



ADMINISTRATIVE REGISTER OF KENTUCKY

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

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet January 8, 2017, at 1:00 p.m. in room 149 Capitol Annex. **Tentative Agenda** 1471
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The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2017 Edition of the **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)

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The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, 700 Capitol Avenue, Room 300, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: \$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.

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VOLUME 44, NUMBER 7 – JANUARY 1, 2018

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

Filing and Publication

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

Public Hearing and Public Comment Period

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

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

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

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

Review Procedure

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

EMERGENCY ADMINISTRATIVE REGULATIONS

STATEMENT OF EMERGENCY
105 KAR 1:140E

Pursuant to KRS 13A.190, the proposed amendment to the administrative regulation is an emergency. This emergency amendment to the administrative regulation amends the current regulation to provide for procedures to implement the provisions of 2017 Ky. Acts ch. 125, sec. 3 (Senate Bill 104). An emergency amendment to the administrative regulation is necessary to provide the procedures to implement 2017 Ky. Acts ch. 125, sec. 3 as of the commencement of the relevant retirement date, beginning January 1, 2018, as provided in the statute. This emergency amendment to the administrative regulation shall be replaced by an ordinary amendment to the administrative regulation. The ordinary amendment to the administrative regulation was filed with the Regulations Compiler on December 15, 2017. The ordinary amendment to the administrative regulation is identical to this emergency amendment to the administrative regulation.

MATTHEW G. BEVIN, Governor
DAVID L. EAGER, Interim Executive Director

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Emergency Amendment)

105 KAR 1:140E. Employer's administrative duties.

RELATES TO: KRS 16.583, 16.645(18), 18A.105, 61.546, 61.552(23), 61.560, 61.565, 61.569, 61.597, 61.598, 61.637(17), 61.675, 61.685, 61.702, 78.545(33), (37), 78.616, 78.625, 78.652, 26 U.S.C. 401(a)(17), (31), 403(b), 408(a), (b), 414(g)(6), 457(b), 3121(b)(10), Pub. L. 104-191, Pub. L. 111-5, Div. A, Title XIII, Div. B, Title IV, 26 C.F.R. 31.3121(b)(10)-2, 29 C.F.R. 519.2(a), 42 C.F.R. 423.504(b)(4)(vi), 45 C.F.R. Parts 160, 162, 164

STATUTORY AUTHORITY: KRS 16.645(18), 61.565, 61.645(9)(g), 61.675, 78.545(33), 78.625

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of the Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. Employers participating in the Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System are required by KRS 16.645(18), 61.565, 61.675, 78.545(33), and 78.625 to make contributions to the retirement systems, to report creditable compensation to the retirement systems and other information that the Board of Trustees may require, and perform other duties and responsibilities as participating employers. 26 U.S.C. 401(a)(17) places a limit on the amount of creditable compensation on which contributions may be made. This administrative regulation sets out the reporting requirements for all participating agencies.

Section 1. (1) Each employer shall submit the reports required under KRS 61.675 and KRS 78.625 electronically using the secure Kentucky Retirement Systems' Employer Self Service Web site by:

(a) The Enter Report Details Module; or

(b) Uploading an electronic file that meets the requirements of the Employer Contribution Record Layout. The employer shall submit a test file to the retirement systems, which shall be reviewed for compliance with the requirements of the Employer Contribution Record Layout. If the test file is in compliance with the requirements of the Employer Contribution Record Layout, the retirement systems shall certify the electronic file and inform the employer of the month when the employer may begin using the electronic file for submitting reports. If the test file is not in compliance with the requirements of the Employer Contribution Record Layout, the retirement systems shall inform the employer of the needed corrections to the test file. The employer shall not submit a report by electronic file pursuant to this subsection until

the test file is certified by the retirement systems.

(2) The retirement systems shall notify each employer of the Web address of the secure Kentucky Retirement Systems' Employer Self Service Web site and shall notify each employer if the Web address of the secure Kentucky Retirement Systems' Employer Self Service Web site changes.

(3) Each employer shall submit the contributions required by KRS 61.675 and KRS 78.625:

(a) Electronically using the secure Kentucky Retirement Systems' Employer Self Service Web site;

(b) By mailing or hand delivering a check;

(c) By the eMARS system maintained by the Finance and Administration Cabinet; or

(d) By wire transfer.

(4) The employer shall report all creditable compensation paid during a month by the tenth day of the following month.

(a) The employer shall designate the month to which the creditable compensation should be applied if it is not the month for which the employer is reporting and if the month the creditable compensation was earned is the month in which the employee:

1. Became employed;

2. Became eligible to participate in one of the systems administered by Kentucky Retirement Systems;

3. Was transferred to hazardous coverage from nonhazardous participation;

4. Was transferred from hazardous coverage to nonhazardous participation;

5. Terminated from employment; or

6. Became ineligible to participate in one (1) of the systems administered by Kentucky Retirement Systems.

(b) If the employee is paid creditable compensation in a lump sum or nonrecurring payment, the employer shall designate the reason for the lump sum or nonrecurring payment.

1. If the lump sum or nonrecurring payment was earned during a specific time period, the employer shall designate the time period during which the lump sum or nonrecurring payment was earned.

2. If the employer fails to designate a specific time period during which the lump sum or nonrecurring payment was earned, the payment shall be considered a lump sum bonus pursuant to KRS 16.505(8), 61.510(13), or 78.510(13).

(5) The provisions of subsection (1) of this section shall not apply to the Kentucky Personnel Cabinet or agencies that are reported by the Kentucky Personnel Cabinet.

(6) Each employer shall report employees who are regular full-time employees as defined by KRS 61.510(21) and 78.510(21) and shall remit employer and employee contributions for those employees.

(7) If an employer fails to withhold from an employee's creditable compensation the full amount of contributions due from the employee in accordance with KRS 16.583, 61.560, 61.597, or 61.702:

(a) The retirement systems shall notify the employer of the additional amount of employee contributions due from the employee;

(b) The employer shall withhold the additional contributions due from the employee in accordance with KRS 16.583, 61.560, 61.697, or 61.702 from the employee's creditable compensation and remit the additional contributions to the retirement systems;

(c) If the employee is no longer employed by the employer, the employer shall notify the retirement systems and the retirement systems shall refund the contributions submitted by the employer on behalf of the employee to the employer, which shall withhold the applicable taxes from the contributions and remit the remaining money to the employee; and

(d) If the contributions are refunded in accordance with paragraph (c) of this subsection, then that service credit shall be omitted service in accordance with KRS 61.552(23).

(8) Each employer shall report employees who are not regular full-time employees as defined by KRS 61.510(21) and 78.510(21), but shall not remit employer or employee contributions for those employees unless required to do so pursuant to KRS 61.680(6),

except:

(a) Student employees of public universities participating in the Kentucky Employees Retirement System who are enrolled as full-time students in a course of study at the university and who are exempt from FICA withholding pursuant to 26 U.S.C. 3121(b)(10) and 26 C.F.R. 31.3121(b)(10)-2; and

(b) Student employees of public universities participating in the Kentucky Employees Retirement System who are enrolled as full-time students in a course of study at the university and are classified as full-time students throughout the fiscal year pursuant to 29 C.F.R. 519.2(a).

(9)(a) An employer participating in Kentucky Employees Retirement System or County Employees Retirement System shall not classify an employee in more than one (1) non-participating position status during the fiscal year, except an employer participating in the County Employees Retirement System may classify an employee as probationary pursuant to KRS 78.510(21)(c) in the same fiscal year that the employer classifies the employee as seasonal, emergency, or part-time.

(b) An employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System shall not change an employee's position status from full-time to seasonal, temporary, or interim in the same fiscal year.

(c) An employer shall not classify an employee as a seasonal employee pursuant to KRS 61.510(21)(a) or 78.510(21)(a) unless the duties of the job can only be performed during a defined time period during a fiscal or calendar year. If the employer classifies an employee as seasonal and the employee is terminated after the defined time period during a fiscal or calendar year, there shall be a three (3) calendar month break in employment before the employer may again classify the employee as a seasonal employee, except for employers that are school boards. If an employer that is a school board classifies an employee as seasonal and the employee is terminated after the defined time period during a fiscal or calendar year, there shall be a six (6) calendar month break in employment before the employer may again classify the employee as a seasonal employee.

(d) If an employer violates the provisions of this subsection, the retirement systems shall determine if the employee worked or averaged the necessary hours to be in a regular full-time position as provided in KRS 61.510(21) or 78.510(21). If the employee worked or averaged the necessary hours to be in a regular full-time position as defined by KRS 78.510(21), the service credit shall be omitted service in accordance with KRS 61.552(23).

Section 2. (1) Each employer shall submit electronic mail to the retirement systems by logging on to the Kentucky Retirement Systems' secure electronic mail server.

(2)(a) If an employer submits personal information about its employees to the retirement systems in an unsecure electronic format or submits personal information regarding its employees intended to be submitted to the retirement systems to another person or entity by hand delivery, mail, fax, or in an electronic format; the employer shall notify affected employees in writing of the disclosure of personal information and provide information regarding obtaining credit reports.

(b) Personal information includes the member's first name or first initial and last name in combination with the member's:

1. Social Security number;
2. Driver's license number;
3. Personal Identification Number permitting access to the member's account; or
4. Medical Information.

(c) The retirement systems shall notify the employer of a disclosure upon discovery.

(d) The employer shall notify the retirement systems of a disclosure upon discovery.

(e) The employer shall submit a draft of the written notification to be made to affected employees to the retirement systems for approval or denial.

(f) The employer shall submit copies of the written notifications made to affected employees to the retirement systems after the notifications have been made.

(g) If the retirement systems is required by federal or state law to provide notification to affected members about the employer's disclosure of personal information or if the retirement systems determines that it should provide the notification to its affected members because of the nature or magnitude of the employer's disclosure, the employer shall reimburse the retirement systems for its costs in notifying members affected by the employer's disclosure.

(h) In transmitting any medically related personal information, the employer shall comply with all statutes and regulations comprising the Health Insurance Portability and Accountability Act of 1996 "HIPAA", Pub.L. 104-191 and the Health Information Technology for Economic and Clinical Health Act "HITECH", Pub.L. 111-5.

(i) Each employer shall execute a data use agreement with retirement systems.

Section 3. (1)(a) The retirement systems shall submit an invoice to employers for any payments owed to the retirement systems, which were not paid through the normal monthly reports.

(b) The employer shall remit payment to the retirement systems by the due date provided on the invoice.

(2) The retirement systems may offset funds owed by the employer to the retirement systems with funds owed to the employer by the retirement systems.

Section 4. (1) An employer shall pay interest at the rate adopted by the board for any creditable compensation paid as a result of an order of a court of competent jurisdiction, the Personnel Board, or the Human Rights Commission or for any creditable compensation paid in anticipation or settlement of an action before a court of competent jurisdiction, the Personnel Board, or the Human Rights Commission including notices of violations of state or federal wage and hour statutes or violations of state or federal discrimination statutes.

(2) The interest shall be assessed from the time period for which the creditable compensation has been reinstated.

Section 5. If an employer refuses to provide the retirement systems access to records or information requested in accordance with KRS 61.685 or does not respond to a request for information or records by the retirement systems, the retirement systems may, if appropriate, hold all payments of:

- (1) Any funds due to the employer; or
- (2) Refunds or initial retirement allowances to any employee or former employee of the employer whose refund or retirement may be affected by the records or information requested by the retirement system.

Section 6. (1) Effective July 1, 1996, and before July 1, 2002, the creditable compensation on which contributions are reported shall not exceed the maximum annual compensation limit contained in 26 U.S.C. 401(a)(17), \$150,000, as adjusted for cost-of-living increases under 26 U.S.C. 401(a)(17)(B). The retirement system shall notify employers of the maximum annual compensation limit. Each employer shall report contributions on all creditable compensation up to the maximum annual limit. Once an employee's creditable compensation has reached the maximum annual limit, the employer shall continue to report the employee's creditable compensation but shall not report any further employer or employee contributions on the employee's creditable compensation. If excess contributions are erroneously reported, the retirement system shall refund the excess contributions to the employer for distribution to the employee after making payroll deductions in accordance with federal and state law.

(2) Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration under this provision, the rules of 26 U.S.C. 414(g)(6) shall apply, except that in applying these rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age nineteen (19) before the close of the year.

(3) Effective with respect to plan years beginning on and after

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July 1, 2002, a plan member's annual compensation that exceeds \$200,000 (as adjusted for cost-of-living increases in accordance with 26 U.S.C. 401(a)(17)(B)) shall not be taken into account in determining benefits or contributions due for any plan year. Annual compensation shall include compensation during the plan year or any other consecutive twelve (12) month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year shall apply to annual compensation for the determination period that begins with or within the calendar year. If the determination period consists of fewer than twelve (12) months, the annual compensation limit shall be an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve (12). If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for this prior determination period shall be subject to the applicable annual compensation limit in effect for that prior period.

(4) A participating member may pay contributions for the creditable compensation over the maximum annual compensation limit for the years used to determine the member's final compensation for purposes of retirement if:

(a) The member's creditable compensation has exceeded the maximum annual compensation limit contained in 26 U.S.C. 401(a)(17) in years prior to the fiscal year beginning July 1, 2002;

(b) The member has filed a notification of retirement; and

(c) The excess creditable compensation is within the maximum annual compensation limit applicable in 2002-2003. Upon receipt of employee contributions, the retirement systems shall bill the employer for the employer contributions on the excess creditable compensation, and the employer shall remit the employer contributions to the retirement systems. The excess shall only be included in retirement calculations if both the employee and employer have paid their respective contributions. [Section 7.-(1)-An employer may request that the retirement systems make a determination if a change in position or hiring of an employee is a bona fide promotion or career advancement prior to the employee's change of position or hiring as provided in KRS 61.598.

(2) An employer may submit a Form 6480, Employer Request for Pre-Determination of Bona Fide Promotion or Career Advancement, describing the proposed change in position or hiring of an employee or potential employee including:

(a) The employee's or potential employee's full name;

(b) The employee's or potential employee's Kentucky Retirement Systems Member Identification Number or Social Security Number;

(c) The potential employee's current employer;

(d) The employee's current job description;

(e) The job description for the employee's proposed job;

(f) Documentation of additional training, skills, education, or expertise gained by the employee or potential employee;

(g) Employer's organizational chart; and

(h) Any additional information the employer wants to be considered by the retirement systems.

(3) The employer shall provide any additional information requested by the retirement systems.

(4) The retirement systems may require the employer to make certifications regarding the information and documentation submitted.

(5) In determining if a change in position or hiring would be a bona fide promotion or career advancement, the retirement systems shall consider the factors listed in KRS 61.598(1)(a).

(6) Increases or proposed increases in an employee's creditable compensation caused by overtime, compensatory time other than lump-sum payment made at the time of termination, or bonuses shall not be a bona fide promotion or career advancement.

(7) The retirement systems shall issue a final administrative decision in writing informing the employer whether the employee's change in position or potential employee's hiring is a bona fide

promotion or career advancement. The retirement systems' determination shall be specific to the employee or potential employee and shall be based on the information and documentation provided by the employer. If the information or documentation provided by the employer is not accurate, the final administrative decision of the retirement systems shall not be binding on the retirement systems pursuant to KRS 61.685.

(8) An employer who disagrees with the retirement systems' final administrative decision may request an administrative hearing in accordance with KRS Chapter 13B. The request for administrative hearing shall be made in writing within thirty (30) days of the date of the final administrative decision of the retirement systems.]

Section 7.[8-] (1) For members retiring on or after January 1, 2014, but prior to July 1, 2017, [After the member retires,] the retirement systems shall determine if annual increases in a member's creditable compensation greater than ten (10) percent occurred over the member's last five (5) fiscal years of employment.

(a) For each of the member's last five (5) fiscal years of employment, the retirement systems shall multiply the member's creditable compensation for the previous fiscal year by 110 percent. If the member's creditable compensation in any of his or her last five (5) fiscal years of employment is greater than the member's creditable compensation from the previous fiscal year multiplied by 110 percent, the retirement systems shall determine that an annual increase in the member's creditable compensation greater than ten (10) percent has occurred.

(b) For purposes of performing the calculations in paragraph (a) of this subsection, the member's creditable compensation shall be annualized by dividing the member's creditable compensation for the fiscal year by the number of months of service credit, and multiplying by twelve (12).

(2) If the retirement systems determines[determine] that the member received annual increases in creditable compensation greater than ten (10) percent over his or her [the member's] last five (5) fiscal years of employment, the retirement systems shall send written notice to the member's last participating employer of the retirement systems' determination that the member has experienced annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment, and the amount of the additional actuarial cost to the retirement systems attributable to the increases.

(3) If the employer believes that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment was due to a bona fide promotion or career advancement, the employer shall file a Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, for a determination that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment were due to a bona fide promotion or career advancement. The Form 6481 shall be filed within sixty (60) days of the date on[of] the notice. If the retirement systems had previously provided a determination that a change in position or hiring of the member would be a bona fide promotion or career advancement, the employer shall submit the determination and provide documentation that the increase in creditable compensation for that fiscal year was due to the employer implementing the proposed change in position or hiring.

(4) The employer shall provide any additional information requested by the retirement systems.

(5) The retirement systems may require the employer to make certifications regarding the information and documentation submitted.

(6) In determining if a change in position or hiring was a bona fide promotion or career advancement, the retirement systems shall consider the factors listed in KRS 61.598(1)(a).

(7) The retirement systems shall issue a final administrative decision in writing informing the employer whether the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment were

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due to a bona fide promotion or career advancement.

(8) If the employer fails to submit a Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, within sixty (60) days of the date on[øf] the notice, the employer shall pay the additional actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment.

(9) If the employer disagrees with the final administrative decision by the retirement systems, the employer shall file a written request for an administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of the date on[øf] the final administrative decision. The hearing shall be limited to the issue of whether the retirement systems correctly determined that the annual increases in the member's creditable compensation greater than ten (10) percent were not due to a bona fide promotion or career advancement.

(10) If the employer fails to file a written request for administrative hearing within thirty (30) days of the date on[øf] the final administrative decision, the employer shall pay the additional actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment.

(11) The retirement systems shall issue an invoice to the last participating employer representing the actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment. The employer may request that the retirement systems allow the employer to pay the cost over a period, not to exceed one (1) year, without interest and the retirement systems shall establish a payment plan for the employer.

(12) If the member was employed by more than one (1) participating employer when the member retired, the actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment shall be divided equally among the member's last participating employers.

(13) An employer who is required to pay the additional actuarial cost pursuant to KRS 61.598 shall be treated as a participating employer in the system to which the employer is required to pay the additional actuarial cost solely for purposes of making the payment required pursuant to KRS 61.598.

Section 8. (1) For members retiring on or after January 1, 2018, the retirement systems shall determine if annual increases in a member's creditable compensation greater than ten (10) percent occurred over the member's last five (5) fiscal years of employment.

(a) For each of the member's last five (5) fiscal years of employment, the retirement systems shall multiply the member's creditable compensation for the previous fiscal year by 110 percent. If the member's creditable compensation in any of his or her last five (5) fiscal years of employment is greater than the member's creditable compensation from the previous fiscal year multiplied by 110 percent, the retirement systems shall determine that an annual increase in the member's creditable compensation greater than ten (10) percent has occurred.

(b) The fiscal year immediately preceding the member's last five (5) fiscal years shall be used for comparison to determine if an increase in creditable compensation greater than ten (10) percent occurred in the initial fiscal year of the member's last five (5) fiscal years.

(c) For purposes of performing the calculations in paragraph (a) of this subsection, the member's creditable compensation shall be annualized by dividing the member's creditable compensation for the fiscal year by the number of months of service credit, and multiplying by twelve (12).

(2) The member shall receive a refund of all pre-tax and post-tax member contributions and interest directly attributable to the reduction in creditable compensation.

(a) Pre-tax member contributions shall be refunded to the member by the employer who picked-up the contributions.

(b) Post-tax member contributions shall be refunded to the member directly from the retirement systems.

(c) Interest earned on pre-tax and post-tax member contributions shall be refunded to the member directly from the retirement systems.

Section 9. (1) If the retirement systems determines that the member received annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment, the retirement systems shall send the member's employer the Form 6487, Request for Member Pension Spiking Exemption Amounts.

(a) Pursuant to KRS 16.645, 61.675, and 78.545, the employer shall furnish the information required by the retirement systems in the discharge of its duties. The employer shall complete the Form 6487 in its entirety and provide supporting documentation.

(b) The employer shall submit a completed Form 6487 at the retirement office within sixty (60) days from the date the Form 6487 was mailed. If the employer fails to submit a completed Form 6487 within that sixty (60) day time period, Kentucky Retirement Systems shall issue a final administrative decision and provide adjustment correspondence to the member.

(2) If the employer believes that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment was not due to a bona fide promotion or career advancement, a lump-sum payment for compensatory time, a lump-sum payment made pursuant to alternate sick leave, leave without pay, overtime attributable to a state or federally funded grant, or overtime attributable to a state of emergency, the employer shall indicate on the Form 6487 that none of the listed exemptions are applicable.

(a) The employer shall report any increases in creditable compensation directly attributable to a lump-sum payment for compensatory time, a lump-sum payment made pursuant to alternate sick leave, or leave without pay during the employer's normal monthly reporting. If, upon review of the Form 6487, the employer believes that adjustments to the reported salaries are required, then the employer shall make those adjustments during the next monthly reporting cycle pursuant to KRS 16.645, 61.675, and 78.545.

(3) If the employer believes that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment was due to a bona fide promotion or career advancement, overtime attributable to a state or federally funded grant, or overtime attributable to a state of emergency, the employer shall include the salary directly attributable to each exemption in Part 2 of the Form 6487.

(a) If the employer believes that any of the salary is directly attributable to a bona fide promotion or career advancement, the employer shall complete Part 3 of the Form 6487.

(b) The employer shall provide an explanation and documentation supporting the assertion that the increase in creditable compensation resulted from a bona fide promotion or career advancement.

(c) In determining if a change in position or hiring was a bona fide promotion or career advancement, the retirement systems shall consider the factors listed in KRS 61.598(1)(a).

(4) The employer shall provide any additional information requested by the retirement systems.

(a) The retirement systems may require the employer to make certifications regarding the information and documentation submitted.

(5) If the increases in creditable compensation are not directly attributable to any of the listed exemptions and no reporting information needs to be corrected, then any annual increase in creditable compensation greater than ten (10) percent shall not be used to calculate the member's retirement allowance.

(6) The retirement systems shall not issue a refund to the employer for the excess employer contributions. The retirement systems shall utilize any employer contributions directly attributable to the reduction in creditable compensation to pay the unfunded liability of the pension fund in which the retiring member participated.

Section 10.[9.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 6481, "Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement", September 2013;~~Form 6480, "Employer Request for Pre-Determination of Bona Fide Promotion or Career Advancement", July 2013;~~ and

(b) Form 6487, "Request for Member Pension Spiking Exemption Amounts", November 2017;~~Form 6484, "Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement", September 2013.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m.

DAVID L. EAGER, Interim Executive Director

APPROVED BY AGENCY: December 15, 2017

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

CONTACT PERSON: Joseph P. Bowman, Special Detail General Counsel, Division of Non-Advocacy, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8615, email joseph.bowman@kyret.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Joseph P. Bowman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements for employers to provide reports and contributions to Kentucky Retirement Systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures and requirements for employers to provide reports and contributions to Kentucky Retirement Systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes provide that employers must file contributions and reports at the retirement systems. This administrative regulation provides the procedures and requirements for employers to file reports and contributions at the retirement systems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by providing the procedures and requirements for employers to file reports and contributions with the retirement systems.

(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 provides the procedure and documentation an employer will have to demonstrate to show that an increase in creditable compensation greater than ten percent (10%) during a member's last five fiscal years of employment is subject to the listed exemptions and capable of being used to calculate the retiring member's retirement benefits.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide the procedure and documentation an employer will have to demonstrate to show that an increase in creditable compensation greater than ten percent (10%) during a member's last five fiscal years of employment is subject to the listed exemptions and capable of being used to calculate the retiring member's retirement benefits.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by providing the procedure and documentation an employer will have to demonstrate to show that an increase in creditable compensation greater than ten percent (10%) during a member's last five fiscal years of employment is subject to the listed exemptions and capable of being used to calculate the retiring member's retirement benefits.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by providing the procedure and documentation an employer will have to demonstrate to show that an increase in creditable compensation greater than ten percent (10%) during the member's last five fiscal years of employment is subject to the listed exemptions and capable of being used to calculate the retiring member's retirement benefits.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 1800 participating employers of Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Employers shall provide information regarding whether a member's increase in creditable compensation greater than ten percent (10%) during the his or her last five fiscal years of employment is subject to the listed exemptions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The additional cost to employers should be minimal because they already report electronically. Kentucky Retirement Systems will have a cost of staff time and resources.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Employers will know how to report the required pension spiking exemption amounts.

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

(a) Initially: \$0.00

(b) On a continuing basis: \$0.00

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Retirement Systems are paid from the Retirement Allowance Account (trust and 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: There is no increase in fees or funding required.

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

(9) TIERING: Is tiering applied? Procedures are the same for all members and participating employers; therefore, tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state and local government employers participating in Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 16.645(18), 61.565, 61.598(6), 61.645(9)(g), 61.675, 78.545(33), and 78.625.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

None.

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

(c) How much will it cost to administer this program for the first year? The additional cost to employers should be minimal because they already report electronically. Kentucky Retirement Systems will have a cost of staff time and resources.

(d) How much will it cost to administer this program for subsequent years? There is no additional cost as employers have always been required by statute to report.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

**STATEMENT OF EMERGENCY
601 KAR 2:030E**

This emergency administrative regulation establishes the guidelines and requirements for the implementation and use of ignition interlock devices. It is filed to address the risk to public safety associated with driving under the influence. This emergency administrative regulation replaces the current emergency regulation that was set to expire on November 21, 2017, and differs substantially by amending the language in Section 7(6)(d) that requires the Commissioner to approve a transfer plan. This emergency administrative regulation will be replaced by an ordinary administrative regulation which is being filed simultaneously with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
GREG THOMAS, Secretary

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
(Emergency Amendment)**

601 KAR 2:030E. Ignition interlock[devices;— the surrendering of license plates].

RELATES TO: KRS 45A, 186.010, 186.440, 186.442, 186.480, 186.531, 186.560, 186.570, 189A.005, 189A.010, 189A.040, 189A.070, 189A.085, 189A.090, 189A.103, 189A.105, 189A.107, 189A.200, 189A.240, 189A.250, 189A.340, 189A.345, 189A.400, 189A.410, 189A.420, 189A.440, 189A.500, 205.712, 18 U.S.C. 2721[57 C.F.R. 11772-11787]

STATUTORY AUTHORITY: KRS 189A.500[489A.085(1)(b); 489A.340(4)(f)]

EFFECTIVE: November 15, 2017

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189A.500 requires the Transportation Cabinet to promulgate administrative regulations to carry out provisions regarding the implementation of the commonwealth's ignition interlock program for motor vehicle drivers who violate KRS 189A.010. This administrative regulation establishes the duties and responsibilities of ignition interlock device providers wishing to enter into an agreement with the Commonwealth of Kentucky and the Transportation Cabinet for the administration and implementation of the ignition interlock device program and requirements for certifying ignition interlock devices under this program. This administrative regulation also establishes the requirements for a defendant charged with a violation of KRS 189.010 to obtain an ignition interlock device and license[KRS 189A.085 states that, after a license plate suspension by a judge pursuant to that provision, the circuit court clerk shall transmit surrendered plates to

~~the Transportation Cabinet in the manner set forth by the Transportation Cabinet in administrative regulation. KRS 189A.340(4)(f) states that the Transportation Cabinet shall promulgate administrative regulations to carry out the provisions of that subsection regarding interlock devices. This administrative regulation outlines the procedure for surrendering plates to the Transportation Cabinet pursuant to court order, providing registration information on a convicted violator to the court, approving interlock device manufacturers, installers, and servicing entities and making an approved list available to the public].~~

Section 1. Definitions. (1) "Calibration" means the process that ensures an accurate alcohol concentration reading is being obtained on the ignition interlock device.

(2) "Certification" means the approval process required by the Commonwealth of Kentucky for ignition interlock devices and device providers prior to operating within the state.

(3) "Defendant" means an individual who is determined to be eligible and who is ordered by the court to drive only motor vehicles that have certified ignition interlock devices installed.

(4) "Department" means the Department of Vehicle Regulation in the Kentucky Transportation Cabinet.

(5) "Device" means a breath alcohol ignition interlock device.

(6) "Fail-point" means the level at which the breath alcohol concentration is at or above .02 percent.

(7) "Ignition interlock certification of installation" is defined by KRS 189A.005(3).

(8) "Ignition interlock device" is defined by KRS 189A.005(2).

(9) "Ignition interlock device provider" or "device provider" is defined by KRS 189A.005(4).

(10) "Ignition interlock license" is defined by KRS 189A.005(5).

(11) "Ignition interlock service provider" or "service provider" means a certified supplier, installer, service provider, and, if applicable, manufacturer of the certified ignition interlock devices.

(12) "Lockout" means the ability of the ignition interlock device to prevent a motor vehicle's engine from starting.

(13) "Manufacturer" means the actual maker of the ignition interlock device that assembles the product and distributes it to device providers.

(14) "Medical accommodation" means non-standard calibration of a device that has been adjusted to detect the breath alcohol level of defendants who have a medically documented condition of diminished lung capacity requiring a reduced air sample.

(15) "Motor vehicle" is defined by KRS 186.010(4).

(16) "NHTSA" means the National Highway Traffic Safety Administration.

(17) "Provider representative" means a device provider employee who provides oversight of the provider's ignition interlock operations within the Commonwealth of Kentucky.

(18) "Retest" means an additional opportunity to provide a breath sample.

(19) "RFQ" means a request for qualifications pursuant to KRS Chapter 45A.

(20) "Rolling retest" means a test of the defendant's breath alcohol concentration required at random intervals during operation of the motor vehicle.

(21) "Service call" means an onsite remote service of an ignition interlock device, outside of a fixed facility, including for example:

- (a) Diagnostic trouble shooting;
- (b) Repair or replacement of a malfunctioning device; or
- (c) Removal of a device from an inoperable vehicle.

(22) "Service facility" means the physical location where the service provider's technicians install, calibrate, or remove ignition interlock devices.

(23) "Service facility inspection" means the process of determining that a service provider and its technicians are qualified and approved to provide ignition interlock services within the Commonwealth of Kentucky.

(24) "Tampering" means an unlawful act or attempt to disable or circumvent the legal operation of the ignition interlock device.

(25) "Technician" means a service provider employee or contractor who installs, calibrates, and removes ignition interlock

devices within the Commonwealth of Kentucky.

(26) "Violation" means:

(a) A breath test indicating an alcohol concentration at the fail-point or above upon initial startup and retest during operation of the motor vehicle;

(b) Altering, concealing, hiding, or attempting to hide one's identity from the ignition interlock system's camera while providing a breath sample;

(c) Failure to provide a minimum of fifty (50) breath samples within a thirty (30) day period;

(d) Tampering that breaches the guidelines for use of the interlock device; or

(e) Failure to pay provider fees as established in Section 2(17) of this administrative regulation.

Section 2. Ignition Interlock Device Applications. (1) The requirements established in this administrative regulation shall not be applied retroactively to ignition interlock devices in use prior to the effective date of this administrative regulation.

(2)(a) Upon arraignment of an offense under KRS 189A.010 resulting in pretrial license suspension, a defendant seeking authorization to apply for and, if eligible, operate under an ignition interlock license shall file with the court a completed Pretrial Application to Court for Authorization to Apply for an Ignition Interlock License and Device, AOC-495.4, pursuant to KRS 189A.200.

(b) Upon conviction of an offense under KRS 189A.010 resulting in license revocation, a defendant seeking authorization to apply for and, if eligible, operate under an ignition interlock license shall file with the court a completed Application to Court Upon Conviction for Authorization to Apply for an Ignition Interlock License and Device, AOC-495.12, pursuant to KRS 189A.070.

(c) Upon judicial finding of a refusal under KRS 189A.107(2) and an acquittal of charges brought under KRS 186.010, the court may authorize the defendant to submit a completed Post-Acquittal Application for Authorization to Apply for an Ignition Interlock License and Device, AOC 495.10.

(d) An eligible defendant in compliance with KRS Chapters 186 and 205 shall receive an Order Upon Acquittal Authorizing Ignition Interlock License and Device, AOC-495.11.

(e) The cabinet shall issue an ignition interlock license for the period of suspension ordered by the court.

(3) A defendant requesting indigency status review shall file concurrently with the application a completed Financial Statement, Affidavit of Indigency, Request for Reduced Ignition Interlock Device Costs, AOC-495.8.

(4) Upon review of the appropriate application, the court may issue the defendant a Pretrial Order Authorizing Application for Ignition Interlock License and Device, AOC-495.5, or an Order Upon Conviction Authorizing Application for Ignition Interlock License and Device, AOC-495.13.

(5) Defendant eligibility guidelines, applications, and medical accommodation forms shall be made available electronically on the cabinet's Web site at <http://drive.ky.gov> and in printed form through the Department of Vehicle Regulation regional field offices. Regional office locations and contact information are available at <http://drive.ky.gov>.

(6)(a) Prior to application, a defendant shall be required to remit to the cabinet a non-refundable application fee in the amount of \$105 pursuant to KRS 189A.420(6). Payment shall be made by cashier's check, certified check, or money order at one (1) of the cabinet's regional field offices or the central office in Frankfort.

(b) A defendant's payment of the application fee shall not be subject to a court's determination of indigency.

(7) A defendant and his or her counsel are advised that a pre-existing out-of-state or in-state suspension for the offenses listed in KRS 186.560, 186.570, or 205.712 shall result in the defendant's ineligibility to obtain an ignition interlock device. Eligibility guidelines are available at <http://drive.ky.gov>.

(8) A defendant shall submit to the cabinet a completed Ignition Interlock Application, TC 94-175, with a court order authorizing application and proof of insurance and valid vehicle registration.

(9) A defendant seeking a medical accommodation due to

diminished lung capacity shall submit with the application a completed Breath Alcohol Ignition Interlock Physician Statement, TC 94-176.

(10) The cabinet shall issue the defendant a letter providing notice of his or her eligibility or ineligibility to install an ignition interlock device based on whether his or her current driving history record conforms to the eligibility guidelines established in KRS Chapters 186 and 205.

(11) A defendant eligible for device installation shall select and contact a certified device provider of his or her choice from the list maintained on the cabinet's Web site at <http://drive.ky.gov>.

(12) A technician designated by the device provider shall install a certified ignition interlock device on the defendant's vehicle upon receipt of the court order and letter of eligibility issued by the cabinet.

(13) A defendant shall be required to install an ignition interlock device on one (1) primary motor vehicle registered and titled in his or her name or another's motor vehicle with express notarized, written consent of the owner authorizing installation of the device.

(14) Nothing in this administrative regulation shall prohibit a person from installing devices on multiple motor vehicles pursuant to subsection (13) of this section.

(15) Upon a defendant's payment of the appropriate fees, the service provider's technician shall install the device and issue to the defendant a Certificate of Installation for Ignition Interlock Device, TC 94-177.

(16) At the time of issuance of an ignition interlock license, a defendant shall:

(a) Present the Certificate of Installation to the circuit clerk in the defendant's county of residence; and

(b) Pay a licensing fee pursuant to KRS 186.531 in addition to the fees specified in subsection (20)(c) of this section. The license shall display an ignition interlock device restriction.

(17) After ten (10) days' written notice to the defendant, the provider shall notify the appropriate county attorney and the cabinet for nonpayment of fees on an account that is in arrears for thirty (30) days or more.

(18) A defendant may voluntarily have the device removed and reinstalled onto a different motor vehicle pursuant to subsection (13) of this section, and upon payment of the appropriate fees to the provider.

(19) A defendant shall have the device removed by an approved service provider and technician designated by the device provider upon completion of the ignition interlock period specified by the court.

(20)(a) Upon removal of the device, the service provider shall retain for their records and provide to the defendant a Certificate of Removal for Ignition Interlock Device, TC 94-178, documenting the successful removal of the interlock device and defendant's payment of all fees.

(b) Upon notice that the device has been removed, the cabinet shall update the defendant's driver history record authorizing the circuit clerk's office to issue the defendant a new license without the ignition interlock restriction.

(c) A defendant shall pay the appropriate fee for a duplicate or renewal license pursuant to KRS 186.531.

(21) A defendant with a license suspension or revocation period exceeding twelve (12) months shall be subject to retesting requirements prior to the issuance of a new license pursuant to KRS 186.480.

Section 3. General Requirements for Ignition Interlock Device Providers. (1) The cabinet shall certify ignition interlock device providers utilizing the provisions of KRS Chapter 45A and the terms of the RFQ. Initial certification shall be valid for a period of eighteen (18) months. Extensions shall be for a period of two (2) years with two (2) subsequent renewals.

(2) Ignition interlock device providers certified under this administrative regulation shall obtain recertification in compliance with this administrative regulation prior to providing devices and services.

(3) An ignition interlock device provider seeking certification to provide devices and services within the commonwealth shall

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comply in all respects with the requirements of solicitation issued by the cabinet. Non-compliance shall result in a denial of certification.

(4) An ignition interlock device provider may subcontract with a person, firm, LLC, or corporation to provide a device and services if that device is specifically included in its original certification request and is specifically certified by the cabinet pursuant to KRS 189A.500.

(5) An ignition interlock device or service provider shall provide information and training for the operation and maintenance of the device to the defendant and other individuals operating a vehicle with an installed device.

(6)(a) A device and service provider shall be prohibited from removing a device owned by a different provider unless an agreement is in place or for the purpose of replacing a defendant's provider due to that provider's insolvency or business interruption.

(b) The original device provider shall bear the costs associated with the removal of the existing device and installation of the new device.

(7) A device provider shall notify the cabinet within fifteen (15) days of a pending suspension, revocation, or disciplinary action taken against it by a jurisdiction outside the commonwealth. Notice shall include a copy of the official correspondence or pleading establishing the reason for the pending action and shall be provided to the cabinet regardless of the existence of an appeal.

(8) The records required by Section 4(2)(e) of this administrative regulation shall be retained by an ignition interlock device provider for five (5) years from the date the device is removed from the defendant's vehicle. The records shall be disposed of in a manner compliant with relevant privacy laws and the provisions contained in this administrative regulation.

Section 4. Certification of Ignition Interlock Devices and Device Providers. (1) An ignition interlock device provider requesting certification of an ignition interlock device shall:

(a) Submit an affidavit that the ignition interlock device sought to be used complies with the applicable specifications and certification requirements contained in the RFQ; and

(b) Submit documentation for each model from either a certified, independent testing laboratory or the NHTSA testing laboratory that the ignition interlock device meets or exceeds the current NHTSA model specifications at nhtsa.gov/staticfiles/nti/pdf/811859.pdf.

(2) An ignition interlock device provider requesting certification shall:

(a) Submit evidence demonstrating successful experience in the development and maintenance of an ignition interlock service program, including a list of jurisdictions served by the device provider;

(b) Provide a description of the training required including its frequency, for persons employed by, contracted with, or permitted by the provider to install, calibrate, remove, and provide continuing support for the devices;

(c) Provide a plan that includes a location map describing the areas and locations of the provider's proposed fixed installation and service facilities. The plan shall include at least one (1) fixed facility in each of the twelve (12) highway districts;

(d) Agree to initial service facility inspections, continuing random inspections, and annual inspections of each service facility by the cabinet or its designee. The provider shall also agree to provide sufficient notice to the cabinet or its designee of the opening of new service facilities to permit the inspection of the facility within thirty (30) days of opening;

(e) Provide a plan for the receipt, maintenance, and destruction or appropriate return of defendant records consistent with court rules and the confidential maintenance of defendant records as required by the Driver's Privacy Protection Act, 18 U.S.C. 2721 and other applicable statutes;

(f) Provide proof of insurance covering the liability related to the manufacture, operation, installation, service, calibration, and removal of the devices with policy limits as established in the RFQ. The provider's liability insurance shall be expressly considered primary in the policy;

(g) Designate a provider representative authorized to speak on behalf of and bind the device provider, and designated to work with the cabinet, the courts, and other agencies in the administration of the ignition interlock program;

(h) Maintain a toll-free twenty-four (24) hour emergency phone service that shall be used by defendants to request assistance in the event of operational problems related to the device and shall include technical assistance and aid in obtaining a roadside service call if needed; and

(i) Demonstrate the ability to maintain sufficient, secure computer hardware and software compatible with the cabinet and court requirements to record, compile, and transmit data and information requested by the cabinet and the Administrative Office of the Courts.

(3) Device providers shall notify the appropriate county attorney within twenty-four (24) hours electronically, or no later than seventy-two (72) hours by mail, fax, or other method approved by the recipient of the following occurrences:

(a) Device tampering or circumvention violations; or

(b) A defendant's failure to comply with a court order pursuant to Section 6(6) of this administrative regulation.

(4) A provider shall indemnify and hold harmless the commonwealth and its employees and agents from all claims, demands, or actions as a result of damages or injury to persons or property, including death, that arise directly or indirectly out of the installation, omission, failure of installation, servicing, calibrating, or removal of an ignition interlock device. If the device provider's report of ignition interlock activities contains a verified error, the cabinet, department, or cabinet or department employees or agents shall be indemnified relevant to the error.

Section 5. Ignition Interlock Device Installation. (1) A provider may charge a defendant for the commodities and services listed in the RFQ, including the following:

(a) Standard ignition interlock device installation, or installation on alternative fuel motor vehicles or a motor vehicle with a push button starter;

(b) Device rental on a monthly basis;

(c) Scheduled device calibrations and monitoring as specified in the RFQ;

(d) Required insurance in case of theft, loss, or damage to the device and its components;

(e) Resets necessary due to the fault of the defendant;

(f) Missed appointments without notice;

(g) Service calls and mileage up to 100 miles at the current rate established by the Kentucky Finance and Administration Cabinet; and

(h) Device removal.

(2)(a) The court shall determine whether a defendant is indigent. A defendant declared indigent shall pay a proportionate amount of the fees agreed to in the RFQ based upon the guidelines established by the Kentucky Supreme Court in Amendment to Administrative Procedures of the Court of Justice, Part XVI, Ignition interlock, Amended Order 2015-13.

(b) A device and service provider shall accept the court ordered amounts paid by an indigent defendant as payment in full.

(3) The defendant shall remit the fees directly to the device or service provider as directed by the device provider. A device provider shall not prohibit the pre-payment of fees for the device and services.

(4) The device provider shall pursue collection of amounts in arrears and recovery of the devices, where applicable, through separate legal action.

(5) An ignition interlock device shall be installed by or under the direction and supervision of a cabinet-certified ignition interlock device provider in conformance with approved, prescribed procedures of the device manufacturer.

(6) A service provider and technician shall use the calibration units approved by NHTSA and appearing on its list of Conforming Products List of Calibrating Units for Breath Alcohol Testers at <http://www.transportation.gov/odapc/conforming-product-list-calibrating-units-breath-alcohol-testers>.

(7) An ignition interlock device provider shall ensure that

technicians installing the device:

(a) Inspect, calibrate, or replace devices with a newly calibrated device at each inspection as required;

(b) Retrieve data from ignition interlock device data logs for the previous period and send the information to the appropriate authority within twenty-four (24) hours electronically, or no later than seventy-two (72) hours by mail, fax, or other method approved by the recipient pursuant to KRS 189A.500;

(c) Record the odometer reading at installation and at service appointments;

(d) Inspect devices and wiring for signs of tampering or circumvention, record suspected violations, and transmit violation reports pursuant to Section 4(3) of this administrative regulation; and

(e) Conform to other calibration requirements established by the device manufacturer.

(8) The cabinet shall:

(a) Maintain a periodically updated, rotating list of certified ignition interlock device providers and approved facilities available at <http://drive.ky.gov>;

(b) Make available an Ignition Interlock Application, TC 94-175, available at <http://drive.ky.gov> and in regional field offices and the central office in Frankfort;

(c) Make available a uniform Certificate of Installation for Ignition Interlock Device, TC 94-177 to be printed and distributed by device providers to their approved service providers and technicians documenting successful ignition interlock device installation; and

(d) Issue an ignition interlock license to eligible defendants upon receipt of a court order and in compliance with the requirements of this administrative regulation. The license shall have in-force status and indicate it is an ignition interlock license by displaying a restriction code for an ignition interlock device.

Section 6. Installation, Operation, Calibration, and Removal of Devices. (1) Prior to installing the device, the provider shall obtain and retain copies of the following from the defendant:

(a) Photo identification;

(b) A copy of the vehicle registration or title containing the VIN of the vehicle designated as primary by the defendant and the names of the operators of the motor vehicle; and

(c) Consent of the defendant or registered owner to install the device.

(2)(a) The device shall be inspected or calibrated by technicians designated by the device provider within thirty (30) days of installation and every sixty (60) days thereafter, as established in KRS 189A.420(4)(b).

(b) A defendant shall have the option to service the device at thirty (30) day intervals following the initial calibration.

(3) If a defendant fails to have the device inspected or recalibrated as required, the ignition interlock device shall be programmed to enter into a lockout condition, at which time the vehicle shall be required to be returned to the service provider.

(4) The defendant shall be responsible for costs related to roadside service unless it is determined that the interlock device failed through no fault of the defendant, in which case the device provider shall be responsible for the applicable costs.

(5) In the event of a violation resulting in an order from the court, the device provider shall remove the device and the cabinet shall suspend the defendant's ignition interlock license.

(6) A device provider shall, within ninety-six (96) hours of receipt of the court's order directing removal of the device, notify the defendant that he or she shall return the vehicle with the installed device for removal.

(7) If an ignition interlock device is removed for any reason, components of the motor vehicle altered by the installation of the device shall be restored to pre-installed conditions.

Section 7. Provider Suspension, Revocation, Voluntary Facility Closure, or Financial Insolvency. (1) The department shall indefinitely suspend or revoke certification of an ignition interlock device provider for the following:

(a) A device in use by that provider and previously certified by

the cabinet is discontinued by the manufacturer or device provider;

(b) The device provider's liability insurance is terminated or cancelled;

(c) The device provider makes materially false or inaccurate information relating to a device's performance standards;

(d) There are defects in design, materials, or workmanship causing repeated failures of a device;

(e) A device provider fails to fully correct an identified service facility deficiency within thirty (30) days after having been notified by the cabinet or its designee to do so;

(f) A service provider impedes, interrupts, disrupts, or negatively impacts an investigation or inspection conducted by the cabinet or its designee involving customer service issues, vehicle damage, or a complaint brought by a third party;

(g) A public safety or client confidentiality issue with an ignition interlock device provider, service facility, or technician is identified;

(h) A provider becomes insolvent or files for bankruptcy; or

(i) The device provider requests a voluntary suspension.

(2)(a) The device provider shall be given thirty (30) days written notice of the existence of one (1) or more of the conditions specified in subsection (1) of this section by letter from the Commissioner of the Department of Vehicle Regulation, served by certified mail, and an opportunity to respond to the allegations or correct the deficiencies within that period.

(b) The commissioner shall consider the provider's response or lack of response if deciding to suspend for a period of time or completely revoke the certification of the provider.

(c) The provider may appeal the commissioner's decisions pursuant to the provisions of KRS Chapter 13B.

(3) A device provider subject to revocation shall be responsible for, and bear the costs associated with:

(a) Providing notice to defendants; and

(b) The removal of currently installed devices or the installation of a new approved device by a device provider in good standing.

(4) A provider subject to revocation shall continue to provide services for currently installed devices for a time to be determined by the cabinet, but no longer than ninety (90) days.

(5) A provider subject to suspension shall continue to provide services for currently installed devices. A new ignition interlock installation shall not be permitted during the period of suspension.

(6)(a) A provider who terminates certification or goes out of business shall comply with the requirements established in subsection (3) of this section, and shall continue to provide services for currently installed devices for ninety (90) days from the date of the provider's notification to the cabinet that they will be terminating ignition interlock services.

(b) A provider who terminates certification or goes out of business shall submit plans for transferring existing defendants to other providers to ensure continuity of service.

(c) A transfer plan shall be submitted to the cabinet for the commissioner's review within thirty (30) days of the initial notification of intent to cease operations in the commonwealth.

A transfer plan shall be submitted to the cabinet for approval by the commissioner within thirty (30) days of the initial notification of intent to cease operations in the commonwealth.

(d) The provider shall be solely responsible for notifying defendants with currently installed devices serviced by the provider, and shall be solely responsible for charges related to installation of a device by a new provider.

Section 8. Surrender of Motor Vehicle Registration Plates. (1) A defendant who does not qualify for an ignition interlock license shall surrender his or her license plates pursuant to KRS 189A.085.

(2) Upon receipt of a request for a vehicle registration inventory from a court, the Transportation Cabinet shall:

(a) Conduct a search of the automated vehicle information system;

(b) Identify motor vehicles owned or jointly owned by the person named on the request; and

(c) Return the results of the search to the court by 12 noon Eastern time, the next working day after the request is received, if the request is received by 12 noon Eastern time. Requests received after 12 noon Eastern time shall be returned to the court

by the close of business the second working day after they are received.

(3) Upon receipt of a court order suspending a licensee's plates, pursuant to KRS 189A.085, the Transportation Cabinet shall suspend the licensee's registration. The cabinet shall not suspend the registration of any person pursuant to KRS 189A.085 unless a court order has been received.

(4) The court shall return confiscated license plates to the Transportation Cabinet. The cabinet shall bear the responsibility for reasonable postage or shipping costs for the return of confiscated license plates.

(5) After the motor vehicle registration suspension period has expired, the county clerk shall reissue a motor vehicle registration plate and registration receipt upon the request of the vehicle owner as follows:

(a) If the registration period of the suspended license plate has not expired, the new registration shall be issued pursuant to KRS 186.180(2); or

(b) If the suspended license plate has expired, the registration shall be issued as a renewal registration pursuant to KRS 186.050.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Breath Alcohol Ignition Interlock Physician Statement", TC 94-176, August 2015;

(b) "Certificate of Installation for Ignition Interlock Device", TC 94-177, August 2015;

(c) "Certificate of Removal for Ignition Interlock Device", TC 94-178, August, 2015; and

(d) "Ignition Interlock Application", TC 94-175, August 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. through 4:30 p.m. This material is also available on the cabinet's Web site at <http://drive.ky.gov>. [Surrender of Motor Vehicle Registration Plates: (1) Upon receipt of a request for a vehicle registration inventory from a court, the Transportation Cabinet shall:

(a) Conduct a search of the automated vehicle information system;

(b) Identify all motor vehicles owned or jointly owned by the person named on the request; and

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(b) If the suspended license plate has expired, the registration shall be issued as a renewal registration pursuant to KRS 186.050.

Section 2. Breath Alcohol Ignition Interlock Device. (1) An ignition interlock device, installed pursuant to court order shall meet the following criteria:

(a) The ignition interlock device shall be designed and constructed to measure a person's breath alcohol concentration, as defined in KRS 189A.005(1), by utilizing a sample of the person's breath delivered directly into the device;

(b) The ignition interlock device shall be designed and constructed so that the ignition system of the vehicle in which it is installed will not be activated if the alcohol concentration of the operator's breath exceeds .02 alcohol concentration as defined in KRS 189A.005(1);

(c) The ignition interlock device shall meet or exceed performance standards contained in the Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDS), as published in 57 FR 11772-11787 (April 7, 1992);

(d) The ignition interlock device shall prevent engine ignition if the device has not been calibrated within a period of ninety-seven (97) days subsequent to the last calibration;

(e) The ignition interlock device shall:

1. Record each time the vehicle is started;
2. Record results of the alcohol concentration test;
3. Record how long the vehicle is operated; and
4. Detect any indications of bypassing or tampering with the device;

(f) The ignition interlock device shall permit a sample free restart for a period of two (2) minutes or less after a stall;

(g) The ignition interlock device shall require:

1. That the operator of the vehicle submit to a retest within ten (10) minutes of starting the vehicle;
2. That retests continue at intervals not to exceed sixty (60) minutes after the first retest;
3. That retests occur during operation of the vehicle; and
4. That the device enter a lockout condition in five (5) days if a retest is not performed or the results of the test exceeds the maximum allowable alcohol concentration;

(h) The ignition interlock device shall be equipped with a method of immediately notifying peace officers:

1. If the retest is not performed; or
2. If the results exceed the maximum allowable alcohol concentration; and

(i) The ignition interlock device shall include instructions recommending a fifteen (15) minute waiting period between the last drink of an alcoholic beverage and the time of breath sample delivery into the device.

(2) An ignition interlock device shall be:

(a) Installed by the manufacturer or by private sector installers in conformance with the prescribed procedures of the manufacturer; and

(b) Be used in accordance with the manufacturer's instructions.

(3)(a) An ignition interlock device shall be calibrated at least once every ninety (90) days to maintain the device in proper working order.

(b) The manufacturer or installer shall calibrate the device or exchange the installed device for another calibrated device in lieu of calibration.

(c) The record of installation and calibration shall be kept in the vehicle at all times for inspection by a peace officer and shall include the following information:

1. Name of the person performing the installation and calibration;
2. Dates of activity;
3. Value and type of standard used;
4. Unit type and identification number of the ignition interlock device checked; and
5. Description of the vehicle in which the ignition interlock device is installed, including the registration plate number and state, make, model, vehicle identification number, year and color.

4) An ignition interlock device in a lockout condition shall be returned to the site of installation for service.

Section 3. Division of Driver Licensing Requirements. (1) The Division of Driver Licensing shall maintain a list of all manufacturers of ignition interlock devices meeting the requirements of this administrative regulation who have provided documentation to the division confirming that they offer appropriate ignition interlock devices and related services within the Commonwealth.

(2) The list of manufacturers who provide appropriate devices, approved installers, and servicing and monitoring entities shall be published and periodically updated by the Division of Driver

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Licensing on the Transportation Cabinet Web site.

(3) The Division of Driver Licensing shall provide a notation on the face of the operator's license stating that:

(a) The licensee is required by order of the court to be using a vehicle with an ignition interlock device; and

(b) The license has been granted an exception for employment purposes pursuant to KRS 189A.340, if granted by the court.

(4) Manufacturers, installers, and servicing and monitoring entities shall apply to the Division of Driver Licensing for approval and placement on the list maintained by the cabinet.

Section 4. Incorporation by Reference. (1) Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDS), 57 FR 11772-11787 (April 7, 1992), 40 pages, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet, Division of Driver Licensing, 2nd Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.]

GREG THOMAS, Secretary

JOHN MARK HACK, Commissioner

D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: November 12, 2017

FILED WITH LRC: November 15, 2017 at 4 p.m.

CONTACT PERSON: D. Ann Dangelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, 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 requirements for the administration and implementation of the ignition interlock program.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 189A.500.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes forms, creates a uniform certificate of installation for ignition interlock devices, certifies the devices approved for use in the Commonwealth, and creates an ignition interlock license to be issued upon court approval.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the regulatory requirements of KRS 189A.500. (2) If this is an amendment to an existing administrative regulation, provide a brief summary:

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the Commissioner's role in the submission of transfer plans by providers in Section 7.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to amend Section 7 (6)(d) that currently requires the Commissioner to approve, rather than to simply review a transfer plan.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 189A.500 that requires the cabinet to implement the ignition interlock program. (d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify provisions in the current 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: companies desiring to provide ignition interlock devices and services within Kentucky; motor vehicle drivers who violate KRS 189A.010 (defendants); the cabinet's Division of Drivers Licensing within the Division of Vehicle Regulation; circuit clerks, and the Administrative Office of the Courts.

(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: Companies desiring to provide ignition interlock devices and services will apply to the cabinet for device certification and authorization; defendants will apply for both the ignition interlock device and authorization to operate with an ignition interlock license pursuant to court order; divisions within the department will approve and process the application forms; and circuit clerks will issue the ignition interlock licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Defendants will pay device and servicing fees pursuant to KRS 189A.500, and an application fee in the amount of \$105 pursuant to KRS 189A.420(6).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If eligible pursuant to KRS chapter 186, defendants will be approved to drive with an Ignition Interlock license; businesses desiring to provide Ignition Interlock devices and services will be granted certification for devices and authority to provide services.

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

(a) Initially: Inspections, mailing of documents and staff time necessary to begin processing applications is estimated at \$525,000.

(b) On a continuing basis: \$105 per defendant and up to approximately \$525,000 annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Initially FHWA – Hazard Elimination Fund. There is presently no appropriation in place to administer or enforce this program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An appropriation will be needed to maintain this program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative fees created herein are pursuant to statute to offset any costs KYTC.

(9) TIERING: Is tiering applied? No tiering is required for device providers. All device providers meeting or exceeding the qualifications will be treated the same. Tiering for defendants in this program is pursuant to statute and judicially determined indigency status.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? KYTC Department of Vehicle Regulation, Division of Driver Licensing, the Circuit Clerks, Administrative Office of the Courts, County Attorneys.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 189A.500(1)(f).

(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. For local government, costs should be minimal as the process is judicially driven and the regulatory actions will be performed within the context of DUI prosecutions.

(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? Up to approximately \$525,000.

(d) How much will it cost to administer this program for subsequent years? Unknown.

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

Revenues (+/-): No revenues will be generated by this program.

Expenditures (+/-): Additional programming to the driver licensing system will need to be implemented. The cost is unknown.

Other Explanation: The cabinet is unsure precisely how many defendants will move for eligibility under this program and whether efficiencies can be achieved if they do.

(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? Up to approximately \$525,000.

(d) How much will it cost to administer this program for subsequent years? Unknown.

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

Revenues (+/-): No revenues will be generated by this program.

Expenditures (+/-): Additional programming to the driver licensing system will need to be implemented. The cost is unknown.

Other Explanation: The cabinet is unsure precisely how many defendants will move for eligibility under this program and whether efficiencies can be achieved if they do.

**STATEMENT OF EMERGENCY
803 KAR 2:505E**

This emergency administrative regulation amends 803 KAR 2:505 to delay by one (1) year the requirement for employers to ensure that crane operators are certified. It also extends by one (1) year the employer duty to ensure that construction crane operators are competent to operate a crane safely. This emergency administrative regulation mirrors the United States Department of Labor, Occupational Safety and Health Administration (OSHA) final rule, *Cranes and Derricks in Construction: Operator Certification Extension* (the "Certification Extension"), published in the November 9, 2017 Federal Register and codified in 29 C.F.R. 1926.1427. This is the second time that OSHA has delayed implementation of the certification requirement, which was promulgated as part of the *Cranes and Derricks in Construction Standard* (the "crane standard") in 2010. Under the standard, employers are required to ensure crane operator competency until the certification requirements become effective. As issued originally, the crane standard required certification by November 10, 2014. Prior to that date, however, OSHA delayed the certification deadline by three (3) years after it received concerns that they were not adequate to ensure operator competency to safely operate crane equipment and that two (2) of the four (4) accredited certification organizations were not issuing certifications in accordance with crane standard requirements. In 2015, OSHA announced its intent to modify the certification requirements, but it did not complete the rulemaking process by November 10, 2017. In issuing the Certification Extension, OSHA noted "many crane operators in the construction industry do not have the certification required by the crane standard." OSHA further stated that it was delaying the certification requirements until November 10, 2018 in order to complete the rulemaking process to address concerns about the crane standard. This administrative regulation is being filed as an emergency administrative regulation to meet an imminent threat to public health, safety, and welfare. In issuing the

Certification Extension, OSHA concluded that extension of the certification requirement was necessary to avoid disrupting the construction industry. In reaching this conclusion, OSHA cited evidence that "many crane operators in the construction industry do not have the certification required by the crane standard and would not be in compliance with the standard," while acknowledging that "many employers have delayed in requiring their employees to be certified while they waited for OSHA to clarify the criteria for the certification." Since the employer duty expires upon the effective date of the certification requirement, OSHA further concluded that extending the employer's duty was necessary "to ensure safe and competent crane operations during the one-year extension period." An ordinary administrative regulation is not sufficient since the crane standard went into effect on November 10, 2017. This emergency administrative regulation will be replaced by an ordinary administrative regulation, which is being filed simultaneously with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
DERRICK K. RAMSEY, Chairman,

**DEPARTMENT OF WORKPLACE STANDARDS
Division of Occupational Health and Safety Compliance
Division of Occupational Safety and Health
Education and Training
(Emergency Amendment)**

803 KAR 2:505E. Cranes and derricks in construction.

RELATES TO: KRS 338.015, 29 C.F.R. Part 1926.1400-1926.1441

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

EFFECTIVE: December 4, 2017

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health rules and administrative regulations and standards. This administrative regulation contains the standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "Established federal standard" is defined by KRS 338.015(10).

(7) "National consensus standard" is defined by KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions established in Section 1 and the requirements in Section 3 of this administrative regulation, the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.1400-1926.1441, effective July 1, 2017[July 1, 2014]; and

(2) The amendments to 29 C.F.R. 1926.1427 published in the November 9, 2017 Federal Register, Volume 82, Number 216.[(2)

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~~The amendments to 29 C.F.R. 1926.1427 published in the September 26, 2014 Federal Register, Volume 79, Number 187.]~~

Section 3. (1) 29 C.F.R. 1926.1423(e)(1)(iii) is amended to read as follows: "On horizontal lattice booms where the fall distance is ten (10) feet or more."

(2) 29 C.F.R. 1926.1423(f) is amended to read as follows: "For assembly – disassembly work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking – working surface with an unprotected side or edge more than ten (10) feet above a lower level, except when the employee is at or near draw-works (when the equipment is running), in the cab, or on the deck."

(3) 29 C.F.R. 1926.1423(h)(2) is amended to read as follows: "For erecting, climbing, and dismantling work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking – working surface with an unprotected side or edge more than ten (10) feet above a lower level."

DERRICK RAMSEY, Chairman

APPROVED BY AGENCY: December 4, 2017

FILED WITH LRC: December 4, 2017 at 4 p.m.

CONTACT PERSON: Mike Pettit, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-4069, fax (502) 564-1682, email Mike.Pettit@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mike Pettit

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926.1427. Section 2 also updates the C.F.R. to July 2017 and establishes the amendments to 29 C.F.R. 1926.1427 published in the November 9, 2017 Federal Register, Volume 82, Number 216. The amendment to 1926.1427(k)(l) extends the construction crane operator certification requirement by one year until November 10, 2018. It also continues the duty in 29 C.F.R. 1926.1427(k)(2)(iii) to ensure construction crane operators are competent and have the ability and knowledge to operate a crane safely.

(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of new federal standards, or a more stringent amendment, within six (6) months of the promulgation date of the final rule. This administrative regulation incorporates occupational safety and health standards set forth in 29 C.F.R. Part 1926, thereby ensuring that the state program is at least as effective as OSHA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote employee health and safety throughout Kentucky and keep the state program as effective as the federal program. Without an extension of the employer duty, the standard would have no requirement to ensure that construction crane operators know how to operate the crane safely.

(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. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926.1400-1926.1441. Section 2 also updates the C.F.R. to July 2017 and requires employers to comply with the amendments to 29 C.F.R. 1926.1427 as published in the November 9, 2017 Federal Register, Volume 82, Number 216. This

extends construction crane operator certification requirement by one year and ensures operators are competent and have the ability and knowledge to operate a crane safely.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to remain consistent with federal standards, to avoid disrupting the construction industry and to ensure the safe operation of cranes while OSHA completes rulemaking that will address concerns with the Cranes and Derricks in Construction Standard, which was originally promulgated in 2010. This amendment was adopted by the Kentucky OSH Standards Board at its December 4, 2017 meeting.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are required from the revisions to 29 C.F.R. 1926.1427 set forth in the November 9, 2017 Federal Register. This amendment will extend by one year the deadline for crane operator certification and the employer duty to ensure crane operators are competent. The amendments in the November 9, 2017 Federal Register do not establish new burdens on the regulated community.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because the amendment requires no new occupational safety and health requirements, no new costs are associated with this amendment.

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

Improved employee protection will result from the promulgation of this amendment, due to the consistency with the federal requirement, providing all a clear understanding of the requirements. This rule will avoid disrupting the construction industry and ensure the safe operation of cranes while OSHA completes rulemaking that will address concerns with the Cranes and Derricks in Construction Standard, which was originally promulgated in 2010.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the Program 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 state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All

employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. This administrative regulation incorporates occupational safety and health standards set forth in 29 C.F.R. Part 1926, thereby ensuring that the state program is at least as effective as OSHA. This amendment only extends by one year the deadline for construction crane operator certification and the employer duty to ensure that crane operators are competent. The amendment is not required by the final federal rule but is necessary in order to remain consistent with federal standards, to avoid disruption to the construction industry, and to ensure the safe operation of cranes while OSHA completes rulemaking that will address concerns with the Cranes and Derricks in Construction Standard. This amendment was adopted by the Kentucky OSH Standards Board at its December 4, 2017 meeting.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. This administrative regulation incorporates occupational safety and health standards set forth in 29 C.F.R. Part 1926, thereby ensuring that the state program is at least as effective as OSHA. This amendment only extends by one year the deadline for construction crane operator certification and the employer duty to ensure that crane operators are competent.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not change the ten (10) foot fall protection requirement. This amendment only extends by one year the deadline for construction crane operator certification and the employer duty to ensure that crane operators are competent which does not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter 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? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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 amendment will not impose any cost to the employer.

(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 (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This final rule does not impose any additional requirements or expenditures to the employer.

STATEMENT OF EMERGENCY
922 KAR 2:280E

This new emergency administrative regulation is necessary in accordance with KRS 13A.190(1)(a)2 and 3 to ensure implementation of 2017 Ky. Acts ch. 135 and timely compliance with 42 U.S.C. 9858f and 45 C.F.R. 98.43, avoiding the loss of federal award under the Child Care and Development Fund Block Grant (CCDF). In addition, the new emergency administrative regulation makes background checks for child care staff members more comprehensive, including national checks and completion of checks at regular intervals, better protecting the health, safety, and welfare of children in child care settings in accordance with KRS 13A.190(1)(a)1. An ordinary administrative regulation would not allow the agency sufficient time to effect background checks to comply with state and federal mandates, preserve federal award, and better protect children's health, safety, and welfare in child care settings. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
VICKIE YATES BROWN GLISSON, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(New Emergency Administrative Regulation)

922 KAR 2:280E. Background checks for child care staff members, reporting requirements, and appeals.

RELATES TO: KRS 17.165, 17.500-17.580, 199.011(14), 199.466, 199.894, 336.220, 620.050-620.120, 45 C.F.R. 98.43, 34 U.S.C. 20921, 42 U.S.C. 9857-9858q

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), 199.8965(8), 199.8982(1)(f), 199.8994(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, qualify for the receipt of federal funds, and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its program. KRS 199.896(2), 199.8982(1)(f), and 199.8994(6) authorize the cabinet to promulgate administrative regulations pertaining to standards of a child-care center, family child-care home, and a child care provider that receives a child care subsidy administered by the cabinet, including criminal convictions that impact the safety and security of children in care. KRS 199.8965(8) requires the cabinet to promulgate an administrative regulation necessary to implement child care staff member background checks in accordance with 42 U.S.C. 9858f and implementing federal rule. This administrative regulation establishes background check requirements for child care staff members, reporting requirements, and appeals.

Section 1. Definitions. (1) "Address check" means a cabinet search of the Kentucky or National Sex Offender Registry to determine if a person's residence is a known address of a registered sex offender.

(2) "Cabinet" is defined by KRS 199.894(1).

(3) "Child-care center" is defined by KRS 199.894(3).

(4) "Child care provider" is defined by 45 C.F.R. 98.43(a)(2)(i).

(5) "Child care staff member" is defined by 45 C.F.R.

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98.43(a)(2)(ii).

(6) "Family child-care home" is defined by KRS 199.894(5).

(7) "Kentucky National Background Check Program" or "NBCP" means a background screening program administered by the cabinet in accordance with 906 KAR 1:190.

(8) "Rap back system" is defined by KRS 199.011(13).

(9) "Type II child-care center" means the primary residence of the licensee in which child care is regularly provided for at least seven (7), but not more than twelve (12), children including children related to the licensee.

Section 2. Applicability and Exceptions. This administrative regulation shall apply to a child care staff member age eighteen (18) or older, including:

(1) An owner, operator, or employee of a child care provider;

(2) A child-care center licensee or director;

(3) An adult household member of a Type II child-care center, family child-care home, or provider registered in accordance with 922 KAR 2:180;

(4) An employee or volunteer who is present during the time a child is receiving care;

(5) Any person with supervisory or disciplinary control over a child in care; and

(6) Any person having unsupervised contact with a child in care.

Section 3. Implementation and Enforcement. (1) A person who is a child care staff member prior to January 1, 2018, shall submit to and complete background checks in accordance with this administrative regulation no later than September 30, 2018.

(2) A child care staff member hired on or after January 1, 2018, shall:

(a) Have completed the background checks required in accordance with this administrative regulation and been found to have no disqualifying offense prior to becoming a child care staff member; or

(b)1. Have submitted to the background checks required in accordance with this administrative regulation;

2. Not be left unsupervised with a child in care pending the completion of the background checks in accordance with this administrative regulation; and

3. Be dismissed or relocated from the residence if the person is found to have a disqualifying background check result.

(3) To assure timely processing of background checks and organize background checks of existing child care staff members, the cabinet shall prioritize the processing of background checks for an individual who is a:

(a) New hire on or after January 1, 2018; or

(b) Child care staff member before January 1, 2018, using the following schedule:

Background Check Submission and Fingerprinting Month	Renewal Month of the Child Care Provider's License, Certification, or Registration
January or February 2018	April or May
March 2018	June or July
April 2018	August
May 2018	September or October
June 2018	November or December
July or August 2018	January or February
September 2018	March

(4) A current or prospective child care staff member shall be subject to background checks in accordance with Sections 4 and 5 of this administrative regulation at intervals pursuant to 45 C.F.R. 98.43(d).

(5) This administrative regulation shall govern a pilot of child care staff member's background check that shall:

(a) Commence in December 2018; and

(b) Include volunteer child care providers representing differing provider types and geographical areas of the state.

Section 4. Procedures and Payments. (1) To initiate the process for obtaining background checks on a prospective child care staff member, the child care provider shall:

(a) Request that the prospective child care staff member provide a copy of his or her driver's license or other government-issued photo identification and verify that the photograph clearly matches the prospective child care staff member;

(b) Request that the prospective child care staff member complete and sign the:

1. DCC-500, Applicant Child Care Staff Member Waiver Agreement and Statement; and

2. DCC-501, Disclosures to Be Provided to and Signed by the Applicant Child Care Staff Member; and

(c) Log on to the NBCP portal and enter the prospective child care staff member's demographic information for a check of the:

1. Child abuse and neglect central registry pursuant to 922 KAR 1:470;

2. National Crime Information Center's National Sex Offender Registry in accordance with 34 U.S.C. 20921; and

3. Sex Offender Registry established in accordance with KRS 17.500 through 17.580.

(2)(a) In accordance with KRS 199.8965(8), 336.220, and 45 C.F.R. 98.43(f), a child care provider shall submit payment via credit or debit card for a state and national fingerprint-supported criminal history background check performed by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI), including the rap back system. If a child care staff member's rap back has not expired, a new fingerprint check shall not be needed.

(b) A child care provider enrolled in the Kentucky NBCP shall pay a fee not to exceed twenty-five (25) dollars in addition to any fees charged in accordance with paragraph (a) of this subsection for the actual cost of processing a fingerprint-supported state and national criminal background check and for providing rap back services.

(3) To the extent funds are available, the:

(a) Race to the Top-Early Learning Challenge Grant in accordance with Pub. L. 112-10 shall cover the cost of background checks performed in accordance with subsection (1) of this section until close of the grant or exhaustion of grant funds, whichever occurs first; or

(b) Cabinet shall absorb, in whole or in part, fees using funding in accordance with 42 U.S.C. 9857-9858q.

(4)(a) Upon submission of payment in accordance with subsections (2) and (3) of this section, the child care provider shall print a copy of the DCC-504, Applicant Child Care Staff Member Live Scan Fingerprinting Form, from the NBCP portal and provide the form to the child care staff member.

(b) The child care staff member shall:

1. Have no more than ninety (90) calendar days from the date of payment pursuant to subsections (2) and (3) of this section to submit the child care staff member's fingerprints at an authorized collection site for NBCP; and

2. Present the DCC-504 and driver's license or other government-issued photo identification to the designated agent at an authorized collection site prior to fingerprint submission.

(5) Upon completion of the background checks in accordance with this section and Section 5 of this administrative regulation, the cabinet:

(a) Shall provide notice to the child care provider in accordance with 45 C.F.R. 98.43(e) that the prospective child care staff member is:

1. Eligible for hire; or

2. Not eligible for hire if the prospective child care staff member is found by the cabinet to have a disqualifying background check result in accordance with Section 6 of this administrative regulation;

(b) May release any record of state criminal history found in the files of the Kentucky centralized criminal history record information system to the child care provider or another entity provided on the waiver in accordance with subsection (1)(b) of this section; and

(c) Shall, upon receipt of written request from an applicant, send a copy of a KSP or FBI criminal history report to the prospective child care staff member by certified mail, restricted delivery service. The prospective child care staff member shall show proof of identity and sign to receive his or her criminal history

report from the local post office.

(6) A child care provider shall not be obligated to employ or offer employment to an individual who has been found by the cabinet to be eligible for hire pursuant to subsection (5)(a) of this section.

(7) A child care staff member may submit a request for a protection and permanency record in accordance with 922 KAR 1:510.

Section 5. Checks of Other States. (1) In accordance with 45 C.F.R. 98.43(b)(3), a prospective child care staff member who resides in or has resided in another state within the last five (5) years shall:

(a) Request from each state of current or prior residency, in accordance with the state's laws, policies, and procedures, with a courtesy notice to the cabinet:

1. An in-state criminal records check by:

- a. Means of fingerprints for the state of residence; or
- b. Any means accepted by a state of prior residency;

2. A check of the state's sex offender registry or repository; and

3. A check of the state-based child abuse and neglect registry and database; and

(b) Direct results of the checks required in paragraph (a) of this subsection to the Department for Community Based Services, Division of Child Care, 275 East Main Street, 3C-F, Frankfort, Kentucky 40601.

(2) If the prospective child care staff member's current or prior state of residency participates in the FBI's National Fingerprint File Program, a prospective child care staff member shall be exempt from the requirements of subsection (1)(a)1. of this section.

(3) In accordance with KRS 336.220, a child care provider shall pay any fee charged by another state for a background check as permitted pursuant to 45 C.F.R. 98.43(f) for a prospective child care staff member.

(4) If another state fails to respond to a check submitted in accordance with subsection (1) of this section within thirty (30) calendar days from the date of the background check's request as verified by the child care staff member, the cabinet shall:

(a) Process a child care staff member's background checks and issue notice to the child care provider in accordance with Section 4(5) of this administrative regulation to ensure compliance with 45 C.F.R. 98.43(e); and

(b) Send notice in accordance with Section 4(5) of this administrative regulation if:

1. Another state provides requested background check results at a later date; and

2. A disqualifying background check result is identified.

(5) A child abuse and neglect central registry check in accordance with 922 KAR 1:470 may be requested by a:

(a) Parent or legal guardian in accordance with KRS 199.466;

or

(b) Child care staff member in another state.

Section 6. Disqualifying Background Check Results. (1) Unless a rehabilitative review pursuant to Section 9 of the administrative regulation determines the individual is eligible to be hired, an individual shall be ineligible to:

(a) Be hired or otherwise serve as a child care staff member if the individual:

1. Meets a criterion specified in 45 C.F.R. 98.43(c);

2. Has been convicted of, or has entered an Alford plea, a plea of guilty, or a plea of nolo contendere to, a:

a. Drug-related felony, and five (5) years has not elapsed since the person was fully discharged from imprisonment, probation, or parole;

b. Sex or violent crime pursuant to KRS 17.165; or

c. A felony offense under:

(i) KRS Chapter 506, inchoate offenses;

(ii) KRS Chapter 511, burglary and related offenses;

(iii) KRS Chapter 515, robbery;

(iv) KRS Chapter 520, escape and other offense related to custody;

(v) KRS Chapter 525, riot, disorderly conduct, and related offenses;

(vi) KRS Chapter 527, offense relating to firearms and weapons;

(vii) KRS Chapter 529, prostitution offenses; or

(viii) KRS Chapter 530, family offenses;

3. Is listed on the:

a. Central registry established in accordance with 922 KAR 1:470; or

b. Another state's state-based child abuse and neglect registry or database;

4. Has been convicted of, or has entered an Alford plea, plea of guilty, or a plea of nolo contendere to, an offense under a criminal statute of the United States or of another state similar to an offense specified in this paragraph;

5. Has an open warrant;

6. Has a criminal background check result indicating that the individual should be approached with caution by authorities; or

7. Has a pending charge for a criminal offense specified in this paragraph; or

(b) Serve as a child-care center's applicant, licensee, or director if the individual has been convicted of, or has entered an Alford plea, a plea of guilty, or a plea of nolo contendere to, a felony offense involving fraud, embezzlement, theft, or forgery.

(2) An individual who has received a pardon for a disqualifying offense, has had the record expunged, or has evidenced dismissal of a warrant or disqualifying charge may serve as a child care staff member.

(3) Unless there is a pending informal review, rehabilitative review, or appeal in accordance with Section 7 of this administrative regulation, a child care provider shall be ineligible for the Child Care Assistance Program and shall be subject to a cabinet action against the child care provider's license in accordance with 922 KAR 2:090, certification in accordance with 922 KAR 2:100, or registration in accordance with 922 KAR 2:180, if the child care provider:

(a) Employs a child care staff member who is ineligible for employment under subsections (1) and (2) of this section; or

(b) Is a registered child care provider, certified family child-care home, or Type II licensed child-care center and includes an adult household member who has a disqualifying background check result in accordance with subsections (1)(a) and (2) of this section.

Section 7. Notice of a Disqualifying Background Check Result and Appeals. (1) The cabinet shall notify each prospective or current child care staff member determined to have a disqualifying background check result in accordance with Section 6 of this administrative regulation.

(2) In addition to the cabinet's notification in accordance with subsection (1) of this section, a child care provider that receives notice from the cabinet that a prospective or current child care staff member has been determined to have a disqualifying background check result in accordance with Section 6 of this administrative regulation shall notify the child care staff member of the cabinet's determination within three (3) business days of receipt of the notice.

(3) Pursuant to 45 C.F.R. 98.43(e)(3), a prospective or current child care staff member who receives notice of having a disqualifying background check result in accordance with Section 6 of this administrative regulation may:

(a) Challenge the accuracy of the cabinet's determination by submitting a written request for informal review, including any information the individual wishes to be considered, to the Department for Community Based Services, Division of Child Care, 275 East Main Street, 3C-F, Frankfort, Kentucky 40621, within ten (10) calendar days of the date of notice in accordance with subsection (1) of this section; or

(b) Request a rehabilitative review pursuant to Section 9 of this administrative regulation.

(4) Upon completion of an informal review upon request pursuant to subsection (3)(a) of this section, the cabinet shall provide written notice of the cabinet's decision to uphold or rescind the notice of disqualifying background check result to the

prospective or current child care staff member.

(5) A prospective or current child care staff member may appeal the results of an informal review or a rehabilitative review pursuant to Section 9 of this administrative regulation and 45 C.F.R. 98.43(e)(3), in accordance with 922 KAR 2:260.

(6) If a prospective or current child care staff member wishes to challenge the accuracy of a criminal background check, the cabinet shall refer the individual to the appropriate state or federal law enforcement agency.

(7) If a prospective or current child care staff member challenges the finding that he or she is the true subject of the results from a registry or repository check, the cabinet shall refer the individual to the agency responsible for maintaining the registry or repository.

Section 8. Termination or Relocation of a Child Care Staff Member upon Receipt of Notice of a Disqualifying Background Check Result. (1) If a prospective or current child care staff member has not requested an informal review or a rehabilitative review in accordance with Section 9 of this administrative regulation, the child care provider shall:

(a)1. Terminate the child care staff member no later than ten (10) calendar days after receipt of notice of the cabinet's determination, including the disqualifying background check result; or

2. Change residence of an adult household member in the child care provider's home no later than fifteen (15) calendar days after receipt of notice of the cabinet's determination, including disqualifying background check result; and

(b) Use the NBCP to provide electronic notification to the cabinet affirming the child care staff member's dismissal or household member's change in residence within three (3) business days of termination or residence change.

(2)(a) If a prospective or current child care staff member requests an informal review or a rehabilitative review in accordance with Section 9 of this administrative regulation, the child care provider:

1. May retain the child care staff member pending resolution of the informal review or rehabilitative review; and

2. Shall ensure that the child care staff member:

a. Is subject to direct, onsite supervision; or

b. Does not have duties or proximity that involves one-on-one contact with a child in care.

(b) A child care provider shall terminate the child care staff member or relocate the adult household member if the:

1. Informal review upholds the cabinet's determination of a disqualifying background check result, or the rehabilitative review committee does not grant a waiver; and

2. Child care staff member does not request an administrative hearing in accordance with Section 7(5) of this administrative regulation, in which the child care provider shall terminate the child care staff member or relocate the adult household member no later than the thirty-first calendar day following written notice of the results of the informal review or rehabilitative review.

(c) If a child care staff member requests an administrative hearing in accordance with Section 7(5) of this administrative regulation to appeal the decision from an informal review or rehabilitative review, the child care provider:

1. May retain the child care staff member pending the appeal's resolution if the child care staff member:

a. Remains subject to direct, onsite supervision; or

b. Does not have duties or proximity that involves one-on-one contact with a child in care; and

2. Shall terminate the child care staff member or relocate the adult household member no later than the thirty-first calendar day from the issuance of the final order if the child care staff member or adult household member does not prevail.

(d) Using the NBCP, the child care provider shall provide electronic notification to the cabinet affirming the individual's dismissal or relocation within three (3) business days of the termination or relocation.

Section 9. Rehabilitative Review. (1)(a) A prospective or

current child care staff member found to have a disqualifying background check result shall be eligible for consideration of rehabilitation under an independent review process.

(b) Consideration of a disqualifying background check result under the rehabilitative review process described in this section shall not apply to:

1. A disqualifying felony offense that occurred less than ten (10) years prior to the date of the criminal background check;

2. Any disqualifying felony or misdemeanor offense related to abuse, neglect, or exploitation of a child;

3. Registration as a sex offender under federal law or under the law of any state;

4. A sex or violent crime as defined by KRS 17.165; or

5. A child abuse and neglect substantiated finding that:

a. Occurred less than five (5) years prior to the date of the registry check; or

b. Involved:

(i) Sex abuse or sex exploitation of a child;

(ii) A child fatality related to abuse or neglect;

(iii) A near fatality of a child related to abuse or neglect; or

(iv) The involuntary termination of parental rights in accordance with KRS 625.050 through 625.120.

(2)(a) A prospective or current child care staff member may submit a written request for a rehabilitative review to the cabinet no later than fourteen (14) calendar days from the date of the notice of the cabinet's determination issued pursuant to Section 4(5) or 7(4) of this administrative regulation regarding a determination of a disqualifying background check result.

(b) If a prospective or current child care staff member requests a rehabilitative review, the child care staff member:

1. May be retained by the child care provider pending the rehabilitative review; and

2. Shall be subject to restrictions and termination or relocation in accordance with Section 8 of this administrative regulation.

(3) The request for a rehabilitative review shall include the following information:

(a) A written explanation of each disqualifying background check result, including:

1. A description of the events related to the disqualifying background check result;

2. The number of years since the occurrence of the disqualifying background check result;

3. The age of the individual at the time of the disqualifying background check result; and

4. Any other circumstances surrounding the disqualifying background check result;

(b) Official documentation showing that all fines, including court-imposed fines 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;

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

(e) Evidence that the individual has pursued or achieved rehabilitation with regard to a disqualifying background check result.

(4) A rehabilitative review shall be conducted by a committee of three (3) employees of the cabinet, none of whom was responsible for determining that the individual has a disqualifying background check result.

(5) The committee shall consider the information required under subsection (3) of this section, and shall also consider mitigating circumstances including:

(a) The amount of time that has elapsed since the disqualifying background check result;

(b) The lack of a relationship between the disqualifying background check result and the position for which the individual has applied; and

(c) Evidence that the applicant has pursued or achieved rehabilitation with regard to the disqualifying background check result.

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(6) No later than thirty (30) calendar days from receipt of the written request for the rehabilitative review, the cabinet shall send the committee's determination on the rehabilitation waiver to the prospective or current child care staff member.

(7) The decision of the committee shall be subject to appeal in accordance with Section 7(5) of this administrative regulation.

(8) A child care provider shall not be obligated to accept an individual who is granted a waiver pursuant to this section as a child care staff member.

Section 10. Transparency. The cabinet shall maintain information concerning the background check processes in accordance with this administrative regulation on its Web site in accordance with 45 C.F.R. 98.43(g).

Section 11. Status of Employment. (1) A child care provider shall maintain the employment or residential status of each child care staff member who has submitted to a fingerprint-based criminal background check by reporting the status using the NBCP web-based system.

(2) The cabinet shall inspect a child care provider to verify conformity with this administrative regulation.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-500, Applicant Child Care Staff Member Waiver Agreement and Statement", 12/2017;

(b) "DCC-501, Disclosures to Be Provided to and Signed by the Applicant Child Care Staff Member", 12/2017; and

(c) "DCC-504, Applicant Child Care Staff Member Live Scan Fingerprinting Form", 12/2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: December 12, 2017

FILED WITH LRC: December 14, 2017 at 4 p.m.

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.

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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov, and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes background check requirements for child care staff members, reporting requirements, and appeals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish background check requirements for child care staff members, reporting requirements, and appeals.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of child care staff members' background checks, reporting requirements, and appeals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes through its establishment of child care staff member background checks, reporting requirements, and appeals. The emergency administrative regulation supports initiation of a pilot

program and implementation of the new back-ground check requirements in late 2017 and 2018, respectively, to ensure the state's compliance with the federally mandated deadline and children's health, safety, and welfare.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The department has projected upwards of 24,000 new and existing child care staff members will be subject to this administrative regulation in its first year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Child care providers will be required to submit anyone meeting the federal definition of "child care staff member" to background checks in accordance with this administrative regulation. Federal law and related federal waiver mandate the background checks be performed on new hires and existing child care staff members no later than September 30, 2018.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated entities will be required to absorb fees imposed by agencies for the provision of background checks. To the extent possible, the department plans to use its resources to absorb or offset costs for regulated entities, thereby ensuring that child care providers are paying the same or only slightly more than present day for more comprehensive background checks. In addition, the department has been successful in securing federal Race to the Top-Early Learning Challenge Grant funds to absorb all costs for providers through the exhaustion of those funds or the sunset of the grant, whichever is first. In addition, the rap back feature will help child care providers avoid costs if the child care staff member remains with the provider or within the child care provider community for five years.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will have access to more comprehensive background checks for child care staff members. The health, safety, and welfare of children served by regulated entities will be better preserved. The utilization of the Kentucky National Background Check Program is also consistent with federal recommendations and is unique opportunity available in Kentucky due to a prior federal grant through the Centers for Medicare and Medicaid Services.

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

(a) Initially: The department has secured federal Race to the Top-Early Learning Challenge Grant funds to assist with initial implementation, projected to be \$1.5 million. If the state fails to adhere to the new federal mandate, the state risks being subject to corrective action and a minimal, initial federal penalty of no less than \$4.4 million of its Child Care and Development Fund award, which will increase in amount in subsequent years of noncompliance.

(b) On a continuing basis: After initial implementation, which will include checks of existing child care staff members, the department will absorb or offset costs associated with implementation of the federal mandate within its existing appropriations, including federal award, to the extent possible.

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

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Initial implementation and enforcement of this administrative regulation will include the use of federal Race to the Top-Early Learning Challenge Grant funds. The Child Care and Development Fund Block Grant, state match, and maintenance of effort for the block grant, and limited agency funds will support the ongoing implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no 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: At this time, this administrative regulation does not directly establish any fees, but rather, passes along fees established by the agencies conducting the background checks, most often law enforcement. The cabinet has no control over the fees charged by law enforcement agencies. Per state law, law enforcement agencies and the cabinet cannot charge a child care provider more than the actual cost of processing the background check.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98.43, 42 U.S.C. 9857-9858q

(2) State compliance standards. KRS 194A.050(1), 199.896(2), 199.8965(8), 199.8982(1)(f), 199.8994(6)

(3) Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different responsibilities or requirements 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? The Cabinet for Health and Family Services will be impacted by this administrative regulation. Quasi-governmental agencies, local governments, and school districts that operate a licensed child-care center will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.896(2), 199.8965(8), 199.8982(1)(f), 199.8994(6), 45 C.F.R. 98.43, 42 U.S.C. 9857-9858q

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no revenue in its first year. Fees passed along to regulated entities will be established by the agency conducting the background check and are not allowed to exceed the actual cost of performing the check.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent

years? This administrative regulation will generate no revenues in its subsequent years.

(c) How much will it cost to administer this program for the first year? This program is anticipated to cost upwards of \$1.5 million within its first year of implementation due to the federal requirement applying to new hires and existing child care staff members. The department has identified federal grant funds to cover most, if not all, these initial costs.

(d) How much will it cost to administer this program for subsequent years? Ongoing costs are unknown, but are projected to be much less than the possible \$4.4 million federal penalty that can be levied upon the state for the first year of noncompliance with the federal mandate. The department anticipates being able to absorb or offset costs within its existing state and federal awards. The enhanced safety measures afforded through the more comprehensive background checks will also ensure avoidance of costs that are associated with child maltreatment.

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

Revenues (+/-)

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

DEPARTMENT OF STATE
Kentucky Registry of Election Finance
(As Amended at ARRS, December 12, 2017)

32 KAR 1:045. Election Finance Statement - State
Executive Committee Building Fund.

RELATES TO KRS 121.172(8), 121.180(2)(b), (c)
STATUTORY AUTHORITY: KRS 121.120(1)(g), (4),
121.172(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) grants the Registry the authority 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 121.172(1) requires the Registry to promulgate administrative regulations to implement provisions permitting a state executive committee of a political party to establish a building fund account. KRS 121.172(8) requires a state executive committee to report all contributions to and expenditures from a building fund account to the Registry of Election Finance on a quarterly basis. KRS 121.180(2)(b) and (c) requires a state executive committee of a political party that has established a building fund account under KRS 121.172 to make full report to the Registry, to be received by the registry within five (5) days after the close of each calendar quarter. This administrative regulation establishes a single form for the reporting of finances by a state executive committee building fund account.

Section 1. (1) A[~~Any~~] state executive committee of a political party that establishes a building fund account under KRS 121.172 shall file the full report required by KRS 121.180 on the State Executive Committee – Building Fund Election Finance Statement form [~~incorporated by reference in this administrative regulation.~~]

(2) The full report shall:

(a) Include the information listed under KRS 121.180(2)(b);
and

(b) Meet the reporting deadline established in KRS 121.180(2)(c).

Section 2. Incorporation by Reference. (1) [~~The~~] "State Executive Committee – Building Fund Election Finance Statement", reference KREF 006/E-BF, revised 12/2017[09/2017], 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: September 27, 2017

FILED WITH LRC: September 29, 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.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, December 12, 2017)

103 KAR 15:050. Filing dates and extensions.

RELATES TO: KRS 131.081(11), 131.170, 136.100, 141.042,
141.160, 141.170, 141.300

STATUTORY AUTHORITY: KRS 131.130(1), 141.042(6),
141.050(4), 141.300(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.081(10), 131.170, 141.042(6), and 141.170 authorize the Department of Revenue[~~Cabinet~~] to grant a taxpayer an extension of time to file a tax return or to pay an installment of estimated income or limited liability entity tax. This administrative regulation establishes the procedures to be used by an individual, a corporation, or a noncorporate entity to obtain an extension of time to file an income or limited liability entity[~~corporation license~~] tax return or to pay an installment of estimated income tax for a taxable year.

Section 1. Definitions. (1) "Corporation" means a corporation as defined in KRS 141.010(24), an S corporation as defined in KRS 141.010(~~27~~)[~~(25)~~], a limited liability company taxed as a corporation, or other entity taxed as a corporation for Kentucky income tax purposes. [;]

(2) "Date prescribed by KRS 136.100 or 141.160" means the 15th day of the fourth month following the close of the taxable year. [; and]

(3) "Noncorporate entity" means a partnership, a limited liability company treated as a partnership, a trust, a fiduciary, or other entity not taxed as a corporation for Kentucky income tax purposes.

Section 2. An Extension of Time for Filing an Income or Limited Liability Entity[~~Corporation~~][~~License~~] Tax Return. (1) Pursuant to KRS 131.081(11) and 141.170, a taxpayer may obtain an extension of time for filing a Kentucky income tax return by means of either a federal extension or a Kentucky extension.

(2) Federal extension.

(a) A taxpayer granted an extension of time for filing a federal income tax return shall be granted the same extension of time for filing a Kentucky income tax return for the same taxable year if a copy of the federal extension approval or request for an automatic extension is attached to the Kentucky income tax return when it is filed.

(b) An extension of time for filing a Kentucky income tax return granted pursuant to this subsection shall be valid for the extension period granted by the Internal Revenue Service.

(c) A copy of the federal extension shall not be mailed to the department[~~Revenue Cabinet~~] on or before the date prescribed by KRS 141.160, except as provided in Section 3 of this administrative regulation.

(3) Kentucky extension. A taxpayer may file an application for extension with the department[~~Revenue Cabinet~~], on or before the date prescribed by KRS 141.160 for filing the return.

(a) An individual or a noncorporate entity shall file an "Application for Extension of Time to File Individual, General Partnership and Fiduciary Income Tax Returns for Kentucky", Revenue Form 40A102.

1. An individual or a noncorporate entity shall state the reason for the request on the application for extension. Inability to pay the tax liability shall not be a valid reason.

2. An individual or a noncorporate entity shall be notified by mail if the application for extension is denied. A copy of an approved application for extension shall not be returned to the individual or noncorporate entity.

3. In accordance with KRS 141.170, an individual or a noncorporate entity shall be granted an extension of time to file for six (6) months unless the application for extension is denied.

4. In accordance with KRS 141.170, an individual outside the United States shall be granted an extension of time to file for twelve (12) months unless the application for extension is denied.

5. A copy of the signed and dated application for extension shall be attached to the income tax return when it is filed.

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(b) A corporation shall file an "[Application for Six-month]Extension of Time to File Kentucky Corporation/[LLET [Income and License Tax] Return", Revenue Form 41A720SL.

1. A corporation shall be granted an extension of time to file for six (6) months.

2. A copy of an approved application for extension shall not be returned to the corporation.

3. The extension shall become valid when mailed to the department[Revenue Cabinet] on or before the date prescribed by KRS 141.160 for filing the return.

4. The corporation shall attach a copy of the signed and dated application for extension to its "Kentucky Corporation Income Tax And LLET [And License Tax]Return", Revenue Form 71A720[720], when it is filed.

(4) An extension of time for filing a mandatory nexus consolidated[Kentucky corporation] income tax return shall constitute an extension of time for filing for each member of the affiliated group.

(5) An extension of time for filing a corporation income tax return shall constitute an extension of time for filing a limited liability entity[corporation license] tax return for the same taxable year.

Section 3. Payment of Tax. (1) An extension of time to file an income or limited liability entity[corporation license] tax return shall not constitute an extension of time to pay the tax.

(2) A taxpayer shall determine if an amount of tax remains unpaid on or before the date prescribed by KRS 136.100 or 141.160 for filing the return.

(3) If tax remains unpaid, a check for the amount of the unpaid tax shall be submitted to the department[Revenue Cabinet] on or before the date prescribed by KRS 136.100 or 141.160 for filing the return along with the Kentucky extension or a copy of the federal extension.

(4) A corporation shall write its Kentucky Account Number in the upper right hand corner of the federal extension submitted.

(5) An affiliated group filing a mandatory nexus consolidated income tax return and making a payment of tax with the application for extension shall file a Kentucky extension to ensure the proper processing of payments.

Section 4. Interest and Penalties. (1) Statutory interest shall be paid from the date prescribed by KRS 136.100 or 141.160 for filing the return until the tax is paid.

(2) If the envelope bearing the return is postmarked on or before the filing date, the[a] late filing penalty prescribed by KRS 131.180 shall not apply.

Section 5. Extension of Time to Pay Estimated Income Tax. (1) A request for an extension of time to pay an installment of estimated tax prescribed by KRS 141.042 and 141.300 shall be submitted to the Department of Revenue[Cabinet], Frankfort, Kentucky 40620.

(2) The request shall state a basis for the extension.

(3) An extension of time to pay an installment of estimated tax shall be granted for thirty (30) days under exceptional circumstances.

(4) Interest shall be paid from the due date of the installment of estimated tax until the tax is paid.

Section 6. The forms and materials listed herein[Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "Application for Extension of Time to File Individual, Partnership and Fiduciary Income Tax Returns for Kentucky", Revenue Form 40A102, (9-97); and

(b) "Application for Six-month Extension of Time to File Kentucky Corporation Income and License Tax Return", Revenue Form 41A720SL, (9-97).

(2) These forms] may be obtained or inspected, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, [Revenue Cabinet, 200 Fair Oaks Lane,] Frankfort, Kentucky 40601[40620], on the department website at

http://revenue.ky.gov, or at a Kentucky Department of Revenue [Cabinet] Taxpayer Service Center during hours of operation, [Monday through Friday, 8 a.m. to 4:30 p.m.]

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 6, 2017

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

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3874, email Lisa.Swiger@ky.gov.

FINANCE AND ADMINISTRATION CABINET Department of Revenue (As Amended at ARRS, December 12, 2017)

103 KAR 26:120. Advertising agencies.

RELATES TO: KRS 139.010, [439.050, 139.100, 139.110, 139.120, 139.140,] 139.200, 139.260, 139.270, 139.280, 139.310, 139.330

STATUTORY AUTHORITY: KRS 131.130, 139.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130 and 139.710 authorize the Department of Revenue[Revenue Cabinet] to promulgate administrative regulations for the assessment, collection, refunding, administration, and enforcement of the Kentucky tax laws. This administrative regulation establishes requirements and guidelines for the application of sales and use tax to purchases and sales of tangible personal property and digital property by advertising agencies.

Section 1. Definitions. (1) "Advertising agency" means a business engaged primarily in the professional service of developing strategy, concept, and design for the placement of advertising on radio or television stations, or in newspapers, magazines, or other media.

(2) "Advertising services" means all advertising agency activities involved in the conceptualization, development, production, and refinement of a master advertisement prior to its reproduction by the advertising agency or a third party including creative concept development, design, layout, consultation services, research, script and copy writing, art preparation, public relations, and account management services.

(3) "Master advertisement" means the original advertising material created by the advertising agency for reproduction as tangible personal property or digital property[in tangible form] for the purpose of display or other advertising uses, such as master commercials, camera ready art, proofs, and corporate logos.

Section 2. Advertising Agencies as Consumers in Creation of Master Advertisement. (1) An advertising agency shall be the consumer of all the tangible personal property and digital property used in the performance of its advertising services to produce a master advertisement regardless of whether the property the agency purchases is acquired in the name or account of the advertising agency or its client. The tax shall apply to the advertising agency's purchase of:

(a) All tangible personal property or digital property for use in the performance of its advertising services, including the purchase or rental of stock photos and movie footage delivered as tangible personal property or digital property;

(b) Any materials that become a component of the master advertisement; and

(c) Any tangible personal property or digital property that is incidentally provided to the client as part of the advertising services.

(2) An advertising agency shall not claim that its purchase of tangible personal property or digital property is exempt from sales and use tax because the property is to be used in fulfilling a contract with:

(a) The federal government, state government, or political subdivision thereof;

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(b) Any department, agency, or instrumentality of the federal government, state government or political subdivision thereof; or

(c) A religious, educational, or charitable institution exempt from tax under KRS 139.495.

(3) The performance of advertising services shall not constitute manufacturing or processing production of tangible personal property or digital property for sale. Therefore, an advertising agency shall not claim that its purchase of tangible personal property or digital property used in the performance of its advertising services is exempt from sales and use tax under the:

(a) Raw material, industrial tool, and industrial supply exemption as provided in KRS ~~139.470(10)~~[139.470(11)]; or

(b) The machinery for new and expanded industry exemption as provided in KRS 139.480(10).

(4) If acting in the capacity of a consumer, an advertising agency shall not bill its client for tax on charges made for advertising services.

Section 3. Advertising Agencies as Retailers After Creation of Master Advertisement. (1) An advertising agency shall be a retailer of tangible personal property and digital property the advertising agency sells to its clients or to others on behalf of its clients regardless of whether the sale is at a marked-up price. This provision shall include property reproduced from a master advertisement whether the advertising agency or a third party actually reproduces the materials. This provision shall not include property described in Section 2 of this administrative regulation that the advertising agency uses in creating a master advertisement.

(2) An advertising agency engaged in business as a retailer shall:

(a) Complete a "Kentucky Tax Registration Application", [~~(October 2002)~~] Revenue Form 10A100, to register with the Department of Revenue[~~Revenue Cabinet~~] for a retail sales and use tax permit; and

(b) Report and pay the applicable sales or use tax[~~derived from gross receipts~~] utilizing Revenue Form 51A102, "Sales and Use Tax Return" [~~(July 2003)~~].

(3) Taxable receipts from an advertising agency's retail sale of tangible personal property or and digital property shall include all charges for services that are a part of the sale of tangible personal property and digital property including charges for:

(a) Inbound freight;

(b) Production supervision; or

(c) Print management that directly relate to the sale of particular tangible personal property.

(4) Gross receipts subject to sales tax shall not include periodic print management fees or other retainer fees not related to the sale of particular tangible personal property or digital property and paid whether or not there is a transfer of tangible personal property or digital property in a given fee period.

(5) An advertising agency may purchase tangible personal property and digital property it sells to or for its clients as a sale for resale without payment of the tax if the advertising agency provides to its suppliers a properly completed:

(a) Kentucky "Resale Certificate" [~~(September 1990)~~], (Revenue Form 51A105);

(b) Multistate Tax Commission (Uniform Sales and Use Tax Certificate Multijurisdiction); [~~or~~]

(c) Streamlined Sales and Use Tax Agreement – Certificate of Exemption (Revenue Form 51A260); or

(d)[~~(e)~~] Other documentation containing the information required by KRS 139.280.

Section 4. Joint Activities by Advertising Agencies. (1) If an advertising agency contracts with a client to provide both advertising services and the sale of tangible personal property or digital property, receipts subject to tax shall be determined by the following guidelines provided the charges for the advertising services are clearly delineated from the charges for the tangible personal property or digital property on the customer's invoice.

(a) Any transfer of tangible personal property or digital property for a consideration, other than the master advertisement and the

items described in Section 2 of this administrative regulation used in the creation of the master advertisement, to a client or a third party on behalf of a client shall be considered a retail sale of tangible personal property or digital property subject to sales tax.

(b) Receipts from agency fees, service charges, or commissions exclusively for advertising services shall not be subject to sales tax, including charges for placing advertisements in print, broadcast, or other media.

(c) The amount separately stated for the tangible personal property or digital property shall not be less than the fair market value of similar property sold in a similar transaction not involving the provision of advertising services.

(2) If an advertising agency contracts with a client to provide both advertising services and the sale of tangible personal property or digital property and does not clearly delineate the charges on the customer's invoice, the total billing amount is subject to tax.

Section 5. 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) At a Kentucky Taxpayer Service Center during business hours; or

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

(a) ~~Revenue Form 10A100 "Kentucky Tax Registration Application For Withholding, Corporation, Sales and Use Taxes, and Motor Vehicle Tire Fee", October 2002;~~

(b) ~~Revenue Form 51A102 "Sales and Use Tax Return", July 2003;~~

(c) ~~Revenue Form 51A105 "Resale Certificate", September 1990; and~~

(d) ~~"Uniform Sales and Use Tax Certificate – Multijurisdictional", July 2000.~~

(2) ~~These material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Revenue Cabinet, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, 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: October 6, 2017

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

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3874, email Lisa.Swiger@ky.gov.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, December 12, 2017)

103 KAR 27:180. Vending machines.

RELATES TO: KRS 139.010, 139.240, 139.260, 139.470, 139.485, 139.720

STATUTORY AUTHORITY: KRS 131.130(1)[~~KRS Chapter 13A~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. This administrative regulation establishes the requirements when interpreting[~~To interpret~~] the sales and use tax law as it applies to sales of tangible personal property through vending machines.

Section 1. Persons who own vending machines which dispense tangible personal property, or operators of the[such] machines under lease or rental agreements, shall complete a "Kentucky Tax Registration Application", Revenue form 10A100, to obtain a Kentucky Retail Sales and Use Tax[~~must~~

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~~obtain a~~ permit to engage in the business of selling tangible personal property and ~~shall~~**[must]** report and pay to the department the tax upon the gross receipts from sales made through ~~the~~**[such]** machines **by utilizing Revenue Form 51A102, "Sales and Use Tax Return"**. One (1) permit ~~shall be~~**[is]** sufficient for all machines of one (1) owner or operator.

Section 2. The owners or operators of vending machines shall be responsible for reporting and paying the tax on the total gross receipts even though the owner or operator of the place in which the machines are located receives a share of ~~the~~**[such]** gross receipts under a commission or concession contract. In reporting and paying ~~the~~**[such]** tax, the owner or operator shall be deemed the agent of the operator or owner of ~~the~~**[such]** place of business in which the machine is located to the extent of commissions due the latter. Gross receipts from sales of tangible personal property made in portions of ~~fifty (50)~~**[twenty-five (25)]** cents or less through coin operated bulk vending machines where unsorted merchandise is dispensed in approximately equal portions are exempt from the sales and use tax (KRS 139.470(6)).

Section 3. A statement in the following form must be affixed upon each vending machine in a conspicuous place: "This vending machine is owned (operated) by _____ Owner (Operator), _____ Place of Business of Owner (Operator), who holds Permit No. _____, issued pursuant to the Sales and Use Tax Law."

Section 4. If the owner or operator of vending machines also places upon each machine a statement that the sales tax is included in the price of the property dispensed, he may compute his liability for the tax in the same manner as all other retailers who separately state the tax.

Section 5. Adequate and complete records must be kept by the owner or operator showing the location of each vending machine owned or operated by him, the serial number thereof, purchases and inventories of merchandise bought for sale through such machine, and the gross receipts derived from each location during each tax period.

Section 6. Forms. The forms listed within this administrative regulation may be inspected, copied, or obtained:

- (1) At the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620;**
- (2) At a Kentucky Taxpayer Service Center; or**
- (3) On the department Web site at <http://revenue.ky.gov>.**

DANIEL P. BORK, Commissioner
APPROVED BY AGENCY: October 6, 2017
FILED WITH LRC: October 12, 2017 at 4 p.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, December 12, 2017)**

103 KAR 28:051. Leases and rentals.

RELATES TO KRS 138.460, 138.463, 139.010, 139.105, 139.200, 139.210, 139.270, 139.280, 139.290, 139.310, 139.330, 139.340, 139.430, 139.471, 139.484, 139.600, 139.620
STATUTORY AUTHORITY: KRS 131.130(1), 139.710
NECESSITY FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the department to make administrative regulations for the administration and enforcement of all tax laws in this state, and KRS 139.710 requires the department to administer the provisions of KRS Chapter 139, regarding sales and use taxes. This administrative regulation sets forth requirements for leases

and rentals of tangible personal property or digital property relating to the sales and use tax law.

Section 1. Definitions. (1) "Primary property location" means the location as indicated by an address for the property provided by the lessee that is available to the lessor from the lessor's records maintained in the ordinary course of business, if use of this address does not constitute bad faith. This location shall not be altered by intermittent use of the property at different locations.

(2) "Transportation equipment" means any of the following:

- (a) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;
- (b) Trucks and truck-tractors with a gross vehicle weight rating (GVWR) of 10,001 pounds or greater, trailers, semi-trailers, or passenger buses that are:
 - 1. Registered through the International Registration Plan; and
 - 2. Operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;
- (c) Aircraft that are operated by air carriers authorized and certificated by the U.S. Department of Transportation or another federal authority or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; and
- (d) Containers designed for use on and component parts attached or secured on the items set forth in paragraphs (a) through (c) of this section.

Section 2. Registrants. (1) A person engaged in leasing or renting tangible personal property or digital property for use in Kentucky is a retailer and shall:

- (a) **Complete a "Kentucky Tax Registration Application", Revenue Form 10A100[Register with the Department of Revenue to obtain a retail sales and use tax permit];** and
- (b) Report and pay the applicable tax derived from the gross lease or rental receipts **utilizing the "Sales and Use Tax Return", Revenue Form 51A102.**

(2) Each period for which a lease or rental is payable shall be considered a complete transaction in determining a retailer responsible for the tax in accordance with ~~KRS 139.010~~**[KRS 139.440(1)(e)]**.

Section 3. Gross Receipts. (1) Gross receipts from the lease or rental of tangible personal property or digital property shall include:

- (a) The total amount of payments, or consideration received by the lessor from the lessee;
 - (b) Payments paid by the lessee to a third party for the benefit of the lessor which are required by the terms of the agreement; and
 - (c) All itemized charges for costs incurred by the lessor and passed on to the lessee as separate charges in the lease or rental agreement including finance or interest charges, property tax, and insurance charges.
- (2) Charges by a lessor to a lessee for a separately-executed maintenance agreement, which is not a part of the lease or rental agreement, shall not be subject to tax.

Section 4. Tax Responsibility. (1) The retailer/lessor leasing or renting tangible personal property or digital property within Kentucky shall be required to collect the sales tax from the customer/lessee.

(2) Every out-of-state retailer leasing or renting tangible personal property or digital property for storage, use or other consumption in this state shall be required to collect the use tax from the purchaser and remit the tax on gross lease or rental receipts to the Department of Revenue.

(3) The lessee's responsibility for the use tax shall not be relieved until payment of the amount due has been made to the Department of Revenue or to a retailer/lessor authorized to collect the Kentucky tax.

Section 5. Resale. (1) A lessor may claim a resale exemption

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for tangible personal property or digital property purchased exclusively for lease or rental.

(2) Parts and accessories purchased by the lessor which become part of the leased or rented property may also be purchased under a resale exemption. However, property purchased by a lessee to maintain leased or rented property of a lessor shall be subject to the sales and use tax.

(3) Tangible personal property or digital property purchased for resale without payment of the tax and to be utilized exclusively for lease or rental, and so used, but subsequently used by the retailer/lessor for some purpose other than lease or rental shall become subject to tax upon this subsequent use. The tax shall be measured by purchase price of the property and shall be in addition to the tax due on the lease or rental receipts.

(4) Tangible personal property or digital property purchased in part for lease or rental and in part for use shall not be purchased from a seller or retailer[vendor] under a resale exemption and shall be subject to tax.

(5) A retailer who purchases tangible personal property or digital property for outright sale, but, while holding the property in the retailer's inventory, makes use of the property in the retailer's business through lease or rental shall be responsible for the applicable tax to the lease or rental receipts.

(6) Tangible personal property or digital property purchased by a retailer engaged exclusively in leasing or renting the property may be eligible for a deduction from the retailer's gross lease or rental receipts for an amount equal to the purchase price of the property used exclusively for lease or rental if the retailer has paid the sales or use tax applicable to the purchase price of the property.

Section 6. Lease with an Exemption Certificate. A lessor of tangible personal property or digital property shall not include within the measure of the tax gross receipts from a lease or rental if the lessor takes from the lessee a fully completed certificate of exemption as evidence that the property leased will be used in an exempt manner under the sales and use tax law.

Section 7. Motor Vehicles. (1) The lease or rental of motor vehicles, which are for use on the public highways and upon which any applicable tax levied under KRS 138.460 or KRS 138.463 has been paid, shall not be subject to the sales or use tax.

(2) Motor vehicles, which are not subject to the motor vehicle usage tax established in KRS 138.460 or the U-Drive-It tax, established in KRS 138.463, shall be subject to the sales and use tax unless another applicable exemption applies.

Section 8. Reciprocity. (1) The sales and use tax law shall provide for credit against any Kentucky use tax for state sales tax paid in another state which imposes a sales tax substantially identical to that of Kentucky.

(2) Out-of-state lessors who have collected sales tax on a lump-sum basis for their state shall be able to receive credit for the amount paid that other state up to the amount due to Kentucky.

(3) Kentucky shall tax any excess lease or rentals, relating to the lump-sum tax amounts.

(4) Reciprocity shall apply to any tax due Kentucky on lease or rental receipts only if the reciprocal state has levied and is legally due the sales or use tax paid on the lease or rental receipts.

Section 9. Lease of Real, Tangible, Digital and Intangible Property. (1) If lease or rental activity involves the lease or rental of real property, in combination with[,] tangible personal, digital property or[and] intangible property, as in the lease or rental of a business operation or establishment, the total amount of the lease or rental shall be subject to the sales and use tax unless the amount applicable to the tangible personal property or[and] digital property is separately stated.

(2) The amount separately stated for the tangible personal property and digital property shall not be less than the fair market lease or rental value for like property for a like rental or lease period.

(3) The lease or rental of tangible personal property and digital

property between separate entities owned by the same or similar stockholders shall be subject to the tax unless otherwise exempted by the sales and use tax law.

(4) The tax shall be levied on the lease or rental amount charged or the fair market lease or rental amount, whichever is greater.

Section 10. General Sourcing Rules. (1) The lease or rental of tangible personal property or[and] digital property, other than property identified in subsection (5)[(3)] of this section, shall be sourced according to the provisions of KRS 139.105(1).

(2) For a lease or rental that requires recurring periodic payments, the first periodic payment shall be sourced as follows according to the provisions of KRS 139.105(1).~~[(a)]~~ Periodic payments made subsequent to the first payment shall be sourced to the primary property location for each period covered by the payment. The primary property location shall not be altered by intermittent use at different locations. Intermittent use shall include business property that accompanies employees on business trips and service calls.

(3)[(b)] For a lease or rental that does not require recurring periodic payments, the payment shall be sourced the same as a retail sale in accordance with the provisions of KRS 139.105(1)[paragraph (a) of this subsection (c) of this section].

(4)[(c)] This subsection shall not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(5)[(3)] The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment shall be sourced as follows:

(a) For a lease or rental that requires recurring periodic payments, each periodic payment shall be sourced to the primary property location.

(b) For a lease or rental that does not require recurring periodic payments, the payment shall be sourced in accordance with the provisions of KRS 139.105(1)[subsection (2) of this section].

(c) This subsection shall not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

Section 11. Forms. The forms listed within this administrative regulation may be inspected, copied, or obtained, subject to applicable copyright law:

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

(2) At a Kentucky Taxpayer Service Center; or

(3) On the department Web site at <http://revenue.ky.gov>.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 6, 2017

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

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3874, email Lisa.Swiger@ky.gov.

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, December 12, 2017)**

103 KAR 30:235. Sales[~~of utility services~~] to the federal government.

RELATES TO: KRS 139.010, 139.200, 139.260, 139.270, 139.310, 139.330, 139.470, 139.720, 139.990

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. [KRS 139.470 was amended by Ky Acts Chapter 77, Pt III,

~~Sec 1.] The 1976 Kentucky General Assembly amended the sales tax law [to exempt sales to Kentucky State Government and to local governments in Kentucky, effective July 1, 1976.] [Sales of utility services to the federal government have continued to be taxed under policy that has been followed since the inception of the sales tax in 1960. All other sales to the federal government had been exempt. Recent research by the Attorney General's Office reveals some case law supporting the government's claim that to continue to tax sales to the federal government constitutes discrimination against the federal government.] This administrative regulation establishes requirements for application of explains how the sales tax is to apply to transactions involving the federal government, consistent with the treatment of sales to Kentucky State Government and local governments in Kentucky [case law referred to above]. [Section 1. On and after the 30th day following the effective date of this administrative regulation, sales tax does not apply to receipts from sales to the federal government. This administrative regulation is prospective only and no refunds or credit adjustments will be made for purchases made prior to the 30th day following the effective date of this administrative regulation. Also, no assessments will be made on sales that were exempted administratively by the cabinet during that same period.]~~

Section 1. [2.] The term "federal government" as used in this administrative regulation shall mean [means] federal agencies, instrumentalities, or corporations which are exempt from all state taxation under the Federal Constitution or statutes, and shall not include:] an agency, corporation or instrumentality that is simply [is not entitled to the exemption simply because it is] regulated by or receives funds or grants from the federal government.

Section 2. [3.] The exemption applies only to sales made directly to the federal government for use in the government function. Any official or employee who uses a [his] position to make a tax-free purchase for [his own] personal use or that of any other person shall [will] be subject [himself] to the penalties provided in KRS 139.990 and other applicable laws.

Section 3. [4.] Sellers and retailers shall include sales made directly to the federal government [are to be included] in the gross receipts [to be] entered on line one (1) of the retailer's Kentucky Sales and Use Tax Return (Form 51A102). Sellers or retailers may deduct these [such] sales on line six (6) [twenty-one (21)] of the return. Sellers or retailers claiming a deduction for sales to the federal government shall [must] maintain in their records [files] a copy of the exemption authorization letter issued to the federal agency and a copy of the invoice upon which an official, or an employee exercising comparable authority, of the federal government has signed and acknowledged in writing that delivery of the property was actually made to the federal government.

Section 4. [5.] Contractors may not claim the exemption when [may not be claimed by contractors] purchasing property to be used in fulfilling contracts with the federal government. As provided by 103 KAR 26:070, sales of property to contractors for use in fulfilling contracts with the federal, state, or local governments for erecting, remodeling, or repairing structures or improvement on or to real estate are subject to tax.

Section 5. [6.] All federal government agencies seeking exemption under authority of this administrative regulation shall [must] apply to the Division of Sales and Use Tax [Sales and Severance Tax Division] for a tax exemption authorization letter. The application (Form 51A125) [form] may be obtained from the Division of Sales and Use Tax [Sales and Severance Tax Division], 501 High Street, Frankfort, Kentucky 40620 [40604] or from one (1) of the department's [cabinet's ten (10)] field offices.

DANIEL P. BORK, Commissioner
 APPROVED BY AGENCY: October 6, 2017
 FILED WITH LRC: October 12, 2017 at 4 p.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, December 12, 2017)**

103 KAR 31:030. Direct pay authorization.

RELATES TO: KRS 139.010, 139.240, 139.250, 139.260, 139.540, 139.550, 139.590, 139.660, [439.400,] 139.710, 139.720
 STATUTORY AUTHORITY: KRS 131.130, 139.260, 139.660, 139.720

NECESSITY, FUNCTION, AND CONFORMITY: KRS [43A.139,] 131.130(1), 139.260, [439.400,] and 139.710 authorized the Department of Revenue [Revenue Cabinet] to promulgate administrative regulations for the: (1) assessment, collection, refunding, administration, and enforcement of Kentucky tax laws; and (2) direct pay authorization. This administrative regulation establishes the requirements and procedures for the direct payment of Kentucky sales and use tax on purchases of tangible personal property or [and] digital property excluding energy and energy producing fuels.

Section 1. Definitions. (1) "Direct pay authorization" or "DPA" means an authorization issued by the Department of Revenue [Revenue Cabinet] that permits a taxpayer to report Kentucky sales and use tax directly to the cabinet on all purchases of tangible personal property and digital property, excluding energy and energy-producing fuels.

(2) "Distribution facility" means a specific location which is used to receive, hold, and ship business inventory.

(3) "Manufacturing" is [as] defined by KRS 139.010(16) [means a process that transforms tangible personal property having no commercial value for its intended use before processing into tangible personal property having appreciable commercial value for its intended use after processing].

Section 2. Qualifications. An applicant shall: (1) Be a person engaged in:

- (a) Manufacturing;
- (b) Extracting minerals, ores, clay, stone, coal, or natural gas;
- (c) Operating a transportation company; or
- (d) Operating a distribution facility; and
- (2) Hold a valid Kentucky retail sales and use tax permit; and
- (3) Have a record of timely payment of taxes administered by the cabinet;
- (4) Maintain records in such a manner that, as applicable, the amount of tangible property and digital property purchased from:

- (a) A Kentucky seller or retailer [vendor] may be properly reported; or
- (b) An out-of-state seller or retailer [vendor] for storage, use, or other consumption in Kentucky or elsewhere can be verified; and

(5) Be engaged in business in Kentucky, and own property, other than office furniture and equipment, that is located in more than one (1) state; or

(6)(a) Have been in engaged in business in Kentucky in excess of twenty-four (24) months; and

(b) Have purchased digital property or tangible personal property, excluding energy and energy-producing fuels, [or digital property] of at least ten (10) million dollars for use in his Kentucky operations in the preceding calendar or fiscal year, as applicable.

Section 3. Application. (1) An applicant shall apply to the department [cabinet] for a DPA by submitting a fully completed [upon] Revenue Form 51A112, "Application for Direct Pay Authorization".

(2) The application shall include: [(a) The applicant's:

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1. Legal business name;
2. Federal Employer Identification Number;
3. Date operations began in Kentucky;
4. Kentucky business address;
5. Mailing address;
6. Type of operation: manufacturing/processing; mining/quarrying; transportation company; or distribution facility;
7. Telephone and fax numbers;
8. Kentucky Employer's Withholding Account Number;
9. Kentucky Corporation Income and License Account Number;

and
10. Kentucky Sales and Use Account Number;

(a)(b) If an applicant is engaged in business and has property, other than office furniture and equipment, located in more than one (1) state, the location of the applicant's home office, and plants or places of business;

(b)(e) If the applicant is not engaged in business and does not have property, other than office furniture and equipment, located in more than one (1) state, the amount of tangible property and digital property purchased for use in the applicant's Kentucky business operations in the last calendar or fiscal year, as applicable;

(c)(d) Statements relating to records and documentation required by Sections 2(3) and (4) and 7 of this administrative regulation;

(d)(e) Most recent year's financial statement certified by the applicant's chief financial officer or a certified public accountant; and

(e)(f) A detailed description of the records maintained to document that the amount of taxable purchases is properly reported.

Section 4. Requirements. A DPA holder shall:

(1) Furnish all of his sellers or retailers, excluding sellers or retailers[vendors, excluding vendors] of energy and energy-producing fuels, with a copy of Revenue Form 51A110, "Direct Pay Authorization";

(2) Report and remit the sales or use tax on all taxable purchases of digital property or tangible personal property and digital property, excluding energy and energy-producing fuels, that would have been remitted by the DPA holder's seller or applicant's retailer if the DPA had not been granted; and

(3) Report all taxable purchases in accordance with KRS 139.540, 139.550, [139.560] and 139.590.

Section 5. Vendor Responsibility. (1) A vendor shall be relieved of the duty of collecting and paying the sales or use tax if he:

(a) Accepts a copy of a company's DPA [in good faith]; and

(b) Retains the copy in his records pursuant to KRS 139.720(2).

(2) A seller or retailer[vendor] shall:

(a) Include sales for which a DPA has been accepted in Line 1, Gross Receipts, of Revenue Form 51A102, "Sales and Use Tax Return"; and

(b) Take a corresponding deduction on Line 19, which shall be labeled "DPA Sales".

Section 6. Limitations. A DPA holder shall not:

(1) Issue the DPA to a construction contractor; or

(2) Allow a contractor to use the holder's DPA to purchase, lease, or rent tangible personal property, digital property, or purchase taxable services.

Section 7. Records. A DPA holder shall maintain records pursuant to KRS 139.720(2) and 103 KAR 31:020.

Section 8. Bond Requirement. Upon demand of the department[cabinet], the applicant or holder of a direct pay authorization shall execute pursuant to KRS 139.660, a bond or an indemnity agreement securing the payment of the sales or use taxes to the department[cabinet] in an amount not less than \$75,000 and not greater than three (3) times the estimated monthly liability.

Section 9. Transfer of Authorization. (1) A DPA shall not be transferable upon the sale, lease, or other transfer of the business.

(2) A DPA holder shall notify the department[cabinet] within ten (10) days of the effective date of the sale, lease, or other transfer of the business.

Section 10. Termination. (1) The department[cabinet] shall terminate a DPA if the DPA holder:

(a) Fails or ceases to be an eligible taxpayer;

(b) Fails to timely file its sales and use tax returns and timely pay any tax due; or

(c) Fails to comply with any of the provisions of this administrative regulation.

(2)(a) The department[cabinet] shall notify a DPA holder of the termination by certified mail at his last known address.

(b) Upon receipt of the notification of termination, a DPA holder shall notify all sellers or retailers[vendors] within thirty (30) days of the date of termination.

(3) The effective date of the termination shall be the date of the mailing of the termination notice.

Section 11. Protests. The denial or termination of a DPA may be protested pursuant to KRS 131.110.

Section 12. 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) At a Kentucky Taxpayer Service Center during business hours; or

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

(a) "Application for Direct Pay Authorization, Form 51A112 (12-97)";

(b) "Direct Pay Authorization, Form 51A110 (8-97)"; and

(c) "Sales And Use Tax Return, Form 51A102 (9-92)".

(2) This material may be inspected, copied, or obtained at Kentucky Revenue Cabinet, 200 Fair Oaks, Frankfort, Kentucky 40620, or at a Kentucky Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.]

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 6, 2017

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

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3874, email Lisa.Swiger@ky.gov.

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, December 12, 2017)**

103 KAR 31:111. Sales and purchases for resale.

RELATES TO: KRS 139.010, 139.260, 139.270, 139.280, 139.290, 139.300, 139.430, 139.440, 139.760, 139.990

STATUTORY AUTHORITY: KRS 131.130(1)

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. This administrative regulation establishes requirements to consolidate and clarify various provisions of the sales and use tax law as they relate to the authorized issuance of resale certificates by purchasers and acceptance thereof by retailers and sellers.

Section 1. A resale certificate shall either be a "single purchase certificate" or a "blanket certificate". (1) A "Single purchase certificate" shall include an itemization by the purchaser of the property to be purchased. A single purchase certificate may only be used for a single purchase of tangible personal property or

digital property[commodities] for resale and shall not be used for subsequent purchases.

(2) A "Blanket certificate" shall include a general description by the purchaser of the kind of property to be purchased for resale in the regular course of business. A purchaser who has executed a blanket certificate shall not be required to execute additional certificates of resale for individual purchases if:

(a) There is no change in the character of the purchaser's operation; and

(b) The purchases are of tangible personal property or digital property of the kind usually purchased by the purchaser for resale.

Section 2. The resale certificate issued by the purchaser shall be in the form of either the "Resale Certificate", Form 51A105, [~~which is incorporated by reference in 103 KAR 3:020,~~]the "Streamlined Sales and Use Tax Agreement - Certificate of Exemption", Revenue Form 51A260, [~~which is incorporated by reference in 103 KAR 3:020,~~] or the Multistate Tax Commission's "Uniform Sales and Use Tax Certificate - Multijurisdiction".

Section 3. If the purchaser is not required to hold a permit because the purchaser is a nonresident purchaser not required to register in Kentucky, the purchaser may issue a fully completed[:]

~~(1)(a) The purchaser may issue a fully completed~~ Streamlined Sales and Use Tax Agreement - Certificate of Exemption (Revenue Form 51A260); or

~~(2)(b) The purchaser may issue a fully completed~~ Resale Certificate (Revenue Form 51A105). [~~and~~] If the purchaser issues a [~~is using the~~] "Resale Certificate", Form 51A105, the purchaser shall note on the face of the certificate that the purchaser is a nonresident purchaser not required to register and obtain a permit in Kentucky. The certificate shall bear the purchaser's signature, name, address, and any other information requested on the form. The purchaser shall clearly mark on the certificate whether it is a single purchase certificate or a blanket certificate.

Section 4. (1) If the retailer or seller has not obtained a completed resale certificate in a timely manner according to the provisions of KRS 139.270, the burden of proving that a sale is exempt as a sale for resale shall be upon the retailer or seller. The retailer or seller may offer proof to the department that the sale in question is not subject to tax in accordance with 103 KAR[Chapter] 1:010.

(2)(a) For example, if a retailer or seller receives a completed resale certificate from a restaurant business for silverware and other table settings only after the 120 day period required under KRS 139.270[a department audit], the burden of proof shall be considered "not met" and the retailer or seller shall remain liable for the tax. The items in this example are for use within the restaurant business rather than for resale.

(b) If the retailer or seller receives a completed resale certificate in the course of a department audit for purchases of disposable cups from the same restaurant business, the burden of proof shall be considered "met" because the product is of the type resold in the normal course of the restaurant business.

Section 5. 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) At a Kentucky Taxpayer Service Center during business hours; or

(3) On the department website at <http://revenue.ky.gov>. [~~Incorporation by Reference. (1) The "Uniform Sales and Use Tax Certificate - Multijurisdiction", Multi-State Tax Commission, July 2000, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.]~~

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 6, 2017

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

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3874, email Lisa.Swiger@ky.gov.

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue**

(As Amended at ARRS, December 12, 2017)

103 KAR 31:170. Disaster Area Relief Sales and Use Tax Refunds.

RELATES TO: KRS 139.519, 139.720, 139.770

STATUTORY AUTHORITY: KRS 131.130(1), 139.519(7)(a), 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 sales and use taxes. KRS 139.519 establishes the tax refund provisions for sales and use tax paid on building materials purchased for the purpose of repairing or replacing a building damaged or destroyed by a disaster within a disaster area. This administrative regulation establishes the requirements for disaster area relief sales and use tax refunds.

Section 1. Definitions. (1) "Building materials" is defined by/in KRS 139.519(1)(a).

(2) "Disaster" is defined by/in KRS 139.519(1)(b).

(3) "Disaster area" is defined by/in KRS 139.519(1)(c).

(4) "Qualifying construction" means:

(a) Construction that repairs the portion of a building damaged by a disaster in a disaster area; or

(b) Construction that replaces a building damaged by a disaster in a disaster area.

Section 2. Refund Application Requirements. (1) A request for a refund shall be filed with the Department of Revenue after completion of the qualifying construction and in accordance with the provisions of KRS 139.519(4)(a)[within three (3) years from the date the disaster area is declared].

(2) To be considered valid, a refund request shall be postmarked, electronically submitted, or if delivered by messenger, hand-stamped by the department by the date required in subsection (1) of this section[~~to qualify for consideration~~] and shall include the following completed information:

(a) Application for Kentucky Disaster Relief Sales and Use Tax Refund, Form 51A600;

(b) Information Sharing and Assignment Agreement for Disaster Relief Refund Claims, Form 51A601;

(c) Expenditure Report for Building Materials Disaster Relief Refunds, Form 51A602;

(d) Copies of contractor invoices to the legal building owner, if applicable;

(e) Related sample sales receipts of building materials purchased from each vendor;

(f) Photographs of disaster damage and related construction;

(g) Other applicable documents that the applicant believes will support the refund claim; and

(h) One of the following types of documentation:

1. Confirmation letter that the legal building owner is eligible for assistance from the Federal Emergency Management Agency (FEMA), United States Department of Homeland Security because of property damage from the disaster; or

2. A copy of the insurance claim filed for the building damage sustained in the disaster.

(3) Any request for a refund filed with the Department after the three (3) year period established in KRS 139.519(4)(a)

~~[subsection (1) of this section]~~ shall be denied.

Section 3. Record Keeping Requirements. The legal owner of the building and other applicable parties shall keep adequate and complete records supporting the refund request for a period not less than four (4) years as provided for in KRS 139.720. The department may audit the records of all parties involved as necessary to verify the refund request and to ensure compliance.

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) At a Kentucky Taxpayer Service Center during business hours; or

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

(a) "Application for Kentucky Disaster Relief Sales and Use Tax Refund", Form 51A600, August 2012;

(b) "Information Sharing and Assignment Agreement for Disaster Relief Refund Claims", Form 51A601, August 2012; and

(c) "Expenditure Report for Building Materials Disaster Relief Refunds", Form 51A602, April 2012.

(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: October 6, 2017

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

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3874, email Lisa.Swiger@ky.gov.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(As Amended at ARRS, December 12, 2017)**

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, 315.4106, 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 and that the board establish the renewal fee by administrative regulation. KRS 315.4104 requires a board-approved[an] application, licensure fee, 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) A non-refundable **initial licensure or renewal** fee of \$200 by check or money order made payable to the Kentucky State Treasurer;

(b)[and] A complete, **sworn, and notarized** Application to Operate as a Third-Party Logistics Facility;

(c) **Unless previously provided, documentation of licensure as a third-party logistics provider through proof of registration with either:**

1. The secretary of the U.S. Department of Health and Human Services, Food and Drug Administration; or

2. The state in which the provider ships;

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

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

2. The board's authorized agent;

(e) **A confirmation statement of the previous owner if ownership changed;**

(f) **Legal proof of any name change, if applicable;**

(g) **An explanation if an applicant, officer, partner, or director has ever been convicted of a felony or had a professional license or permit disciplined under federal, state, or local law;**

(h) **Ownership information for each partner, director, or officer, including:**

1. **Name and title;**

2. **Email addresses;**

3. **Federal employer identification number;**

4. **Address;**

5. **Phone number;**

6. **Social security number; and**

7. **Date of birth;**

(i) **State of incorporation or organization if the owner is a corporation; and**

(j) **Upon request, a list of all manufacturers, wholesale distributors, and dispensers for whom the third-party logistics provider provides services.**[~~"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) **An applicant applying for any ownership or address change shall submit a non-refundable ownership change fee of \$100 and a change of address fee of \$100.**

(3) **Each License shall[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 established[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 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.

**GENERAL GOVERNMENT CABINET
Board of Pharmacy
(As Amended at ARRS, December 12, 2017)**

201 KAR 2:400. Outsourcing facility.

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

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

NECESSITY, FUNCTION AND CONFORMITY: KRS 315.340 establishes requirements for in-state outsourcing facilities doing business in Kentucky, requires the board to set fees, and requires the board to promulgate administrative regulations relating to in-state permit applicants for licensure and renewal. KRS 315.342 establishes requirements for out-of-state outsourcing facilities doing business in Kentucky, requires the board to set fees, and requires the board to promulgate administrative regulations relating to in-state permit applicants for licensure and renewal. This administrative regulation establishes further licensure, renewal, and general requirements for in-state and out-of-state outsourcing facilities.

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

(a) A nonrefundable initial licensure or renewal fee of \$250 by check or money order made payable to the Kentucky State Treasurer.

(b) A complete, sworn, and notarized["] Application to Operate as an Outsourcer Facility["];

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

(d) 1. Unless previously provided, a copy of the current inspection report conducted by the United States Food and Drug Administration pursuant to KRS 315.340(2)(a)2. and (b)1. or KRS 315.342(2)(a) 2. [(2)] and (b) 1. [(1)], if applicable; or

2. [(2)] If a current inspection report is not available from the United States Food and Drug Administration, the applicant shall submit an inspection report by:

a. The [(1)] National Association of Boards of Pharmacy (NABP);

or

b. [(2)] The board's authorized agent;

(e) A confirmation statement of the previous owner if ownership changed;

(f) Legal proof of any name change, if applicable;

(g) An explanation if an applicant, owner, officer, or pharmacist-in-charge has ever been convicted of a felony or had a professional license or permit disciplined under federal, state, or local law; and

(h) Ownership information for each owner or officer, including:

1. Name and title;

2. Address;

3. Phone number;

4. Social security number; and

5. Date of birth.

(2) An applicant applying for any ownership or address change shall submit a non-refundable ownership change fee of \$100 and a change of address fee of \$100.

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

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

(a) A felony conviction related to:

1. The practice of pharmacy;

2. Drugs; or

3. Federal or state medical assistance programs;

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

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

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

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

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

(3) If the board considers denying or resolves to deny an application based solely on an applicant's prior conviction of a crime, the board shall follow the notification and procedure requirements in KRS 335B.030(2).

Section 3. General Requirements. An outsourcing facility shall:

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

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

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

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

SCOTT GREENWELL, R.Ph., President

APPROVED BY AGENCY: August 14, 2017

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

CONTACT PERSON: Steve Hart, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Steve.Hart@ky.gov.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Hairdressers and Cosmetologists
(As Amended at ARRS, December 12, 2017)**

201 KAR 12:082. Education requirements and school administration[School's course of instruction].

RELATES TO: KRS 317A.020, 317A.050[(8)], 317A.090,

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317B.015, 317B.025

STATUTORY AUTHORITY: KRS 317A.060[(4)], 317A.090,

317B.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060(2)(e)[(4)] requires the board to promulgate administrative regulations governing the hours and courses of instruction at schools of cosmetology, including their hours and courses of instruction]. **KRS 317B.020(3)(i) authorizes the board to promulgate administrative regulations including the hours and courses of instruction in esthetic practices.** KRS 317A.090 establishes the requirements for schools of cosmetology. This administrative regulation establishes requirements for the hours and courses of instruction, reporting, education requirements, and administrative functions required for students and faculty for[of] schools of cosmetology.

Section 1. Subject Areas. The regular courses of instruction for cosmetology students shall contain courses relating to the[four] subject areas identified in this section.

(1) Basics:

(a) History and Career Opportunities;

(b) Life Skills;

(c) Professional Image; and

(d) Communications.

(2) General Sciences:

(a) Infection Control: Principles and Practices;

(b) General Anatomy and Physiology;

(c) Skin Structure, Growth, and Nutrition;

(d) Skin Disorders and Diseases;

(e) Properties of the Hair and Scalp;

(f) Basic Chemistry; and

(g) Basics of Electricity.

(3) Hair Care:[The first area of courses shall relate to professional practices, which shall include]

(a) Principles of Hair Design;[The cosmetology profession:]

(b) Scalp Care, Shampooing, and Conditioning;

(c) Hair Cutting;

(d) Hair Styling;

(e) Braiding and Braid Extensions;

(f) Wig and Hair Additions;

(g) Chemical Texture Services; and

(h) Hair Coloring.

(4) Skin Care:

(a) Hair Removal;

(b) Facials; and

(c) Facial Makeup.

(5) Nails:

(a) Manicuring;

(b) Pedicuring;

(c) Nail Tips and Wraps;

(d) Monomer Liquid and Polymer Powder Nail Enhancements;

and

(e) Light Cured Gels.

(6) Business Skills:

(a) Preparation for Licensure and Employment;

(b) On the Job Professionalism; and

(c) Salon Businesses.[1. Cosmetology vocabulary;

2. Brief history: how it began, and changes; and

3. Ethics: ethics in a beauty salon; and salon conduct;

(b) Salon procedures:

1. Hygiene and good grooming:

a. Personal and public;

b. Personal characteristics; and

c. Responsibilities of a cosmetologist;

2. Professional attitudes and salesmanship:

a. Personality development;

b. Salesmanship and business management;

c. Customer relationship; and

d. Telephone personality;

3. Public relations and psychology:

a. Behavior; and

b. Proper image; and

(c) Specialty services:

1. Facial treatments and make-up:

a. Facial treatment/make-up preparation;

b. Implements and supplies;

c. Procedure in giving a plain facial;

d. Purpose and effect of massage movements;

e. Facial cosmetics;

f. Special problems;

g. Eyebrow arching; and

h. Lash and brow dye and enhancements;

2. Nail technology:

a. Purpose and effect;

b. Preparation;

c. Equipment; and

d. Procedures, including the following:

(i) Plain manicure;

(ii) Oil manicure;

(iii) Removal of stains;

(iv) Repair work;

(v) Hand and arm massage;

(vi) Buffing;

(vii) Application of lacquer; and

(viii) Application of artificial nails.

(2) The second area of courses shall relate to life sciences (general anatomy), which shall include:

(a) Osteology:

1. Definition; and

2. Functions;

(b) Myology:

1. Definition;

2. Functions; and

3. Types;

(c) Neurology:

1. Definition;

2. Functions;

3. Types (motor and sensory); and

4. Principal nerves of the head, face and neck;

(d) Angiology:

1. Definition;

2. Composition of blood; and

3. Function of blood;

(e) Dermatology:

1. Structure of skin;

2. Functions of skin;

3. Appendages of skin;

4. Conditions of the skin; and

5. Lesions of the skin;

(f) Trichology:

1. Structure of hair;

2. Composition;

3. Blood and nerve supply;

4. Growth and regeneration;

5. Color;

6. Texture;

7. Elasticity;

8. Porosity; and

9. Conditions to be recognized;

(g) Nails:

1. Structure and composition;

2. Growth and regeneration; and

3. Irregularities.

(3) The third area of courses shall relate to physical sciences (chemistry and treatment), which shall include:

(a) Chemistry:

1. Elements, compounds, and mixtures:

a. Properties of;

b. Acid and alkali; and

c. Chemistry of water.

2. Composition and uses of cosmetics:

a. For the body;

b. For the skin and face; and

c. For the scalp and hair;

3. Chemistry of hair lightening;

4. Chemistry of hair coloring;

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5. Chemical hair relaxing;
6. Chemistry of make-up;
7. Chemistry of facial treatments;
8. Chemistry of rinses:
 - a. Soaps and shampoos; and
 - b. Detergents; and
9. Chemistry of cold waving;

(b) Scalp and hair treatments:

1. Purpose and effects;
2. Preparation and procedure;
3. Use of cap;
4. Electricity and therapeutic ray; and
5. Safety rules;

(c) Shampoos and rinses:

1. Importance of good shampoo;
2. Purpose of effects;
3. Required materials and implements;
4. Brushing and drying;
5. Types of shampoos;
6. Rinses (not colored); and
7. Composition;

(d) Hair coloring:

1. Principal reasons for coloring;
 2. Advantages of coloring;
 3. Classifications of hair coloring;
 4. Variation of products;
 5. Procedures; and
 6. Safety measures;
- (e) Hair lightening:
1. Types of lighteners;
 2. Implements and supplies;
 3. Procedure;
 4. Special problems in hair lightening;
 5. Fillers and toners;
 6. Removal of aniline derivative tints; and
 7. Tint back to natural coloring;

(f) Cold waving:

1. Basic requirements;
2. Scalp and hair analysis;
3. Hair porosity;
4. Hair texture;
5. Hair elasticity;
6. Hair density;
7. Curling rods and chemicals;
8. Variation of permanent wave products;
9. Procedures;
10. Problems; and
11. Safety measures; and

(g) Sterilization and sanitation:

1. Definitions;
2. Importance;
3. Sterilization rules; and
4. Methods of sterilization.

(4) The fourth area of courses shall relate to hair designing or sculpturing, which shall include:

(a) Hair shaping:

1. Fundamentals of hair shaping;
2. Correct use of tools;
3. Designing and planning the hair cut;
4. Sectioning and thinning;
5. Razor and shear shaping;
6. Wig shaping; and
7. Safety precautions;

(b) Hair styling:

1. Finger waving;
2. Pin curls;
3. Hair partings;
4. Artistry hair styling;
5. Dressing of the coiffure;
6. Special consideration in hair styling;
7. Chemical hair relaxing and styling;
8. Facial types; and
9. Hair pressing and types of hot-iron curling; and

(c) Care and styling of wigs:

1. Purpose;
2. Quality;
3. Types of wigs;
4. Ordering wigs;
5. Cleaning;
6. Shaping;
7. Tinting and color rinsing;
8. Setting; and
9. Safety precautions.]

Section 2. A school of cosmetology shall teach the students about the various supplies and equipment used in the usual salon practices. [Section 3. A school shall have the following charts or visual aids available for students' use:

(1) Charts or visual aids showing anatomy of muscles of face and neck with special reference to the direction of muscle fibers and function of muscle or groups of muscles; and

(2) Charts or visual aids showing anatomy of nails.]

Section 3[4]. (1) A cosmetology student shall receive not less than 1,500[1,800] hours in clinical class work and scientific lectures with a minimum of:

~~(a) [(1) A minimum of] 375 lecture hours~~[450 minimum lecture hours] for science and theory;

~~(b) [(2) A minimum of] 1,085~~[1,305 minimum] clinic and practice hours; and

~~(c) [(3) A minimum of] Forty (40)~~[Forty-five (45)] hours on the subject of applicable Kentucky statutes and administrative regulations.

~~(2) [(4)] A student of cosmetology student shall not be permitted to~~ perform chemical services on the public until the student has completed a minimum of 250 hours of instruction.

Section 4. Training Period for Cosmetology Students, Nail Technician Students, Esthetician Students, and Apprentice Instructors. (1) A training period for a student shall:

~~(a)] be no more than eight (8) hours per day, forty (40) hours per week.~~

~~(2)] and;~~

~~(b)] A student shall be allowed thirty (30) minutes per eight (8) hour day for meals or a rest break. This thirty (30) minute period shall not be credited toward a student's instructional hours requirement.~~

Section 5. Laws and Regulations. At least one (1) hour per week shall be devoted to the teaching and explanation of the Kentucky law as set forth in KRS Chapter 317A, **317B**, and **201 KAR Chapter 12**[the administrative regulations of the board]. [Section 6. A school of cosmetology shall maintain and teach the curriculum established in this section.

(1) The curriculum for freshmen students shall be:

(a) Theory and related theory class, 100 hours, which shall include:

1. General theory, including Kentucky cosmetology law and applicable administrative regulations promulgated thereunder;
2. Clinical theory; and
3. Lecturing theory; and

(b) Clinical and related theory class (freshman practice class on students or mannequins), 200 hours, which shall include:

1. Cold waves;
2. Facials and make-up;
3. Complete "S" formations or complete finger waves;
4. Pin curl technique;
5. Hair shaping;
6. Hair styling techniques;
7. Lash and brow tint and enhancements;
8. Eyebrow arches;
9. Nail technology;
10. Scalp treatments;
11. Shampooing;
12. Hair coloring, bleaching, and rinsing (mixing and formulas);
13. Heat permanent;

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14. Safety measures.

(2) The curriculum for junior and senior students shall be:

(a) Theory and related theory class, 500 hours, including:

1. Professional practices;
2. Life sciences (general anatomy);
3. Physical sciences (chemistry and treatment);
4. Hair designing safety measures; and
5. Kentucky cosmetology laws and applicable administrative

regulations; and

(b) Clinical class, 1,000 hours, including:

1. Hair conditioning treatments;
2. Scalp treatments;
3. Hair shaping;
4. Shampoos;
5. Cold waves;
6. Chemical hair relaxing (permanent wave);
7. Complete "S" formation and complete finger waves;
8. Pin-curl techniques;
9. Hair styles;
10. Iron curling;
11. Hair coloring and toning;
12. Bleaches and frostings;
13. Facials and make-up;
14. Nail technology;
15. Lash and brow tints and enhancements;
16. Eyebrow arches;
17. Color rinses (certified color);
18. Wiggery;
19. Professional ethics and good grooming;
20. Salesmanship;
21. Reception desk and telephone answering;
22. Recordkeeping;
23. Dispensary (procedures for ordering supplies and retail merchandise);
24. Personality development;
25. Salon management; and
26. Public relations.

Section 7. In addition to the regular course of instruction, a cosmetology school may have two (2) related lectures and demonstrations per month.

Section 8. Time not utilized in theory or clinic work shall be used for study periods or library work.

Section 9. A school shall furnish students text books that:

- (1) Have been approved by the board; and
- (2) Are in paper or electronic format.

Section 10. A student of cosmetology shall not be permitted to work on the public until the student has completed 300 hours of instruction.

Section 11. A student of cosmetology shall be allowed a total of sixteen (16) hours for out-of-school activities pertaining to the profession of cosmetology per 1,800 hours, not to exceed eight (8) hours per day, if it is reported within ten (10) days of the field trip or education show to the board office on the Certification of Cosmetology Field Trip * Hours form, or Certification of Cosmetology Student Education Show * Hours form, as appropriate.

Section 12. A student of cosmetology shall be allowed a total of sixteen (16) hours for attending educational programs per 1,800 hours, not to exceed eight (8) hours per day, if it is reported within ten (10) days of the field trip or education show to the board office on the Certification of Cosmetology Field Trip * Hours form, or Certification of Cosmetology Student Education Show * Hours form, as appropriate.

Section 13. A copy of the Kentucky State Board of Hairdressers and Cosmetologists' statutes and administrative regulations shall be made available to all students.]

Section 6[14]. Nail Technician Curriculum. The nail technician course of instruction[curriculum] shall include the following:

(1) Basics:

- (a) History and Opportunities;
- (b) Life Skills;
- (c) Professional Image; and
- (d) Communications.

(2) General Sciences:

- (a) Infection Control: Principles and Practices;
- (b) General Anatomy and Physiology;
- (c) Skin Structure and Growth;
- (d) Nail Structure and Growth;
- (e) Nail Diseases and Disorders;
- (f) Basics of Chemistry;
- (g) Nail Product Chemistry; and
- (h) Basics of Electricity.

(3) Nail Care:

- (a) Manicuring;
- (b) Pedicuring;
- (c) Electric Filing;
- (d) Nail Tips and Wraps;
- (e) Monomer Liquid and Polymer Powder Nail Enhancements;
- (f) UV and LED Gels; and
- (g) Creative Touch.

(4) Business Skills:

- (a) Seeking Employment;
- (b) On the Job Professionalism; and
- (c) Salon Businesses.

[Science and theory, 200 hours, which shall include:

- (a) 1. Equipment;
2. Sterilization;
3. Sanitation;
4. Chemistry and types of artificial nails;
5. Public and personal hygiene safety measures; and
6. Statutes and administrative regulations governing

cosmetology and nail technology;

- (b) Nail condition and manicure techniques;
- (c) Hand and arm massage;
- (d) Science pertaining to areas of hands and arms;
- (e) 1. Personality;
2. Grooming;
3. Salon management;
4. Professional ethics; and
5. Cosmetic theory laws;

(f) Nails:

1. Structure and composition;
2. Growth and regeneration; and
3. Irregularities; and

(2) Clinical, 400 hours, which shall include:

- (a) Oil and plain manicure;
- (b) Nail polish changes:
 1. Nail polish changes;
 2. Moons;
 3. Half moons; and
 4. Tips;
- (c) Hand and arm massage;
- (d) Safety measures;
- (e) Care of equipment;
- (f) Removal of stains;
- (g) Repair work including wraps and tips;
- (h) Buffing;
- (i) Application of lacquer; and
- (j) Application of artificial nails.]

Section 7. Nail Technology Hours Required. (1) A nail technician student [of nail technology] shall receive no less than 600 hours in clinical and theory class work with **a minimum of:**

- (a) **[A minimum of] 210 lecture hours for science and theory;**
- (b) **[A minimum of] Twenty-five (25) hours on the subject of applicable Kentucky statutes and administrative regulations; and**
- (c) **[A minimum of] 365 clinic and practice hours.**

(2) A nail technician student [of nail technology] shall have completed eighty (80) hours in clinical and related theory class

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before working on and providing services to the general public. Clinical practice shall be performed on other students or mannequins during the first eighty (80) hours.

Section 8[45]. Apprentice Cosmetology Instructor Curriculum. The course of instruction[study and curriculum] for an apprentice cosmetology instructor shall include no less than [as a minimum, for a total of] 1,000 hours, 425 hours of which shall[**must**] be in direct contact with students, in the following:

- (1) Orientation[~~fifteen (15) hours~~];
- (2) Psychology of student training[~~fifty (50) hours~~];
- (3) Introduction to teaching[~~thirty (30) hours~~];
- (4) Good grooming and professional[personality] development[~~fifty (50) hours~~];
- (5) Course outlining and development[~~forty (40) hours~~];
- (6) Lesson planning[~~forty-five (45) hours~~];
- (7) Teaching techniques (methods)[~~eighty (80) hours~~];
- (8) Teaching aids, audio-visual techniques[~~eighty (80) hours~~];
- (9) Demonstration techniques[~~fifty-five (55) hours~~];
- (10) Examinations and analysis[~~sixty (60) hours~~];
- (11) Classroom management[~~forty-five (45) hours~~];
- (12) Recordkeeping[~~twenty-five (25) hours~~];
- (13) Teaching observation[~~sixty-five (65) hours~~];
- (14) Teacher assistant[~~ninety (90) hours~~]; and
- (15) Pupil teaching (practice teaching)[~~270 hours~~].

Section 9[46]. An apprentice instructor shall be under the immediate supervision and instruction of a licensed instructor during the school day. An apprentice instructor shall not assume the duties and responsibilities of a licensed supervising instructor.[Section 17. All records of apprentice instructors' hours earned shall be recorded on the Monthly Attendance Report form supplied by the board office on or before the tenth day of each month.]

Section 10[48]. Schools may enroll persons[The board may permit an individual to enroll in a school] for a special brush-up course in any subject. [of the following subjects:

- (1) Permanent waving, and all chemical control;
- (2) Nail technology, hand and arm massage, and application of artificial nails;
- (3) All iron curls;
- (4) Facials;
- (5) Hair coloring and bleaching;
- (6) Scalp massage;
- (7) Hair shaping, trimming, and thinning;
- (8) Science; or
- (9) Hair dressing and styling.]

Section 11. Esthetician Curriculum. The regular course of instruction for esthetician students shall consist of courses relating to the subject areas identified in this section.

- (1) Basics:
 - (a) History and Career Opportunities;
 - (b) Professional Image; and
 - (c) Communication.
- (2) General Sciences:
 - (a) Infection Control: Principles and Practices;
 - (b) General Anatomy and Physiology;
 - (c) Basics of Chemistry;
 - (d) Basics of Electricity; and
 - (e) Basics of Nutrition.
- (3) Skin Sciences:
 - (a) Physiology and Histology of the Skin;
 - (b) Disorders and Diseases of the Skin;
 - (c) Skin Analysis; and
 - (d) Skin Care Products: Chemistry, Ingredients, and Selection.
- (4) Esthetics:
 - (a) Treatment Room;
 - (b) Basic Facials;
 - (c) Facial Massage;
 - (d) Facial Machines;
 - (e) Hair Removal;

- (f) Advanced Topics and Treatments; and
 - (g) Makeup.
- (5) Business Skills:
 - (a) Career Planning;
 - (b) The Skin Care Business; and
 - (c) Selling Products and Services.

Section 12. Esthetician Hours **Required**[Requirements]. (1) An **esthetician**[A] student[~~of esthetics~~] shall [not] receive no less than 1,000 hours in clinical and theory class work with a **minimum of**:

- (a) [A **minimum of**] 365 lecture hours for science and theory;
 - (b) [A **minimum of**] Thirty-five (35) hours on the subject of applicable Kentucky statutes and administrative regulations; and
 - (c) [A **minimum of**] 600 clinic and practice hours.
- (2) An **esthetician**[A] student[~~of esthetics~~] shall have completed 150 hours in clinical and related theory class before providing services to the general public. Clinical practice shall be performed on other students or mannequins during the first 150 hours.

Section 13. Extracurricular Events. Each cosmetology, nail technician, and esthetician student shall be allowed up to sixteen (16) hours for field trip activities pertaining to the profession of study, sixteen (16) hours for attending educational programs, and sixteen (16) hours for charitable activities relating to the field of study, totaling not more than forty-eight (48) hours and not to exceed eight (8) hours per day. Attendance or participation shall[**must**] be reported to the board within ten (10) business days of the field trip, education show, or charitable event on the Certification of Student Extracurricular Event Hours form.

Section 14. Student Records. **Each school shall**:

- (1) [**Each school shall**] Maintain a daily attendance record for all full-time students, part-time students, and apprentice instructors;[;]
- (2) [**Each school shall**] Keep a record of each student's practical work and work performed on clinic patrons;[;]
- (3) [**Each school shall**] Maintain a detailed record of all student enrollments, withdrawals, and dismissals for a period of five (5) years; and[;]
- (4) [**Each school shall**] Make records required by this Section available to the board and its employees upon request.

Section 15. Certification of Hours. (1) Schools shall forward to the board digital certification of a student's hours completed within ten (10) business days of a student's withdrawal, dismissal, completion, or the closure of the cosmetology school.

(2) No later than the 10th day of each month, a cosmetology school shall submit to the board via electronic delivery a certification of each student's total hours obtained for the previous month and the total accumulated hours to date for all students enrolled. Amended reports shall not be accepted by the board without satisfactory proof of error. **Satisfactory proof of error shall require, at a minimum, a statement signed by the school manager certifying the error and the corrected report.**

Section 16. No Additional Fees. Schools shall not charge students additional fees beyond the contracted amount.

Section 17. Instructor Licensing and Responsibilities. (1) A person employed by a cosmetology school for the purpose of teaching or instruction shall be licensed by the board as a cosmetologist instructor and [properly] shall post his or her license as required in 201 KAR 12:060[12.060].

- (2) A licensed instructor or apprentice instructor shall supervise all students during a class or practical student work.
- (3) An instructor or apprentice instructor shall render services only incidental to and for the purpose of instruction.
- (4) Cosmetology schools shall not permit an instructor to perform cosmetology services in the school for compensation during school hours.
- (5) An instructor shall not permit students to instruct or teach

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other students in the instructor's absence.

(6) Except as provided in subsection (7) of this section, schools may not permit a demonstrator to teach in a school of cosmetology.

(7) A properly qualified, licensed individual may demonstrate a new process, preparation, or appliance in the presence of a licensed instructor in a licensed school.

Section 18. School Patrons. All services rendered in a cosmetology school to the public shall be performed by students. Instructors may teach and aid the students in performing the various services.

Section 19. Enrollment. (1) Any person enrolling in a school for a cosmetology, nail technician, or esthetics course shall furnish proof that the applicant has:

(a) A high school diploma,

(b) A General Educational Development (GED) diploma; or

(c) Results from the Test for Adult Basic Education indicating a score equivalent to the successful completion of the twelfth grade of high school.

(2) The applicant shall provide with the enrollment a passport photograph taken within thirty (30) days of submission of the application.

(3) A student enrolling in a school of cosmetology who desires to transfer hours from an out of state cosmetology school shall, prior to enrollment, provide to the board certification from the state agency that governs the out of state cosmetology school the credit hours obtained in that state.

(4) If the applicant is enrolled in a board approved cosmetology program at an approved Kentucky high school, the diploma, GED, or equivalency requirement of this Section is not necessary until examination.

Section 20. Certificate of Enrollment. Schools shall submit to the board the student's digital enrollment, accompanied by the applicant's proof of education, as established in Section 19 of this administrative regulation[above], within ten (10) business days of enrollment.

Section 21. Student Compensation. Schools shall not pay a student a salary or commission while the student is enrolled at the school.

Section 22. Transfer. A student desiring to transfer to another cosmetology school shall:

(1) Notify the school in which the student is presently enrolled of the student's withdrawal; and

(2) Complete a digital enrollment as required for the new school.

Section 23. Refund Policy. A school shall include the school's refund policy in school-student contracts.

Section 24. Student Complaints. A student may file a complaint with the board concerning the school in which the student is enrolled, by following the procedures outlined in 201 KAR 12:060.

Section 25. Student Leave of Absence.[(1)] The school shall report a student's leave of absence to the board within ten (10) business days. The leave shall be reported:

(1)[(a)] In writing from the student to the school; and

(2)[(b)] Clearly denote the beginning and end dates for the leave of absence.

Section 26. Student Withdrawal. Within ten (10) business days from a student's withdrawal, a cosmetology school shall report the name of the withdrawing student to the board.

Section 27. Laws and Regulation Material. A cosmetology school shall provide an informational copy of KRS Chapter 317A and 317B, and 201 KAR Chapter 12 to each student upon enrollment.

Section 28. Credit for hours completed.[(1)] The board shall credit hours previously completed in a licensed school of cosmetology as follows:

(1)[(a)] Full credit (hour for hour) for hours completed within five (5) years of the date of school enrollment; and

(2)[(b)] No credit for hours completed five (5) or more years from the date of school enrollment.

Section 29[19]. Incorporation by Reference. (1)[The following material is incorporated by reference:] "Certification of Student Extracurricular Event Hours[Form] [Form], September 2017, is incorporated by reference.[(a) Certification Of Cosmetology Field Trip * Hours", 2003;

(b) "Certification Of Cosmetology Student Education Show * Hours", 2003; and

(c) The "Monthly Attendance Report" Form, 2003.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

R. KAY SWANNER, Board Chair

APPROVED BY AGENCY: October 12, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

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GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(As Amended at ARRS, December 12, 2017)

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, ~~Pub.L.;~~~~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" or "**APRN**" is defined ~~by~~~~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:

(a) Be a DEA-registered prescriber of Buprenorphine; and

(b)[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 **established[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:

1. A physician certified in addiction medicine or psychiatry as required by 201 KAR 9:270;

2.[or] An APRN who is certified in addiction therapy by the:

a.[1.] Addictions Nursing Certification Board;

b.[2.] American Academy of Health Care Providers in the

Addictive Disorders; or

c.[3.] National Certification Commission for Addiction Professionals; or

3. 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 **requirements[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:

a. Evaluate the patient to determine whether the patient's dosage should be continued or modified; and

b. [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:

a. Incorporate those findings into the treatment plan to support the continuation or modification of treatment; and

b. [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) **drug screens** 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:

(i) Incorporate those findings into appropriate clinical evaluation to support the continuation or modification of treatment; and

(ii) [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 **who is not certified in addiction therapy** shall:

1. Refer the patient for **an** 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

2. [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 **(1.5[1.2])** contact hours of continuing education required annually by 201 KAR 20:215, Section 5(1)(b) in addiction disorders.

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.

**GENERAL GOVERNMENT CABINET
Board of Alcohol and Drug Counselors
(As Amended at ARRS, December 12, 2017)**

201 KAR 35:040. Continuing education requirements.

RELATES TO: KRS 309.085(1)(b)

STATUTORY AUTHORITY: KRS 309.0813(2), 309.085(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.813(2) and 309.085(1)(b) authorize the Board of Alcohol and Drug Counselors to promulgate administrative regulations establishing continuing education requirements. This administrative regulation establishes the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Basic Continuing Education Requirements. (1)(a) A minimum of ten (10) continuing education hours each year shall be accrued by each person holding a registration as an alcohol and drug peer support specialist.

(b) A minimum of sixty (60) continuing education hours shall be accrued by each person holding a certificate as a certified alcohol and drug counselor during the three (3) year certification period for renewal with at least three (3) continuing education hours in ethics.

(c) A minimum of sixty (60) continuing education hours shall be accrued by each person holding a license as a licensed clinical alcohol and drug counselor during the three (3) year licensure period for renewal with at least three (3) continuing education hours in ethics.

(d) A minimum of twenty (20) continuing education hours each year shall be accrued by each person holding a license as a licensed clinical alcohol and drug counselor associate. A licensed clinical alcohol and drug counselor associate shall obtain at least three (3) continuing education hours in ethics during the renewal cycle.

(2) All continuing education hours shall be relevant to the field of alcohol and drug counseling.

(3) A credential holder shall determine prior to attending a specific continuing education program that the program:

(a) Has been approved by the board; or

(b) Is offered or sponsored by an organization approved by the board to provide continuing education programs.

(4) If the specific continuing education program is not pre-approved as established in subsection (3) of this section, the certificate holder may apply for board approval by providing the information required by Section 4 of this administrative regulation.

(5) A credential holder shall complete a minimum of six (6) hours of continuing education in suicide assessment, treatment, and management as required by KRS 210.366. The suicide assessment, treatment, and management continuing education course shall be approved by the board, be provided by an entity identified in Section 2(4)(b) of this administrative regulation, or be

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approved by one (1) of the following boards:

- (a) Kentucky Board of Social Work;
- (b) Kentucky Board of Licensure of Marriage and Family Therapists;
- (c) Kentucky Board of Licensed Professional Counselors;
- (d) Kentucky Board of Licensure for Pastoral Counselors;
- (e) Kentucky Board of Examiners of Psychology; or
- (f) Kentucky Board of Licensure for Occupational Therapy.

Section 2. Methods of Acquiring Continuing Education Hours.

(1) Continuing education hours applicable to the renewal of the credential shall be directly related to the professional growth and development of a credential holder.

(2) Continuing education hours may be earned by:

(a) Attending a continuing education program that has prior approval by the board;

(b) The completion of appropriate academic coursework; or

(c) Other alternative methods approved by the board in accordance with subsection (6) of this section.

(3) At least fifty (50) percent of the required continuing education hours for a credential holder shall be earned through live, face to face, continuing education presentations.

(4) Attendance at continuing education programs automatically approved by the board.

(a) A program relevant to the practice of alcohol and drug counseling that is provided, approved, or sponsored by any of the providers listed in paragraph (b) of this subsection shall be:

1. Approved without further review; and

2. Exempt from the program fee established in 201 KAR 35:020, Section ~~8[9]~~.

(b) The provisions of this subsection shall apply to the following providers:

1. The National Association of Addiction Professionals (NAADAC) and its member boards;

2. The International Certification and Reciprocity Consortium (ICRC);

3. The Kentucky Cabinet for Health and Family Services, Division of Mental Health and Substance Abuse and its subcontractors;

4. The Kentucky School of Alcohol and Drug Studies;

5. An Addiction Technology Transfer Center (ATTC);

6. State or United ~~States~~[State] Regional Addiction Training Institute; or

7. Clinical Applications of the Principles on Treatment of Addictions and Substance Abuse (CAPTASA).

(5)(a) Academic coursework. An academic course, as defined in 201 KAR 35:010, Section 1(1), shall not require board review or approval.

(b) A general education course, or elective designated to meet academic degree requirements, shall be acceptable for continuing education credit if it is relevant to the practice of alcohol and drug counseling.

(c) Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equaling fifteen (15) continuing education hours.

(6) Alternative methods for obtaining continuing education hours; programs requiring board review and approval. The following activities shall be reviewed by the board to determine whether or not the activity complies with the requirements of Section 3(2) of this administrative regulation:

(a)1. A program, including a home study course and in-service training provided by an organization or education institution not listed in subsection (4)(b) of this section; or

2. A program or academic course presented by the credential holder, who shall earn two (2) continuing education hours for each contact hour of instruction, unless it is repeated instruction of the same course; or

(b) A relevant publication in a professionally recognized or juried publication authored by the credential holder, who shall earn continuing hours as follows:

1. Five (5) continuing education hours for each published abstract or book review in a refereed journal;

2. Ten (10) continuing education hours for each book chapter

or monograph;

3. Fifteen (15) continuing education hours for each published article in a refereed journal; and

4. Twenty (20) continuing education hours for each published book.

Section 3. Procedures for Preapproval of Continuing Education Programs. (1) An applicant seeking to obtain approval of a continuing education program prior to its offering shall apply to the board at least thirty (30) days in advance of the commencement of the program, and shall provide the information required in Section 4 of this administrative regulation.

(2) A continuing education activity shall be qualified for approval if the activity:

(a) Is an organized program of learning;

(b) Pertains to subject matter relating to alcohol and drug counseling;

(c) Enhances the professional competence of the credential holder by:

1. Refreshing knowledge and skills; or

2. Educating on a new topic or subject; and

(d) Is conducted by a competent instructor, as documented by appropriate academic training, professional licensure or certification, or professionally recognized experience.

(3)(a) The board may monitor or review a continuing education program approved by the board, in accordance with this section.

(b) Upon evidence of significant variation in the program presented from the program approved, the board shall withdraw approval of the hours granted to the program.

Section 4. Subsequent Approval of Continuing Education Programs. (1) A course that has not been preapproved by the board may be used for continuing education if approval is subsequently secured from the board.

(2) The following information shall be submitted for board review of a program:

(a) A published course or seminar description;

(b) The name and qualifications of the instructor;

(c) A copy of the program agenda indicating hours of education;

(d) Number of continuing education hours requested;

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

(f) Continuing Education Program Application for continuing education credits approval.

Section 5. Application for Approved Sponsor. (1) A company, individual, or association that wishes to be designated as an approved sponsor of continuing education shall complete a Continuing Education Sponsor Application [~~incorporated by reference in 201 KAR 35:020~~], and pay the provider fee established in 201 KAR 35:020, Section ~~8[9]~~.

(2) An approved sponsor of continuing education shall be allowed to advertise the program as pre-approved to meet the continuing education requirements for credential renewal.

(3)(a) Approval shall be for one (1) year from date of approval unless substantial course changes occur.

(b) For purposes of this section, a substantial course change shall be a change in the curriculum in excess of twenty (20) percent.

Section 6. Responsibilities and Reporting Requirements of Credential Holder; Audit. (1)(a) During the renewal period, the board shall review at least fifteen (15) percent of all credential holders' documentation supporting the completion of the appropriate number of continuing education hours through a random audit process.

(b) Copies of supporting documentation submitted to the board shall be shredded and shall not be returned to the certificate holder upon completion of the audit process.

(c) Verification of continuing education hours shall not otherwise be reported to the board.

(2) A credential holder shall:

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

(b) Identify personal continuing education needs and seek activities that meets those needs;

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

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

(e) Submit to the board, if applicable, a request for approval for continuing education activities not approved as established in Section 3 of this administrative regulation;

(f) Document attendance, participation in, and successful completion of continuing education activity; and

(g) Maintain records of continuing education hours for five (5) years from the date of the offering of the continuing education activity.

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

(a) Transcript;

(b) Certificate;

(c) Affidavit signed by the instructor;

(d) Receipt for the fee paid to the sponsor; or

(e) Written summary of experiences that are not formally or officially documented otherwise.

(4) Failure to comply with this administrative regulation shall constitute a violation of KRS 309.085(1)(b) and shall result in board:

(a) Refusal to renew credential;

(b) Suspension of credential; or

(c) Revocation of credential.

Section 7. Carry-over of Continuing Education Hours Prohibited. Continuing education hours earned in excess of those required pursuant to Section 1 of this administrative regulation shall not be carried forward.

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 or serious injury of the credential holder;

(b) Serious illness of the credential holder or of an immediate family member; or

(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 certificate holder; and

(b) Accompanied by a verifying document signed by a licensed physician or an advanced practice registered nurse.

(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 credential holder shall reapply for the waiver or extension.

Section 9. Continuing Education Requirements for Reinstatement or Reactivation of a Credential. (1) A person requesting reinstatement of certification or licensure shall:

(a) Submit evidence of receiving sixty (60) hours of continuing education within the three (3) year period immediately preceding the date that reinstatement is requested; or

(b) Obtain sixty (60) hours of continuing education within six (6) months of reinstatement of certification or licensure.

(2) Failure to obtain sixty (60) hours within six (6) months shall result in termination of certification or licensure.

(3) A person requesting reinstatement of a registration shall:

(a) Submit evidence of receiving thirty (30) hours of continuing education within the three (3) year period immediately preceding the date that reinstatement is requested; or

(b) Obtain ten (10) hours of continuing education within six (6) months of reinstatement of registration.

(4) Failure to obtain ten (10) hours within six (6) months shall result in termination of registration.

(5) A person requesting reactivation of registration, certification, or licensure shall submit evidence of receiving twenty (20) hours of continuing education within one (1) year immediately preceding the date that reactivation is requested. A minimum of ten (10) hours shall be live, face to face continuing education presentations.

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

(a) "Continuing Education Sponsor Application Form", 2008; and

(b) "~~[KBADC Form 18,]~~ Continuing Education Program Application", June 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 911 Leewood Drive, Frankfort, Kentucky, telephone (502) 564-3296 ext. 222, Monday through Friday, 8:30 a.m. to ~~4:30~~~~[5:00]~~ p.m.

GEOFFREY WILSON, Board Chairperson

APPROVED BY AGENCY: October 13, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

CONTACT PERSON: Kelly Walls, Board Administrator, Department of Professional Licensing, 911 Leewood Drive, Frankfort, Kentucky 40601, phone (502) 782-8814, fax (502) 696-5898, email Kelly.Walls@ky.gov.

**GENERAL GOVERNMENT CABINET
Board of Alcohol and Drug Counselors
(As Amended at ARRS, December 12, 2017)**

201 KAR 35:055. Temporary registration or certification.

RELATES TO: KRS 309.083, 309.0831

STATUTORY AUTHORITY: KRS 309.0813(1), (5), 309.083, 309.0831

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) and (5) authorize the board to promulgate administrative regulations establishing the requirements for registering with the Board of Alcohol and Drug Counselors as a registered alcohol and drug peer support specialist, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor associate, or licensed clinical alcohol and drug counselor. This administrative regulation establishes the requirements for temporary credentials.

Section 1. Application for Temporary Registration. (1) An applicant for temporary registration as a certified alcohol and drug~~[and alcohol]~~ peer support specialist may submit an application after the requirements established in KRS 309.0831(1), (2), (6), (7), and (10) are met.

(2) The application required by subsection (1) of this section shall be made by submitting a completed KBADC Form 1, incorporated by reference in 201 KAR 35:020. The application shall:

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and

2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:

1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 35:020, Section 1(1);

2. Proof of a high school diploma or equivalent;
3. A signed agreement to abide by the standards of practice and code of ethics approved by the board;
4. KBADC Form 2, Attestation of Recovery, in which the applicant declares that he or she has been in recovery for a minimum of two (2) years from a substance-related disorder; and
5. A supervision agreement signed by the applicant and the applicant's supervisor.

Section 2. Application for Temporary Certification. (1) An applicant for temporary certification as a certified alcohol and drug counselor may submit KBADC Form 1, incorporated by reference in 201 KAR 35:020, after the requirements established in KRS 309.083(1), (2), (6), (7), and (10) are met.

(2) The application shall:

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and
2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:

1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 35:020, Section 1(1);
2. An official transcript for all levels of education required for certification;
3. A signed agreement to abide by the standards of practice and code of ethics approved by the board; and
4. A supervision agreement signed by the applicant and the applicant's supervisor.

Section 3. Period of Temporary Credential. (1) The period of a temporary credential shall be terminated upon the passage of two (2) years from issuance.

(2) The board may approve an extension of the period of a temporary credential for a maximum of two (2) years if a:

- (a) Written request is submitted that is cosigned by the board approved supervisor; and
- (b) One (1) of the following~~[circumstances delineated in 201 KAR 35:040, Section 8(4),]~~ exists:

1. A circumstance delineated in 201 KAR 35:040, Section 8(1);

or

2. The credential holder presents evidence of insufficient time

a. Complete supervision, training, or work experience;[;] or

b. Successfully pass[passing] the required examination.

(3) The board shall not grant more than two (2) extensions of the period of a temporary credential.

Section 4. Incorporation by Reference. (1) "KBADC Form 2, Attestation of Recovery", June 2015, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30[5:00] p.m.

GEOFFREY WILSON, Board Chairperson

APPROVED BY AGENCY: October 13, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

CONTACT PERSON: Kelly Walls, Board Administrator, Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 782-8814; fax (502) 696-5898, email Kelly.Walls@ky.gov.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, December 12, 2017)**

301 KAR 2:075. Wildlife rehabilitation permit.

RELATES TO: KRS 150.015, 150.021, 150.183, 150.195, 50

C.F.R 17, 21

STATUTORY AUTHORITY: KRS 150.025(1)(h), 150.280
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(h) authorizes the department to promulgate administrative regulations reasonably necessary to implement or carry out the purposes of KRS Chapter 150. KRS 150.280 ~~requires~~authorizes the department to promulgate administrative regulations regarding the holding of protected wildlife. This administrative regulation establishes the permitting and operating~~guidelines for issuing a permit to a wildlife rehabilitator, maintaining a facility for wildlife rehabilitation, and the operating~~ requirements for wildlife rehabilitators.

Section 1. Definitions. (1) "Cervid" means a member of the family Cervidae.

(2) "Enhanced rabies surveillance area" means Bell, Boyd, Bracken, Carter, Clay, Elliot, Fleming, Floyd, Greenup, Harlan, Johnson, Knott, Knox, Laurel, Lawrence, Leslie, Letcher, Lewis, Martin, Mason, McCreary, Pike, Perry, Robertson, and Whitley counties.

(3) "Permit holder" means a wildlife rehabilitation permit holder.

(4) "Rabies vector species" means a:

(a) Coyote (Canis latrans);

(b) Gray fox (Urocyon cinereoargenteus);

(c) Raccoon (Procyon lotor);

(d) Red fox (Vulpes vulpes);

(e) Spotted skunk (Spilogale putorius); or

(f) Striped skunk (Mephitis mephitis).

(5)~~(3)~~ "Wildlife rehabilitation" means the process of rescuing, raising, and arranging for veterinary medical care of orphaned, sick, displaced, or injured wildlife with the goal of releasing the wildlife back into its natural habitat.

Section 2. Wildlife Rehabilitation Permits. (1) An applicant for a wildlife rehabilitation permit shall:

(a) Be at least eighteen (18) years of age;

(b) Complete an application;

(c) Submit the application to the Director of Wildlife at #1 Sportsman's Lane, Frankfort, Kentucky 40601;

(d) Submit proof of successful completion of the course entitled "Basic Wildlife Rehabilitation" offered by the International Wildlife Rehabilitation Council; and

(e) Submit the annual permit fee as established in 301 KAR 3:022.

(2) An applicant:

(a) May obtain a course-pending status for up to one (1) year upon the issuance of the initial permit; and

(b) Shall submit proof of course completion to the department before the permit shall be renewed.

(3) An applicant's or permit holder's facility shall be inspected by a conservation officer to document compliance with Section 4 of this administrative regulation before a permit is obtained or renewed.

(4) A permit shall be revoked and wildlife confiscated if:

(a) An applicant falsifies information on the application;

(b) The permit holder fails to comply with the provisions of this administrative regulation; or

(c) The permit holder is convicted of a violation of KRS Chapter 150.

(5) An individual whose request for a permit has been denied or whose status has been revoked or suspended may request an administrative hearing pursuant to KRS Chapter 13B.

Section 3. Requirements. (1) A permit holder shall:

(a) Only keep wildlife in a rehabilitation facility for a maximum of 180 days unless specifically exempted by the U.S. Fish and Wildlife Service; and

(b) Submit to the department a completed Kentucky Department of Fish and Wildlife Resources Wildlife Rehabilitation Annual Report Form.

(2) If an animal is not releasable, as established in subsection (4) of this section, and is held for educational purposes, then the annual report shall document each educational program's:

- (a)[4.] Date;
 (b)[2.] Time; and
 (c)[3.] Location.

(3) A permit holder shall not simultaneously hold captive wildlife under the auspices of a captive wildlife permit as established in 301 KAR 2:081 or 301 KAR 2:083.

(4) A permit holder may retain wildlife for educational purposes if the animal:

- (a) Is a mammal with an amputated leg;
 (b) Lacks adequate vision to function in the wild;
 (c) Lacks locomotive skills necessary for survival in the wild; or
 (d) Has another permanent injury that is reasonably expected to inhibit survival in the wild.

(5) An animal retained for educational purposes pursuant to subsection (4) of this section shall be exhibited in an educational program a minimum of six (6) times per year.

(6) Except as **established in [allowed pursuant to]** 50 C.F.R. 17 and 21, a permit holder shall not propagate threatened and endangered wildlife.

(7) A permit holder shall immediately notify the department, in writing, of any federally-threatened or endangered wildlife species delivered, recovered, or retained for rehabilitation.

(8) A permit holder shall not rehabilitate or attempt to rehabilitate any species of terrestrial wildlife not native to Kentucky.

(9) A permit holder shall not rehabilitate or attempt to rehabilitate a:

- (a)[A] Cougar (*Felis concolor*);
 (b)[A] Wolf (*Canis lupus* or *Canis rufus*);
 (c)[An] Elk (*Cervus elaphus*); or
 (d)[A] Bear (*Ursus americanus*).

(10) A permit holder shall not transport wildlife across state lines for rehabilitation, release, or for any other purpose, unless authorized by the commissioner.

(11) A permit holder shall release rehabilitated wildlife into the appropriate habitat for that species.

(12) A permit holder shall obtain landowner permission before releasing rehabilitated wildlife.

(13) A permit holder shall not keep a cervid in a rehabilitation facility for more than 180 days.

(14) A wild-born cervid held in captivity for rehabilitation purposes shall not be housed in:

- (a) The same pen as another captive cervid or housed in direct physical contact with a cervid that originated in captivity; or
 (b) A pen that has previously housed cervids that originated in captivity.

(15) A permit holder shall not simultaneously hold a captive cervid permit.

(16) A licensed wildlife rehabilitator shall not:

- (a) Accept, obtain, or possess a rabies vector species originating from the enhanced rabies surveillance area; or
(b) Transport a rehabilitated rabies vector species into or out of the enhanced rabies surveillance area.

Section 4. Facilities and Operating Standards. (1) A facility shall comply with Minimum Standards for Wildlife Rehabilitation as adopted by the National Wildlife Rehabilitators Association and the International Wildlife Rehabilitation Council.

(2) A permit holder shall allow a conservation officer to inspect the facilities at any reasonable time.

(3) The conservation officer shall immediately notify the permit holder and the commissioner if the inspection reveals that the facility is not in compliance with this administrative regulation.

(4) The conservation officer shall make a second inspection after ten (10) days, and the permit shall be revoked and all captive wildlife confiscated immediately if the unsatisfactory conditions have not been corrected.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) The National Wildlife Rehabilitator's Association and the International Wildlife Rehabilitation Council publication "Minimum Standards for Wildlife Rehabilitation", third edition, 2000;
 (b) "Kentucky Department of Fish and Wildlife Resources

Wildlife Rehabilitation Annual Report Form", 2002 edition; and
 (c) "Application for Wildlife Rehabilitation Permit", 2006 edition.
 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. until 4:30 p.m.

GREGORY K. JOHNSON, Commissioner
 DON PARKINSON, Secretary

APPROVED BY AGENCY: October 12, 2017

FILED WITH LRC: October 13, 2017 at 9 a.m.

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

**TOURISM, ARTS AND HERITAGE CABINET
 Department of Fish and Wildlife Resources
 (As Amended at ARRS, December 12, 2017)**

301 KAR 2:081. Transportation and holding of live native wildlife.

RELATES TO: KRS 150.015, 150.290, 150.305, 150.320, 150.330, 150.360, 150.370, 150.990

STATUTORY AUTHORITY: KRS 150.025(1)(c), 150.180, 150.280, 50 C.F.R. 21.29

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(c) authorizes the department to promulgate administrative regulations for the buying, selling, or transporting of wildlife. KRS 150.180 authorizes the department to regulate the buying, selling, or transporting of protected wildlife. KRS 150.280 **requires [authorizes]** the department to promulgate administrative regulations to establish the procedures for the propagation and holding of protected wildlife. 50 C.F.R. 21.29 establishes the federal standards for holding raptors. This administrative regulation establishes requirements for the buying, selling, holding, and transportation of live native wildlife.

Section 1. Definitions [Definition]. (1) "Enhanced rabies surveillance area" means Bell, Boyd, Bracken, Carter, Clay, Elliot, Fleming, Floyd, Greenup, Harlan, Johnson, Knott, Knox, Laurel, Lawrence, Leslie, Letcher, Lewis, Martin, Mason, McCreary, Pike, Perry, Robertson, and Whitley counties.

(2) "Native wildlife" means wildlife species that [which] have historically existed or currently exist in the wild in Kentucky without introduction by man, except for introduced species which have become naturalized.

(3) "Rabies vector species" means a:

- (a) Coyote (*Canis latrans*);
(b) Gray fox (*Urocyon cinereoargenteus*);
(c) Raccoon (*Procyon lotor*);
(d) Red fox (*Vulpes vulpes*);
(e) Spotted skunk (*Spilogale putorius*); or
(f) Striped skunk (*Mephitis mephitis*).

Section 2. Taking and Possessing Native Wildlife. (1) A person shall not possess native wildlife that was not legally acquired.

(2) A person shall not participate in [do] any of the activities established in paragraphs (a) through (e) of this subsection [following] with native wildlife obtained from the wild:

- (a) Buy;
 (b) Sell;
 (c) Offer to buy;
 (d) Offer to sell; or
 (e) Trade or barter.

(3) Except as established [specified] in Section 7 of this administrative regulation and subsections (4) and (5) of this section, a person holding native wildlife in captivity shall apply for and obtain the appropriate [a] permit prior to acquiring wildlife.

- (4) Northern bobwhite.
 (a) A person may possess 100 or fewer northern bobwhite

without a captive wildlife permit, if the:

1. Birds are not propagated or sold; and
2. He[Person] retains and possesses a receipt or proof of purchase.

(b) A person possessing northern bobwhite for dog training areas or a shoot-to-train season shall comply with all applicable requirements of 301 KAR 2:041.

(c) ~~Any[Proof of purchase shall be retained as permission to possess.~~

(d) confining facility[facilities] shall comply with Sections 8, 9, 10, and 11 of this administrative regulation.

(5) Amphibians and reptiles.

(a) Five (5) or fewer individuals of each species of native reptile or amphibian may be taken year round or possessed for personal use without a permit, ~~except[. The following shall be exceptions to taking or possessing five (5) individuals of each species.]~~ there shall be:

1. No limit on snapping or softshell turtles;
2. A limit of fifteen (15) bullfrogs per night[~~on bullfrogs~~]; and
3. A limit of twenty-five (25) dusky salamanders or spring lizards of the genus Desmognathus.

(b) There shall be no limit on the number of individuals of each species possessed by a commercial or noncommercial captive wildlife permit holder, if the permit holder does not possess more than five (5) wild-caught individuals of each species of amphibian or reptile.

(c) A captive wildlife permit shall not be required to hold reptiles with a color morphology that is distinctly different from the wild type of the same species of reptile.

(6) A rabies vector species trapped within the enhanced rabies surveillance area shall be euthanized before being moved, except that foxes and coyotes trapped during the trapping season, pursuant to 301 KAR 2:251, may be transferred to a permitted commercial foxhound training enclosure[only] if the enclosure is located within the county of capture.

(7) A fox or coyote trapped within the enhanced rabies surveillance area during the trapping season may be held for up to forty-eight (48) hours with a valid captive wildlife permit before being transferred to a permitted commercial foxhound training enclosure.

(8) A person shall not transport a rabies vector species into or out of the enhanced rabies surveillance area.

Section 3. Captive Wildlife Permits and Record Keeping. (1) Commercial captive wildlife permit.

(a) A commercial captive wildlife permit shall be required for a person to:

1. Sell;
2. Offer to sell;
3. Trade; or
4. Barter native wildlife.

(b) A commercial captive wildlife permit shall be renewable annually from the date of issue.

(2) Noncommercial captive wildlife permit.

(a) A noncommercial captive wildlife permit shall be required for a person possessing native wildlife, but not selling, offering to sell, trading, or bartering animals.

(b) A noncommercial captive wildlife permit shall be renewable three (3) years from the date of issue.

(3) A captive wildlife permit holder shall maintain accurate records for all captive-bred and wild-captured wildlife and include the [following] information established in paragraphs (a) and (b) of this subsection.[:]

(a) For each captive-bred animal, a person shall:

1. Record the common and scientific name;
2. Keep[The following] evidence of legal acquisition, which shall be a:
 - a. Bill of sale;
 - b. Receipted invoice; or
 - c. Certificate of origin;
3. Record and maintain each animal's date of birth;
4. Record and maintain each transaction date related to:
 - a. Sale;

- b. Purchase;
- c. Trade;
- d. Barter; or
- e. Gifting; and

5. Record and maintain[The following] information off[for] the person either receiving or transferring captive wildlife, which shall include the person's:

- a. Name;
- b. Address;
- c. Phone number; and
- d.[The person's] Captive wildlife permit number.

(b) For each wild-captured animal, a person shall record and maintain the:

1. Common and scientific name;
2. Date of capture or date when received;
3. Location of capture;
4. Trapping license or hunting license number, if applicable, of the individual obtaining the wildlife; and
- 5.[The following] Information off[for] the person to whom the animal was given or received, which shall include the person's:

- a. Name;
- b. Address;
- c. Phone number; and
- d.[The person's] Captive wildlife permit number.

(4) A captive wildlife permit holder shall:

- (a) Maintain all records for five (5) years; and
- (b) Allow records to be inspected by a department representative upon request.

Section 4. Transportation Permits and Certificates[Certificate] of Veterinary Inspection. (1) A person shall apply for and obtain a valid transportation permit or permit authorization number from the department for all shipments of wildlife, native or exotic, unless otherwise exempted by this or another administrative regulation, prior to:

- (a) Receiving a shipment of wildlife;
- (b) Importing wildlife into Kentucky; or
- (c) Transporting wildlife into and through the state to a destination outside Kentucky.

(2) A copy of a valid transportation permit or permit authorization number shall accompany all shipments of wildlife into and through Kentucky.

(3) An individual transportation permit shall be valid for one (1) shipment of wildlife.

(4) An annual transportation permit shall be valid for multiple wildlife shipments for one (1) year from the date of issue.

(5) All shipments of wildlife, except for amphibians and reptiles, shall be accompanied by:

- (a) A certificate of veterinary inspection stating that the wildlife is free from symptoms of disease; or
- (b) A federal quarantine certificate.

Section 5. Applying for Permits. (1) A person shall complete an application for a captive wildlife permit or a transportation permit on a form supplied by the department.

(2) An applicant for a captive wildlife permit shall only obtain wildlife from one of the legal sources established in paragraphs (a) through (d) of this subsection.[indicate one of the following legal sources for obtaining the wildlife:]

- (a) A legal purchase or transfer of captive-bred animals from a commercial captive wildlife permit holder;
- (b) A[receipt, if it is a] gift from a commercial or noncommercial captive wildlife permit holder;
- (c) Wildlife trapped by the applicant[Trapping] during a legal season for the species with a valid trapping license, if applicable; or

(d) A legal out-of-state source if the applicant provides [accompanied by] a valid transportation permit.

(3) Following permit issuance, the permit holder shall retain records as established[specified] in Section 3(3) and (4) of this administrative regulation.

(4) An applicant shall construct holding facilities that meet or exceed the enclosure specifications established in Sections 8 and

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9 of this administrative regulation for each listed species to be acquired before submitting the captive wildlife application.

(5) The department shall deny a captive wildlife or transportation permit to an applicant that:

- (a) Is less than eighteen (18) years of age;
- (b) Has been convicted within the last year of a violation of:
 1. This administrative regulation; or
 2. 301 KAR 2:082;
- (c) Does not submit a completed application; or
- (d) Does not remit the correct fee pursuant to 301 KAR 3:022.

(6) The department shall deny a captive wildlife permit to an applicant that:

(a) Has acquired wildlife prior to receiving an approved captive wildlife permit, except as allowed in Sections 2(4) and (5) of this administrative regulation; or

(b) Holds a wildlife rehabilitation permit as established [specified] in 301 KAR 2:075.

(7) An annual transportation permit holder shall notify the department of any amendments to the original application at least forty-eight (48) hours prior to any wildlife shipment by calling the department [by telephone] at 800-858-1549, Monday through Friday, between 8 a.m. and 4:30 p.m. Eastern time.

(8) A person importing and possessing native wildlife shall be responsible for complying with any [following] local ordinance [ordinances and rules] regarding captive wildlife.

Section 6. Prohibited Species. (1) Except as specified in Section 7 of this administrative regulation, a person shall not import, transport, or possess a:

- (a) Alligator snapping turtle (*Macrochelys temminckii*);
- (b) Black bear (*Ursus americanus*);
- (c) Copperbelly water snake (*Nerodia erythrogaster neglecta*);
- (d) Cougar or mountain lion (*Felis concolor*);
- (e) Wild turkey (*Meleagris gallopavo*); or
- (f) Wolf (*Canis lupus*).

(2) The [following] species established in paragraphs (a) through (d) of this subsection shall not be imported into or transported through Kentucky, except as specified in Section 7 of this administrative regulation. [.]

- (a) Coyote [Coyotes] (*Canis latrans*);
- (b) Fox [Foxes] (*Vulpes* spp.; *Alopex lagopus*; *Urocyon cinereoargenteus*);
- (c) Raccoon [Raccoons] (*Procyon lotor*); or
- (d) Skunk [Skunks] (*Mephitis* spp.; *Spilogale putorius*; *Conepatus leuconotus*).

Section 7. Exemptions. (1) A facility that is accredited by the American Zoo and Aquarium Association shall:

(a) Not be required to obtain a transportation permit for native wildlife; and

(b) Be allowed to import, transport, and possess the prohibited species established [listed] in Section 6(1) and (2) of this administrative regulation.

(2) Upon written request, the department shall grant [consider] an exemption for the importation or possession of the prohibited species listed in Sections 6(1) and (2) for legitimate scientific or educational purposes by the following entities:

(a) A facility that is designated as the official zoo of a municipality;

- (b) A government agency;
- (c) A college or university; or
- (d) A licensed or accredited institution of:
 1. Research; or
 2. Education.

Section 8. Confining Facilities. (1) A cage, pen, or other enclosure [Cages, pens, or other enclosures] for confining native wildlife shall be of sufficient structural strength to:

- (a) Prevent the escape of the captive animal [animals];
- (b) Protect the caged animal from injury and predators; and
- (c) Prevent the entrance of free individuals of the same species.

(2) A wing-clipped and pinioned bird [birds] may be kept in a suitable unroofed enclosure [enclosures] even though wild birds of the same species may enter the enclosure.

(3) A person shall not maintain any native wildlife in captivity in an unsanitary or unsafe condition or in a manner that results in the maltreatment or neglect of that wildlife.

(4) Native wildlife shall not be confined in any cage or enclosure that does not meet the cage specifications in Section 9 of this administrative regulation.

(5) A cage or enclosure [Cages and enclosures] shall be maintained as established in paragraphs (a) through (n) of this subsection [follows]:

(a) Clean drinking water shall be provided daily in clean containers;

(b) Swimming or wading pools shall be cleaned as needed to ensure good water quality;

(c) Any cage or enclosure [Enclosures] shall provide adequate drainage of surface water;

(d) A captive mammal or bird shall be fed daily;

(e) Food shall be:

1. Of a type and quantity that meets the nutritional requirements for the particular species; and

2. Provided in an unspoiled and uncontaminated condition;

(f) Any feeding container [containers] shall be kept clean, and uneaten food shall be removed within a reasonable time;

(g) A shelter shall be provided for security and protection from inclement weather;

(h) Shade or an overhead structure shall be provided in warm seasons;

(i) Fecal and food waste shall be:

1. Removed from cage daily; and

2. Stored or disposed of in a manner that prevents noxious odors and/or insect pests;

(j) Any cage or enclosure [and enclosures] shall be ventilated to prevent noxious odors;

(k) A hard floor within a cage or enclosure [floors within cages or enclosures] shall be cleaned a minimum of once per week;

(l) A cage or enclosure with a dirt floor [Cages or enclosures with dirt floors] shall be raked a minimum of once every three (3) days with the waste removed;

(m) Animals that are compatible may be held in the same enclosure if the required floor space is provided; and

(n) A common wall [walls] shall be constructed between animals that are not compatible so the animals cannot interact.

Section 9. Minimum Enclosure Sizes and Associated Requirements for Stationary Facilities. (1) Birds.

(a) A northern bobwhite older than fourteen (14) weeks shall be held in an enclosure that meets the requirements established in subparagraphs 1. through 3. of this paragraph [with the following minimum specifications:]

1. An enclosure for a single northern bobwhite shall be a minimum of 100 square feet.

2. There shall be an increase in one (1) square foot per additional northern bobwhite.

3. A northern bobwhite may be held in smaller breeding pens during the breeding season.

(b) A duck shall be held in an enclosure that meets the requirements established in subparagraphs 1. and 2. of this paragraph [with the following minimum specifications:]

1. No more than two (2) pairs or one (1) pair and their offspring prior to first molt shall be confined to an area smaller than 100 square feet; and

2. [There shall be at least ten (10) square feet of water that is one (1) foot or greater in depth; and

3.] There shall be at least two (2) [twenty (20)] square feet of additional land space [and five (5) square feet of water surface] for each additional adult duck.

(c) A goose shall be held in an enclosure that meets the requirements established in subparagraphs 1. through 3. of this paragraph [with the following minimum specifications:]

1. No more than two (2) pair or one (1) pair and their offspring prior to first molt shall be confined to an area smaller than 500 square feet;

2. There shall be a minimum of fifty (50) square feet of water that is two (2) feet or greater in depth; and

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3. There shall be at least 100 square feet of land and twenty-five (25) square feet of water surface for each additional adult goose.

(d) A ruffed grouse shall be held in an enclosure that meets the requirements established in subparagraphs 1. and 2. of this paragraph. [with the following minimum specifications:]

1. There shall be 200 square feet of floor space for five (5) or fewer birds with a height of at least six (6) feet; and

2. There shall be an additional twenty (20) square feet of floor space for each additional bird.

(e) A raptor[Raptors] shall be held in an enclosure meeting the federal falconry standards described in 50 C.F.R. Part 21.29.

(2) Mammals.

(a) A bat shall be held[kept] in an enclosure that meets the requirements established in subparagraphs 1. through 3. of this paragraph. [with the following minimum specifications:]

1. A little brown bat, long-eared bat, and pipistrelle shall be held[kept] in an enclosure that is at least 6 ft. x 6 ft. x 6 ft.

2. An evening or red bat shall be held[kept] in an enclosure that is at least 8 ft. x 12 ft. x 8 ft.

3. A big brown or hoary bat shall be held[kept] in an enclosure that is at least 10 ft. x 20 ft. x 8 ft.

(b) A fox, bobcat, or raccoon shall be held in an enclosure that meets the requirements established in subparagraphs 1. and 2. of this paragraph. [with the following minimum specifications:]

1. A single animal enclosure shall be 8 ft. x 8 ft. x 6 ft.; and

2. There shall be thirty (30) square feet floor space for each additional animal.

(c) A coyote shall be held in an enclosure that meets the requirements established in subparagraphs 1. and 2. of this paragraph. [with the following minimum specifications:]

1. A single animal enclosure shall be 8 ft. x 8 ft. x 6 ft.; and

2. There shall be twenty-five (25) square feet floor space for each additional animal.

(d) A beaver or otter shall be held in an enclosure that meets the requirements established in subparagraphs 1. through 4. of this paragraph. [with the following minimum specifications:]

1. A single animal enclosure shall be 8 ft. x 12 ft. x 6 ft. with a 4 ft. x 6 ft. pool that is three (3) feet deep at one (1) end;

2. There shall be an increase in horizontal cage size and pool size by eight (8) square feet for each additional animal;

3. An otter shall have a slide and a dry place for sleeping and retreat; and

4. A beaver shall be supplied with gnawing logs and a dry place for sleeping and retreat.

(e) A muskrat or[and] mink shall be held in an enclosure that meets the requirements established in subparagraphs 1. through 3. of this paragraph. [with the following minimum specifications:]

1. A single animal enclosure shall be 6 ft. x 4 ft. x 3 ft. with a 2 ft. x 4 ft. pool which is two (2) feet deep at one (1) end;

2. There shall be an increase in horizontal cage size by eight (8) square feet and a pool size of two (2) square feet; and

3. A muskrat shall have gnawing material.

(f) A gray squirrel, fox squirrel, or flying squirrel shall be held in an enclosure that meets the requirements established in subparagraphs 1. and 2. of this paragraph. [with the following minimum specifications:]

1. A single animal enclosure shall be 4 ft. x 4 ft. x 8 ft.; and

2. There shall be an increase in floor space by two (2) square feet for each additional animal.

(g) A skunk, opossum, rabbit, or woodchuck shall be held in an enclosure that meets the requirements established in subparagraphs 1. through 3. of this paragraph. [with the following minimum specifications:]

1. A single animal enclosure shall be 6 ft. x 8 ft. x 8 ft.;

2. There shall be an increase in floor space by four (4) square feet for each additional animal; and

3. A woodchuck shall have several gnawing logs approximately six (6) inches in diameter.

(h) A weasel shall be held in an enclosure that meets the requirements established in subparagraphs 1. and 2. of this paragraph. [with the following minimum specifications:]

1. A single animal enclosure shall be 3 ft. x 3 ft. x 3 ft.; and

2. There shall be an increase in floor space by three (3) square feet for each additional animal.

Section 10. Mobile Facility. A mobile facility used in transporting native wildlife shall meet the [following] requirements established in subsections (1) through (5) of this section.[-]

(1) The mobile facility[It] shall be equipped to provide fresh air and adequate protection from the elements, without injurious drafts.[-]

(2) The animal housing area shall be free of engine exhaust fumes.[-]

(3) A cage shall be large enough to ensure that each animal has sufficient room to stand erect and lay naturally.[-]

(4) The structural strength of the enclosure shall be sufficient to contain the live animals and to withstand the normal rigors of transportation.[-; and]

(5) Wildlife transported in the same cage area shall be in compatible groups.

Section 11. Temporary Facility. Native wildlife housed in a temporary facility or exhibit shall be housed in a cage that meets the minimum cage specifications provided in Section 8 of this administrative regulation if present in any geographical location for more than ten (10) days.

Section 12. Inspections and Permit Revocation. (1) A permit holder shall allow a conservation officer to inspect the holding facilities at any reasonable time.

(2) A[The] conservation officer[office] shall immediately notify the permit holder if the inspection reveals a violation of any provision of this administrative regulation.

(3) A captive wildlife permit shall be revoked for a period of one (1) year and all captive wildlife confiscated if a violation is not corrected within ten (10) days of the initial inspection.

(4) A fee shall not be refunded for a permit that is revoked.

(5) An individual whose permit has been revoked may request an administrative hearing pursuant to KRS Chapter 13B.

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

(a) "Captive Wildlife Permit Application", 2012 edition;

(b) "Annual Transportation Permit Application", 2012 edition; and

(c) "Individual Transportation Permit Application", 2012 edition.

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

GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: October 12, 2017

FILED WITH LRC: October 13, 2017 at 9 a.m.

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, December 12, 2017)**

301 KAR 3:022. License, tag, and permit fees.

RELATES TO: KRS 150.025, 150.180, 150.183, 150.240, 150.275, 150.280, 150.290, 150.450, 150.485, 150.520, 150.525, 150.600, 150.603, 150.660, 150.720

STATUTORY AUTHORITY: KRS 150.175, 150.195(4)(f), 150.225, 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.175 authorizes the types of licenses, permits and tags. KRS 150.195(4)(f) requires the department to promulgate an

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administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.225 authorizes the department to promulgate administrative regulations establishing reasonable license fees relating to hunting, fishing, and trapping. KRS 150.620 authorizes the department to charge reasonable fees for the use of lands and waters it has acquired for wildlife management and public recreation. This administrative regulation establishes fees and terms for licenses, permits, and tags.

Section 1. Licenses, tags, and permits listed in this section shall be valid from March 1 through the last day of February the following year. (1) Sport fishing licenses:

- (a) Statewide annual fishing license (resident): ~~twenty-three (23)~~twenty (20) dollars;
 - (b) Statewide annual fishing license (nonresident): fifty (50) dollars;
 - (c) Joint statewide fishing license (resident): ~~forty-two (42)~~thirty-six (36) dollars;
 - (d) Statewide three (3) year fishing license (resident): fifty-five (55) dollars; and
 - (e) Trout permit (resident or nonresident): ten (10) dollars.
- (2) Commercial fishing licenses:
- (a) Commercial fishing license (resident) plus ten (10) resident commercial gear tags: \$150; and
 - (b) Commercial fishing license (nonresident) plus ten (10) nonresident commercial gear tags: \$600.
- (3) Commercial fishing gear tags (not to be sold singly):
- (a) Commercial fishing gear tags (resident) block of ten (10) tags: fifteen (15) dollars; and
 - (b) Commercial fishing gear tags (nonresident) block of ten (10) tags: \$100.
- (4) Hunting licenses:
- (a) Statewide hunting license (resident): ~~twenty-seven (27)~~twenty (20) dollars;
 - (b) Statewide hunting license (nonresident): \$140;
 - (c) Statewide junior hunting license (resident): six (6) dollars;
 - (d) Statewide junior hunting license (nonresident): ten (10) dollars;
 - (e) Shooting preserve hunting license (resident or nonresident): five (5) dollars; and
 - (f) Migratory game bird and waterfowl permit (resident or nonresident): fifteen (15) dollars.
- (5) Combination hunting and fishing license (resident): ~~forty-two (42)~~thirty (30) dollars.
- (6) Senior or disabled combination hunting and fishing license (resident): ~~twelve (12)~~eighteen (18)~~five (5)~~ dollars.
- (7) Trapping licenses:
- (a) Trapping license (resident): twenty (20) dollars;
 - (b) Trapping license (resident landowner – tenant ~~landowner/tenant~~): ten (10) dollars;
 - (c) Trapping license (nonresident): \$130; and
 - (d) Junior trapping license (resident): five (5) dollars.
- (8) Game permits:
- (a) Resident bear: thirty (30) dollars;
 - (b) Resident youth bear: ten (10) dollars;
 - (c) Nonresident bear: \$250;
 - (d) Resident bear chase: thirty (30) dollars;
 - (e) Resident youth bear chase: ten (10) dollars;
 - (f) Resident quota cow elk permit: sixty (60) dollars;
 - (g) Nonresident quota cow elk permit: \$400;
 - (h) Resident quota bull elk permit: \$100;
 - (i) Nonresident quota bull elk permit: \$550;
 - (j) Resident out-of-zone elk permit: thirty (30) dollars;
 - (k) Nonresident out-of-zone elk permit: \$400;
 - (l) Resident deer permit: thirty-five (35) dollars;
 - (m) Nonresident deer permit: \$120;
 - (n) Resident youth deer: ten (10) dollars;
 - (o) Nonresident youth deer: fifteen (15) dollars;
 - (p) Bonus antlerless deer permit (two (2) tags per permit (resident or nonresident): fifteen (15) dollars;
 - (q) Bonus quota hunt deer permit (resident or nonresident): thirty (30) dollars;

- (r) Resident spring turkey: thirty (30) dollars;
 - (s) Nonresident spring turkey: seventy-five (75) dollars;
 - (t) Resident fall turkey: thirty (30) dollars;
 - (u) Nonresident fall turkey: seventy-five (75) dollars;
 - (v) Resident youth turkey: ten (10) dollars;
 - (w) Nonresident youth turkey: fifteen (15) dollars;
 - (x) Resident youth elk: thirty (30) dollars; and
 - (y) Nonresident youth elk: forty (40) dollars.
- (9) Peabody individual permit: fifteen (15) dollars.
- (10) Sportsman's license (resident), which includes a resident hunting and fishing license, spring turkey permit, fall turkey permit, trout permit, state migratory game bird and waterfowl permit, and deer permit: ninety-five (95) dollars.
- (11) Junior sportsman's license (resident), which includes a junior hunting license, two (2) junior deer permits, and two (2) junior turkey permits: thirty (30) dollars.
- (12) Land Between the Lakes hunting permit: twenty (20) dollars.
- (13) Conservation permit: five (5) dollars.

Section 2. Licenses, tags, and permits listed in this section shall be valid for the calendar year issued. (1) Live fish and bait dealer's licenses:

- (a) Live fish and bait dealer's license (resident): fifty (50) dollars; and
 - (b) Live fish and bait dealer's license (nonresident): \$150.
- (2) Commercial taxidermist license: \$150.
- (3) Commercial guide licenses:
- (a) Commercial guide license (resident): \$150; and
 - (b) Commercial guide license (nonresident): \$400.
- (4) Shooting area permit: \$150.
- (5) Dog training area permit: fifty (50) dollars.
- (6) Collecting permits:
- (a) Educational wildlife collecting permit: twenty-five (25) dollars; and
 - (b) Scientific wildlife collecting permit: \$100.
- (7) Nuisance wildlife control operator's permit: \$100.
- (8) Pay lake license:
- (a) First two (2) acres or less: \$150; and
 - (b) Per additional acre or part of acre: twenty (20) dollars.
- (9) Commercial captive wildlife permit: \$150.
- (10) Commercial fish propagation permit: fifty (50) dollars.
- (11) Wildlife rehabilitator's permit: twenty-five (25) dollars.
- (12) Annual wildlife transportation permit: \$250.
- (13) Peabody Wildlife Management Area annual event permit: \$250.
- (14) Fish transportation permit: twenty-five (25) dollars.

Section 3. Licenses, tags, and permits listed in this section shall be valid for three (3) years from the date of issue. (1) Falconry permit: seventy-five (75) dollars.

- (2) Noncommercial captive wildlife permit: seventy-five (75) dollars.

Section 4. Licenses, tags, and permits listed in this section shall be valid for the date or dates specified on each. (1) Short-term licenses:

- (a) One (1) day resident fishing license: seven (7) dollars;
 - (b) One (1) day nonresident fishing license: ten (10) dollars;
 - (c) Seven (7) day nonresident fishing license: thirty (30) dollars;
 - (d) Fifteen (15) day nonresident fishing license: forty (40) dollars;
 - (e) One (1) day resident hunting license (not valid for deer, elk, or turkey hunting): seven (7) dollars;
 - (f) One (1) day nonresident hunting license (not valid for deer, elk, or turkey hunting): fifteen (15) dollars;
 - (g) Seven (7) day nonresident hunting license (not valid for deer, elk, or turkey hunting): fifty-five (55) dollars; and
 - (h) Three (3) day fur bearer's license: fifty (50) dollars.
- (2) Individual wildlife transportation permit: twenty-five (25) dollars.
- (3) Special resident commercial fishing permit: \$600.
 - (4) Special nonresident commercial fishing permit: \$900.

- (5) Commercial waterfowl shooting area permit: \$150.
- (6) Shoot to retrieve field trial permits:
 - (a) Per trial (maximum four (4) days): seventy-five (75) dollars; and
 - (b) Single day: twenty-five (25) dollars.
- (7) Boat dock permit: \$100 per ten (10) year permit period beginning January 1, 2008, except that the fee shall be pro-rated for the number of years remaining in the ten (10) year period.
- (8) Shoreline use permit: Valid for a fifteen (15) year permit period beginning January 1, 2010 and shall contain three (3) tiers:
 - (a) Tier I: \$100;
 - (b) Tier II: \$200;
 - (c) Tier III: \$300; and
 - (d) The fees shall be pro-rated to the nearest five (5) year interval remaining in the fifteen (15) year permit period.
- (9) Peabody individual event permit: twenty-five (25) dollars.
- (10) Commercial roe-bearing fish buyer's permit:
 - (a) Commercial roe-bearing fish buyer's permit (resident): \$500; and
 - (b) Commercial roe-bearing fish buyer's permit (nonresident): \$1,000.
- (11) Commercial roe-bearing fish harvester's permit:
 - (a) Commercial roe-bearing fish harvester's permit (resident): \$500; and
 - (b) Commercial roe-bearing fish harvester's permit (nonresident): \$1,500.
- (12) Otter Creek Outdoor Recreation Area:
 - (a) Daily Entry Permit: three (3) dollars, with children under twelve (12) free; and
 - (b) Daily Special Activities Permit: seven (7) dollars.
- (13) Commercial foxhound training enclosure permit: \$150.

Section 5. Licenses, tags, and permits listed in this section shall be valid on a per unit basis as specified. (1) Ballard waterfowl hunt (per person, per day): fifteen (15) dollars.

- (2) Pheasant hunt permit (per person, per day): twenty-five (25) dollars.
- (3) Horse stall rental (per space, per day): two (2) dollars.
- (4) Dog kennel rental (per dog, per day): fifty (50) cents.
- (5) Commercial captive cervid permit (per facility, per year): \$150.
- (6) Noncommercial captive cervid permit (per facility, ~~[i]~~ per three (3) years): seventy-five (75) dollars.

Section 6. The following licenses listed in this section shall be valid from April 1 through March 31 of the following year:

- (1) Fur processor's license (resident): \$150;
- (2) Fur buyer's license (resident): fifty (50) dollars; and
- (3) Fur buyer's license (nonresident): \$300.

Section 7. The following Otter Creek Outdoor Recreation Act permits shall be valid from July 1 through June 30 of the following year:

- (1) Annual Entry Permit: thirty (30) dollars, with children under twelve (12) free; and
- (2) Annual Special Activities Permit: seventy (70) dollars.

GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: September 12, 2017
FILED WITH LRC: September 14, 2017 at 11 a.m.

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, December 12, 2017)

301 KAR 3:120. Commercial nuisance wildlife control.

RELATES TO: KRS ~~[150.105]~~ 150.183, 150.275, 150.410
STATUTORY AUTHORITY: KRS 150.025(1)(h), 150.105, 150.275

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(h) authorizes the department to promulgate any other administrative regulations reasonably necessary to implement or carry out the purposes of KRS Chapter 150.~~[150.275 authorizes the department to issue permits to qualified persons to take and transport wildlife at any time for commercial nuisance wildlife control, and] KRS 150.105 authorizes the commissioner, with the approval of the commission, to authorize any person to destroy or bring under control any wild animal, fish, or wild birds, protected or unprotected, which are causing damage to persons, property, ~~or~~ other animals, or spreading diseases. KRS 150.275 authorizes the department to issue permits to qualified persons to take and transport wildlife at any time for commercial nuisance wildlife control.~~~~[permit wildlife causing damage to be destroyed or controlled by any means he deems necessary]. This administrative regulation establishes the requirements for commercial nuisance wildlife control.~~~~[Commercial Nuisance Wildlife Control] permits, and nuisance wildlife control operators.~~~~[the conditions under which the permits shall be used].~~

Section 1. Definitions. (1) "Commercial purposes" means taking nuisance wildlife in exchange for payment ~~[, barter]~~ or trade.

(2) "Enhanced rabies surveillance area" means Bell, Boyd, Bracken, Carter, Clay, Elliot, Fleming, Floyd, Greenup, Harlan, Johnson, Knott, Knox, Laurel, Lawrence, Leslie, Letcher, Lewis, Martin, Mason, McCreary, Pike, Pery, Robertson, and Whitley counties.

(3) "Federally-protected wildlife" means any wildlife species listed by the U.S. Fish and Wildlife Service as threatened or endangered, and any birds protected under the Migratory Bird Treaty Act and the Bald Eagle Protection Act.

~~(4)~~~~(3)~~ "Nuisance wildlife" means vertebrate wildlife that causes or may cause damage or threat to agriculture, human health or safety, property, or natural resources.

~~(5)~~~~(4)~~ "Nuisance wildlife control operator" ~~[Wildlife Control Operator]~~ means the holder of a valid permit, issued by the department, which authorizes~~[authorizing]~~ the taking of nuisance wildlife for commercial purposes.

~~(6)~~~~(5)~~ "NWCO" means a nuisance wildlife control operator~~[Nuisance Wildlife Control Operator]~~ as defined in this administrative regulation.

~~(7)~~~~(6)~~ "Permit" means the nuisance wildlife control operator's~~[Nuisance Wildlife Control Operator's]~~ permit issued pursuant to this administrative regulation.

(8) "Rabies vector species" means a:

- (a) Coyote (*Canis latrans*);
- (b) Gray fox (*Urocyon cinereoargenteus*);
- (c) Raccoon (*Procyon lotor*);
- (d) Red fox (*Vulpes vulpes*);
- (e) Spotted skunk (*Spilogale putorius*); or
- (f) Striped skunk (*Mephitis mephitis*).

~~(9)~~~~(7)~~ "Rural habitat~~[area]~~" means an area of the state not included within the boundaries of an incorporated or unincorporated city, village or borough, and having a population in excess of 1,500 inhabitants.

Section 2. NWCO Permit. (1) A person shall apply for a NWCO~~[Nuisance Wildlife Control Operator]~~ permit on a form provided by the department.

- (2) The department shall not grant a permit to a person:
 - (a) Less than eighteen (18) years old;

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(b) Who has been convicted of a violation of KRS Chapter 150 or the administrative regulations promulgated under its authority within one (1) year of the date of application; or

(c) Who fails to achieve a score of seventy (70) percent or better on an examination administered by the department.

(3) Nothing in this subsection shall prohibit persons under eighteen (18) years old from assisting a NWCO.

(4) A person may appeal the denial of a permit for a violation of KRS Chapter 150 or the administrative regulations adopted under its authority by following the procedures established in Section 7 of this administrative regulation.

(5) A NWCO shall have his ~~for her~~ permit in his ~~for her~~ possession at all times when taking or transporting wildlife.

(6) The NWCO permit shall be valid from March 1 through the last day of February.

Section 3. Reporting Requirements. (1) A NWCO~~[An operator]~~ shall file an annual activity report with the department between March 1 and March 30 of each year.

(2) The annual activity report shall be filed:

(a) On a form:

1. Provided by the department ~~;~~ or

2. Photocopied from the department form.

(b) The form shall contain the ~~following~~ information regarding the activity for the period from March 1 of the previous year through the last day of February of the current year.

(3) The department shall not renew the permit of an operator who does not:

(a) Submit the annual activity report as required by this section; or

(b) Does not provide the information required by the annual activity report form.

(4) Report documents shall be made available to ~~department~~~~[KDFWR Wildlife and Boating Officers or Division of Wildlife]~~ staff upon request ~~[and reasonable notice]~~.

Section 4. Restrictions on Taking Wildlife. (1) A NWCO shall not:

(a) Take federally-protected wildlife unless the NWCO~~[he]~~ has a valid permit issued by the U. S. Fish and Wildlife Service;

(b) Take the ~~following~~ species established in subparagraphs 1. through 5. unless authorized by the commissioner:

1. Copperbelly water snake (*Nerodia erythrogaster neglecta*);

2. ~~White-tailed~~~~[White-tail]~~ deer (*Odocoileus virginianus*);

3. Elk (*Cervus canadensis*);

4. Black bear (*Ursus americanus*); or

5. Wild turkey (*Meleagris gallopavo*); or

(c) Use lethal capture methods to take bats.

(2) A NWCO may take other nuisance wildlife year-round using lethal or nonlethal capture methods, provided the NWCO~~[he]~~ has written or oral authorization from the person requesting control.

Section 5. Methods of taking nuisance wildlife. (1) A NWCO using traps shall comply with~~[adhere to the provisions of]~~:

(a) KRS 150.410; and

(b) The trapping requirements in~~[Section 10(2)(b) of]~~ 301 KAR 2:251.

(2) A NWCO using a gun shall provide proof of completion of the Kentucky Hunter Education Program or a course offered by another jurisdiction that meets the course standards set by the International Hunter Education Association.

Section 6. Disposal of captured animals. (1) A NWCO~~[Unless the permit specifies that certain species shall be euthanized, an operator]~~ may euthanize or release captured wildlife, except that a NWCO shall:

(a) Euthanize any rabies vector species captured within the enhanced rabies surveillance area before being moved; and

(b) Shall not transport a rabies vector species into or out of the enhanced rabies surveillance area.

(2) Acceptable methods of euthanizing wildlife shall include:

(a) Captive bolt~~;~~ ~~gunshot~~ ~~drowning (only for animals trapped in water sets)~~ ~~cervical dislocation and thoracic compression (for~~

~~small mammals and birds)~~ ~~and mechanical stunning (stunning shall be followed immediately by a method that ensures death)];~~

(b) Gunshot;

(c) Drowning, for wildlife trapped in water sets, pursuant to 301 KAR 2:251;

(d) Cervical dislocation or thoracic compression for small mammals and birds;

(e) Mechanical stunning, if followed immediately by an acceptable euthanasia method;

(f) Inhalants, including halothane, isoflurane, carbon monoxide, ~~or~~~~[and]~~ carbon dioxide;

(g)~~[e]~~ Noninhalants including Secobarbital/dibucaine; ~~or~~~~[and]~~

(h)~~[d]~~ Commercially-available agents for striped skunks, in accordance with manufacturer's specifications.

(3) The department may, upon issuing a permit, specify that certain species shall be euthanized.

(a) The requirement that a species be euthanized may apply statewide or to certain geographical regions.

(b) If the requirement that a species be euthanized is made to apply:

1. Statewide, all permits issued in that permit year shall contain the same requirement~~[specification]~~; or

2. To a limited geographical area, all permits issued in that area shall contain the same requirement~~[specification]~~.

(4) A NWCO shall:

(a) Euthanize wildlife that shows obvious symptoms of disease or injury~~;~~ ~~]~~

(b) Transport wildlife for release in a safe manner that minimizes stress to the animal~~;~~ ~~]~~

(c) Not release wildlife:

1. Except in a rural habitat suitable for the particular species; and

2. Without the written permission of:

a. The private landowner of at least 100 contiguous acres;

b. The private landowners of contiguous properties totaling at least 100 acres; or

c. The agency responsible for management of public land totaling at least 300 acres~~;~~ ~~or]~~

(d) Dispose of all wildlife carcasses by:

1. Complete incineration of the entire carcass and all of its parts and products;

2. Placing~~[Disposition of]~~ the carcass in a contained landfill as established in~~[approved pursuant to]~~ KRS Chapter 224;

3. Burying the carcass and all its parts and products in the earth;

a. In a location that~~[at a point which]~~ is never covered with the overflow of ponds or streams;

b. ~~and which is]~~ Not less than 100 feet~~[distant]~~ from any watercourse, sinkhole, well, spring, public highway, residence, or stable; and

c. ~~The carcass shall be placed in an opening in the earth]~~ At least one (1) foot deep and covered with one (1) foot of earth~~;~~ ~~or]~~

4. Removing~~[Removal of]~~ the carcass by a duly-licensed rendering establishment; and~~;~~ ~~or~~

5. Any other proven method of disposal with the prior approval of the department.

(e) Not hold wildlife for more than forty-eight (48) hours except as otherwise provided by administrative regulations promulgated by the department.

(5) A permitted NWCO wishing to sell the pelts of furbearers taken during the statewide furbearer hunting and trapping season shall also possess a valid trapping license or hunting license, if applicable.

Section 7. Permit revocation, appeal process. (1) The department shall~~[may]~~ revoke without refund the permit of a nuisance wildlife control operator who:

(a) Is convicted of a violation of a federal fish and wildlife law, a Kentucky fish and wildlife law, including KRS Chapter 150 or Title 301 KAR, or another state's fish and wildlife law; or

(b) Knowingly provides false information on:

1. The application for a permit~~;~~ ~~]~~ or

2. The Annual Activity Report.

(2) An individual whose permit has been revoked shall be ineligible to apply for another Nuisance Wildlife Control Operator Permit or be an assistant on another Nuisance Wildlife Control Operator Permit for a period of three (3) years.

(3) An individual whose permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

Section 8. Items incorporated by reference. (1) The following material is incorporated by reference:

(a) "NWCO Application," edition August 2004; and

(b) "NWCO Annual Activity Report Form," edition August 2004;

(2) The material may be inspected, copied, or obtained subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky, Monday through Friday from 8 a.m. to 4:30 p.m.

GREGORY K. JOHNSON, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: October 12, 2017

FILED WITH LRC: October 13, 2017 at 9 a.m.

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing
(As Amended at ARRS, December 12, 2017)**

601 KAR 23:020. Military surplus vehicle.

RELATES TO: KRS 186.010, 186.020, 186A.070(1), 186A.073, 186A.115, 186A.170, 49 C.F.R. Section 571.7

STATUTORY AUTHORITY: KRS 186A.020, 186A.073, 186A.115(2)(b), (c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186A.073(4) and (5) requires the Kentucky Transportation Cabinet to promulgate administrative regulations establishing the procedures necessary to apply for, and obtain title for a military surplus vehicle. This administrative regulation establishes the requirements for an applicant to obtain a certificate of title and registration for a military surplus vehicle.

Section 1. Definitions. (1) "Military surplus vehicle" is defined by KRS 186.010(20).

(2) "Motor vehicle" is defined by KRS 186.010(4).

Section 2. Application for Title. (1) The owner of a military surplus vehicle shall apply for a certificate of title as established in paragraphs (a) through (c) of this subsection.

(a) The military surplus vehicle shall be inspected by a certified motor vehicle inspector who meets the requirements of 601 KAR 9:085 and 601 KAR 9:090.

(b) The certified motor vehicle inspector shall complete a Military Surplus Vehicle Inspection form, TC 96-344, certifying that the vehicle is roadworthy.

(c) The applicant for title shall submit to the county clerk of residence:

1. The completed Military Surplus Inspection form, TC 96-344, and supporting documents that establish the sale or transfer of the vehicle from the military or the military's designated agent to the applicant; and

2. Proof that the military surplus vehicle was originally manufactured in accordance with/under the mandated requirements established in/of 49 C.F.R. Section 571.7. A military surplus vehicle built prior to 1968 and prior to the requirements of 49 C.F.R. Section 571.7 shall be exempt from inspection.

(2) If the previous owner is a person or entity other than the military or the military's designated agent, the applicant shall

submit a completed Application for Kentucky Certificate of Title or Registration, TC 96-182, and the supporting documents as required by KRS 186.020 and 186A.070(1).

(3) A military surplus vehicle shall remain designated as a military surplus vehicle after transfer of ownership or sale.

(4) A military surplus vehicle inspected pursuant to subsection (1)(a) of this section shall not be inspected again as an out-of-state vehicle as required by KRS 186A.115.

(5) The county clerk of residence shall issue an original certificate of title without a special brand unless the vehicle was originally branded in another state.

Section 3. Certification. (1) A military surplus vehicle that has been certified as roadworthy pursuant to the vehicle inspection in Section 2(1)(a) of this administrative regulation shall be considered a motor vehicle and shall not require a re-inspection.

(2) A roadworthy military surplus vehicle may be processed through speed title pursuant to KRS 186A.170(1)(b).

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Kentucky Certificate of Title or Registration", TC 96-182, October, 2015; and

(b) "Military Surplus Vehicle Inspection", TC 96-344, May/July, 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Vehicle Regulation, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material may also be obtained by accessing the department's Web site at <http://Drive.ky.gov/>.

GREG THOMAS, Secretary

JOHN-MARK HACK, Commissioner

D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: October 5, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

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**TRANSPORTATION CABINET
Department of Aviation
(As Amended at ARRS, December 12, 2017)**

602 KAR 15:030. Fees for services and facilities of the Capital City Airport.

RELATES TO: KRS Chapter 13B, 45.453, 174.504, 183.011(2), (5)

STATUTORY AUTHORITY: KRS 174.504

NECESSITY, FUNCTION, AND CONFORMITY: KRS 174.504 requires the cabinet to promulgate administrative regulations establishing fees for users of the services and facilities of the Capital City Airport (CCAD) and for the usage of state aircraft. This administrative regulation establishes hangar fees, tie-down fees, fees for fuel and lubricants, fees for aircraft services, and usage fees for state aircraft pursuant to KRS 174.504.

Section 1. Definitions. (1) "Aeronautical activity" means an activity that involves, makes possible, or is required for the operation of aircraft or that contributes to or is required for the safety of operations.

(2) "Aircraft" is defined by KRS 183.011(2).

(3) "Airport" is defined by KRS 183.011(5).

(4) "Airport manager" means the designated individual appointed by the airport owner authorized to administer and manage the operations of the airport and airport facility.

(5) "Aviation fuel" means a specialized type of petroleum-based fuel that is used to power aircraft including jet fuel and aviation gasoline.

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(6) "Fixed cost" means the cost or expense of operating aircraft that result from owning and supporting the aircraft including costs for insurance.

(7) "Hangar" means a type of enclosed structure designed to hold one (1) or more aircraft and items incidental to the operation and maintenance of the stored aircraft.

(8) "Hobbs meter" means a device that measures elapsed time that is wired in series with the collective control and a switch activated by engine or transmission oil pressure.

(9) "Lease" means the written contract between the airport or airport owner and a lessee specifying the terms and conditions under which the lessee may conduct commercial or aeronautical activities on or at the airport.

(10) "Periodic cost" means the cost or expense for modernization, painting, or refurbishment.

(11) "State aircraft usage" means the use of state aircraft for on-demand air transportation by state officials and employees traveling on official state business.

(12) "T-hangar" means a type of enclosed structure designed to hold a single aircraft in protective storage.

(13) "Tie-down" means an outdoor spot used by smaller aircraft to park that usually has a set of three (3) ropes for tying down the aircraft.

(14) "Variable costs" means the costs or expenses that vary depending on how much an aircraft is used including crew fees, maintenance, fuel, and landing and tie-down fees.

Section 2. Rates and Charges. (1) The airport manager shall maintain a current schedule of rates and charges for the use of the airport and its facilities.

(2) Unless otherwise provided by lease or agreement, a person shall not use an area of the airport or the airport's facilities without payment of the rates and charges established in this administrative regulation except areas designated for open use by the general public.

Section 3. ~~[.]~~ Hangar Fees. (1)(a) The rental fee for a hangar shall be set at a fixed price per square foot of the leased space and calculated by multiplying aircraft length x width x seventy-five (75) percent x cost per square foot.

(b) Pricing for the cost of a T- hangar shall be based on the size of the hangar and calculated by multiplying the square footage x cost per square foot.

(2) The cost per square foot shall be:

(a) \$0.21 for small single engine airplanes and helicopters;
and

(b) \$0.24 for larger twin engine airplanes.

Section 4. Tie-down Fees. (1) Tie-down and parking rent fees shall be set at a fixed price consistent with the average rate for tie-down spaces at other airport facilities in the geographical area.

(2) Transient aircraft shall be charged a nightly rate for tie-down storage. The fee for the first night shall be waived if fuel or other purchases at the airport exceed the tie-down fee.

(3) Prior to the beginning of each fiscal year, the airport shall review the rates and charges for transient aircraft and compare them with the rates in effect at non state-owned airports in the geographical region. [The fee for a transient aircraft shall be based on the schedule of rates, charges, fees, and rents in the Capital City Airport's Schedule of Service Fees].

Section 5. Building and Office Lease. (1) Fees for building or office lease shall be set at a fixed price per square foot of the leased space.

(2) The fee shall be calculated pursuant to the guidelines established by the Finance and Administration Cabinet in State Facility Rent and Utility Rates on the State Budget Director's Web site at [https://osbd.ky.gov/Documents/KBUD%20Information/1820%20KBUD%20Information/Facilities rates 18-20.pdf](https://osbd.ky.gov/Documents/KBUD%20Information/1820%20KBUD%20Information/Facilities%20rates%2018-20.pdf) [<http://osbd.ky.gov/kbud.htm>].

Section 6. Payment. (1) Rent may be paid to the airport in one (1) of the following ways:

(a) Issuance of a check made payable to the Kentucky State Treasurer; or

(b) Use of a major credit card.

(2) Rent shall be paid as detailed in the tenant's lease and as established in paragraphs (a) and (b) of this subsection. Rent shall be paid:

(a) Annually in full with the first annual payment on or before the date the lease begins with subsequent payments yearly on the anniversary date of the lease; or

(b) Monthly installments payable at the beginning of each month.

Section 7. Adjustment of Rates and Charges. (1) **Prior to the beginning of each fiscal year, the airport shall review the most current rates and charges to determine if they are consistent with the rates and charges in effect at non state-owned airports in the geographical region. [The airport shall review the rates and charges in effect at the airport and compare them with rates and charges in effect at non state-owned airports in the geographical region prior to the beginning of each fiscal year].**

(2) The airport may adjust the rates and charges in effect at the airport **based upon the results offollowing** the review established in subsection (1) of this section.

(3) The airport shall provide to a lessee not less than thirty (30) days written notice of an adjustment in the rates and charges.

(4) The airport manager may waive ground support fees for:

(a) An organization or person engaged in a non-profit aeronautical program or activity that benefits a charitable organization or community; or

(b) A high volume fuel customer who purchases a minimum of 300 gallons or more of aviation fuel.

Section 8. Aviation Fuel. (1) The airport shall have the exclusive right and control of the sale of aviation fuel sold at the airport.

(2) The selling price for aviation fuel sold at the airport shall be based on:

(a) Weekly wholesale price;

(b) Applicable state and federal taxes; and

(c) A survey of aviation fuel prices at similar airports in the geographical region.

Section 9. Ground Support. (1) Ground support services offered by the airport shall include:

(a) Heating of aircraft engine;

(b) Power assistance to start engine;

(c) Aircraft towing; and

(d) Use of forklift.

(2) A fee for a ground support service shall be consistent with the average rate or charge for identical or similar services at airports in the geographical area.

Section 10. State Aircraft Usage Fees. (1) The costs of operating the state aircraft program for state officials and employees shall be recouped by the CCAD.

(2) Aircraft costs shall be calculated annually to compute an operating cost per flight hour.

(3) Calculations shall be based on a three (3) to five (5) year average of:

(a) Fixed costs;

(b) Periodic costs; and

(c) Variable costs.

(4) The formulas established in paragraphs (a) and (b) of this subsection shall be used to calculate the annual cost of operation for each aircraft and to determine the hourly cost of operation rate.

(a) (Annual Variable Costs) + (Annual Fixed Costs) + (Annualized Periodic Cost) = Total Annual Cost of Operation.

(b) (Total Annual Cost of Operation) + (Annual Hourly Usage) = Total Hourly Cost of Operation.

(5) Hourly fees charged for usage of aircraft owned and

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operated by the Kentucky Department of Aviation are available on the Capital City Airport Web site at <https://cca.ky.gov> or <https://transportation.ky.gov/Aviation/Pages/Aircraft-Fleet-Services.aspx>. [<http://cca.ky.gov/ccadivision.htm>.]

(6) Insurance for state aircraft shall be covered by an aviation liability insurance policy obtained and coordinated through State Risk and Insurance Services.

Section 11. Measurement of Flight Time for State Aircraft. (1) The measurement of flight time shall depend on the type of aircraft.

(2) Flight time for a helicopter shall be measured with a Hobbs meter.

(3) Flight time for an airplane shall be measured from its takeoff roll until the airplane arrives at its destination and shall be computed in hours and tenths.

Section 12. Billing for Usage of State Aircraft. (1) A state agency using an aircraft shall be billed for the associated costs after each flight.

(2) Billing shall be based on the hourly cost of operation and the hours the aircraft was used regardless of the number of passengers.

(3) If repositioning the aircraft to accomplish the intended flight is necessary, a customer shall be charged for the flight time required to reposition the aircraft.

(4) If it is necessary to fly without passengers in order to accommodate a customer's schedule, that time shall also be included in the charge.

(5) A bill shall be paid by the user of a state aircraft within thirty (30) days of service pursuant to KRS 45.453.

Section 13. Penalties. (1) An interest penalty of five (5) percent shall be assessed each thirty (30) day billing cycle that an account remains in arrears.

(2) A delinquent account shall be referred for legal action after ninety (90) days.

(3) A party aggrieved by the findings of the airport may request an administrative hearing. The request shall be in writing and postmarked within twenty (20) days of the notice.

(a) A request for a hearing shall detail the grounds on which the hearing is requested.

(b) The hearing request shall be addressed to the Transportation Cabinet, Department of Aviation, 200 Mero Street, Frankfort, Kentucky 40622. The administrative hearing shall be conducted pursuant to KRS Chapter 13B.

GREG THOMAS, Secretary

STEVE S. PARKER, Commissioner

D. ANN DANVELO, Office of Legal Services

APPROVED BY AGENCY: July 26, 2017

FILED WITH LRC: August 4, 2017 at 2 p.m.

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ENERGY AND ENVIRONMENT CABINET

Department for Natural Resources

Division of Mine Safety

(As Amended at ARRS, December 12, 2017)

805 KAR 7:020. Training to obtain a permit as an~~and certification of~~ inexperienced miner~~[miners]~~.

RELATES TO: KRS 351.102, 351.1291~~[, 351.105]~~

STATUTORY AUTHORITY: KRS 351.102(3), 351.106(1), (12), 351.1291(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.102(3)~~[and]~~ 351.106(1), and 351.1291(1) require the Department for Natural Resources~~Division~~~~[Office]~~ of Mine Safety~~[and Licensing]~~ to establish a program of education and training for prospective~~[inexperienced]~~ miners~~[according to~~

~~criteria and standards determined by the Mining Board]~~. KRS 351.106(12) authorizes the Secretary of the Energy and Environment Cabinet to promulgate administrative regulations necessary to implement KRS Chapter 351. This administrative regulation establishes a program of training necessary to obtain a permit as an~~for~~ inexperienced miner~~[miners]~~.

Section 1. Training and Certification to become an~~of~~ inexperienced Miner~~[Miners]~~. (1) A candidate desiring to obtain a permit as an inexperienced underground or surface miner shall be at least eighteen (18) years of age prior to enrolling in a training program~~[an inexperienced miner class]~~.

(2) The required [trainee miner] training shall be documented and include the following information:

- (a) Full name of person trained;
- (b) Miner identification number;
- (c) Type of mining operation;
- (d) Type of training received;
- (e) Date training completed;
- (f) Subjects taught in that training;
- (g) Signature of instructor;
- (h) Signature of miner;
- (i) Documentation providing proof the individual being trained~~[trainee]~~ is at least eighteen (18) years of age; and
- (j) Date of signatures.

(3) The documentation shall be embossed with the instructor's seal and an embossed copy shall be provided to the miner.

(4)~~(2)~~(a) The certificate earned by completing the [trainee miner] training program shall be valid for twelve (12) months preceding initial employment at a mine.

(b) If employment is not obtained within twelve (12) months, annual retraining requirements shall be successfully completed each year in accordance with 805 KAR 7:030 in order to maintain the inexperienced~~[trainee]~~ miner permit.

Section 2. Training Program. (1) The training program to become an inexperienced underground or surface miner~~[for inexperienced miners]~~ shall include instruction in the following courses:

- (a)~~(1)~~ Introduction to mining;
- (b)~~(2)~~ Self-rescue devices;
- (c)~~(3)~~ The statutory rights of miners and their representatives;
- (d)~~(4)~~ Authority and responsibility of supervisors;
- (e)~~(5) Entering and leaving a mine,~~ Transportation~~[,]~~ and communication;
- (f)~~(6)~~ Mine map~~[, escapeways, emergency evacuations, barricading]~~;
- (g)~~(7) Roof or ground control and ventilation plans;~~
- (8) Health standards;
- (h)~~(9) Clean-up and rock dusting;~~
- (10) Hazard recognition;
- (i)~~(11)~~ Electrical hazard;
- (j)~~(12)~~ First aid;
- (k)~~(13)~~ Mine gases and explosives;
- (l)~~(14)~~ Accident prevention; and
- (m)~~(15)~~ Mining and mine safety related issues; and
- (n) Alcohol and substance abuse education as required by KRS 351.102(3) and 351.1291~~[issue]~~.

(2) The training program to become an inexperienced underground miner shall include instruction in the following courses in addition to those listed in subsection (1) of this section:

- (a) Entering and leaving a mine;
- (b) Escapeways, emergency evacuations, barricading;
- (c) Roof control and ventilation plans; and
- (d) Clean-up and rock dusting.

(3) The training program to become an inexperienced surface miner shall include instruction in the following courses in addition to those listed in subsection (1) of this section:

- (a) Ground control plans;
- (b) Cutting and welding;
- (c) Fire protection; and

(d) Safety around bins and hoppers.

CHARLES G. SNAVELY, Secretary
 APPROVED BY AGENCY: August 14, 2017
 FILED WITH LRC: August 15, 2017 at 9 a.m.
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**ENERGY AND ENVIRONMENT CABINET
 Department for Natural Resources
 Division of Mine Safety
 (As Amended at ARRS, December 12, 2017)**

805 KAR 7:030. Annual retraining for underground and surface miners.

RELATES TO: KRS 351.106, 351.1291
 STATUTORY AUTHORITY: KRS ~~[351.105;]~~ 351.106(1), (12), 351.1291(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.106(1) and 351.1291(2) require[requires] the Department for Natural Resources~~[of Mines and Minerals]~~ to establish an annual miner retraining program~~[according to the criteria and standards determined by the Mining Board]~~. KRS 351.106(12) authorizes the Secretary of the Energy and Environment Cabinet to promulgate administrative regulations necessary to implement KRS Chapter 351. This administrative regulation establishes the requirements and terms of the annual retraining program.

Section 1. **Annual Retraining for Underground Miners.** (1) A certified underground miner shall receive a minimum of sixteen (16) hours of annual retraining.

(2) At least eight (8) hours of the annual retraining shall ~~be~~:

- (a) ~~Be~~ administered in a classroom;
- (b) ~~Be~~ conducted by a Kentucky certified underground mining instructor;

(c) Include alcohol and substance abuse education as required by KRS 351.106(1); and

(d) ~~Be~~~~[The amount of training]~~ documented on the Mine Safety and Health Administration Form 5000-23~~[training form defined in Section 4(3) of this administrative regulation]~~ and embossed with the instructor's seal.~~;~~

(3)~~(2)~~ The balance of the annual retraining shall be administered in segments of not less than fifteen (15) minutes. Training administered in this manner shall be provided by, or under the direct supervision of, a Kentucky certified underground mining instructor or a Kentucky certified mine foreman. A person who receives annual retraining in this manner shall be notified that each segment is being administered in satisfaction of the annual retraining requirement, and a record of each segment, including dates, duration, subject and attendees, shall be maintained at the mine site until the training form, Mine Safety and Health Administration Form 5000-23~~, described in Section 4(3) of this administrative regulation]~~ can be completed.

(4)~~(3)~~ Documentation of completed training pursuant to subsections (1) through (3) of this section shall be made on the Mine Safety and Health Administration Form 5000-23 and shall include the following information:

- (a) Full name of person trained;
- (b) Miner identification number;
- (c) Type of mining operation;
- (d) Type of training received;~~;~~
- (e) Date training completed;
- (f) Subjects taught in that training;
- (g) Amount of training;
- (h) Signature of instructor;
- ~~(i)(h)~~ Signature of miner; and
- ~~(j)(i)~~ Date of signatures.

(5) After completion of his training, or upon the miner leaving employment with the licensee, the miner shall receive a copy of all

of his training records.

~~(6)(4)~~ The annual retraining courses shall include the following subjects:

- (a) Transportation controls and communications systems;
- (b) Barricading;
- (c) Roof control and ventilation plans;
- (d) First aid;
- (e) Electrical hazards and moving equipment;
- (f) Accident prevention;
- (g) Self-rescue devices;
- (h) Explosives;
- (i) Health and safety standards; and
- (j) Statutory rights of miners and their representatives.

Section 2. **Annual Retraining for Surface Miners.** (1) A certified surface miner shall receive a minimum of eight (8) hours of annual retraining that shall be administered in a classroom by a Kentucky certified surface instructor.

(2) The training shall be recorded on the Mine Safety and Health Administration Form 5000-23, which shall be maintained on the mine premises.

(3) The retraining shall include the subjects required by KRS 351.1291(2).

Section 3. (1) A person employed as a miner shall complete annual retraining within twelve (12) months from the end of the month of his most recent completed annual retraining requirement.

(2) A certified miner who has had a break in employment as ~~a~~~~[an underground]~~ miner shall be eligible to work if he has successfully completed the annual retraining requirements within the last twelve (12) months.

Section 4.~~3.~~ The licensee shall maintain verification of all miner training and certification at the mine premises. (1) The documentation shall include:

- (a) The dates the annual training sessions were conducted;
- (b) The name of the miner; and
- (c) The miner identification number.

(2) Licensees shall maintain documentation of the miners who are no longer employed by the licensee on the mine premises until the requirements of KRS 351.106~~(10)(8)~~ are met.

Section 5.~~4.~~ Incorporation by Reference. (1) The "Mine Safety and Health Administration Form 5000-23," revised October 1983, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Division of Mine Safety ~~[Department for Mines and Minerals]~~, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHARLES G. SNAVELY, Secretary
 APPROVED BY AGENCY: August 14, 2017
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**ENERGY AND ENVIRONMENT CABINET
 Department for Natural Resources
 Division of Mine Safety
 (As Amended at ARRS, December 12, 2017)**

805 KAR 7:040. Mine-specific training ~~for~~~~ef~~ newly employed miners.

RELATES TO: KRS 351.102, 351.103, 351.106, 351.1291
~~[351.105]~~

STATUTORY AUTHORITY: KRS 351.102(3), ~~[351.105;]~~ 351.106(1), (12), 351.1291(1)~~[-(4)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.102(3), ~~[and]~~ 351.106(1), and 351.1291(1) require the

VOLUME 44, NUMBER 7 – JANUARY 1, 2018

Department ~~for Natural Resources~~[of Mines and Minerals] to establish a ~~mine-specific~~[miner] training program for newly employed miners ~~[according to the criteria and standards determined by the Division of Mine Safety]~~[Mining Board]. KRS 351.106(12) authorizes the Secretary of the Energy and Environment Cabinet to promulgate administrative regulations necessary to implement KRS Chapter 351. This administrative regulation establishes a program of mine-specific training [and examination] for newly employed miners.

Section 1. Mine-specific Training for Newly Employed Inexperienced Miners. (1) Each newly employed inexperienced miner shall receive a minimum of eight (8) hours of mine-specific training provided by the licensee. The training shall:

(a) Be performed by a Kentucky certified mine foreman or mining instructor; ~~and;~~

(b) Apply to the mine where the miner is to be employed.

(2) ~~[Each newly employed experienced miner shall receive sufficient training provided by the licensee. The training shall:~~

~~(a) Be performed by a Kentucky certified mine foreman or mining instructor; and~~

~~(b) Apply to the mine where the miner is to be employed.~~

~~(3) The training shall include instruction in accordance with 805 KAR 7:020, Section 2(1)(b)(2) through (m)(15)[the courses set forth in 805 KAR 7:020, Section 2(2)-(15)], and shall be completed before the newly hired miner can be assigned any work duties.~~

~~(3)(4) The licensee shall verify to the department documentation containing the following information on the Mine Safety and Health Administration Form 5000-23, incorporated by reference in 805 KAR 7:030:~~

~~(a) Full name of person trained;~~

~~(b) Miner identification number;~~

~~(c) Type of mining operation;~~

~~(d) Type of training received;~~

~~(e) Date training completed;~~

~~(f) Verification of eight (8) hours training in mine specifics;~~

~~(g) Signature of miner;~~

~~(h) Signature of instructor; and~~

~~(i) Date of signatures.~~

~~(4) The newly employed miner shall receive a copy of the Mine Safety and Health Administration Form 5000-23[this form].~~

~~(5) Upon proof by a licensee that a reemployed inexperienced[experienced] miner has received the training established in this section[administrative regulation] within twelve (12) months preceding reemployment at the mine, the miner shall not be required to repeat the mine-specific training[established in this administrative regulation].~~

Section 2. Mine-specific Training for Newly Employed Experienced Miners. (1) Each newly employed experienced miner shall receive mine-specific training provided by the licensee. The training shall:

(a) Be performed by a Kentucky certified mine foreman or mining instructor; and

(b) Apply to the mine where the miner is to be employed.

(2) The licensee shall submit to the department documentation containing the following information on the Mine Safety and Health Administration Form 5000-23, incorporated by reference in 805 KAR 7:030:

(a) Full name of person trained;

(b) Miner identification number;

(c) Type of mining operation;

(d) Type of training received;

(e) Date training completed;

(f) Signature of miner;

(g) Signature of instructor; and

(h) Date of signatures.

(3) The newly employed miner shall receive a copy of the Mine Safety and Health Administration Form 5000-23.

(4) Upon proof by a licensee that a reemployed experienced miner has received the training established in this section within twelve (12) months preceding reemployment at the mine, the miner shall not be required to repeat the mine-specific

training.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

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ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Safety
(As Amended at ARRS, December 12, 2017)

805 KAR 7:050. Training of underground and surface miners for new work assignments.

RELATES TO: KRS 351.103, ~~351.106~~[354.105]

STATUTORY AUTHORITY: KRS 351.102(3), 351.106(1), (12)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

351.102(3) and [KRS] 351.106(1) ~~require~~[requires] the Department for Natural Resources to establish[require the Department of Mines and Minerals to establish, according to criteria and standards determined by the Mining Board,] a miner training program that includes training of miners who receive new work assignments. KRS 351.106(12) authorizes the Secretary of the Energy and Environment Cabinet to promulgate administrative regulations necessary to implement KRS Chapter 351. This administrative regulation establishes a program of training[and examination] for underground and surface miners who receive new work assignments.

Section 1. Task Training. (1) A miner who receives a new work assignment shall not perform the work duties until he has completed a training program as provided in subsection (2)[~~Section 1(2)~~] of this section[~~administrative regulation~~] if his new work assignment requires direct operation of:

(a) Mechanical machinery;

(b) Electrical machinery; or

(c) Equipment in connection with:

1. Mobile equipment operations;

2. Blasting and drilling operations;

3. Haulage and conveyor system operations; or

4. Roof control.

(2) The training program for miners who receive new work assignments shall include:

(a) Health and safety aspects and safe operating procedures for work tasks, equipment, and machinery;

(b) Supervised practice during nonproduction;

(c) Supervised operation during production;

(d) New or modified machines and equipment; and

(e) Mining and mine safety related issues.

Section 2. (1) If a miner becomes qualified under Section 1 [~~the provisions~~] of this administrative regulation to perform a work assignment, he shall continue to be qualified thereafter if the miner demonstrates safe operating procedures in performance of the work assignment.

(2) Each licensee shall maintain current documentation on the mine premises that the miner has demonstrated proficiency in work assignments pursuant to Section 1(1) of this administrative regulation.

Section 3. The provisions of this administrative regulation shall not be construed to alter or deprive a person of a right or duty accruing to that person by virtue of a labor-management contract.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

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ENERGY AND ENVIRONMENT CABINET
 Department for Natural Resources
 Division of Mine Safety
 (As Amended at ARRS, December 12, 2017)

805 KAR 7:060. Training program approval for underground and surface mining.

RELATES TO: KRS 351.101, 351.102, 351.1291, ~~351.105, EO 2009-538~~

STATUTORY AUTHORITY: KRS 351.070(13), 351.102(3), 351.106(1), (12), 351.1291(1)

NECESSITY, FUNCTION, AND CONFORMITY: ~~[KRS 352.070(13) authorizes the Energy and Environment Cabinet] [Environmental and Public Protection Cabinet] [to promulgate administrative regulations necessary and suitable for the proper administration of KRS Chapter 351.] KRS 351.102(3) and [Chapter] 351.106(1) require[requires] the Department for Natural Resources [Mining Board] to establish a program of education and training for a prospective miner to obtain a permit as an inexperienced underground or surface miner. KRS 351.106(12) authorizes the Secretary of the Energy and Environment Cabinet to promulgate administrative regulations necessary to implement KRS Chapter 351. [and education of inexperienced underground and surface coal miners.] [EO 2009-0538, effective June 12, 2009, abolishes the Environmental and Public Protection Cabinet and establishes the new Energy and Environment Cabinet.] This administrative regulation establishes the procedure for public and private entities to submit training programs to the Division of Mine Safety [Mining Board] for approval.~~

Section 1. A training program to obtain a permit as an inexperienced underground or surface miner ~~for inexperienced miners~~ shall be approved by the Division of Mine Safety ~~board~~ if:

(1) The proposed program meets the criteria and objectives of 805 KAR 7:020; ~~f~~ and

(2) The instructors teaching the program have been certified by the Kentucky Department for Natural Resources and the U.S. Department of Labor, Mine Safety and Health Administration.

Section 2. (1) A person who desires to provide a training program to prospective ~~inexperienced~~ miners shall submit the proposed training program to the Division of Mine Safety, 300 Sower Blvd, Frankfort, Kentucky 40601 ~~[Mining Board, P.O. Box 2244, Frankfort, Kentucky 40602-2244]~~, for review.

(2) The proposed training program shall contain the following information:

- (a) The address and location of the training facility to be used;
- (b) A description of the equipment and facilities to be used;
- (c) A list of the participating instructors;
- (d) The content areas in the training program for which each instructor shall be responsible;
- (e) The approximate number of students per class;
- (f) The dates on which the training program will be conducted;
- (g) The name and address of the person responsible for the formulation and implementation of the training program;
- (h) An outline of the proposed program showing how it meets the criteria and objectives of 805 KAR 7:020;
- (i) A list of instructional material to be used including films or programmed material and noting where the material will be used within the instructional sequence; and
- (j) A description of the instructional methods to be used throughout the program including lecture-demonstration, personalized instruction, and team-teaching.

Section 3. (1) Approval granted by the Division of Mine Safety ~~board~~ in accordance with the provisions of this administrative regulation shall be conditional upon the practical implementation of the training program in a manner consistent with the criteria and objectives of 805 KAR 7:020.

(2) The Division of Mine Safety ~~may~~ ~~department~~ shall have the authority to monitor an approved program without prior

notice.

CHARLES G. SNAVELY, Secretary
 APPROVED BY AGENCY: August 14, 2017
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ENERGY AND ENVIRONMENT CABINET
 Department for Natural Resources
 Division of Mine Safety
 (As Amended at ARRS, December 12, 2017)

805 KAR 8:030. Criteria for the imposition and enforcement of sanctions against certified miners.

RELATES TO: KRS 351.1041, 351.120, 351.194, 352.010-352.540 ~~352-550~~

STATUTORY AUTHORITY: KRS 351.025(1)(a), 351.070(13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070(13) authorizes the Secretary of the Energy and Environment Cabinet ~~Commissioner of the Department for Natural Resources~~ ~~Department of Mines and Minerals~~ to promulgate administrative regulations he deems necessary and suitable for the proper administration of KRS Chapter 351 ~~351-090 to 351-9901~~. KRS 351.025(1)(a) requires the Department for Natural Resources ~~Department of Mines and Minerals~~ to promulgate administrative regulations that establish comprehensive criteria for the imposition and enforcement of sanctions against certified miners whose intentional violation of, or order to violate, mine safety laws places miners in imminent danger of serious injury or death. This administrative regulation establishes the criteria for the revocation, suspension, or probation of a miner's certificate upon an adjudication by the Mine Safety Review Commission that a miner has committed this type of violation.

Section 1. (1) If a certified miner commits a first offense, as adjudicated by the Kentucky Mine Safety Review Commission, the commission may revoke or suspend the miner's certificate, in accordance with ~~for a period of time to be determined at the discretion of the commission, pursuant to~~ KRS 351.194(5) and (6), or it may probate the miner's certificate for a period of no greater than ten (10) working days.

(2) If a certified miner's certificate is revoked pursuant to subsection (1) of this section, the miner may apply to the Division of Mine Safety ~~Kentucky Mining Board~~ for the reinstatement of his certificate, after the revocation period has ended, and after he has retaken and passed the requisite examination required for the certification. The Division of Mine Safety ~~Mining Board~~ may grant or deny the application in accordance with KRS Chapter 351 and the administrative regulations promulgated under that chapter.

(3) If a certified miner's certificate is suspended, pursuant to subsection (1) of this section, it shall be automatically reinstated at the end of the specified period of suspension. A suspension imposed by the commission may be for nonconsecutive days.

(4) If a certified miner is placed on probation, the Mine Safety Review Commission may impose the terms of the probation, and it may impose penalties for the violation of the terms of probation, in accordance with KRS 351.025(1)(a) and subsection (1) of this section. If the certified miner satisfies the terms of his probation, the probation shall automatically expire at the end of the probationary period.

(5) If a certified miner, who has been adjudicated by the Mine Safety Review Commission to have committed a first or subsequent offense, holds more than one (1) certificate, the commission may revoke, suspend, or probate some or all of the miner's certificates.

(6)(a) A certified miner, who has been adjudicated by the Mine Safety Review Commission to have committed a first or

subsequent offense, and who is hourly and not a foreman, may request the commission to consider whether the miner:

1. Was ordered by a foreman or other superior to commit a violation; or

2. Acted solely on his own accord.

(b) If requested by the miner, the commission shall take into consideration the factors in paragraph (a) of this subsection when determining the penalty.

(c) If the commission determines that the miner was ordered by a foreman to violate the mine safety law, the commission shall state whether and why that fact mitigated the severity of the penalty it imposed [If a certified miner, who has been adjudicated by the Mine Safety Review Commission to have committed a first or subsequent offense, is an hourly employee and not a foreman, in determining the penalty for the miner, the commission shall determine and state in its decision whether the miner was ordered by a foreman or other superior to violate the mine safety law in question, or whether the miner acted solely on his own accord, if the miner raises that issue. If the commission determines that the miner was ordered by a foreman to violate the mine safety law, the commission shall state whether and why that fact mitigated the severity of the penalty it imposed].

CHARLES G. SNAVELY, Secretary

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ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Safety
(As Amended at ARRS, December 12, 2017)

805 KAR 8:040. Criteria for the imposition and enforcement of sanctions against owners and part-owners of licensed premises.

RELATES TO: KRS 13B.090, 351.1041, 351.120, 351.194, 352.010-352.540[352.550]

STATUTORY AUTHORITY: KRS 351.025(1)(b), 351.070(13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070(13) authorizes the Secretary of the Energy and Environment Cabinet [Commissioner of the Department for Natural Resources] [Department of Mines and Minerals] to promulgate administrative regulations he deems necessary and suitable for the proper administration of KRS Chapter 351[351.090 to 351.9901]. KRS 351.025(1)(b) requires the Department for Natural Resources [Department of Mines and Minerals] to promulgate administrative regulations that establish comprehensive criteria for the imposition and enforcement of sanctions against owners and part-owners of licensed premises whose intentional violation of, or order to violate, mine safety laws places miners in imminent danger of serious injury or death. This administrative regulation establishes the criteria for the imposition of civil monetary penalties and other consequences upon an adjudication by the Mine Safety Review Commission that an owner or part-owner of a licensed premises has committed this type of violation.

Section 1. (1) If an owner or part-owner of a licensed premises commits a first offense, as adjudicated by the Kentucky Mine Safety Review Commission, the commission may impose a civil monetary penalty against the owner or part-owner of not less than \$2,500 and not more than \$10,000.

(2) If an owner or part-owner of a licensed premises applies for a foreman's certificate, an inspector's certificate, or any other certificate under KRS Chapter 351 and Chapter 352 [Kentucky's mining laws], subsequent to a first offense adjudication by the Mine Safety Review Commission that he intentionally violated, or

ordered another person to violate, a mine safety law which placed a miner in imminent danger of serious injury or death, the Division of Mine Safety [Kentucky Mining Board] shall consider that adverse adjudication during its consideration of the individual's application. The Division of Mine Safety [Mining Board] may grant or deny the application in accordance with KRS Chapter 351 and the administrative regulations promulgated under that chapter.

(3) If an owner or part-owner of a licensed premises applies for a license to operate a coal mine in the Commonwealth of Kentucky subsequent to a first offense adjudication by the Mine Safety Review Commission that he intentionally violated, or ordered another person to violate, a mine safety law which placed a miner in imminent danger of serious injury or death, the Division of Mine Safety [Kentucky Department of Mines and Minerals] shall consider that adverse adjudication during its consideration of the application. The Division of Mine Safety [department] may grant or deny the application in accordance with KRS Chapter 351 and the administrative regulations promulgated under that chapter.

(4) If an owner or part-owner of a licensed premises commits a second offense, as adjudicated by the Kentucky Mine Safety Review Commission, the commission may impose a civil monetary penalty against the owner or part-owner of not less than \$5,000 and not more than \$10,000.

(5) If an owner or part-owner of a licensed premises applies for a foreman's certificate, an inspector's certificate, or any other certificate under KRS Chapter 351 and Chapter 352 [Kentucky's mining laws], subsequent to a second offense adjudication by the Mine Safety Review Commission that he intentionally violated, or ordered another person to violate, a mine safety law which placed a miner in imminent danger of serious injury or death, the Division of Mine Safety [Kentucky Mining Board] shall consider that adverse adjudication during its consideration of the individual's application. After that second offense adjudication, there shall be a rebuttable presumption that the applicant is not suitable to be certified in the Commonwealth of Kentucky, and the applicant shall appear at a hearing before the Mine Safety Review Commission [Mining Board] and present evidence as to his suitability. The applicant shall bear the burden of proof in the proceeding, in accordance with KRS 13B.090(7). The Division of Mine Safety [Mining Board] may grant or deny the application in accordance with KRS Chapter 351 and the administrative regulations promulgated under that chapter.

(6) If an owner or part-owner of a licensed premises applies for a license to operate a coal mine in the Commonwealth of Kentucky subsequent to a second offense adjudication by the Mine Safety Review Commission that he intentionally violated, or ordered another person to violate, a mine safety law which placed a miner in imminent danger of serious injury or death, the Division of Mine Safety [Kentucky Department of Mines and Minerals] shall consider that adverse adjudication during its consideration of the application. After that second offense adjudication, there shall be a rebuttable presumption that the applicant is not suitable to hold a mine license in the Commonwealth of Kentucky, and the applicant shall appear at a hearing before the Mine Safety Review Commission [department] and present evidence as to his suitability. The applicant shall bear the burden of proof in the proceeding, in accordance with KRS 13B.090(7). The division [department] may grant or deny the application in accordance with KRS Chapter 351 and the administrative regulations promulgated under that chapter.

(7) If an owner or part-owner of a licensed premises commits a third offense, as adjudicated by the Kentucky Mine Safety Review Commission, the commission may impose a civil monetary penalty against the owner or part-owner of not less than \$7,500 and not more than \$10,000.

(8) Upon the adjudication by the Mine Safety Review Commission of a third offense committed by an owner or part-owner of a licensed premises, whether those offenses were committed at the same mine or at more than one (1) mine, the owner or part-owner shall not be eligible to obtain or hold any mine certificate or mine license within the Commonwealth of Kentucky.

(9) Penalties against owners or part-owners of licensed

premises, imposed pursuant to subsection (1), (4), or (7) of this section, shall[may] only be imposed for the individual acts of the owner or part-owner, not for the acts of another.

(10) If an owner or part-owner of a licensed premises is also a certified miner at the time of committing his first or second offense, the Mine Safety Review Commission may additionally impose on that owner or part-owner any nonmonetary penalties applicable to certified miners pursuant to 805 KAR 8:030.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

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**ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Safety
(As Amended at ARRS, December 12, 2017)**

805 KAR 8:050. Criteria for the imposition and enforcement of sanctions against noncertified personnel.

RELATES TO: KRS 13B.090, 351.1041, 351.194, 352.010-352.540 [352.550]

STATUTORY AUTHORITY: KRS 351.025(1)(c), 351.070(13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070(13) authorizes the Secretary of the Energy and Environment Cabinet[Commissioner of the Department for Natural Resources][Department of Mines and Minerals] to promulgate administrative regulations he deems necessary and suitable for the proper administration of KRS Chapter 351[351.090 to 351.9901]. KRS 351.025(1)(c) requires the Department for Natural Resources[Department of Mines and Minerals] to promulgate administrative regulations that establish comprehensive criteria for the imposition and enforcement of sanctions against noncertified personnel whose intentional violation of, or order to violate, mine safety laws places miners in imminent danger of serious injury or death. This administrative regulation establishes the criteria for the imposition of civil monetary fines and other consequences upon an adjudication by the Mine Safety Review Commission that a noncertified person has committed this type of violation.

Section 1. (1) If a noncertified person commits a first offense, as adjudicated by the Kentucky Mine Safety Review Commission, the commission may impose a civil monetary fine, in accordance with KRS 351.025(1)(c)[against the noncertified person equivalent to the value of the wages received by that person for up to ten (10) working days].

(2) If a noncertified person applies for a foreman's certificate, an inspector's certificate, or any other certificate under KRS Chapter 351 and Chapter 352[Kentucky's mining laws], subsequent to a first offense adjudication by the Mine Safety Review Commission that he intentionally violated, or ordered another person to violate, a mine safety law which placed a miner in imminent danger of serious injury or death, the Division of Mine Safety[Kentucky Mining Board] shall consider that adverse adjudication during its consideration of the individual's application. The Division of Mine Safety[Mining Board] may grant or deny the application in accordance with KRS Chapter 351 and the administrative regulations promulgated under that chapter.

(3) If a noncertified person applies for a foreman's certificate, an inspector's certificate, or any other certificate under KRS Chapter 351 and Chapter 352[Kentucky's mining laws], subsequent to a second offense adjudication by the Mine Safety Review Commission that he intentionally violated, or ordered another person to violate, a mine safety law which placed a miner in imminent danger of serious injury or death, the Division of Mine Safety[Kentucky Mining Board] shall consider that adverse adjudication during its consideration of the individual's application.

After that second offense adjudication, there shall be a rebuttable presumption that the applicant is not suitable to be certified in the Commonwealth of Kentucky, and the applicant shall appear at a hearing before the Mine Safety Review Commission[Mining Board] and present evidence as to his suitability. The applicant shall bear the burden of proof in the proceeding, in accordance with KRS 13B.090(7). The Division of Mine Safety[Mining Board] may grant or deny the application in accordance with KRS Chapter 351 and the administrative regulations promulgated under that chapter.

(4) Upon the adjudication by the Mine Safety Review Commission of a third offense committed by a noncertified person, that person shall not be eligible to obtain or hold any mine certification within the Commonwealth of Kentucky.

(5) A noncertified person who is also an owner or part-owner of a licensed premises shall be penalized under the provisions applicable to owners and part-owners, pursuant to 805 KAR 8:040, rather than under the provisions applicable to noncertified personnel, pursuant to subsections (1) through (4) of this section.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

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**PUBLIC PROTECTION CABINET
Kentucky Department of Insurance
(As Amended at ARRS, December 12, 2017)**

806 KAR 39:030. Kentucky No-Fault Rejection Form.

RELATES TO: KRS 304.39-060

STATUTORY AUTHORITY: KRS 304.2-110, 304.39-300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the commissioner of the Department[Executive Director] of Insurance may promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. KRS 304.39-060 requires the Department[Office] of Insurance to prescribe a form whereby any person may reject limitations on his or her tort rights and liabilities. This administrative regulation establishes the Kentucky No-Fault Rejection Form["Kentucky No-fault Rejection Form"] and provides for its electronic submission[its use].

Section 1. Rejection. Any person may refuse to consent to the limitation of his or her tort rights and liabilities by filing with the Department[Office] of Insurance a Kentucky No-Fault Rejection Form. ["Kentucky No-fault Rejection Form". The "Kentucky No-fault Rejection Form" shall contain an advisory providing information as to no-fault benefits and the effects of rejection, so each person may make an informed decision as to rejecting no-fault benefits.]

Section 2. Submitting the Kentucky No-Fault Rejection Form. (1) Members of the same household may indicate[their] rejections on the same form, but each household member[individual] shall execute the form on his or her own behalf unless[he is] under legal disability, or a minor under eighteen (18) years of age. The policyholder shall;

(a) Mail[send] the original and one (1) copy of the form to the Department[Office] of Insurance; or

(b) Submit the form electronically using the online version of the "Kentucky No-Fault Rejection Form," available on the department's Web site at http://insurance.ky.gov/Department Web site.

(2) Upon receipt of the properly completed form[forms], the department[Office of Insurance] shall provide the policyholder a file-stamped electronic or hard copy for his or her records[stamp the copy with the date filed and return it to the policyholder for his or her records].

(3) A rejection is effective upon the date of filing with the

department[of Insurance] as indicated by the department file stamp and remains effective unless[revoked by submission of revocation of the rejection on the form made a part of this administrative regulation, or is] superseded by the filing of a subsequent rejection form.

(4) A rejection may be revoked by submitting a Kentucky No-Fault Rejection Form and selecting the revocation option.

Section 3. Legal Disability or a minor. Where a guardian or conservator[committee] has been appointed for a person under a legal disability,[in order to reject,] the guardian or conservator[committee] shall execute the rejection form on behalf of the person[ward]. A rejection for a minor under eighteen (18) years of age shall be executed by a parent, if there is no guardian or conservator.[A rejection for a minor under eighteen (18) years of age must be executed by a parent, if there is no guardian or committee]. A rejection executed by a parent, guardian, or conservator[parent or guardian] is valid only so long as the individual is under legal disability, which includes a minor under eighteen (18) years of age.

Section 4. Notice to insurer. Each policyholder or insured[of an automobile liability insurance policy] submitting the Kentucky No-Fault Rejection Form shall send to his or her insurance company a file stamped copy of any rejection form filed with the Department[Office] of Insurance[involving any member of his household who is not a policyholder].

Section 5. Incorporation by Reference. (1) NF-1(a)(b)(c) P and C, "Kentucky No-Fault Rejection Form" (12/09/17)[(09/00)], is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Department[Office] of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Department[Office] of Insurance Web site: <http://insurance.ky.gov>[http://doi.ppr.ky.gov/kentucky/].

NANCY G. ATKINS, Commissioner
DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: October 13, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(As Amended at ARRS, December 12, 2017)

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

RELATES TO: KRS 205.560, 205.565, 210.370-210.485, 311.840, 42 C.F.R. 400.203, Part 414, 438.2, 440.50, 447.10, 447.200-447.205, 447.325[447-Subpart B], 42 U.S.C. 1395m, 1395w-4, 1395x(t)(1), 1396a, 1396b, 1396c, 1396d, 1396s

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds[for the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes the method of reimbursement for physicians' services by the Medicaid Program.

Section 1. Definitions. (1) "Add-on code" or "add-on service" means a service designated by a specific CPT code that[which]

may be used in conjunction with another CPT code to denote that an adjunctive service has been performed.

(2) "Assistant surgeon" means a physician who attends and acts as an auxiliary to a physician performing a surgical procedure.

(3) "Community mental health center" means a facility that meets the community mental health center requirements established in 902 KAR 20:091[provides a comprehensive range of mental health services to Medicaid recipients of a designated area in accordance with KRS 210.370 to 210.485].

(4) ["Average wholesale price" or "AWP" means the average wholesale price published in a nationally-recognized comprehensive drug data file for which the department has contracted.

(4) "Biological" means the definition of "biologicals" pursuant to 42 U.S.C. 1395x(t)(1).

(5) "CPT code" means a code used for reporting procedures and services performed by physicians and published annually by the American Medical Association in Current Procedural Terminology.

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

(6) "Direct physician contact" means that the billing physician is physically present with and evaluates, examines, treats, or diagnoses the recipient.

(7) "Drug" means the definition of "drugs" pursuant to 42 U.S.C. 1395x(t)(1).

(8) "Federal financial participation" is defined by 42 C.F.R. 400.203["Established patient" means one who has received professional services from the provider within the past three (3) year period].

(9) "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.

(10) "Healthcare common procedure coding system" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.

(11) "Incidental" means that a medical procedure;

(a) Is performed at the same time as a primary procedure; and
(b) 1.;

(a) Requires little[few] additional[physician] resources; or
2. [(b)] Is clinically integral to the performance of the primary procedure.

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

(13) [(42)] "Locum tenens physician" means a substitute physician:

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

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

(14) [(43)] "Major surgery" means a surgical procedure assigned a ninety (90) day global period.

(15) "Managed care organization" means an entity for which the department has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

(16) [(44)] "Medicaid Physician Fee Schedule" means a list, located at <http://chfs.ky.gov/dms>, that:

(a) Contains the[of] current reimbursement rates for physician services established by the department in accordance with [Section 3-ef] this administrative regulation; and

(b) Is updated at least quarterly to coincide with the quarterly updates made by the Centers for Medicare and Medicaid Services as required by 42 U.S.C. 1395m and 1395w-4 and 42 C.F.R. Part 414.

(17) "Medical direction" means a service provided:

(a) Under direct orders from a physician who is:

1. Not physically present with the recipient during the provision of the service; and

2. Communicating with the service provider during the provision of the service; or

(b) Based on a set of written instructions from a physician who

is not physically present with the recipient during the provision of the service.

(18)[(15)] "Minor surgery" means a surgical procedure assigned a ten (10) day global period.

(19)[(16)] "Modifier" means a reporting indicator used in conjunction with a CPT code to denote that a medical service or procedure that has been performed has been altered by a specific circumstance while remaining unchanged in its definition or CPT code.

(20)[(17)] "Mutually exclusive" means that two (2) procedures:

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

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

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

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

(21) "Pediatric teaching hospital" is defined by KRS 205.565(1).

(22) "Physician administered drug" or "PAD" means any rebatable covered out-patient 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.

(23)[(18)] "Physician assistant" is defined by[in] KRS 311.840(3).

(24)[(19)] "Physician group practice" means two (2) or more licensed physicians who have enrolled both individually and as a group and share the same Medicaid group provider number.

(20)] "Professional component" means the physician service component of a service or procedure that has both a physician service component and a technical component.

(25) "Provider group" means a group of at least[:

(a)] two (2) individually licensed physicians who:

(a)[1.] Are enrolled with the Medicaid Program individually and as a group; and

(b)[2.] Share the same Medicaid provider number[; or

(b) One (1) physician and at least one (1) APRN who:

1. Are enrolled with the Medicaid Program individually and as a group; and

2. Share the same Medicaid provider number[.

(26)[(24)] "Relative value unit" or "RVU" means the Medicare-established value assigned to a CPT code that[which] takes into consideration the physician's work, practice expense, and liability insurance.

(27)[(22)] "Resource-based relative value scale" or "RBRVS" means the product of the relative value unit (RVU) and a resource-based dollar conversion factor.

(28) "State university teaching hospital" means:

(a) A hospital that is owned or operated by a Kentucky state-supported university with a medical school; or

(b) A hospital:

1. In which three (3) or more departments or major divisions of the University of Kentucky or University of Louisville medical school are physically located and that are used as the primary (greater than fifty (50) percent) medical teaching facility for the medical students at the University of Kentucky or the University of Louisville; and

2. That does not possess only a residency program or rotation agreement.

(29)[(23)] "Technical component" means the part of a medical procedure performed by a technician, inclusive of all equipment, supplies, and drugs used to perform the procedure.

(30)[(24)] "Usual and customary charge" means the uniform amount that[which] a physician charges the general public in the majority of cases for a specific medical procedure or service.

Section 2. Standard Reimbursement. (1) Reimbursement for a

covered service shall be made to:

(a) The individual participating physician who provided the covered service; or

(b) The[A] physician;

1. In a provider group[practice] enrolled in the Kentucky Medicaid Program; and

2. Who provided the covered service.

(2) Except as provided in subsection (3) of this section and Sections 3 through 10 of this administrative regulation[subsections (3) to (9) of this section], reimbursement for a covered service shall be the lesser of:

(a) The physician's usual and customary charge; or

(b) The amount specified in the Medicaid Physician Fee Schedule established in accordance with[Section 3—of] this administrative regulation.

(3) If there is not an established fee for a listed service in the Medicaid Physician Fee Schedule, the reimbursement shall be forty-five (45) percent of the usual and customary billed charge.

Section 3. Rates Established Using a Relative Value Unit and a Dollar Conversion Factor.

(1) Except for a service specified in Sections 4 through 9 of this administrative regulation:

(a) The rate for a non-anesthesia related covered service shall be established by multiplying RVU by a dollar conversion factor to obtain the RBRVS maximum amount specified in the Medicaid Physician Fee Schedule; and

(b) The rate for a covered anesthesia service shall be established by multiplying the dollar conversion factor (designated as X) by the sum of each specific procedure code RVU (designated as Y) plus the number of units spent on that specific procedure (designated as Z). A unit shall equal a fifteen (15) minute increment of time.

(2) The dollar conversion factor shall be:

(a) Fifteen (15) dollars and twenty (20) cents for a nondelivery related anesthesia service; or

(b) Twenty-nine (29) dollars and sixty-seven (67) cents for all non-anesthesia related services.

Section 4. Medicare Part B Covered Services.[(4)] Reimbursement for a service covered under Medicare Part B shall be made in accordance with 907 KAR 1:006, Section 3.

Section 5. Services with a Modifier.[(5) If cost-sharing is required for a service to a recipient, the cost-sharing provisions established in 907-KAR-1:604 shall apply.

(6)] Reimbursement for a service denoted by a modifier used in conjunction with a CPT code shall be established in this section.

(1) A service reported with a two (2) digit modifier of "51" shall be reimbursed at fifty (50) percent of the fee listed on the Medicaid Physician Fee Schedule for the service.

(2)] follows:

(a) second anesthesia service provided by a provider to a recipient on the same date of service and reported by the addition of the two (2) digit modifier twenty-three (23) shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable CPT code;

(b)] A professional component of a service reported by the addition of the two (2) digit modifier "26" [twenty-six (26)] shall be reimbursed at the product of:

(a)] [4-] The Medicare value assigned to the physician's work; and

(b)] [2-] The dollar conversion factor specified in Section 3(2) of this administrative regulation.

(3)] [-(c)] A technical component of a service reported by the addition of the two (2) letter modifier "TC" shall be reimbursed at the product of:

(a)] [4-] The Medicare value assigned to the practice expense involved in the performance of the procedure; and

(b)] [2-] The dollar conversion factor specified in Section 3(2) of this administrative regulation.

(4)] [-(d)] A bilateral procedure reported by the addition of the two (2) digit modifier "50" [fifty (50)] shall be reimbursed at 150

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percent of the amount assigned to the CPT code.

~~(5) [(e)]~~ An assistant surgeon procedure reported by the addition of the two (2) digit modifier "80" [eighty ~~(80)~~] shall be reimbursed at sixteen (16) percent of the allowable fee for the primary surgeon.

~~(6) [(f)]~~ A procedure performed by a physician acting as a locum tenens physician for a Medicaid-participating physician reported by the addition of the two (2) character modifier "Q6" [Q six ~~(6)~~] shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable CPT code.

~~(7) [(g)]~~

~~(g)~~ An evaluation and management telehealth consultation service provided by a telehealth provider or telehealth practitioner [consulting medical specialist] in accordance with 907 KAR 3:170 and reported by the two (2) letter modifier "GT" shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable evaluation and management CPT code.

~~(8) [(h)]~~ and

~~(h)~~ A level II national [HCPCS ~~(h)~~] healthcare common procedure coding system [modifier] designating a location on the body shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable code.

Section 6. Laboratory, Venipuncture, and Catheter. (1) [(7)] Except for a service specified in paragraph [paragraphs] (a) or (b) of this subsection, a physician laboratory service shall be reimbursed in accordance with 907 KAR 1:028.

(a) Charges for a laboratory test performed by dipstick or reagent strip or tablet in a physician's office shall be included in the office visit charge.

(b) A routine venipuncture procedure shall not be separately reimbursed if submitted with a charge for an office, hospital, or emergency room visit or in addition to a laboratory test.

~~(2) [(8)]~~ Reimbursement for placement of a central venous, arterial, or subclavian catheter shall be:

(a) Included in the fee for the anesthesia if performed by the anesthesiologist;

(b) Included in the fee for the surgery if performed by the surgeon; or

(c) Included in the fee for an office, hospital, or emergency room visit if performed by the same provider.

(3) A laboratory test performed with microscopy shall be reimbursed separately from an evaluation and management CPT code.

Section 7. Delivery-Related Anesthesia, Anesthesia Add-On Services, Oral Surgery-Related Anesthesia, and Anesthesia Under Medical Direction. (1) The department shall reimburse as follows for the following delivery-related anesthesia services:

(a) For a vaginal delivery, the lesser of:

1. \$215; or

2. The actual billed charge;

(b) For a cesarean section, the lesser of:

1. \$335; or

2. The actual billed charge;

(c) For neuroxial labor anesthesia for a vaginal delivery or cesarean section, the lesser of:

1. \$350; or

2. The actual billed charge;

(d) For an additional anesthesia for cesarean delivery following neuroxial labor anesthesia for vaginal delivery, the lesser of:

1. Twenty-five (25) dollars; or

2. The actual billed charge; or

(e) For an additional anesthesia for cesarean hysterectomy following neuroxial labor anesthesia, the lesser of:

1. Twenty-five (25) dollars; or

2. The actual billed charge.

(2) For an anesthesia add-on service provided to a recipient under the age of one (1) year or over the age of seventy (70) years, the department shall reimburse the lesser of:

(a) Twenty-five (25) dollars; or

(b) The actual billed charge.

(3) For deep sedation or general anesthesia relating to oral

surgery performed by an oral surgeon, the department shall reimburse the lesser of:

(a) \$150; or

(b) The actual billed charge.

(4) The department shall not reimburse for an anesthesia service if the claim for the service is submitted with a modifier indicating that a service of medical direction was performed.

Section 8. Vaccines. (1) The department shall reimburse administration of a:

(a) Pediatric vaccine to a recipient under the age of nineteen (19) years; or

(b) Flu vaccine to a recipient of any age.

(2)(a) The department shall reimburse for the cost of a vaccine administered to a recipient under nineteen (19) years of age, in addition to administration of the vaccine, for a vaccine that is:

1. Administered to the recipient by a physician; and

2. Not available free through the Vaccines for Children Program in accordance with 42 U.S.C. 1396s.

(b) The department shall not reimburse for the cost of a vaccine if the vaccine is available free through the Vaccines for Children Program in accordance with 42 U.S.C. 1396s.

Section 9. Physician Assistant. [(1)] Reimbursement for a service provided by a physician assistant shall be seventy-five (75) percent of the amount reimbursable to a physician in accordance with this administrative regulation. [(2) ~~Reimbursement for a covered service provided by a physician assistant shall be included in the facility reimbursement if the physician assistant is employed by a primary care center, federally qualified health center, federally qualified health center look-alike, rural health clinic, or community mental health center~~] [(9) The department shall reimburse a flat rate of seventy-two (72) dollars per office visit for an office visit beginning after 5 p.m. Monday through Friday or beginning after 12 p.m. on Saturday or anytime Sunday.

~~Section 3. Reimbursement Methodology.~~ (1) ~~Except for a service specified in subsections (3) through (7) of this section:~~

~~(a) The rate for a nonanesthesia related covered service shall be established by multiplying RVU by a dollar conversion factor to obtain the RBRVS maximum amount specified in the Medicaid Physician Fee Schedule; and~~

~~(b) The rate for a covered anesthesia service shall be established by multiplying the dollar conversion factor (designated as X) by the sum of each specific procedure code RVU (designated as Y) plus the number of units spent on that specific procedure (designated as Z). A unit shall equal a fifteen (15) minute increment of time.~~

~~(2) The dollar conversion factor shall be:~~

~~(a) Fifteen (15) dollars and twenty (20) cents for a nondelivery related anesthesia service; or~~

~~(b) Twenty-nine (29) dollars and sixty-seven (67) cents for all nonanesthesia related services.~~

~~(3) For the following services, reimbursement shall be the lesser of:~~

~~(a) The actual billed charge;~~

~~(b) A fixed fee of three (3) dollars and thirty (30) cents for:~~

~~1. Administration of a pediatric vaccine to a Medicaid recipient under the age of twenty-one (21); or~~

~~2. Administration of a flu vaccine;~~

~~(c) For delivery-related anesthesia services, a fixed rate described as follows:~~

~~1. Vaginal delivery, \$215;~~

~~2. Cesarean section, \$335;~~

~~3. Neuroxial labor anesthesia for a vaginal delivery or cesarean section, \$350;~~

~~4. Additional anesthesia for cesarean delivery following neuroxial labor anesthesia for vaginal delivery shall be twenty-five (25) dollars;~~

~~5. Additional anesthesia for cesarean hysterectomy following neuroxial labor anesthesia shall be twenty-five (25) dollars;~~

~~(d) A fixed rate of twenty-five (25) dollars for anesthesia add-on~~

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services provided to a recipient under age one (1) or over age seventy (70); or

(e) A fixed rate of \$150 for deep sedation or general anesthesia relating to oral surgery performed by an oral surgeon.

(4) Except as established in subsection (5) or (7)(c) of this section, the department shall reimburse the following drugs at the lesser of the average wholesale price (AWP) minus ten (10) percent of the actual bill charge, or the actual billed charge if the drug is administered in a physician's office.

(a) Rho (D) immune globulin injection;

(b) An injectable antineoplastic drug;

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

(d) Penicillin G benzathine injection;

(e) Ceftriaxone sodium injection;

(f) Intravenous immune globulin injection;

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

(h) An intrauterine contraceptive device;

(i) An implantable contraceptive device;

(j) Long-acting injectable risperidone; or

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

1. Is not typically self-administered;

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

and

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

(5) If long acting injectable risperidone is provided to an individual covered under both Medicaid and Medicare and administered by a physician employed by a community mental health center or other licensed medical professional employed by a community mental health center, the department shall provide reimbursement in an amount that is:

(a) The same rate it reimburses for these drugs provided to Medicaid recipient; and

(b) Reduced by the amount of the third party obligation.

(6) Reimbursement for a covered service provided by a physician assistant shall be:

(a) Made to the employing physician; or

(b) Included in the facility reimbursement if the physician assistant is employed by a primary care center, federally qualified health center, rural health clinic, or comprehensive care center.

(7)(a) Except for an item identified in paragraph (b) of this subsection or subsection (5) of this section, reimbursement for a service provided by a physician assistant shall be seventy-five (75) percent of the amount reimbursable to a physician in accordance with this section and Section 4 of this administrative regulation.

(b) Except as established in subsection (5) of this section, the department shall reimburse the following drugs at the lesser of the average wholesale price (AWP) minus ten (10) percent of the actual billed charge, if the drug is administered in a physician's office by a physician assistant:

1. Rho (D) immune globulin injection;

2. An injectable antineoplastic drug;

3. Medroxyprogesterone acetate for contraceptive use, 150 mg;

4. Penicillin G benzathine injection;

5. Ceftriaxone sodium injection;

6. Intravenous immune globulin injection;

7. Sodium hyaluronate or hylan G-F for intra-articular injection;

8. An intrauterine contraceptive device;

9. An implantable contraceptive device;

10. Long-acting injectable risperidone; or

11. An injectable, infused or inhaled drug or biological:

a. Is that not typically self-administered;

b. Is not excluded as a noncovered immunization or vaccine;

and

c. Requires special handling, storage, shipping, dosing or administration[.];

Section 10. Reimbursement Limits and Related Requirements.

(1)(a) Except for 4. Reimbursement Limitations. (1)(a) With the exception of] chemotherapy administration to a recipient under the

age of nineteen (19) years, reimbursement for an evaluation and management service with a corresponding CPT code of 99214 or 99215 shall be limited to two (2) per recipient per provider per calendar year[twelve (12) months].

(b) ~~A~~[Any] claim for an evaluation and management service with a corresponding CPT code of 99214 or 99215 submitted in excess of the limit established in paragraph (a) of this subsection shall be reimbursed as an evaluation and management service with a corresponding CPT code of 99213.

(c) A claim for an evaluation and management service of moderate or high complexity in excess of the limit established in paragraph (a) of this subsection shall be reimbursed at the Medicaid rate for the evaluation and management service representing medical decision making of low complexity.

(2) Reimbursement for an anesthesia service shall include:

(a) Preoperative and postoperative visits;

(b) Administration of the anesthetic;

(c) Administration of fluids and blood incidental to the anesthesia or surgery;

(d) Postoperative pain management until discharge from the recovery area;

(e) Preoperative, intraoperative, and postoperative monitoring services; and

(f) Insertion of arterial and venous catheters.

(3) With the exception of an anesthetic, contrast, or neurolytic solution, administration of a substance to a recipient by epidural or spinal injection for the control of chronic pain shall be limited to three (3):

(a) Injections per date of service; and

(b) Dates of service per six (6) month period[per recipient].

(4) If related to the surgery and provided by the physician who performs the surgery, reimbursement for a surgical procedure shall include the following:

(a) A preoperative service;

(b) An intraoperative service; and

(c) A postoperative service and follow-up care within:

1. Ninety (90) calendar days following the date of major surgery; or

2. Ten (10) calendar days following the date of minor surgery[; and

(d) A preoperative consultation performed within two (2) days of the date of the surgery].

(5) Reimbursement for the application of a cast or splint shall be in accordance with 907 KAR 1:104, Section 3(4)[limited to two (2) per ninety (90) day period for the same injury or condition].

(6)[Reimbursement for the application of a cast or splint associated with a surgical procedure shall be considered to include:

(a) A temporary cast or splint, if applied by the same physician who performed the surgical procedure;

(b) The initial cast or splint applied during or following the surgical procedure; and

(c) A replacement cast or splint needed as a result of the surgical procedure if:

1. Provided within ninety (90) days of the procedure by the same physician; and

2. Applied for the same injury or condition.

(7)] Multiple surgical procedures performed by a physician during the same operative session shall be reimbursed as follows:

(a) The major procedure, an add-on code, and other CPT codes approved by the department for billing with units shall be reimbursed in accordance with Section 3(1)(a) or (2)(b) of this administrative regulation; and

(b) The additional surgical procedure shall be reimbursed at fifty (50) percent of the amount determined in accordance with Section 3(1)(a) or (2)(b) of this administrative regulation.

(7)[(8)] When performed concurrently, separate reimbursement shall not be made for a procedure that has been determined by the department to be incidental, integral, or mutually exclusive to another procedure.

(8) The department shall not reimburse for an evaluation and management CPT code unless:

(a) Direct physician contact occurred during the visit; or

(b) Direct physician contact is not required in accordance with 907 KAR 3:005, Section 3(2).

Section 11. Other Provider Preventable Conditions. In accordance with 907 KAR 14:005, the department shall not reimburse for other provider preventable conditions[~~(9) Reimbursement shall not be made for the cost of a vaccine that is administered by a physician~~].

Section 12[5]. Supplemental Payments. (1) In addition to a reimbursement made pursuant to Sections 2 through 10[4] of this administrative regulation, the department shall make a supplemental payment to a medical school faculty physician;

(a) Who:

1. Is licensed to practice medicine or osteopathy in Kentucky;
2. Is enrolled in the Kentucky Medicaid program in accordance with 907 KAR 1:672;

3. Is participating in the Kentucky Medicaid program in accordance with 907 KAR 1:671;

4. Is employed by a state university teaching hospital, ~~afor~~ pediatric teaching hospital, or a state university school of medicine that is part of a university health care system; and

5. Agrees to assign his or her Medicaid reimbursement, in accordance with 42 C.F.R. 447.10, to the state university ~~entity~~teaching hospital or pediatric teaching hospital with whom the physician is employed; and

(b) For services provided:

1. Directly by the medical school faculty physician; or
2. By a resident working under the supervision of the medical school faculty physician~~employed by a state-supported school of medicine that is part of a university health care system that includes a:~~

(a) Teaching hospital; and

(b) Pediatric teaching hospital.

(2) A supplemental payment plus other reimbursements made in accordance with this administrative regulation shall:

(a) Not exceed the physician's charge for the service provided; and

(b) ~~shall~~ Be paid directly or indirectly to the medical school.

(3) A supplemental payment made in accordance with this section shall be:

(a) Based on the funding made available through an intergovernmental transfer of funds for this purpose by a state-supported school of medicine meeting the criteria established in subsection (1) of this section;

(b) Consistent with the requirements of 42 C.F.R. 447.325; and

(c) Made on a quarterly basis.

Section 13. The department shall reimburse for physician administered drugs in accordance with 907 KAR 23:020.

Section 14. Not Applicable to Managed Care Organizations. (1) A managed care organization may elect to reimburse the same amount for physician services as the department does.

(2) A managed care organization shall not be required to reimburse the same amount as established in this administrative regulation for a physician service reimbursed by the department via this administrative regulation.

Section 15. Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

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

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

Section 16[6]. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid recipient based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR

1:560.

(3) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 12, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

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**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(As Amended at ARRS, December 12, 2017)**

921 KAR 3:045. Issuance procedures.

RELATES TO: 7 C.F.R. 274.2, 274.4, 274.5, 274.6

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4, 274.1

NECESSITY, FUNCTION, AND CONFORMITY: 7 C.F.R. 271.4 requires the Cabinet for Health and Family Services to administer a Supplemental Nutrition Assistance Program (SNAP) within the state. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. The cabinet shall follow procedures established in 7 C.F.R. 274.1 in the operation of an electronic benefit transfer or "EBT" system. This administrative regulation establishes issuance procedures used by the cabinet in the administration of SNAP.

Section 1. Basic Issuance Requirements. (1) The cabinet shall be responsible for the timely and accurate issuance of benefits to eligible households.

(2) In issuing benefits, the cabinet shall insure that:

(a) Only certified households receive benefits;

(b) Program benefits shall be distributed in the correct amounts; and

(c) Benefit issuance and reconciliation activities shall be properly conducted and accurately reported to the Food and Nutrition Service (FNS).

(3) The cabinet shall advise the recipient at time of application that:

~~(a) Unused~~(a) After twelve (12) months of EBT account inactivity, unused benefits shall be expunged in accordance with Section 6 of this administrative regulation; and

(b) Expunged benefits shall be:

1. Applied for benefit overpayments in accordance with 921 KAR 3:050; or

2. Returned to the FNS of the U.S. Department of Agriculture.

(4) The cabinet shall maintain issuance records for a period of three (3) years from the month of origin.

Section 2. Benefit Delivery. (1) Benefits shall be provided to an eligible household through an EBT system.

(2) An EBT card and instructions for use shall be mailed:

(a) Directly to each eligible household; or

(b) To the local office for pick up, if requested by the household.

Section 3. Benefit Availability. (1) Benefits shall be available to a household the day after an approval is processed, if the case is a:

(a) New application;

(b) Reapplication; or

(c) Recertification that is:

1. Initiated after the 15th day of the month; and

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2. Approved during the benefit month.

(2) An ongoing case shall have benefits credited to the EBT account and available to the household within the first nineteen (19) days of the benefit month.

Section 4. EBT Card Replacement. (1) The cabinet shall provide a replacement EBT card to a household within five (5) days, if the EBT card is reported:

- (a) Lost;
- (b) Stolen; or
- (c) Damaged.

(2) An EBT card shall be deactivated if a household reports the need for card replacement.

Section 5. Benefit Replacement. (1) After the household receives an EBT card, if the EBT card is lost or stolen and the EBT account is reduced, the cabinet shall not provide replacement benefits.

(2) If food purchased with SNAP benefits is destroyed in a household misfortune, the cabinet shall provide replacement benefits if:

- (a) The loss is reported:
 - 1. Orally or in writing; and
 - 2. Within ten (10) days of the household misfortune; and
- (b) A household member or authorized representative signs a statement attesting to the loss.

(3) If the household is eligible for replacement benefits, the replacement shall equal:

- (a) The amount of the loss to the household, not to exceed the maximum of one (1) month's benefits for the household requesting replacement; or
- (b) Up to the full value of the benefits, if the replacement includes restored benefits.

(4) The cabinet shall not provide a replacement due to a household misfortune if:

- (a) A disaster declaration has been issued by FNS; and
- (b) The household is eligible for disaster SNAP benefits.

(5) There shall not be a limit on the number of benefit replacements for food:

- (a) Purchased with SNAP benefits; and
- (b) Destroyed in a household misfortune.

(6) If available documentation indicates that a household's request for benefit replacement appears fraudulent, the cabinet shall:

- (a) 1. Deny the replacement; or
- 2. Delay the replacement; and
- (b) Inform the household:

1. Of its right to a fair hearing to contest the denial or delay of a replacement; and

2. That a replacement shall not be made while the denial or delay is being appealed.

Section 6. Account Inactivity. (1) If an EBT account has not been debited in twelve (12) consecutive months, the cabinet shall:

(a) Expunge a monthly benefit on a monthly basis as each individual benefit month reaches a date that is twelve (12) months in the past; and

- (b) Notify the household in writing:
 - 1. That the household's EBT account has not been debited in the last twelve (12) months; and
 - 2. Of the amount of SNAP benefits that have been expunged.

(2) If a recipient debits the EBT account, the expungement process shall cease.

(3) When the cabinet receives an official death notice or confirms a death match from an official source for a SNAP single-person household, the cabinet shall expunge the remaining benefit amount in accordance with correspondence from the United States Department of Agriculture dated August 23, 2017.

(4) [(3)] Expunged benefits shall not be retrieved.

Section 7. Incorporation by Reference. (1) The "Correspondence from United States Department of Agriculture dated August 23, 2017", 8/23/2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, KY 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ADRIA JOHNSON, Commissioner
VICKIE YATES BROWN GLISSON, Secretary
APPROVED BY AGENCY: October 3, 2017
FILED WITH LRC: October 4, 2017 at 4 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

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Comments)

401 KAR 59:015. New indirect heat exchangers.

RELATES TO: KRS 224.10, 40 C.F.R. Part 60, Subparts D, Da, Db, Dc, Appendices A, [and] B, Part 63, Subparts DDDDD, UUUUU, JJJJJ

STATUTORY AUTHORITY: KRS 224.10-100(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation **establishes requirements[provides]** for the control of emissions from new indirect heat exchangers.

Section 1. Definitions. (1) "Affected facility" means an indirect heat exchanger having a heat input capacity greater than one (1) million BTU per hour (MMBTU/hr).

(2) "~~CEMS~~" means ~~continuous emissions monitoring system~~.

(3) "Classification date" means:

(a) August 17, 1971, for an affected facility with a capacity greater than 250 MMBTU/hr [(MMBTU/hr)] heat input; and:

1. For particulate emissions;
2. For sulfur dioxide emissions; and
3. For nitrogen oxide emissions, if fuels other than lignite are burned;

(b) April 9, 1972, for an affected facility with a capacity of 250 MMBTU/hr heat input or less.

(3) "Fuel" means any material combusted for the purpose of creating useful heat.

(4) "GCV" means ~~gross calorific value~~ [for particulate emissions and sulfur dioxide emissions; and

(c) December 22, 1976, for an affected facility with a capacity greater than 250 MMBTU/hr. heat input for nitrogen oxides if lignite fuel is burned.

(4) "~~COMS~~" means ~~continuous monitoring system for opacity~~.]

(5) "Indirect heat exchanger" means a piece of equipment, apparatus, or contrivance used for the combustion of fuel in which the energy produced is transferred to its point of usage through a medium that does not come in contact with or add to the products of combustion.

(6) "Shutdown period" means [the period]:

(a) For a source subject to 40 C.F.R. Part 63, Subpart DDDDD, UUUUU, or JJJJJ, the period defined as "shutdown" in:

1. 40 C.F.R. 63.7575;
2. 40 C.F.R. 63.10042; or
3. 40 C.F.R. 63.11237; or

(b) For a source not subject to 40 C.F.R. Part 63, Subpart DDDDD, UUUUU, or JJJJJ, the period [Beginning when, whichever occurs first]:

1. Beginning when whichever occurs first:

a. The affected facility no longer supplies useful thermal energy for heating, cooling, process purposes, or generation of electricity; or

b. [2.] Fuel is not being combusted in the affected facility; and

2. [(b)] Ending when:

a. [1.] The affected facility no longer supplies useful thermal energy for heating, cooling, process purposes, or generation of electricity; and

b. [2.] Fuel is not being combusted in the affected facility.

(7) "Startup period" means [the period]:

(a) For a source subject to 40 C.F.R. Part 63, Subpart DDDDD, UUUUU, or JJJJJ, the period defined as "startup" in:

1. 40 C.F.R. 63.7575;
2. 40 C.F.R. 63.10042; or
3. 40 C.F.R. 63.11237; or

(b) For a source not subject to 40 C.F.R. Part 63, Subpart DDDDD, UUUUU, or JJJJJ, the period [Beginning with either]:

1. Beginning with either:

a. The combustion of any fuel in an affected facility for the purpose of supplying useful thermal energy for heating, cooling, process purposes, or generation of electricity; or

b. [2.] The combustion of fuel in an affected facility for any purpose after a shutdown event; and

2. [(b)] Ending after the longest manufacturer-recommended time required to engage all control devices utilized by the affected facility applicable to the pollutant, not to exceed four (4) hours after any of the useful thermal energy from the affected facility is supplied for any purpose.

(8) "Useful thermal energy" means energy that meets the minimum operating temperature, flow, or pressure required by an energy use system that uses energy provided by the affected facility ["PM CEMS" means a particulate matter continuous emissions monitoring system].

Section 2. Applicability. (1) This administrative regulation shall apply to an affected facility [facilities] commenced on or after the applicable classification date.

(2) An affected facility subject to 40 C.F.R. 60.40 through [to] 60.46 (Subpart D),; 60.40Da through [to] 60.52Da (Subpart Da),; 60.40b through [to] 60.49b (Subpart Db),; or 60.40c through [to] 60.48c (Subpart Dc) shall be exempt from Sections 3 through 6 of this administrative regulation for each pollutant covered under this administrative regulation with a specific emission standard in the applicable New Source Performance Standard (NSPS) codified at 40 C.F.R. Part 60.

Section 3. Method for Determining Allowable Emission Rates.

(1) Except as established [provided] in subsection (3) of this section, the total rated heat input capacity of all affected facilities at a source, including those for which an application to construct, modify, or reconstruct has been submitted to the cabinet, shall be used as established [specified] in Sections 4 and 5 of this administrative regulation to determine the allowable emission rate in terms of lb/MMBTU [pounds per million BTU (lb/MMBTU)] heat input.

(2) The permitted allowable emissions rate of an affected facility shall not be changed due to inclusion or shutdown of another affected facility at the source.

(3) A source [Sources] may submit a request to [petition] the cabinet for approval of [to approve] an allowable emission rate apportioned independently from individual heat input pursuant to this subsection, as established in paragraphs (a) through (f) of this subsection. [follows:]

(a) The following equation shall be used to determine the allowable emissions rate:

$$F = (AB + DE) / C$$

, in which:

1. A = allowable emission rate (in lb/MMBTU heat input) determined pursuant to subsection (1) of this section;

2. B = total rated heat input (in MMBTU/hr) of all affected facilities at the source commenced on or after the applicable classification date, including those for which an application to construct, modify, or reconstruct has been submitted to the cabinet;

3. C = total rated heat input (in MMBTU/hr) of all affected facilities at the source, including those for which an application to construct, modify, or reconstruct has been submitted to the cabinet;

4. D = allowable emission rate (in lb/MMBTU heat input) determined pursuant to 401 KAR 61:015, Section 3(1);

5. E = total rated heat input (in MMBTU/hr) of all affected facilities at the source commenced before the applicable classification date; and

6. F = alternate allowable emission rate in lbs per actual

MMBTU heat input. [;]

(b) In determining an alternative allowable emission rate for sulfur dioxide, the formula established in paragraph (a) of this subsection shall utilize values for allowable emissions rates for an affected facility stated in terms of total rated heat input capacity based on the use of the same fuel category (solid, liquid, or gaseous fuel), which shall be determined by utilizing the formulas established in Section 5 of this administrative regulation.

(c) The total emissions in (lb/hr) from all affected facilities at the source subject to this administrative regulation divided by the total actual heat input (in MMBTU/hr) of the affected facilities shall not exceed the alternate allowable emission rate as determined in paragraph (a) of this subsection. [;]

(d) [(e)] A source operating an affected facility that is not subject to a federal NSPS codified at 40 C.F.R. Part 60 only because the affected facility commenced construction prior to the NSPS classification date, shall not allow emissions of the affected facility to exceed the allowable emission rate determined pursuant to Sections 4 and 5 of this administrative regulation. [;]

(e) [(f)] The source shall demonstrate compliance with this subsection by conducting a performance test pursuant to 401 KAR 50:045 for each affected facility subject to this administrative regulation. [; and]

(f) [(g)] The source shall demonstrate that compliance with this subsection shall be maintained on a continuous [eontinual] basis.

Section 4. Standard for Particulate Matter. Except as established [provided] in Sections [Section] 3(3) and 7 of this administrative regulation, an affected facility subject to this administrative regulation shall not cause emissions of particulate matter in excess of:

(1)(a) 0.56 lb/MMBTU actual heat input for sources with total heat input capacity totaling ten (10) MMBTU/hr or less for all affected facilities at the source;

(b) 0.10 lb/MMBTU actual heat input for sources with total heat input capacity totaling 250 MMBTU/hr or more for all affected facilities at the source; and

(c) 0.9634 multiplied by the quantity obtained by raising the total heat input capacity (in MMBTU/hr) to the -0.2356 power for sources with heat input values totaling greater than ten (10) MMBTU/hr and less than 250 MMBTU/hr for all affected facilities at the source; and

(2) Twenty (20) percent opacity, except:

(a) For a source [sources] with heat input capacity totaling 250 MMBTU/hr or more for all affected facilities at the source, a maximum of twenty-seven (27) percent opacity shall be allowed for one (1) six (6) minute period in any sixty (60) consecutive minutes;

(b) For a source [sources] with total heat input capacity of less than 250 MMBTU/hr for all affected facilities at the source, a maximum of forty (40) percent opacity shall be allowed for a maximum of six (6) consecutive minutes in any sixty (60) consecutive minutes during fire box cleaning or soot blowing; and

(c) For emissions from an affected facility caused by building a new fire, emissions during the period required to bring the boiler up to operating conditions shall be allowed, if the method used is recommended by the manufacturer and the time does not exceed the manufacturer's recommendations.

Section 5. Standard for Sulfur Dioxide. (1) Except as established [provided] in Sections [Section] 3(3) and 7 of this administrative regulation, an affected facility subject to this administrative regulation shall not cause emissions of gases that contain sulfur dioxide in excess of:

(a) For a source [sources] with heat input capacity totaling ten (10) MMBTU/hr or less for all affected facilities at the source:

1. Three and zero-tenths (3.0) lb/MMBTU actual heat input for combustion of liquid and gaseous fuels; and

2. Five and zero-tenths (5.0) lb/MMBTU actual heat input for combustion of solid fuels;

(b) For sources with heat input capacity totaling 250 MMBTU/hr or more for all affected facilities at the source:

1. Eight-tenths (0.8) lb/MMBTU actual heat input for combustion of liquid and gaseous fuels; and

2. One and two-tenths (1.2) lb/MMBTU actual heat input for combustion of solid fuels; and

(c) For a source [sources] with total heat input values greater than ten (10) MMBTU/hr and less than 250 MMBTU/hr for all affected facilities at the source, the standard, in lb/MMBTU actual heat input, shall be equal to:

1. For an affected facility combusting liquid fuels, the lesser of:

a. Three and zero-tenths (3.0) lb/MMBTU; or

b. The value of 7.7223 multiplied by the quantity obtained by raising to the -0.4106 power the total heat input capacity (in MMBTU/hr) of the affected facilities combusting liquid fuels;

2. For an affected facility combusting gaseous fuels, the lesser of:

a. Three and zero-tenths (3.0) lb/MMBTU; or

b. The value of 7.7223 multiplied by the quantity obtained by raising to the -0.4106 power the total heat input capacity (in MMBTU/hr) of the affected facilities combusting gaseous fuels; and

3. For an affected facility combusting solid fuels, the lesser of:

a. Five and zero-tenths (5.0) lb/MMBTU; or

b. The value of 13.8781 multiplied by the quantity obtained by raising to the -0.4434 power the total heat input capacity (in MMBTU/hr) of the affected facility [facilities] combusting solid fuels.

(2) For simultaneously combusting [burning] different fuels in combination, the applicable standard shall be determined by prorating BTUs pursuant to the following equation: Allowable sulfur dioxide emission in lb/MMBTU [hr. heat input] =

$$\frac{x(a) + y(b) + z(c)}{x + y + z}$$

[(y(a) + z(b))/(y + z)], in which:

(a) $x[y]$ = percent total heat input derived from liquid [or gaseous] fuel;

(b) $y[z]$ = percent total heat input derived from gaseous [solid] fuel;

(c) z = percent total heat input derived from solid fuel;

(d) a = allowable sulfur dioxide emission in lb/MMBTU [hr heat input] derived from liquid [or gaseous] fuel; [and]

(e) [(f)] b = allowable sulfur dioxide emission in lb/MMBTU [hr] derived from gaseous [solid] fuel; and

(f) c = allowable sulfur dioxide emission in lb/MMBTU derived from solid fuel.

(3) Compliance shall be based on the total heat input from all fuels combusted [burned].

Section 6. [Standard for Nitrogen Oxides. (1) An affected facility with heat input capacity of 250 MMBTU/hr or more shall not cause emissions of gases that contain nitrogen oxides expressed as nitrogen dioxide in excess of:

(a) 0.20 lb/MMBTU heat input (0.36 grams per million calories (g/MMCal)) derived from gaseous fuel;

(b) 0.30 lb/MMBTU heat input (0.54 g/MMCal) derived from liquid fuel;

(c) 0.70 lb/MMBTU heat input (1.26g/MMCal) derived from solid fuel except lignite;

(d) 0.60 lb/MMBTU heat input (1.08 g/MMCal) derived from lignite or lignite and wood residue except as provided in paragraph (e) of this subsection; and

(e) 0.80 lb/MMBTU derived from lignite that is mined in North Dakota, South Dakota, or Montana and that is burned in a cyclone-fired unit.

(2) Except as provided in subsections (3) and (4) of this section, if different fuels are burned simultaneously in any combination, the allowable nitrogen dioxide emission shall be prorated using the following equation: Allowable nitrogen dioxide emission in lb/MMBTU/hr heat input $(x(0.20) + y(0.30) + w(0.60)) + ((x + y + z + w))$ in which:

(a) x = percent of total heat input derived from gaseous fuel;

(b) y = percent of total heat input derived from liquid fuel;

(c) z = percent of total heat input derived from solid fuel (except lignite); and

(d) w = percent of total heat input derived from lignite.

(3) For fossil fuel containing at least twenty-five (25) percent by weight coal refuse burned in combination with gaseous, liquid, or other solid fossil fuel; wood residue; or biomass, the standard for

nitrogen oxides shall not apply.

(4) A cyclone-fired unit burning fuel containing at least twenty-five (25) percent lignite mined in North Dakota, South Dakota, or Montana shall be subject to subsection (1)(e) of this section for all types of fuel combusted in combination with the lignite.

Section 7. Emission and Fuel Monitoring. (1) Except as provided in subsection (2) of this section, sources shall install, calibrate, maintain, and operate a continuous monitoring system for measuring:

- (a) Opacity of emissions;
- (b) Sulfur dioxide emissions;
- (c) Nitrogen oxides emissions; and
- (d) Oxygen or carbon dioxide emissions.

(2) Subsection (1) of this section shall not apply as follows:

(a) For an affected facility burning only gaseous fuel, a continuous monitoring system for opacity (COMS) shall not be required.

(b) For an affected facility burning only natural gas, wood, wood residue, or biomass; or a combination of natural gas, wood, wood residue, or biomass, a continuous emissions monitoring system (CEMS) for sulfur dioxide emissions shall not be required.

(c) 1. For nitrogen oxides, installation of CEMS may be delayed until after the initial performance tests required by 401 KAR 59:005, Sections 2 and 4(2); and

2. If the initial performance test results show nitrogen oxide emissions:

a. Are less than seventy (70) percent of the applicable standard in Section 6 of this administrative regulation, CEMS for nitrogen oxides shall not be required; or

b. Are equal to or greater than seventy (70) percent of the applicable standard in Section 6 of this administrative regulation, the source shall install CEMS for nitrogen oxides within one (1) year after the date of the initial performance tests.

(d) For a source exempt from installing CEMS for sulfur oxides and nitrogen oxides pursuant to paragraphs (b) and (c) of this subsection, a continuous monitoring system for measuring oxygen or carbon dioxide shall not be required.

(e) For an affected facility not using a flue gas desulfurization device, CEMS for sulfur dioxide emissions shall not be required if the source monitors sulfur dioxide emissions by fuel sampling and analysis pursuant to subsection (5) of this section.

(3) For performance evaluations subject to 401 KAR 59:005, Section 4(3), and calibration checks subject to 401 KAR 59:005, Section 4(4):

(a) Reference Methods 6-6C or 7-7E, incorporated by reference in 401 KAR 50:015, as applicable, shall be used for conducting performance evaluations of CEMS for sulfur dioxide and nitrogen oxides;

(b) Sulfur dioxide or nitric oxide, as applicable, shall be used for preparing calibration gas mixtures pursuant to 40 C.F.R. Part 60, Appendix B, Performance Specification 2;

(c) The span value for a continuous monitoring system:

1. For an affected facility burning fossil fuels, shall be eighty (80), ninety (90), or 100 percent; and

2. For systems measuring sulfur oxides or nitrogen oxides, shall be determined pursuant to the following table:

DETERMINATION OF SPAN VALUE (in parts per million)		
Fossil Fuel	Span Value for Sulfur Dioxide	Span Value for Nitrogen Oxides
Gas	*	500
Liquid	1,000	500
Solid	1,500	500
Combinations	1,000y + 1,500z	500(x + y) + 1,000z

In which:

a. * shall indicate that a value shall not be applicable;

b. x = fraction of total heat input derived from gaseous fossil fuel;

c. y = fraction of total heat input derived from liquid fossil fuel; and

d. z = fraction of total heat input derived from solid fossil fuel;

(d) Span values computed pursuant to paragraph (c) of this subsection for burning combinations of fuels shall be rounded to the nearest 500 parts per million (ppm); and

(e) The source shall submit the proposed CEMS span value for cabinet approval pursuant to 40 C.F.R. 60.13(d) and this subsection, for all affected facilities that simultaneously burn fossil fuel and non-fossil fuel.

(4) For continuous monitoring systems installed pursuant to subsection (1) of this section, the following conversion procedures shall be used to convert the continuous monitoring data into units of the applicable requirement in nanograms/joule (ng/J) or lb/MMBTU:

(a) For continuous monitoring systems measuring oxygen, the pollutant concentration and oxygen concentration shall be measured on a consistent wet or dry basis as follows:

1. Procedures approved by the cabinet and the U. S. EPA pursuant to 40 C.F.R. Part 60, Appendix B, shall be used for wet-basis measurements; and

2. For dry-basis measurements, the following conversion procedure shall be used:

$E = (20.9CF)/(20.9 - \text{percent oxygen})$ in which E, C, F, and percent oxygen shall be determined pursuant to subsection (5) of this section; and

(b) For continuous monitoring systems measuring carbon dioxide, the pollutant concentration and carbon dioxide concentration shall be measured on a consistent wet or dry basis and the following conversion procedure shall be used: $E = (100 CF_c)/(\text{percent carbon dioxide})$, in which E, C, F_c, and percent carbon dioxide shall be determined pursuant to subsection (5) of this section.

(5) The values used in the equations in subsection (4)(a) and (b) of this section shall be derived as follows:

(a) E = pollutant emissions in grams per million calorie (g/MMCal) or lb/MMBTU;

(b) C = pollutant concentration in grams per dry cubic meter at standard conditions (g/dscm) or pounds per dry cubic feet at standard conditions (lb/dscf) determined by multiplying the average concentration (ppm) for each one (1) hour period by 0.0000415 M (g/dscm)/ppm or (lb/dscf)/ppm; multiplied by two and five-tenths (2.5) multiplied by ten (10) raised to the negative ninth (9) power; and multiplied by M (g/dscm)/ppm or (lb/dscf)/ppm in which M equals:

1. Pollutant molecular weight in grams per gram-mole (g/g-mole) or pounds/pound-mole (lb/lb-mole); or

2. 64.07 for sulfur dioxide and 46.01 for nitrogen oxides;

(c) F, F_c = a factor representing a ratio of the volume of dry flue gases generated to the calorific value of the fuel combusted (F), and a factor representing a ratio of the volume of carbon dioxide generated to the calorific value of the fuel combusted (F_c), respectively, pursuant to the applicable American Society for Testing and Materials (ASTM) standard from the Book of ASTM Standards incorporated by reference in 401 KAR 50:015 as follows:

1. For anthracite coal as classified according to ASTM D388-66(72), F equals 10,140 dscf/MMBTU and F_c equals 1,980 standard cubic feet (scf) CO₂/MMBTU;

2. For subbituminous and bituminous coal as classified according to ASTM D388-66(72), F equals 9,820 dscf/MMBTU and F_c equals 1,810 scf CO₂/MMBTU;

3. For liquid fossil fuels including crude, residual, and distillate oils, F equals 9,220 dscf/MMBTU and F_c equals 1,430 scf CO₂/MMBTU;

4a. For gaseous fossil fuels, F equals 8,740 dscf/MMBTU;

b. For natural gas, F_c equals 1,040 scf CO₂/MMBTU; for propane, F_c equals 1,200 scf CO₂/MMBTU; and for butane F_c equals 1,260 scf CO₂/MMBTU;

5a. For bark, F equals 9,575 dscf/MMBTU and F_c equals 1,927 scf CO₂/MMBTU;

b. For wood residue other than bark, F equals 9,233 dscf/MMBTU, and F_c equals 1,842 scf CO₂/MMBTU; and

6. For lignite coal as classified according to ASTM D388-66(72), F equals 9,900 dscf/MMBTU and F_c equals 1,920 scf CO₂/MMBTU;

(d) The source may use the equation given in subparagraph 1 of this paragraph to determine an F factor (dscm/MMCgal, or dscf/MMBTU) on a dry basis or Fc factor (standard cubic meters (scm) CO₂/MMCal, or standard cubic feet (scf) CO₂/MMBTU) on either wet or dry basis in lieu of the F or Fc factors specified in paragraph (c) of this subsection; where

1. The F or Fc Factor shall be determined by the following:

a. $F = \{227.2 (\%H) + 95.5 (\%C) + 35.6 (\%S) + 8.7 (\%N) - 28.7 (\%O)\} / GCV$ (metric units);

b. $F = 10^6 \{3.64 (\%H) + 1.53 (\%C) + 0.57 (\%S) + 0.14 (\%N) - 0.46 (\%O)\} / GCV$ (English units);

c. $F_c = \{2.0 \times 10^{-6} (\%C)\} / GCV$ (metric units); and

d. $F_c = \{3.21 \times 10^{-6} (\%C)\} / GCV$ (English units);

2. H, C, S, N, and O shall be content by weight of hydrogen, carbon, sulfur, nitrogen, and oxygen (expressed as percent), respectively, as determined on the same basis as GCV by ultimate analysis of the fuel fired using ASTM method D3178-73 or D3176-74 (solid fuels) or computed from results using ASTM methods D1137-53(75), D1945-64(73), or D1946-67(72) (gaseous fuels) as applicable; and

3. GCV shall be the gross calorific value (Cal/g or BTU/lb) of the fuel combusted determined by ASTM test methods D2015-66(72) for solid fuels and D1826-64(70) for gaseous fuels as applicable; and

(e) For an affected facility firing a combination of fuels, the F or Fc factors determined by paragraphs (c) and (d) of this subsection shall be prorated in accordance with the applicable formula as follows:

1. $F = xF_1 + yF_2 + zF_3$, where:

a. x, y, z = the fraction of total heat input derived from gaseous, liquid, and solid fuels, respectively; and

b. F₁, F₂, F₃ = the value of F for gaseous, liquid, and solid fuels, respectively, pursuant to subsection (5)(c) and (d) of this section; or

$$F_c = \frac{\sum_{i=1}^n X_i (F_c)_i}{\sum_{i=1}^n X_i}$$

2. where:

a. X_i = fraction of total heat input derived from each type fuel; and

b. (F_c)_i = applicable Fc factor for each fuel type determined pursuant to subsection (5)(c) and (d) of this section.

(6) For reports required pursuant to 401 KAR 59:005, Section 3(3), periods of excess emissions required to be reported shall be as follows:

(a) Excess emissions shall be any six (6) minute period during which the average opacity of emissions exceeds twenty (20) percent opacity, except that one (1) six (6) minute average per hour of up to twenty-seven (27) percent opacity shall not be required to be reported;

(b) For sulfur dioxide, excess emissions shall be any three (3) hour period during which the average emissions (arithmetic average of three (3) contiguous one (1) hour periods) of sulfur dioxide as measured by a continuous monitoring system exceed an applicable standard in Section 5 of this administrative regulation; and

(c) For nitrogen oxides, excess emissions shall be any three (3) hour period during which the average emissions (arithmetic average of three (3) contiguous one (1) hour periods) of nitrogen oxides as measured by a continuous monitoring system exceed an applicable standard in Section 6 of this administrative regulation.

(7) The source may request approval to install a Particulate Matter Continuous Emissions Monitoring System (PM-CEMS) as an alternative to subsection (1)(a) of this section as follows:

(a) The request for approval shall be made in writing to the cabinet;

(b) if the PM-CEMS request is approved, the source:

1. Shall be subject to a federally enforceable PM limit of 0.030 lb/MMBTU/hr or less;

2. Shall comply with 40 C.F.R. 60.42Da(a); and

3. Shall follow the compliance and monitoring provisions of 40 C.F.R. 60.48Da and 60.49Da that are applicable to particulate matter, excluding 40 C.F.R. 60.48Da(c) and (g)(3);

(c) Excess emissions for an affected facility using PM-CEMS

shall be determined by a boiler operating day, as defined by 40 C.F.R. 60.41Da, in which the average emissions (arithmetic average of all operating one (1) hour periods) exceed the applicable standard pursuant to 40 C.F.R. 60.42Da; and

(d) For calculating average emissions and determining compliance:

1. The boiler operating day shall have at least eighteen (18) hours of unit operation during which the standard shall apply; and

2. All valid hourly emission rates of the boiler operating day not meeting the minimum eighteen (18) hours valid data daily average requirement shall be averaged with the valid hourly emission rates of the next boiler operating day with eighteen (18) hours or more of valid PM-CEMS data.

Section 8.] Test Methods and Procedures. (1) Except as established[provided] in 401 KAR 50:045, the reference methods established[specified] in 40 C.F.R. Part 60, Appendix A, shall be used to determine compliance with Sections 4 and 5[-5, and 6] of this administrative regulation as **established in paragraphs (a) through (e) of this subsection.**[follows:]

(a) Reference Method 1 shall be used for the selection of sampling site and sample traverses.[;]

(b) Reference Method 3 shall be used for gas analysis in applying Reference Methods 5 and 6.[-, 6, and 7][;]

(c) Reference Method 5 shall be used for concentration of particulate matter and the associated moisture content.[;]

(d) Reference Method 6 shall be used for the concentration of sulfur dioxide.[;] and

(e) [Reference Method 7 shall be used for the concentration of nitrogen oxides; and

(f)]Reference Method 9 shall be used for visible emissions.

(2) For Reference Method 5:

(a) Reference Method 1 shall be used to select the sampling site and the number of traverse sampling points;

(b) The sampling time for each run shall be at least sixty (60) minutes, and the minimum sampling volume shall be 0.85 dscm (thirty (30) dscf), except smaller sampling times or volumes, if necessitated by process variables or other factors, may be requested by the source; and

(c) The probe and filter holder heating systems in the sampling train shall be set to provide a gas temperature not greater than 160 degrees Centigrade (320 degrees Fahrenheit).

(3) For Reference Method 6[Methods 6 and 7]:

(a) The sampling site shall be the same as the site selected for Reference Method 5;

(b) The sampling point in the duct shall be at the centroid of the cross section or at a point no closer to the walls than one (1) meter (3.28 ft); [and]

(c) [For Reference Method 6,]The sample shall be extracted at a rate proportional to the gas velocity at the sampling point.[;]

(4) For Reference Method 6:]

(d)[(a)] The minimum sampling time shall be twenty (20) minutes, and the minimum sampling volume shall be 0.02 dscm (0.71 dscf) for each sample;

(e)[(b)] The arithmetic mean of two (2) samples shall constitute one (1) run; and

(f)[(c)] Samples shall be taken at approximately thirty (30) minute intervals.

(4)[(5) For Reference Method 7:

(a) Each run shall consist of at least four (4) grab samples taken at approximately fifteen (15) minute intervals; and

(b) The arithmetic mean of the samples shall constitute the run value.

(6) For each run using the methods established[specified] by subsection (1)[(a), (b), and (e)] of this section, the emissions expressed in g/MMcal[g/MMCal] (lb/MMBTU) shall be determined by the following procedure:

$$E = \frac{20.9CF}{20.9 - \%O_2}$$

[E = 20.9CF/(20.9 - percent oxygen)], in which:

(a) E = pollutant emission, g/MMcal[g/MMCal] (lb/MMBTU);

(b) C = pollutant concentration, g/dscm (lb/dscf), as determined

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by Reference Methods 5 or ~~6, 6, or 7~~;

(c) Percent oxygen:

1. Shall equal oxygen content by volume (expressed as a percent), dry basis; and

2. Shall be determined using the integrated or grab sampling and analysis procedures of Reference Method 3~~;~~

a. For determination of sulfur dioxide~~and nitrogen oxides~~ emissions, the oxygen sample shall be obtained simultaneously at the same point in the duct as used to obtain the samples for Reference ~~Method 6, [Methods 6 and 7]~~ determinations~~;~~ respectively, with the oxygen sample for reference Method 7 obtained using the grab sampling and analysis procedures of Reference Method 3; and

b. For determination of particulate emissions, the oxygen sample shall be obtained simultaneously by traversing the duct at the same sampling location used for each run of Reference Method 5 pursuant to subsection (2) of this section, using Reference Method 1 for selection of the number of traverse points, except that not more than twelve (12) points shall be required; and

(d) F = a factor as determined in 40 C.F.R. 60.45(f)~~[Section 7(5) of this administrative regulation]~~.

~~(5)(7)~~ If an affected facility fires a combination of ~~fossil~~ fuels, the heat input, expressed in ~~cal/hr~~ (BTU/hr), shall be determined during each testing period by multiplying the ~~GCV~~ [gross calorific value] of each fuel fired by the rate of each fuel ~~combusted~~ [burned], in which:

(a) ~~GCV~~ [Gross calorific value] shall be determined in accordance with the applicable ASTM methods D2015-66(72) (solid fuels), D240-76 (liquid fuels), or ~~D1826-64(75)~~ [D1826-64(70)] (gaseous fuels), incorporated by reference in 401 KAR 50:015~~[as applicable]~~; and

(b) The rate of fuels ~~combusted~~ [burned] during each testing period shall be determined by the applicable method and shall be confirmed by a material balance over the steam generation system.

Section 7. Standards During a Startup Period or a Shutdown Period. During a startup period or a shutdown period, an owner or operator shall comply with the work practice standards established in this section. (1)(a) The owner or operator shall comply with 401 KAR 50:055, Section 2(5)[At all times, the owner or operator of each affected facility shall operate the affected facility and all applicable control devices in a manner consistent with good air pollution control practices for minimizing emissions];

(b) The frequency and duration of startup periods or shutdown periods shall be minimized by the affected facility;

(c) All reasonable[possible] steps shall be taken by the owner or operator to minimize the impact of emissions on ambient air quality from the affected facility during startup periods and shutdown periods;

(d) The actions, including duration of the startup period, of the owner or operator of each affected facility during startup periods and shutdown periods, shall be documented by signed, contemporaneous logs or other relevant evidence; and

(e) Startups and shutdowns shall be conducted according to either:

1. The manufacturer's recommended procedures; or

2. Recommended procedures for a unit of similar design, for which manufacturer's recommended procedures are available, as approved by the cabinet based on documentation provided by the owner or operator of the affected facility; or[and]

(2)(a) An affected facility subject to 40 C.F.R. 63.7500 shall meet the work practice standards established in ~~Table 3 to Subpart DDDDD~~ of 40 C.F.R. Part 63, ~~Table 3 to Subpart DDDDD~~, as established in 401 KAR 63:002, Section 2(4)(iii);

(b) An affected facility subject to 40 C.F.R. 63.11201 shall meet the work practice standards established in ~~Table 3 to Subpart UUUUU~~ of 40 C.F.R. Part 63, ~~Table 3 to Subpart UUUUU~~, as established in 401 KAR 63:002, Section 2(4)(vyyv); or

(c) An affected facility subject to 40 C.F.R. 63.11201 shall meet the work practice standards established in ~~Table 2 to Subpart JJJJJ~~ of 40 C.F.R. Part 63, ~~Table 2 to Subpart JJJJJ~~, as

established in 401 KAR 63:002, Section 2(4)(jjjj).

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: December 12, 2017

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

CONTACT PERSON: Cassandra Jobe, Supervisor, Division for Air Quality, 300 Sower Blvd., Frankfort, Kentucky 40601, phone (502) 782-6670, fax (502) 564-4245, email Cassandra.Jobe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the control of emissions of criteria pollutants from new indirect heat exchangers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to control the emissions of criteria pollutants from new indirect heat exchangers. This administrative regulation is necessary for the Energy and Environment Cabinet (Cabinet) to protect human health and the environment by establishing emission limits for criteria pollutants for new indirect heat exchangers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the control of emissions from new indirect heat exchangers. This administrative regulation is part of the Kentucky State Implementation Plan (SIP).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will enable the Cabinet to continue to implement and enforce the control of emissions from new indirect heat exchangers, resulting in the protection of human health and the environment and attainment of the National Ambient Air Quality Standards (NAAQS).

(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 clarifies the definitions of startup period and shutdown period to be consistent with federal definitions. The amendment also clarifies the requirements for work practice standards for indirect heat exchangers.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify definitions for consistency with federal regulations. The amendment also provides clarity for the work practice standards.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by providing clarity and consistency with federal regulations.

(d) How the amendment will assist in the effective administration of statutes: The amendment clarifies the work practice standards for existing indirect heat exchangers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Owners and operators of new indirect heat exchangers 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: Regulated entities will have clarification in definitions and the work practice 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 to the regulated entities to comply with this amendment. This amendment clarifies how regulated entities comply with the work practice standards.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the sources will have clarity on how to meet the work practice standards.

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

(a) Initially: The Division for Air Quality will not incur any additional costs for the implementation of this administrative regulation initially.

(b) On a continuing basis: The Division for Air Quality will not incur any additional costs for the implementation of this administrative regulation on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division for Air Quality's current operating budget will be used for the implementation and enforcement of the amendment to this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. Emission limits for affected facilities apply based on the capacity of the new indirect heat exchanger.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation has the potential to affect any unit, part, or division of state or local government operating a new indirect heat exchanger. The Division for Air Quality will continue to permit sources in accordance with this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 224.10-100(5), 224.20-120, 42 U.S.C. 7410, 7411, and 40 C.F.R. Part 60

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 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 proposed administrative regulation will not generate revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The Division for Air Quality's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The Division for Air Quality's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

The federal mandate for this administrative regulation is in 40 C.F.R. Part 60 and 42 U.S.C. 7411.

2. State compliance standards. This administrative regulation provides for the control of emissions from new indirect heat exchangers.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 7411 requires that the U.S. EPA promulgate emission standards for new stationary sources.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. This administrative regulation establishes work practice standards that are not part of the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The work practice standards were requested as an alternative way to address emissions during periods of startup and shutdown.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Comments)**

401 KAR 61:015. Existing indirect heat exchangers.

RELATES TO: KRS Chapter 224, 40 C.F.R. Part 60, Subpart D, Da, Db, Dc, Part 63, Subparts DDDDD, UUUUU, JJJJJ

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the [Environmental and Public Protection] cabinet to promulgate[prescribe] administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes requirements[provides] for the control of emissions from existing indirect heat exchangers.

Section 1. [~~Applicability. The provisions of this administrative regulation shall apply to each affected facility commenced before the applicable classification date defined below.~~

Section 2.] Definitions. As used in this administrative regulation, all terms not defined in this section[herein] shall have the meaning given them in 401 KAR 50:010 and 401 KAR 50:025.

(1) "Affected facility" means an indirect heat exchanger having a heat input capacity of more than one (1) MMBTU/hr[~~million-BTU per hour~~].

(2) [~~"Indirect heat exchanger" means any piece of equipment, apparatus, or contrivance used for the combustion of fuel in which the energy produced is transferred to its point of usage through a medium that does not come in contact with or add to the products of combustion.~~

(3) "Classification date" means:

(a) August 17, 1971, for affected facilities with a capacity of more than 250 MMBTU/hr[~~million-BTU per hour~~] heat input; or

(b) April 9, 1972, for affected facilities with a capacity of 250 MMBTU/hr[~~million-BTU per hour~~] heat input or less.

(3) "Fuel" means any material combusted for the purpose of creating useful heat.

(4) "GCV" means gross calorific value.

(5) [~~"Indirect heat exchanger" means a piece of equipment, apparatus, or contrivance used for the combustion of fuel in which the energy produced is transferred to its point of usage through a medium that does not come in contact with or add to the products of combustion.~~

(6) "Shutdown period" means [the period]:

(a) For a source subject to 40 C.F.R. Part 63, Subpart DDDDD, UUUUU, or JJJJJJ, the period defined as "shutdown" in:

1. 40 C.F.R. 63.7575;

2. 40 C.F.R. 63.10042; or

3. 40 C.F.R. 63.11237; or

(b) For a source not subject to 40 C.F.R. Part 63, Subpart

DDDDD, UUUUU, or JJJJJ, the period[Beginning when, whichever occurs first]:

1. Beginning when whichever occurs first:

a. The affected facility no longer supplies useful thermal energy for heating, cooling, process purposes, or generation of electricity; or

b.[2.] Fuel is not being combusted in the affected facility; and

2. [(b)] Ending when:

a.[1.] The affected facility no longer supplies useful thermal energy for heating, cooling, process purposes, or generation of electricity; and

b.[2.] Fuel is not being combusted in the affected facility.

(7) "Startup period[periods]" means:

(a) For a source subject to 40 C.F.R. Part 63, Subpart DDDDD, UUUUU, or JJJJJ, the period defined as "startup" in:

1. 40 C.F.R. 63.7575;

2. 40 C.F.R. 63.10042; or

3. 40 C.F.R. 63.11237; or

(b) For a source not subject to 40 C.F.R. Part 63, Subpart DDDDD, UUUUU, or JJJJJ, the period[Beginning with either]:

1. Beginning with either:

a. The combustion of any fuel in an affected facility for the purpose of supplying useful thermal energy for heating, cooling, process purposes, or generation of electricity; or

b.[2.] The combustion of fuel in an affected facility for any purpose after a shutdown event; and

2. [(b)] Ending after the longest manufacturer-recommended time required to engage all control devices utilized by the affected facility applicable to the pollutant, not to exceed (4) four hours after any of the useful thermal energy from the affected facility is supplied for any purpose.

(8) "Useful thermal energy" means energy that meets the minimum operating temperature, flow, or pressure required by any energy use system that uses energy provided by the affected facility.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each affected facility commenced before the applicable classification date.

Section 3. Method for Determining Allowable Emission Rates.

(1) Except as established[provided] in subsection (3) of this section, the total rated heat input capacity of all affected facilities at a source, commenced before the applicable classification date within a source, shall be used as established[specified] in Sections 4 and 5 of this administrative regulation to determine the allowable emission rate in terms of lb/MMBTU[pounds of effluent per million BTU] heat input.

(2) The permitted allowable emission rate of an affected facility shall not be changed due to inclusion or shutdown of another affected facility at the source[At such time as any affected facility is assigned an allowable emission rate by the cabinet, at no time thereafter shall that rate be changed due to inclusion or shutdown of any affected facility at the source].

(3) A source may submit a request to the cabinet for approval of an allowable emission rate apportioned independent from individual heat input pursuant to this subsection.

(a) The following equation shall be used to determine the allowable emissions rate:

[(a) A source may petition the cabinet to establish an allowable emission rate which may be apportioned without regard to individual affected facility heat input provided that the conditions specified in paragraphs (b), (c), (d), and (e) of this subsection are met. Such allowable emission rate shall be determined according to the following equation:]

$$F = (AB + DE)/C$$

Where:

1. A = the allowable emission rate (in lb/MMBTU/hr heat[pounds per million BTU] input), as determined according to 401 KAR 59:015, Section 3(1);

2. B = the total rated heat input (in MMBTU/hr[millions of BTU per hour]) of all affected facilities commenced on or after the applicable classification date within a source, including those for

which an application to construct, modify, or reconstruct has been submitted to the cabinet;

3. C = the total rated heat input (in MMBTU/hr[millions of BTU per hour]) of all affected facilities within a source, including those for which an application to construct, modify, or reconstruct has been submitted to the cabinet;

4. D = the total emission rate (in lb/MMBTU[pounds per million BTU] input) as determined according to subsection (1) of this section;

5. E = the total rated heat input (in MMBTU/hr[millions of BTU per hour]) of all affected facilities commenced before the applicable classification date; and

6. F = the alternate allowable emission rate (in lb/MMBTU[pounds per actual million BTU] input).

(b) In determining an alternative allowable emission rate for sulfur dioxide, the formula established in paragraph (a) of this subsection shall utilize values for allowable emissions rates for affected facilities stated in terms of total rated heat input capacity based on the use of the same fuel category (solid, liquid, or gaseous fuel), which shall be determined by utilizing the formulas established in Section 5 of this administrative regulation.

(c) The total emissions in lb/hr from all affected facilities at the source subject to this administrative regulation divided by the total actual heat input expressed in MMBTU/hr of the affected facilities shall not exceed the alternate allowable emission rate as determined in paragraph (a) of this subsection.

(d)[(b) At no time shall the owner or operator of the source allow the total emissions (in pounds per hour) from all affected facilities within the source divided by the total actual heat input (in millions of BTU per hour) of all affected facilities within the source to exceed the alternate allowable emission rate as determined by paragraph (a) of this subsection.

(e) At no time shall the owner or operator of any source subject to federal new source performance standards allow the emissions from any affected facility commenced on or after the applicable classification date to exceed the allowable emission rate determined by use of that affected facility's rated heat input (instead of the heat input as determined by subsection (1) of this section) as established[specified] in 401 KAR 59:015, Sections 4 and 5.

(e)1. The source shall demonstrate compliance with this subsection by conducting a performance test pursuant to 401 KAR 50:45 for each affected facility subject to this administrative regulation.

2. The source shall demonstrate that compliance with this subsection shall be maintained on a continuous basis. [(d) The owner or operator of the source must demonstrate compliance with this subsection by conducting a performance test according to 401 KAR 50:045 on each affected facility under such conditions as may be specified by the cabinet.

(e) Upon petition, the cabinet will establish an alternate emission rate in accordance with this subsection if the owner or operator demonstrates to the cabinet's satisfaction that the source will maintain compliance with this subsection on a continual basis.]

Section 4. Standard for Particulate Matter. (1) Except as established[provided for] in Sections[Section] 3(3) and 9 of this administrative regulation, an affected facility subject to this administrative regulation shall not cause emissions of particulate matter in excess of[no owner or operator of an affected facility subject to the provisions of this administrative regulation shall cause to be discharged into the atmosphere from that affected facility]:

(a)[(1) Particulate matter in excess of] That established[specified] in Appendix A of this administrative regulation;

(b)[(2) Emissions which exhibit] Greater than twenty (20) percent opacity in regions classified as Priority I, pursuant to Appendix A of this administrative regulation, with respect to particulate matter, except that, for:

1. [(a) That, for] Cyclone or pulverized fired indirect heat exchangers, a maximum of forty (40) percent opacity shall be permissible for not more than one (1) six (6) minute period in any

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sixty (60) consecutive minutes;

~~2.[(b) That, for]~~ Stoker fired indirect heat exchangers, a maximum of forty (40) percent opacity shall be permissible for not more than six (6) consecutive minutes in any sixty (60) consecutive minutes during cleaning the fire box or blowing soot and, for indirect heat exchangers with stationary grates, a maximum of forty (40) percent opacity shall be permissible during cleaning of the grates for not more than three (3) consecutive minutes in any sixty (60) consecutive minutes for each section of grates that are cleaned; and

~~3.[(c) For]~~ Emissions from an indirect heat exchanger during building a new fire for the period required to bring the boiler up to operating conditions if[provided] the method used is that recommended by the manufacturer and the time does not exceed the manufacturer's recommendations;[-]

~~(c)[(3) Emissions which exhibit]~~ Greater than forty (40) percent opacity in regions classified as Priority II or III with respect to particulate matter except that, for:

~~1.[(a) That, for]~~ Cyclone or pulverized fired indirect heat exchangers, a maximum of sixty (60) percent opacity shall be permissible for not more than one (1) six (6) minute period in any sixty (60) consecutive minutes;

~~2.[(b) That, for]~~ Stoker fired indirect heat exchangers, a maximum of sixty (60) percent opacity shall be permissible for not more than six (6) consecutive minutes in any sixty (60) consecutive minutes during cleaning the fire box or blowing soot and, for indirect heat exchangers with stationary grates, a maximum of sixty (60) percent opacity shall be permissible during cleaning of the grates for not more than three (3) consecutive minutes in any sixty (60) consecutive minutes for each section of grates that are cleaned; and

~~3.[(c) For]~~ Emissions from an indirect heat exchanger during building a new fire for the period required to bring the boiler up to operating conditions if[provided] the method used is that recommended by the manufacturer and the time does not exceed the manufacturer's recommendations.

~~(2)[(4)]~~ The emission limitations established[contained] in subsection (1)[other subsections] of this section shall not apply to any affected facility (with more than 250 MMBTU/hr[~~million BTU per hour~~] heat input capacity, which was in being or under construction before August 17, 1971, or any affected facility with 250 MMBTU/hr[~~million BTU per hour~~] capacity or less, which was in being or under construction prior to April 9, 1972) if that affected facility was in compliance prior to April 9, 1972, with, or has a valid permit to operate within the provisions of the previous Kentucky Air Pollution Control Commission Regulation No. 7 [entitled "]Prevention and Control of Emissions of Particulate Matter from Combustion of Fuel in Indirect Heat Exchangers.["] These affected facilities shall comply with the emission limitations in that administrative regulation except that replacement of the particulate emissions control device associated with the affected facility shall subject it to the standard established[contained] in this section.

Section 5. Standard for Sulfur Dioxide. (1) Except as established in Sections[provided for in Section] 3(3) and 9 of this administrative regulation and subsection (5) of this section, an affected facility subject to this administrative regulation shall not cause emissions of gases that[no owner or operator of an affected facility subject to the provisions of this administrative regulation shall cause to be discharged into the atmosphere from that affected facility, any gases which] contain sulfur dioxide in excess of that established[specified] in Appendix B of this administrative regulation.

(2) If[When] different fuels are burned simultaneously in any combination, the applicable standard shall be determined by proration using the following formula:

$$\frac{lb}{MMBTU} = \frac{[x(a) + y(b) + z(c)]}{x + y + z} \quad \frac{lb}{MMBTU} = \frac{y(a) + z(b)}{(y + z)}$$

Where:

- (a) x is the percent of total heat input derived from liquid fuel;
- (b) y is the percent of total heat input derived from [liquid or]

gaseous fuel;

~~(c) z~~ is the percent of total heat input derived from solid fuel;
~~(d) a~~ is the allowable sulfur dioxide emission in ~~lb/MMBTU[pounds per million BTU]~~ heat input derived from liquid ~~[or gaseous] fuel; [and]~~

~~(e) b~~ is the allowable sulfur dioxide emissions in ~~lb/MMBTU[pounds per million BTU]~~ heat input derived from ~~gaseous[solid] fuel; and~~

~~(f) c~~ is the allowable sulfur dioxide emissions in ~~lb/MMBTU heat input derived from solid fuel.~~

(3) Compliance shall be based on the total heat input from all fuels burned, including gaseous fuels.

(4) In counties classified as VA with respect to sulfur dioxide, for a source[sources] having a total heat input greater than 1,500[1500] MMBTU/hr[1,500,000,000 BTU per hour (1500 MM BTU/hr.)] as determined by Section 3(1) of this administrative regulation, an[an] owner or operator shall not allow the annual average sulfur dioxide emission rate from all existing and new affected facilities combined at the source to exceed six-tenths (0.60) pounds per million BTU.

(5) In counties classified as IA with respect to sulfur dioxide, at a source[sources] having a total rated heat input greater than 1,500[1500] MMBTU/hr[1,500,000,000 BTU per hour (1500 MM BTU/hr.)] as determined by Section 3(1) of this administrative regulation, the cabinet shall allow one (1) affected facility, as stated[specified] on the operating permit, to emit sulfur dioxide at a rate not to exceed a twenty-four (24) hour average of eight and zero tenths (8.0) lb/MMBTU[pounds per million BTU], during those periods of time when the affected facility is being operated for the purpose of generating high sulfur dioxide content flue gases for use in any experimental sulfur dioxide removal system.

Section 6. Monitoring of Operations. (1) The sulfur content of solid fuels, as burned, shall be determined in accordance with the methods specified by the cabinet.

(2) The sulfur content of liquid fuels, as burned, shall be determined in accordance with the methods specified by the cabinet.

(3)(a) The rate of fuel burned for each fuel shall be measured daily or at shorter intervals and recorded.

(b) The heating value and ash content of fuels shall be ascertained at least once per week and recorded.

(c) If[Where] the indirect heat exchanger is used to generate electricity, the average electrical output and the minimum and maximum hourly generation rate shall be measured and recorded daily.

(4) The owner or operator of an[any] indirect heat exchanger of more than 250 MMBTU/hr[~~million BTU per hour~~] heat input subject to the provisions of this administrative regulation shall maintain a file of all measurements required by this administrative regulation and summarized monthly. The record of all measurements[any such measurement(s)] and summary shall be retained for at least two (2) years following the date of [such] measurements and summaries.

(5) The cabinet may require for an[any] indirect heat exchanger of less than 250 MMBTU/hr [million BTU per hour] heat input, any or all the fuel monitoring required by this section.

(6) For an indirect heat exchanger that does not use a flue gas desulfurization device, a continuous monitoring system as established[specified] in 401 KAR 61:005 for measuring sulfur dioxide emissions shall not be[is not] required if the owner or operator monitors the[such] emissions by fuel sampling and analysis [pursuant to Section 7(6) of 401-KAR-59:015].

Section 7. Test Methods and Procedures. (1) Except as established[provided] in 401 KAR 50:045, performance tests used to demonstrate compliance with Sections 4 and 5 of this administrative regulation shall be conducted according to the following methods, incorporated [filed] by reference in 401 KAR 50:015{}:

- (a) Reference Method 1 for the selection of sampling site and sample traverses;
- (b) Reference Method 3 for gas analysis to be used when

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applying Reference Methods 5 and 6, 6 and 7];

(c) Reference Method 5 for the concentration of particulate matter and the associated moisture content;

(d) Reference Method 6 for the concentration of sulfur dioxide; and

(e) Reference Method 9 for visible emissions [Reference Method 7 for the concentration of nitrogen oxides].

(2) For Reference Method 5:

(a) [and 7.] Reference Method 1 shall be used to select the sampling site and the number of traverse sampling points; [.]

(b) The sampling time for each run shall be at least sixty (60) minutes and the minimum sampling volume shall be 0.85 dscm (thirty (30) dscf), except that smaller sampling times or volumes, [if] when necessitated by process variables or other factors, may be requested by the source; and [approved by the Cabinet]. [.]

(c) The probe and filter holder heating systems in the sampling train shall be set to provide a gas temperature not [no] greater than 160°C (320°F).

(3) For Reference Methods 6; [.]

(a) [and 7.] The sampling site shall be the same as that selected for Reference Method 5; [.]

(b) The sampling point in the duct shall be at the centroid of the cross section or at a point no closer to the walls than one (1) m (3.28 ft.); [.]

(c) [For Reference Method 6.] The sample shall be extracted at a rate proportional to the gas velocity at the sampling point; [.]

(d) [(4) For Reference Method 6.] The minimum sampling time shall be twenty (20) minutes, and the minimum sampling volume shall be 0.02 dscm (0.71 dscf) for each sample; [.]

(e) The arithmetic mean of two (2) samples shall constitute one (1) run; and [.]

(f) Samples shall be taken at approximately thirty (30) minute intervals.

~~(4) [(5)] (a) [For Reference Method 7, each run shall consist of at least four (4) grab samples taken at approximately fifteen (15) minute intervals. The arithmetic mean of the samples shall constitute the run value.~~

(6) For each run using the methods established [specified] by subsection (1) [(e), (d), and (e)] of this section, the emissions expressed in g/million cal (lb/MMBTU [lb/million BTU]) shall be determined by the following equation:

$$E = CF \frac{20.9}{20.9 - \%O_2}$$

Where:

1. E = pollutant emission, g/million cal (lb/MMBTU [lb/million BTU]); [.]

2. C = pollutant concentration, g/dscm (lb./dscf) determined by Reference Method 5, or 6; [or 7]. [.]

3. F = a factor as determined in 40 C.F.R. 60.45(f); and [404 KAR 59:015, Section 7]. [.]

4. %O₂ = oxygen content by volume (expressed as percent), dry basis.

Percent oxygen shall be determined by using the integrated or grab sampling and analysis procedures for Reference Method 3 as applicable. The sample shall be obtained as **established in paragraphs (b) and (c) of this subsection.** [follows:]

(b) [(a)] For determination of sulfur dioxide and nitrogen oxides emissions, the oxygen sample shall be obtained simultaneously at the same point for Reference Method 6 [and 7] determinations; respectively. For Reference Method 7, the oxygen sample shall be obtained using the grab sampling and analysis procedures for Reference Method 3].

(c) 1. [(b)] For determination of particulate emissions, the oxygen sample shall be obtained simultaneously by traversing the duct at the same sampling location used for each run of Reference Method 5 pursuant to [under] subsection (2) of this section.

2. Reference Method 1 shall be used for selection of the number of traverse points except that no more than twelve (12) sample points shall be [are] required.

(5) [(6)] If [(7) When] combinations of fossil fuels are fired, the heat input, expressed in cal/hr. (BTU/hr.), shall be determined during each testing period by multiplying the gross calorific value of

each fuel fired by the rate of each fuel burned. ~~GCV [GVC] [Gross calorific value]~~ shall be determined in accordance with ASTM methods D2015-66(72) (solid fuels), D240-64(73) (liquid fuels), or D1826-64(70) (gaseous fuels), as applicable (ASTM designations incorporated [filed] by reference in 401 KAR 50:015). The rate of fuels burned during each testing period shall be determined by suitable methods and shall be confirmed by a material balance over the steam generation system.

Section 8. Compliance Timetable. (1) An affected facility [facilities] located in an area [areas] designated as attainment for sulfur dioxide or [and/or] particulate matter shall be in compliance as of June 6, 1979.

(2)(a) In Class IA counties, the owner or operator of any affected facility in any source with a [whose] total rated capacity of 16,000 MMBTU/hr [is sixteen thousand million BTU per hour (16,000 MM BTU/hr)] or more shall be required to [complete the following]:

1. Submit a final control plan for achieving compliance with this administrative regulation no later than May 1, 1978;
2. Award contracts for complying coal by January 1, 1979;
3. Initiate use of [such] complying coal on or before December 1, 1979; and
4. Demonstrate compliance by performance tests on or before October 1, 1981.

(b) In Class IVA counties designated as nonattainment for sulfur dioxide, the owner or operator of any affected facility in any source with a total rated capacity of greater than 1,500 MMBTU/hr [1,500,000,000 BTU per hour (1,500 MM BTU/hr)] but less than 21,000 MMBTU/hr [twenty-one thousand million BTU per hour (21,000 MM BTU/hr)] shall be required to [complete the following]:

1. Submit a final control plan for achieving compliance with this administrative regulation no later than May 1, 1979;
2. Award contracts for complying coal by August 1, 1979;
3. Initiate use of [such] complying coal on or before January 1, 1980; and
4. Demonstrate compliance by performance tests on or before March 1, 1980.

(c) In Class IVA counties designated as nonattainment for sulfur dioxide, the owner or operator of any affected facility in any source with a total rated capacity of greater than 21,000 MMBTU/hr [twenty-one thousand million BTU per hour (21,000 MM BTU/hr)] shall be required to [complete the following]:

1. Submit a control plan for flue gas desulfurization and initiate construction of a coal washing plant on or before June 1, 1978;
2. Issue invitations for bids for construction and installation of flue gas desulfurization equipment on or before October 1, 1978;
3. Award contract for construction and installation of flue gas desulfurization equipment on or before March 1, 1979;
4. Initiate construction of flue gas desulfurization equipment on or before December 1, 1979;
5. Complete construction of coal washing plant on or before December 1, 1980;
6. Complete construction of flue gas desulfurization equipment on or before June 1, 1982; and
7. Demonstrate compliance by performance tests on or before September 1, 1982.

Section 9. Standards During a Startup Period or a Shutdown Period. During a startup period or a shutdown period, an owner or operator shall comply with the work practice standards established in this section.

(1)(a) **The owner or operator shall comply with 401 KAR 50:055, Section 2(5) [At all times, the owner or operator of each affected facility shall operate the affected facility and all applicable control devices in a manner consistent with good air pollution control practices for minimizing emissions].**

(b) The frequency and duration of startup periods or shutdown periods shall be minimized by the affected facility;

(c) All **reasonable [possible]** steps shall be taken by the owner or operator to minimize the impact of emissions on ambient air quality from the affected facility during startup periods and

shutdown periods:

(d) The actions, including duration of the startup period, of the owner or operator of each affected facility during startup periods and shutdown periods, shall be documented by signed, contemporaneous logs or other relevant evidence; and

(e) Startups and shutdowns shall be conducted according to either:

1. The manufacturer's recommended procedures; or

2. Recommended procedures for a unit of similar design, for which manufacturer's recommended procedures are available, as approved by the cabinet based on documentation provided by the owner or operator of the affected facility; **or[and]**

(2)(a) An affected facility subject to 40 C.F.R. 63.7500 shall meet the work practice standards established in **[Table 3 to Subpart DDDDD of]** 40 C.F.R. Part 63, **Table 3 to Subpart DDDDD**, as established in 401 KAR 63:002, Section 2(4)(iiii);

(b) An affected facility subject to 40 C.F.R. 63.9991 shall meet the work practice standards established in **[Table 3 to Subpart UUUUU of]** 40 C.F.R. Part 63, **Table 3 to Subpart UUUUU**, as established in 401 KAR 63:002, Section 2(4)(yyyy); or

(c) An affected facility subject to 40 C.F.R. 63.11201 shall meet the work practice standards established in **[Table 2 to Subpart JJJJJ of]** 40 C.F.R. Part 63, **Table 2 to Subpart JJJJJ**, as established in 401 KAR 63:002, Section 2(4)(jjjj).

Section 10. Incorporation by Reference. (1) "Kentucky Air Pollution Control Commission Regulation No. 7 Prevention and Control of Emissions of Particulate Matter from Combustion of Fuel in Indirect Heat Exchangers" (November 1969), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

APPENDIX A TO 401 KAR 61:015 ALLOWABLE PARTICULATE EMISSION RATES			
For sources having a total heat input capacity (as determined by Section 3(1) of:	The standard (in pounds per million BTU actual heat input) is (based upon the Priority classification with respect to particulates of the region in which the source is located):		
(MM BTU/Hr.)	Priority I	Priority II	Priority III
10 or less	0.56	0.75	0.80
50	0.38	0.52	0.57
100	0.33	0.44	0.49
250	0.26	0.35	0.40
500	0.22	0.30	0.34
1000	0.19	0.26	0.30
2500	0.15	0.21	0.24
5000	0.13	0.18	0.21
7500	0.12	0.16	0.19
10000 or more	0.11	0.15	0.18

Interpolation of allowable emissions for intermediate heat input values not established[specified] above may be accompanied by use of the equations shown below for the appropriate heat input range [specified]. In all equations X = MMBTU/hr[millions of BTU per hour] heat input as determined by Section 3(1), and Y = allowable particulate emissions in pounds per MMBTU[million BTU] actual heat input.

Region Classification with respect to Particulate Matter	Range (MM BTU/Hr.)	Allowable (Lb.s/MM BTU)
Priority I	10 to 10,000	$Y = 0.9634 X^{-0.2356}$
Priority II	10 to 10,000	$Y = 1.2825 X^{-0.2330}$
Priority III	10 to 10,000	$Y = 1.3152 X^{-0.2159}$

APPENDIX B TO 401 KAR 61:015
 All standards shall be [are] twenty-four (24) hour averages

The standard (in pounds per million BTU actual heat input) is based upon the classification with respect to sulfur dioxide of the county in which the source is located:

For sources having a total heat input (as determined by Section 3(1)) of:	CLASS I		CLASS IA		CLASS II		CLASS III		CLASS IV		CLASS IVA		CLASS V		CLASS VA	
	Liquid/ Gaseous Fuel	Solid Fuel	Liquid/ Gaseous Fuel	Solid Fuel	Liquid/ Gaseous Fuel	Solid Fuel	Liquid/ Gaseous Fuel	Solid Fuel	Liquid/ Gaseous Fuel	Solid Fuel	Liquid/ Gaseous Fuel	Solid Fuel	Liquid/ Gaseous Fuel	Solid Fuel	Liquid/ Gaseous Fuel	Solid Fuel
10 or less	3.0	5.0	3.0	5.0	4.0	6.0	4.6	7.0	5.4	8.0	5.4	8.0	6.0	9.0	6.0	9.0
50	1.5	2.4	1.5	3.9	2.4	3.7	3.2	4.8	4.3	6.4	4.3	6.4	4.9	7.3	4.9	7.3
100	1.2	1.8	1.2	3.6	2.0	3.0	2.7	4.1	4.0	5.9	4.0	5.9	4.5	6.7	4.5	6.7
150	1.0	1.5	1.0	3.3	1.8	2.7	2.5	3.7	3.7	5.6	3.7	5.6	4.3	6.4	4.3	6.4
200	0.9	1.3	0.9	3.2	1.6	2.5	2.3	3.5	3.6	5.4	3.6	5.4	4.1	6.2	4.1	6.2
250-1500	0.8	1.2	0.8	3.1	1.5	2.3	2.2	3.3	3.5	5.2	3.5	5.2	4.0	6.0	4.0	6.0
greater than 1,500 but less than 21,000	0.8	1.2	0.8	1.2	1.5	2.3	2.2	3.3	3.5	5.2	2.3	3.5	4.0	6.0	1.1	1.1
21,000 or more	0.8	1.2	0.8	1.2	1.5	2.3	2.2	3.3	3.5	5.2	2.1	3.1	4.0	6.0	1.1	1.1

Interpolation of allowable emissions for rated capacity values between 10 and 250 million BTU heat input may be accomplished by use of the equations shown below for the appropriate fuel specified. In all equations Y = allowable sulfur dioxide emission in pounds per million BTU actual heat input, X = millions of BTU per hour heat input capacity rating as determined by Section 3(1).

COUNTY CLASS	FUEL	ALLOWABLE (POUNDS/MM BTU)
I	Liquid/Gaseous	$Y = 7.7223 - 0.4106X$
	Solid	$Y = 13.8781 - 0.4454X$
IA	Liquid/Gaseous	$Y = 7.7223 - 0.4106X$
	Solid	$Y = 7.0382 - 0.1485X$
II	Liquid/Gaseous	$Y = 8.0681 - 0.3047X$
	Solid	$Y = 11.9134 - 0.2979X$
III	Liquid/Gaseous	$Y = 7.7966 - 0.2291X$
	Solid	$Y = 11.9872 - 0.2356X$
IV	Liquid/Gaseous	$Y = 7.3639 - 0.1347X$
	Solid	$Y = 10.8875 - 0.1338X$
IVA	Liquid/Gaseous	$Y = 7.3639 - 0.1260X$
	Solid	$Y = 10.8875 - 0.1338X$
V	Liquid/Gaseous	$Y = 8.0189 - 0.1260X$
	Solid	$Y = 12.0284 - 0.1260X$
VA	Liquid/Gaseous	$Y = 8.0189 - 0.1260X$
	Solid	$Y = 12.0284 - 0.1260X$

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CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: December 12, 2017

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

CONTACT PERSON: Cassandra Jobe, Supervisor, Division for Air Quality, 300 Sower Blvd., Frankfort, Kentucky 40601, phone (502) 782-6670, fax (502) 564-4245, email Cassandra.Jobe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the control of emissions of criteria pollutants from existing indirect heat exchangers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to control the air emissions of criteria pollutants from existing indirect heat exchangers. This administrative regulation is necessary for the Energy and Environment Cabinet (Cabinet) to protect human health and the environment by establishing emission limits for criteria pollutants for existing indirect heat exchangers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the control of emissions from existing indirect heat exchangers. This administrative regulation is part of the Kentucky State Implementation Plan (SIP).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will enable the Cabinet to continue to implement and enforce the control of emissions from existing indirect heat exchangers, resulting in the protection of human health and the environment and attainment of the National Ambient Air Quality Standards (NAAQS).

(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 clarifies the definitions of startup period and shutdown period to be consistent with federal definitions. This amendment also clarifies the requirements for work practice standards.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify definitions for consistency with federal regulations. The amendment also clarifies the requirements for work practice standards.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by providing clarity and consistency with federal regulations.

(d) How the amendment will assist in the effective administration of statutes: The amendment clarifies the work practice standards for existing indirect heat exchangers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Owners and operators of existing indirect heat exchangers 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: Regulated entities will have clarification in definitions and the work practice 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 to the regulated entities to comply with this amendment. This amendment clarifies how regulated entities comply with the work practice standards.

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

sources will have clarity on how to meet the work practice standards.

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

(a) Initially: The Division for Air Quality will not incur any additional costs for the implementation of this administrative regulation initially.

(b) On a continuing basis: The Division for Air Quality will not incur any additional costs for the implementation of this administrative regulation on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division for Air Quality's current operating budget will be used for the implementation and enforcement of the amendment to this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. Emission limits for affected facilities apply based on the capacity of the existing indirect heat exchanger.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation has the potential to affect any unit, part, or division of state or local government operating an existing indirect heat exchanger. The Division for Air Quality will continue to permit sources in accordance with this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 224.10-100(5), 224.20-120, 42 U.S.C. 7410, 7411, and 40 C.F.R. Part 60

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 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 proposed administrative regulation will not generate revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The Division for Air Quality's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The Division for Air Quality's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate for this administrative regulation is

in 40 C.F.R. Part 60 and 42 U.S.C. 7411.

2. State compliance standards. This administrative regulation provides for the control of emissions from existing indirect heat exchangers.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 7411 requires that the U.S. EPA promulgate emission standards for existing stationary sources.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. This administrative regulation establishes work practice standards that are not part of the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The work practice standards were requested as an alternative way to address emissions, particularly during periods of startup and shutdown.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(Amended After Comments)

505 KAR 1:170. Department of Juvenile Justice Policies and Procedures: Prison Rape Elimination Act of 2003 (PREA).

RELATES TO: KRS 15A.065, 15A.067, Chapters 600-645, 42 U. S. C. 15601-15609, 28 C.F. R. 115.311-115.393

STATUTORY AUTHORITY: KRS 15A.065, 15A.067, 15A.160, 15A.210, 200.115, 605.100, 605.150, 635.095, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.100, 605.150, 635.095, 640.120, and 645.250 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policies and Procedures: "Prison Rape Elimination Act of 2003 (PREA)", December 15~~[September 24]~~, 2017, is incorporated by reference and includes the following:

- 900 Definitions (Amended 8/24/17~~[February 10, 2014]~~);
- 901 Zero Tolerance of Any Type of Sexual Misconduct (Amended 8/24/17~~[January 15, 2014]~~);
- 902 Personnel Procedures (Amended 8/24/17~~[January 15, 2014]~~);
- 903 Prohibited Conduct of Staff, Interns, Volunteers, and Contractors (Amended 8/24/17~~[January 15, 2014]~~);
- 904 Contracted Residential Entities (Amended 8/24/17~~[October 14, 2013]~~);
- 90 Juvenile Vulnerability Assessment Procedure (Amended 8/24/17~~[January 15, 2014]~~);
- 906 Reporting and Investigating PREA Violations (Amended 8/24/17~~[February 10, 2014]~~);
- 907 Resident PREA Education (Amended 8/24/17~~[January 15, 2014]~~);
- 908 DJJ Response to a Report of a PREA Violation (Amended 8/24/17~~[January 15, 2014]~~);
- 909 Data Collection and Review (Amended 8/24/17~~[January 15, 2014]~~);
- 910 Facility Security Management (Amended 8/24/17~~[February 10, 2014]~~);
- 911 DJJ Staff PREA Education and Training (Amended 8/24/17~~[October 14, 2013]~~); and
- 912 Sexual Orientation and Gender Identity (Amended 12/15/17~~[8/24/17]~~).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field

office, Monday through Friday, 8 a.m. to 4:30 p.m.

CAREY D. COCKERELL, Commissioner

APPROVED BY AGENCY: December 14, 2017

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

CONTACT PERSON: William Codell, Assistant General Counsel, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836, email William.Codell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: William Codell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Kentucky Department of Juvenile Justice, including the rights and responsibilities of employees and the juvenile population as it relates to the Prison Rape Elimination Act of 2003 (PREA).

(b) The necessity of this administrative regulation: To comply with the requirements of 28 C.F.R. 115, Subpart D.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Kentucky Department of Juvenile Justice.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation and material incorporated by reference establishes policies and procedures that govern the operations of the Kentucky Department of Juvenile Justice and its facilities. It provides direction and information to departmental employees and juveniles concerning the operations of the department.

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

(a) How the amendment will change this existing administrative regulation: The amendment shall bring the Kentucky Department of Juvenile Justice into compliance with the federal requirements of the Prison Rape Elimination Act of 2003 (PREA) and updates current practices for the department, employees, and juveniles in the care and custody of the department.

(b) The necessity of the amendment to this administrative regulation: To comply with the requirements of 28 C.F.R. 115, Subpart D.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation governs the operations of the Kentucky Department of Juvenile Justice.

(d) How the amendment will assist in the effective administration of the statutes: The amendment and material incorporated by reference establishes policies and procedures that govern the operations of the Kentucky Department of Juvenile Justice and its facilities. It provides direction and information to departmental employees and juveniles concerning the operations of the department as it relates to the Prison Rape Elimination Act of 2003 (PREA).

(3) List type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the Kentucky Department of Juvenile Justice, 1,400 employees, all juveniles committed to the care and custody of the department, visitors, volunteers, interns, and contractors.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Staff, volunteers, interns, and contractors will be required to follow the incorporated policies and procedures. Juveniles in the care and custody of the Kentucky Department of Juvenile Justice will have the rights established by the policy.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that this amended administrative regulation will

increase current costs significantly.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The impact of the policies and procedures will protect rights of juveniles in the care and custody of the dept. and further ensure safety and protection of youth.

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

(a) Initially: The Prison Rape Elimination Act of 2003 (PREA) 28C.F.R. 115.313 (c) mandates that secure juvenile facilities shall maintain staff ratios of a minimum of 1:8 during resident waking hours and 1:16 during resident sleeping hours by October 1, 2017, to achieve compliance with the PREA standards. Currently, the staff to youth ratio is 1:12 during resident waking hours, and each secure facility is under staffed causing the department to be noncompliant with federal standards. In order to come into compliance, the department would have to hire a minimum of 80-90 staff, which roughly yields 4 million dollars (\$4,000,000) in addition to the current staffing budget. The department anticipates that any additional costs will be related to training staff, volunteers, interns, and contractors on the new policies and the requirements of PREA.

(b) On a continuing basis: The additional cost of staff to youth ratios being lowered to 1:8 in accordance with federal standards will result in a an estimated cost of a least 4 million (\$4,000,00) dollars. The cost of audits for the PREA audit cycle will be up to \$70,000 dollars.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Juvenile Justice 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: No increase in fees is anticipated. The department has determined that an increase in funding will be necessary to cover the cost of the staff to youth ratio reduction from 1:12 to 1:8. The estimated cost of this staffing modification is anticipated to be an additional 4 million dollars (\$4,000,000). Furthermore, it is necessary to maintain the appropriate funding to complete the audits required by federal standards for each DJJ residential and secure facility.

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

(9) Tiering: Is tiering applied? No. Tiering is not appropriate in this amended 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? Response: This regulation impacts operation of the Kentucky Department of Juvenile Justice and its facilities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Response: KRS 15A.065, 15A.067, 15A.160, 15A.160, 200.115, 605.11, 605.150, 640.120, 645.450, 28 C.F.R. 115, Subpart D.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Response: 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? Response: Not applicable.

(c) How much will it cost to administer this program for the first year? The department anticipates that the initial cost to comply with the federal Prison Rape Elimination Act of 2003 (PREA) standards that require the staff to youth ratio to be 1:8 is 4 million dollars (\$4,000,000) above the current staffing budget. Response: The department anticipates that any initial cost will be related to training staff, volunteers, interns, and contractors on the new policies and the requirements of PREA.

(d) How much will it cost to administer this program for subsequent years? Response: In order to maintain compliance with the federal PREA standards, the department must maintain the appropriate staff to youth ratio which is 1:8 and any staffing costs associated with maintaining that ratio. In order to come into compliance, the department would have to hire a minimum of 80-90 staff, which roughly yields 4 million dollars (\$4,000,000) in addition to the current staffing budge. As a result, it will be imperative for the department to increase its budget regarding staffing costs. The cost of audits for the PREA audit cycle will be up to \$70,000.

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

Revenues (+/-): No revenue will be generated from this regulation.

Expenditures (+/-): Expenditures relate to training staff and auditing programs to ensure compliance.

Other Explanation:

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amended After Comments)**

701 KAR 8:010. Charter school student application, lottery, and enrollment.

RELATES TO: KRS 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599, 161.141

STATUTORY AUTHORITY: KRS 160.1591

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1591 requires the Kentucky Board of Education to promulgate an administrative regulation to guide student application, lottery, and enrollment in public charter schools. This administrative regulation sets forth the requirements for charter school student application, lottery, and enrollment.

Section 1. Definitions. (1) "Academically behind" means at risk of academic failure.

(2) "Adult student" means a student who is eighteen (18) years or older who is still eligible for enrollment and attendance at a school program pursuant to KRS 158.030 and 158.100.

(3) "Applicant" is defined in KRS 160.1590(3).

(4) "At risk" means at risk of academic failure.

(5) "At risk of academic failure" means:

(a) Attendance at a school identified pursuant to KRS 160.346(2) for targeted support or intervention;

(b) Attendance at a school identified pursuant to KRS 160.346(3) for comprehensive support and improvement;

(c) Current achievement two (2) or more grade levels below the student's age group;

(d) Demonstration of poor academic skills, such as failure of two (2) or more subjects in two (2) of the past four (4) school years;

(e) Consistent absence or tardy and absence twenty-five (25) or more unexcused student attendance days, as defined in KRS 158.070, in the last two (2) school years and an overall grade average below a C;

(f) Suspension (in-school suspension or home suspension) two (2) or more times during the past school year and an overall grade average below a C;

(g) Family history of dropping out or lack of family support for the student in the completion of school;

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(h) Little or no participation in school cocurricular or extracurricular programs;

(i) Below grade level in reading or math skills;

(j) Indication of being socially isolated; or

(k) An applicant's definition for this term in its authorizer approved charter application, pursuant to KRS 160.1594(2).

(6) "Authorizer" or "public charter school authorizer" is defined in KRS 160.1590(13).

(7) "Charter application" is defined in KRS 160.1590(4).

(8) "Charter contract" or "contract" is defined in KRS 160.1590(5).

(9) "Charter school" means a public charter school.

(10) "Charter school board of directors" is defined in KRS 160.1590(6).

(11) "Cocurricular programs" means school programs which have activities that are unequivocally instructional in nature, directly related to the instructional program, and scheduled to minimize absences from classroom instruction.

(12) "Computerized randomization" means use of a computer software program for randomization.

(13) "Conversion public charter school" is defined in KRS 160.1590(7).

(14) "Days" means calendar days calculated pursuant to KRS 446.030.

(15) "Education service provider" is defined in KRS 160.1590(8).

(16) "Emancipated youth" means a student under the age of eighteen (18) who is or has been married or has by court order or otherwise been freed from the care, custody, and control of the student's parents.

(17) "Enrollment" means the process for the charter school to register a student for attendance at the charter school.

(18) "Enrollment preference" means the priority of the student application from students identified in KRS 160.1591(5).

(19) "Extracurricular programs" means voluntary programs that are offered by a school but are not part of the required school program.

(20) "Grade" or "Grade Level" means a single elementary, middle, or high school grade of school.

(21) "Human randomization" means randomization without the use of computer randomization.

(22) "Knowingly" means that a person knew that in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of a statute or administrative regulation.

(23) "Local school district" is defined in KRS 160.1590(10).

(24) "Lottery" means the transparent, open, equitable, and impartial process that is competently conducted with randomization in accordance with the targeted student population and service community as identified in KRS 160.1593(3) for the charter school to choose students for enrollment and attendance at the charter school when the student applications received by the charter school exceed the charter school's capacity.

(25) "Multiple" means a person who was born as a result of the same pregnancy as at least one (1) other sibling.

(26) "Notice" means written notice.

(27) "Notify" means provide written notice.

(28) "Parent" is defined in KRS 160.1590(11).

(29) "Persistently low-achieving public schools" or "Persistently low-achieving noncharter public schools" means noncharter public schools identified for comprehensive support and improvement pursuant to KRS 160.346.

(30) "Person with custody or charge" means any adult, pursuant to KRS 159.010, who falls within the definition of KRS 387.010(2) for interested person or entity and with whom the student resides.

(31) "Primary enrollment preference" means any enrollment preference other than a secondary enrollment preference.

(32) "Public charter school" is defined in KRS 160.1590(12).

(33) "Randomization" means to leave to chance alone and eliminate bias and interference.

(34) "Secondary enrollment preference" means the priority of a resident student application for enrollment in a public charter school, after acceptance of all the student applications with primary

enrollment preference, if the public charter school's capacity has not been exceeded for that school year.

(35) "Start-up public charter school" is defined in KRS 160.1590(17).

(36) "Student" is defined in KRS 160.1590(19) and includes any person who is entitled to enrollment and attendance at a school program as provided in KRS 158.030 and 158.100.

(37) "Student application" means an application submitted to a charter school for student enrollment in the charter school.

(38) "Students with special needs" or "Special needs students" means:

(a) Exceptional children and youth students, as defined in KRS 157.200, who are eligible pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. secs. 1400 et seq. for an individual education plan, as described in KRS 157.196, or an individual education program, as described in KRS 158.281; or

(b) Students who are eligible for services under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. sec. 794, to prevent substantial limitation of one or more major life activities.

(39) "Traditionally underperforming" means at risk of academic failure.

(40) "Year" or "Academic year" or "School year" means school year as defined in KRS 158.050.

Section 2. Student Application. (1) Any parent, person with custody or charge, adult student, or emancipated youth student who has the ability to enroll the student pursuant to Kentucky law may initiate a student application to a charter school for the student who is eligible for attendance at the charter school under KRS 158.030, 158.100, or 160.1591(5) or (6).

(2) Any adult student or emancipated youth student may initiate the student's own application to a charter school.

(3) A student application for enrollment in a charter school shall list the grade level the parent, person with custody or charge, adult student, or emancipated youth student understands to be the most appropriate grade level for the student based on available information. Any future determination by the resident local school district or the charter school that the student should be placed in a different grade level shall not invalidate the student's application unless the charter school determines that the parent, person with custody or charge, adult student, or emancipated youth student knowingly misrepresented the grade level most appropriate for the student on the student application.

(4) Consent of the parent, person with custody or charge, adult student, or emancipated youth student to serve on the charter school board of directors shall not be a condition for student application to the charter school.

(5) The charter school shall not limit the number of applications that it accepts from students based on ethnicity, national origin, religion, sex, income level, disabling condition, proficiency in the English language, or academic or athletic ability, in violation of the Civil Rights Act of 1964, 42 U.S.C. secs. 1981 to 2000h-6, as amended, Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, as amended, KRS 160.1591(5), or KRS 160.1593(19).

(6) For a start-up charter school, the enrollment preference described in KRS 160.1591(5)(d) is only available to:

(a) A child of a Kentucky resident who is on the board of directors and resides within the charter school's enrollment boundaries; or

(b) A child of a Kentucky resident who will be a full-time employee of the charter school and resides within the charter school's enrollment boundaries.

(7) The charter school shall utilize a uniform application process for all student applications, including use of the Kentucky Charter School Student Application.

Section 3. Lottery. (1) A charter school board of directors shall create and publish policies and procedures on its website for conducting the lottery that include the following:

(a) Identification and designation of duties for charter school board members, any education service provider, charter school staff, and volunteers prior to the lottery event;

(b) Segregation of duties to decrease the likelihood of errors, mitigate the risk of interference, and increase the public perception that the lottery is a randomized, transparent, open, equitable, and impartial process that is competently conducted;

(c) Provision for breaks during the lottery;

(d) Retention of records from the lottery for **the length of the charter contract [two (2) years]**;

(e) Creation of minutes from the lottery; and

(f) Procedures for receipt, investigation, and handling of written complaints regarding the lottery with concurrent provision of all documents to the authorizer, the commissioner of education, and the Kentucky Board of Education. Procedures shall include:

1. Any remedies the charter school shall provide upon determination that student selection during the lottery was affected by an error committed by individuals acting on behalf of the charter school during the application or lottery processes;

2. Transparency in the charter school's remedying of such an error; and

3. Actions to prevent reoccurrence of errors in the application and lottery processes in future years.

(2) A charter school shall conduct the lottery in compliance with the requirements of KRS 160.1591, 160.1592, 701 KAR Chapter 8, and its policies and procedures, that may include, as allowed by the authorizer:

(a) Selection of numbers assigned to individual students; and

(b) Human randomization or computerized randomization.

(3) The charter school shall afford primary enrollment preferences and secondary enrollment preferences only to students as allowed in KRS 160.1591, 160.1592, and this administrative regulation, as designated in the charter application, and as allowed in the charter contract.

(4) A charter school shall not conduct a lottery for enrollment if the number of student applications does not exceed the capacity of the charter school for that school year, as stated in the charter school's charter contract.

(5) If the number of student applications exceeds the capacity of the charter school for the school year, then pursuant to KRS 160.1591(5)(c), the charter school shall reserve space for enrollment of returning students and then conduct the lottery for the other student applications.

(6) If the number of student applications with enrollment preferences meeting the requirements of subsection (3) of this section exceeds the capacity of the charter school for the school year, the charter school shall include in the lottery for enrollment only those students with enrollment preferences.

(7) Selection in the lottery of a student who is a multiple shall also result in:

(a) The automatic selection of the student's multiple siblings who have submitted a student application to that charter school for attendance that school year, unless this would exceed the capacity of the charter school; or

(b) If the automatic selection of the student's multiple siblings would exceed the capacity of the charter school for that school year, the automatic placement of the student's multiple siblings at the top of the wait list.

(8) At least thirty (30) days prior to conducting a lottery, the charter school shall publish on its website, **and provide notice of the lottery to provide information on the lottery** to parents, persons with custody or charge, adult students, and emancipated youth students **who have submitted student applications to the charter school, notice of the lottery and information on the lottery**. The **Web site publication and** notice shall include:

(a) The date and location of the lottery and the information meeting to be held prior to the lottery pursuant to subsection (9) of this section;

(b) Information on the legal requirements and policies and procedures utilized in holding the lottery;

(c) Information for filing a written complaint regarding the lottery monitor;

(d) Information for filing a written complaint regarding an error committed by individuals acting on behalf of the charter school during the application or lottery processes; and

(e) Identification of the charter school for the lottery.

(9) At least twenty (20) days prior to conducting a lottery, the charter school shall hold a meeting to provide the lottery information in subsection (8) of this section to parents, persons with custody or charge, adult students, and emancipated youth students.

(10) The authorizer may include in the charter contract a requirement for the charter school to conduct a practice lottery, in the presence of the lottery monitor, to reduce charter school community shareholder concerns, to identify potential issues and perceptions with the selected lottery method, and to build the charter school's capacity to conduct the lottery.

(11) The charter school shall not require the presence of the parent, person with custody or charge, adult student, or emancipated youth student at the lottery for inclusion in the lottery or for eligibility for enrollment.

(12) The charter school shall not require the consent of the parent, person with custody or charge, adult student, or emancipated youth student to serve on the charter school board of directors for inclusion in the lottery or for eligibility for enrollment.

(13) If a charter school determines capacity by grade level, then the charter school shall hold lotteries only in those grade levels where student applications exceeded the charter school's capacity and shall hold separate lotteries, which may occur on the same date, for each of those grade levels. A student shall be eligible for the lottery for the grade level listed on the student's application, unless the charter school and the parent, persons with custody or charge, adult student, or emancipated youth student agree otherwise.

(14) The lottery and the information meeting required in subsection (9) of this section shall each be held in accordance with the Open Meetings Act at a time and location convenient to parents, persons with custody or charge, adult students, and emancipated youth students who have submitted a student application for enrollment in the charter school.

(15) The lottery shall be monitored by a competent, independent, impartial party, the lottery monitor, **who shall be selected by the charter school**, to ensure compliance with KRS 160.1591 and 160.1592 as follows:

(a) The charter school shall include the identity, qualifications, and affiliations of the lottery monitor in the information they provide to the public thirty (30) days prior to the lottery, pursuant to subsection (8) of this section, and in the lottery information meeting held pursuant to subsection (9) of this section;

(b) Complaints regarding the competence, independence, or impartiality of the lottery monitor shall be provided in writing to the commissioner of education who shall conduct an investigation and render a decision within seven (7) days of receipt of the written complaint; and

(c) If the lottery monitor is determined by the commissioner of education to lack competence, independence, or impartiality, the commissioner of education shall appoint an individual who does meet these requirements to serve as a monitor for the lottery selection process.

(16) In the lottery, the charter school shall select students for enrollment up to the capacity of the school for that school year and then the charter school shall select students for inclusion on the wait list above the school capacity as follows:

(a) The charter school shall continue to select students for placement on the wait list until the charter school has exhausted the student applications for that school year;

(b) The charter school shall ensure that lottery drawing for the wait list is separate from the lottery for selection of students for enrollment and that each parent, person with custody or charge, adult student, and emancipated youth student, who submitted a student application to the charter school and is placed on a wait list, is notified in writing of the student's inclusion on the wait list and the student's position on the wait list after the conclusion of the wait list lottery process;

(c) The charter school shall place students on the wait list in the order they are drawn during that portion of the lottery process;

(d) The charter school shall maintain and continuously update accurate records of the order of the wait list;

(e) The charter school shall update the wait list as students are

admitted;

(f) The charter school shall weekly publish on its website updated information on each student's position on the wait list as well as the last date for enrollment for that year. **The charter school shall weekly provide each parent, person with custody or charge, or student with notice of the student's updated position on the wait list as well as the last date for enrollment for that year;** and

(g) The charter school shall place student applications received after the lottery on the wait list, in the order received, after the students placed on the wait list through the lottery process in this section.

Section 4. Student Enrollment. (1) A charter school shall include in its policies and procedures on student enrollment:

(a) The status of an enrollment preference and eligibility for enrollment and attendance for a student if the student ceases to **reside within the charter school's enrollment boundaries[be a resident of the local school district]** prior to or during the school year;

(b) The status of an enrollment preference for a sibling under KRS 160.1591(5)(c) if the student who was enrolled the previous school year withdraws from the charter school;

(c) The status of an enrollment preference for a student under KRS 160.1591(5)(d) if the resident ceases to be a member of the board of directors or ceases to be a full-time employee of the charter school prior to or during the school year;

(d) The status of an enrollment preference for a student under KRS 160.1591(5)(e) if the student ceases to be eligible for free or reduced price meals prior to or during the school year; and

(e) The status of an enrollment preference for a student under KRS 160.1591(5)(e) if the student's former school ceases to be a persistently low-achieving public school prior to the school year the student shall attend the charter school.

(2) A charter school shall accept student applications for enrollment and attendance from all local school district resident students who are eligible for enrollment based on KRS 158.030, 158.100, 160.1591(5) or (6) as follows:

(a) Only a student who **resides within the charter school's enrollment boundaries[is a resident of the local school district]** by the student's first day of student attendance is eligible for enrollment and attendance at the charter school that school year; and

(b) A student who attended the public charter school the previous year shall be automatically re-enrolled for attendance each school year unless:

1. The student has been awarded a high school diploma after meeting or exceeding the minimum requirements for high school graduation set by the Kentucky Board of Education;

2. The charter school has expelled the student pursuant to KRS 158.150;

3. A court has ordered placement of the student in another school or **a[another] local school district outside the charter school's enrollment boundaries;**

4. The student has voluntarily withdrawn from enrollment in the charter school; or

5. The student **[is] no longer resides within the charter school's enrollment boundaries[a resident of the local school district].**

(3) In addition to the requirements of KRS 160.1592(14), a charter school shall not discourage, restrict, or prohibit enrollment of a student, including based on:

(a) Whether the emancipated youth student, adult student, parent, or person with custody or charge gives consent for the charter school unilaterally to unenroll or withdraw the student from the charter school without providing the due process protections in KRS 158.150;

(b) The student's disability, academic performance, athletic ability, or the ability of the parent or person with custody or charge to volunteer at the charter school;

(c) The student's ability to meet academic minimum requirements;

(d) The student's English competence;

(e) The student's status as a student with special needs;

(f) The student's status as a student at risk of academic failure;

(g) The student's status as a homeless child or youth, under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11301 et seq.; or

(h) The student's eligibility for free or reduced price meals, under the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq.

(4) In addition to the requirements of KRS 160.1592(14), a charter school shall not:

(a) Require or request

1. An interview prior to enrollment;

2. Letters of recommendation;

3. Essays;

4. Resumes or information regarding a student's school or community activities;

5. Grades;

6. Test scores;

7. Attendance records;

8. **Special needs student status or special needs student disability information, at risk student information, free or reduced price lunch student eligibility information, or other education record information, except to the extent allowed by the authorizer in the charter contract for the purpose of confirming and providing an enrollment preference to the student pursuant to KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8;**

9. Disciplinary history except as allowed pursuant to KRS 158.155;

10[9]. Proof of a Social Security card or number, U.S. birth certificates, visa, or citizenship;

11[40]. Information on the legal residence or presence in the United States of the student, parent, or person with custody or charge; or

12[44]. Information regarding the cause of any student's residency with a person other than the parent; or

(b) Require a family to volunteer at the charter school or provide payment to the school, except:

1. As allowed in KRS 160.1592(14) for fees required on the same basis and to the same extent as other public schools; and

2. The charter school may encourage **[parental] involvement by parents, persons with custody or charge, adult students, and emancipated youth students** in the charter school as long as involvement is not required and there are no adverse consequences for the family or student who cannot be involved; or

(c) Require or request a parent, person with custody or charge, adult student, or emancipated youth student to consent to the charter school's withdrawal or unenrollment of the student from the charter school without providing the due process protections in KRS 158.150.

(5) A charter school shall enroll a student in compliance with KRS 158.032 and KRS 159.010.

(6) By the first day of a student's attendance, a charter school shall verify the residence of the student within the local school district and use methods similar to those employed by a local school district to verify residence.

(7) A conversion public charter school shall accept for enrollment student applications with secondary enrollment preference after accepting student applications with primary enrollment preference, if the conversion public charter school's capacity has not been exceeded for that school year. After complying with the primary enrollment preference requirement in KRS 160.1591(5)(b), a conversion public charter school may utilize the enrollment preferences in KRS 160.1591(5)(c-e) in enrolling additional local school district resident students pursuant to KRS 160.1591(5)(b).

(8) A charter school shall conduct enrollment as follows:

(a) A charter school shall establish and publish on its website an open enrollment period during which the charter school shall accept applications for enrollment of new students;

(b) A charter school shall establish and publish on its website a specific deadline for notification to parents, persons with custody or charge, adult students, or emancipated youth students of the

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charter school's acceptance of the student's application for enrollment;

(c) A charter school shall notify parents, persons with custody or charge, adult students, and emancipated youth students with accepted applications of their opportunity to enroll in the charter school and the deadlines and required documentation for enrollment;

(d) A charter school shall establish and publish on its website a specific deadline **during the open enrollment period** for parents, persons with custody or charge, adult students, or emancipated youth students with accepted applications to notify the school of their enrollment decision and to initiate enrollment of the student in the charter school. Failure of the parent, person with custody or charge, adult student, or emancipated youth student to accept the enrollment offer and enroll the student **by the deadline established by the charter school** during the open enrollment period may result in the forfeiture of an enrollment preference and result in enrollment of the student that school year only if capacity of the school has not been exceeded for that school year. Prior to forfeiture of the student's enrollment offer, a charter school shall attempt to enroll the student by again contacting the parent, person with custody or charge, adult student, or emancipated youth student through at least two (2) of the following methods, until successful:

1. Phone;
2. Email;
3. Mailed correspondence; or
4. Home visit; and

(e) A charter school shall allow a parent, person with custody or charge, adult student, or an emancipated youth student to enroll the student for attendance at the charter school in the grade level the parent, person with custody or charge, adult student, or emancipated youth student understands to be the most appropriate grade level based on available information. Any future determination by the resident local school district or the charter school that the student should be placed in a different grade level shall not invalidate the student's enrollment.

(9) A charter school shall only require the following documentation or information for student enrollment:

(a) Proof of the student's identity and age, as required pursuant to KRS 158.032;

(b) Immunization records, as required by KRS 158.035;

(c) Proof of residency in the local school district, as required by the resident local school district;

(d) Home language survey, as required by 703 KAR 5:070, as a first screening process to identify students who are English learners; and

(e) Proof of the student's current grade level.

(10) A charter school may request additional information with the consent of the authorizer **only to process the student applications, conduct the lottery, or enroll the charter school students**, but the refusal or failure to provide additional information cannot be a cause for denial of enrollment or for withdrawal of a student.

(11) A charter school shall accept ~~[local school district resident]~~ student applications **from students who reside within the charter school's enrollment boundaries** and enroll additional ~~[local school district resident]~~ students **who reside within the charter school's enrollment boundaries** for that school year after the end of the open enrollment period if the charter school has capacity to educate additional students at that grade level for that school year.

Section 5. Incorporation by Reference. (1) "Kentucky Charter School Student Application", February 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Legal, Legislative and Communication Services, 5th floor, 300 Building, 300 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed

and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

STEPHEN L. PRUITT, PH.D., Commissioner

MARY GWEN WHEELER, Chair

APPROVED BY AGENCY: December 14, 2017

FILED WITH LRC: December 15, 2017 at 9 a.m.

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 300 Sower Boulevard, Fifth Floor, Sower Building, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email kevin.brown@education.ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation fulfills the regulation promulgation requirement of the agency in KRS 160.1590 to 160.1599 and 161.141.

(b) The necessity of this administrative regulation: KRS 160.1590 to 160.1599 and 161.141 became effective on June 29, 2017. This administrative regulation provides guidance on student application, lottery, and enrollment in public charter schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 160.1590 to 160.1599 and 161.141 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations providing guidance on student application, lottery, and enrollment in the public charter schools. This administrative regulation provides guidance from the agency on student application, lottery, and enrollment in the public charter schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

KRS 160.1590 to 160.1599 and 161.141 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations providing guidance from the agency on student application, lottery, and enrollment in the public charter schools. This new administrative regulation provides guidance to facilitate transparent and equitable student application, lottery, and enrollment in the public charter schools, as required by KRS 160.1590 to 160.1599 and 161.141.

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

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

(b) The necessity of the amendment to this administrative regulation: The authorizing statute requires the agency to provide guidance on student application, lottery, and enrollment in the public charter schools.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: School districts, public charter schools, students applying for enrollment in public charter schools, and the Kentucky Department of Education 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: School districts, whose students seek enrollment in public charter schools, should not need to take action related to the lotteries. Public charter schools, who seek to enroll students, will have to create and execute a student lottery as detailed by statute and this regulation. Students, who seek

enrollment in a public charter school will have to assure they qualify for lottery entry. The Kentucky Department of Education shall provide support to ensure the transparent and uniform application, lottery, and enrollment of students in public charter schools.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance costs for school districts should be minimal to none because school districts are already facilitating the transfer of students to other schools. Compliance costs for public charter schools should be minimal to none because this administrative regulation should assist in the organized student application, lottery, and enrollment of students in public charter schools. Same for students and the Kentucky Department of Education.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This new administrative regulation will create one consistent standard for the application, lottery, and enrollment of students in public charter schools.

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

(a) Initially: Compliance costs should be minimal to none.

(b) On a continuing basis: Compliance costs should be minimal to none.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Education general funds and school district funds, and funds provided to public charter schools.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: N/A.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts and all public charter schools.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts, public charter schools, and the Department of Education.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 160.1590 to 160.1599 and 161.141.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation should have no impact on the expenditures or revenues for school districts or public charter schools.

(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 should not impact school district or public charter school revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation should not impact school district or public charter school revenues.

(c) How much will it cost to administer this program for the first year? Administration costs to school districts or public charter schools should be minimal to none.

(d) How much will it cost to administer this program for subsequent years? Administration costs to school districts or public charter schools should be minimal to 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: There should be no fiscal impact resulting from the new administrative regulation.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amended After Comments)**

701 KAR 8:020. Evaluation of charter school authorizers.

RELATES TO: KRS 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599, 161.141

STATUTORY AUTHORITY: KRS 160.1596

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1596 requires the Kentucky Board of Education to promulgate an administrative regulation to establish the process to be used to evaluate the performance of a charter school authorizer, based upon the requirements of KRS 160.1590 to 160.1599 and 161.141, and the actions to be taken in response to failures in performance.

Section 1. Definitions. (1) "Academically behind" means at risk of academic failure.

(2) "Achievement gap" is defined in KRS 160.1590(2) and means the same as in KRS 158.649.

(3) "Adult student" means a student who is eighteen (18) years or older who is still eligible for enrollment and attendance at a school program pursuant to KRS 158.030 and 158.100.

(4) "Applicant" is defined in KRS 160.1590(3).

(5) "Areas of exceptionality" means categories of disabilities of students with special needs.

(6) "At risk" means at risk of academic failure.

(7) "At risk of academic failure" means:

(a) Attendance at a school identified pursuant to KRS 160.346(2) for targeted support or intervention;

(b) Attendance at a school identified pursuant to KRS 160.346(3) for comprehensive support and improvement;

(c) Current achievement two (2) or more grade levels below the student's age group;

(d) Demonstration of poor academic skills, such as failure of two (2) or more subjects in two (2) of the past four (4) school years;

(e) Consistent absence or tardy and absence twenty-five (25) or more unexcused student attendance days, as defined in KRS 158.070, in the last two (2) school years and an overall grade average below a C;

(f) Suspension (in-school suspension or home suspension) two (2) or more times during the past school year and an overall grade average below a C;

(g) Family history of dropping out or lack of family support for the student in the completion of school;

(h) Little or no participation in school cocurricular or extracurricular programs;

(i) Below grade level in reading or math skills;

(j) Indication of being socially isolated; or

(k) An applicant's definition for this term in its authorizer approved charter application, pursuant to KRS 160.1594(2).

(8) "Authorizer" or "public charter school authorizer" is defined in KRS 160.1590(13).

(9) "Authorizer's board of directors" means:

(a) The board of education for the local school district for an authorizer described in KRS 160.1590 (13)(a); and

(b) The boards of education that have collaborated to set up a regional public charter school for an authorizer described in KRS 160.1590(13)(b).

(10) "Bilingual students" means students who are fluent in English and a foreign language, which may include American Sign Language.

(11) "Charter" means charter contract.

(12) "Charter application" is defined in KRS 160.1590(4).

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(13) "Charter contract" or "contract" is defined in KRS 160.1590(5).

(14) "Charter school" means a public charter school.

(15) "Charter school board of directors" is defined in KRS 160.1590(6).

(16) "Cocurricular programs" means school programs which have activities that are unequivocally instructional in nature, directly related to the instructional program, and scheduled to minimize absences from classroom instruction.

(17) "Comprehensive learning experiences" or "Expanded learning opportunities" means daily, rigorous learning experiences that build on a student's talents, challenge the student's skills and understandings, and develop the student's ability to reason, problem solve, collaborate, and communicate to prepare the student for success in postsecondary.

(18) "Conversion public charter school" or "conversion charter school" is defined in KRS 160.1590(7).

(19) "Days" means calendar days calculated pursuant to KRS 446.030.

(20) "Education service provider" is defined in KRS 160.1590(8).

(21) "Emancipated youth" means a student under the age of eighteen (18) who is or has been married or has by court order or otherwise been freed from the care, custody, and control of the student's parents.

(22) "Enrollment preference" means the priority of the student application from students identified in KRS 160.1591(5).

(23) "Extracurricular programs" means voluntary programs that are offered by a school but are not part of the required school program.

(24) "Fiscal year" is defined in KRS 160.450.

(25) "Foreign entity" is defined in KRS 14A.1-070(10).

(26) "Gifted" means a gifted and talented student as defined in KRS 157.200(1)(n).

(27) "Governing board of the authorizer" means the authorizer's board of directors.

(28) "Governing body of the authorizer" means the authorizer's board of directors.

(29) "Grade" or "Grade Level" means a single elementary, middle, or high school grade of school.

(30) "Knowingly" means that a person knew that in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of a statute or administrative regulation.

(31) "Local school district" is defined in KRS 160.1590(10).

(32) "Parent" is defined in KRS 160.1590(11).

(33) "Persistently low-achieving public schools" or "Persistently low-achieving noncharter public schools" means noncharter schools identified for comprehensive support and improvement pursuant to KRS 160.346.

(34) "Person with custody or charge" means any adult, pursuant to KRS 159.010, who falls within the definition of KRS 387.010(2) for interested person or entity and with whom the student resides.

(35) "Primary enrollment preference" means any enrollment preference other than a secondary enrollment preference.

(36) "Public charter school" is defined in KRS 160.1590(12).

(37) "Regional achievement academy" is defined in KRS 160.1590(15).

(38) "Regional achievement zone" is defined in KRS 160.1590(16).

(39) "School level" or "Level" or "Educational level" means the configuration of grade levels that form elementary, middle, and high schools.

(40) "Secondary enrollment preference" means the priority of a resident student application for enrollment in a public charter school, after acceptance of all the student applications with primary enrollment preference, if the public charter school's capacity has not been exceeded.

(41) "Start-up public charter school" is defined in KRS 160.1590(17).

(42) "Student" is defined in KRS 160.1590(19) and includes any person who is entitled to enrollment and attendance at a school program as provided in KRS 158.030 and 158.100.

(43) "Student attendance day" is defined in KRS 158.070(1)(e).

(44) "Students with special needs" or "Special needs students" means:

(a) Exceptional children and youth students, as defined in KRS 157.200, who are eligible pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. secs. 1400 et seq. for an individual education plan, as described in KRS 157.196, or an individual education program, as described in KRS 158.281; or

(b) Students who are eligible for services under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. sec. 794, to prevent substantial limitation of one (1) or more major life activities.

(45) "Substantial hardship" means a significant, unique, and demonstrable economic, technological, legal, or other impact on a local school district which impairs its ability to continue to successfully meet the requirements of educational programs or services for its students.

(46) "Superintendent" means the local school district employee tasked with the duties described in KRS 160.370.

(47) "Traditionally underperforming" means at risk of academic failure.

(48) "Unilateral imposition of conditions" means the authorizer has placed **or attempted to place** conditions or requirements that are not required by KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8:

(a) On the applicant in the authorizer's formal action approving the charter application; or

(b) On the charter school in the charter contract or an amendment.

(49) "Unilaterally imposed conditions" or "Unilateral conditions" or "Conditions unilaterally imposed" means conditions or requirements not required by KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8 that the authorizer places **or attempts to place**:

(a) On the applicant in the authorizer's formal action approving the charter application; or

(b) On the charter school in the charter contract or an amendment.

(50) "Year" or "Academic year" or "School year" means school year as defined in KRS 158.050.

Section 2. Policies and Procedures. (1) Pursuant to KRS 160.1594, an authorizer shall create policies and procedures governing the authorizer's performance of its duties under KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 and include in its policies and procedures:

(a) The authorizer's strategic vision for chartering, including a clear statement of any preference for a charter application that demonstrates the intent, capacity, and capability to provide comprehensive learning experiences or expanded learning opportunities to students identified in KRS 160.1594(2) or KRS 160.1592(19);

(b) Identification of any charter application preferences of the authorizer pursuant to KRS 160.1594(2);

(c) Information on the authorizer's performance contracting requirements:

1. Including academic, financial, and operational measures, and the performance frameworks, that the authorizer has developed for public charter school oversight and evaluation and with which the authorizer shall evaluate the charter school's performance under the charter contract, in accordance with KRS 160.1594 and 701 KAR Chapter 8; and

2. Including requirements for executing a contract with a charter school board of directors that articulates:

a. The rights and responsibilities of each party regarding school autonomy;

b. Funding;

c. Administration and oversight;

d. Outcomes;

e. Measures for evaluating success or failure;

f. Performance consequences; and

g. Other material terms;

(d) The evidence the authorizer shall require, the evaluation the authorizer shall conduct using the performance framework, and

other aspects of the authorizer's ongoing monitoring of the charter school including:

1. Ensuring a charter school's legally entitled autonomy;
2. Protecting ~~[student]~~ **student's civil, disability, safety, and educational** rights;
3. Informing intervention, revocation, and renewal decisions; and
4. Providing annual reports as required by KRS 160.1597(5);
 - (e) The requirements for reporting to the public;
 - (f) The authorizer's authority to intervene in charter schools, when and if necessary;
 - (g) Guidelines concerning the format and content essential for an applicant to demonstrate the capacities necessary to establish and operate a public charter school, pursuant to KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8;
 - (h) The timeline for submission, review, decision, and appeal for a charter application, and a request for renewal. An authorizer described in KRS 160.1590(13)(c) and (d) shall consult with the superintendent of the resident local school district when planning this timeline;
 - (i) A template of the assurances an authorizer shall require in a charter contract;
 - (j) The following evidence sufficiency requirements for the charter application:
 1. The charter school board of directors' ability to meet the financial solvency and sustainability demands of their proposed budget;
 2. Competent and timely charter school start-up and operation;
 3. Foreseen and unforeseen closure; and
 4. All debts and obligations during each fiscal year of the charter contract and during the entire contract term;
 - (k) The financial transparency requirements that will apply to a charter school, including specific provisions regarding publication on the authorizer's website and the charter school's website;
 - (l) The charter school closure protocol and requirements;
 - (m) A description of the authorizer's organizational capacity, including its commitment of human and financial resources necessary to conduct authorizing duties effectively and efficiently;
 - (n) The authorizer's requirements for solicitation and evaluation of a charter application, including its implementation of a comprehensive application process that includes use of the Kentucky Charter School Application and Addendum, and rigorous criteria, and approval of only a charter application that demonstrates a strong capacity to establish and operate a charter school;
 - (o) The authorizer's charter renewal and revocation processes and rigorous criteria, including its design and implementation of a transparent and rigorous process that uses comprehensive academic, financial, and operational performance data to make merit-based renewal and revocation decisions; and
 - (p) The requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 for an applicant, a board of directors, an education service provider, a charter school, and their employees.

Section 3. Standards of Authorizer Performance Generally. (1) Prior to authorizing a charter school, an authorizer described in KRS 160.1590(13)(c) and (d) shall file the Notice of Intent with the Kentucky Board of Education.

(2) An authorizer shall restrict the expenditure of funds received as a result of charter authorization and oversight to the purpose of fulfilling authorizing obligations pursuant to KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(3) Pursuant to KRS 160.1596(5)(e), an authorizer shall include in its report and place in a publicly accessible location on its website information on the following:

- (a) The oversight and any services provided by the authorizer to the public charter schools under the authority of the authorizer;
- (b) The authorizing functions provided by the authorizer to the public charter schools under its jurisdiction, including the operating costs and expenses of the authorizer as detailed in annual audited financial statements that conform to generally accepted accounting principles;
- (c) All use of charter authorizing revenue including

expenditures, contracts, and revenues, in the format required by the commissioner of education; and

(d) The reports that an authorizer is required to make pursuant to KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(4) The authorizer, or its designee for charter authorizing, shall participate in annual **in-service** training as follows:

(a) Each authorizer or member of the authorizer's board of directors shall complete:

1. **Twelve (12) hours of annual training for an authorizer or member with zero to eight (8) years of experience as an authorizer and eight (8) hours for an authorizer or a member with more than eight (8) years of experience as an authorizer**~~Nine (9) hours of annual training, with six (6) additional hours of training for new authorizers and new members];~~ or

2. Competency-based annual **in-service** training;

(b) ~~[The~~ **In-service** training **toward the board of education member training requirements of KRS 160.180 may also count toward this requirement, to the extent the requirements of both are met by the content of the training, and the training for this requirement** shall include the following topics of authorizer responsibility and charter school formation and operation:

1. Financial governance and transparency;
2. Conflict of interest;
3. Charter application;
4. Charter school contracting;
5. Charter school monitoring;
6. Charter school renewal, nonrenewal, and revocation;
7. Charter school closure;~~[and]~~
8. Ethics;

9. Curriculum and instruction;

10. Educational services provided for special needs, at risk, English learner, gifted, and other special population students; and

11. Physical restraint and seclusion of students; and

(c) The training shall be approved by the commissioner of education.

(5) An authorizer shall submit to the department a written assurance of a charter school's compliance with the pre-operating requirements in this administrative regulation and in the charter contract before the opening of the charter school.

(6) An authorizer shall require the sharing of best practices between the charter school and the resident local school district.

Section 4. Standards of Authorizer Performance Concerning Charter Applications. (1) Pursuant to KRS 160.1591 and 160.1594(1)(e)2 and to the extent not prohibited by federal law, an authorizer shall not approve a charter application that is:

(a) From an applicant that is or includes:

1. A for-profit organization, or its designee;
2. An organization, or its designee, that is organized for religious purposes, within the meaning of 501(c)(3) of the Internal Revenue Code of 1986, as amended, and qualifying for tax-exempt status pursuant to 501(c)(3) of the Internal Revenue Code of 1986, as amended; or
3. A business entity, or its designee, that is not authorized to do business and in good standing in the Commonwealth of Kentucky, pursuant to KRS Chapter 14A; or

(b) That has in the proposed board of directors:

1. A for-profit organization, or its designee;
2. An organization, or its designee, that is organized for religious purposes, within the meaning of 501(c)(3) of the Internal Revenue Code of 1986, as amended, and qualifying for tax-exempt status pursuant to 501(c)(3) of the Internal Revenue Code of 1986, as amended; or
3. A business entity, or its designee, that is not authorized to do business and in good standing in the Commonwealth of Kentucky, pursuant to KRS Chapter 14A.

(2) An authorizer shall require a charter application to be submitted on the Kentucky Charter School Application and Addendum and may require additional information from the applicant.

(3) An authorizer shall publish a copy of a submitted charter

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application on its website within three (3) days of submission by the applicant to the authorizer.

(4) An authorizer shall provide a copy of a submitted charter application to the resident local school district superintendents and to any other authorizer of charter schools in that local school district within three (3) days of submission by the applicant to the authorizer.

(5) An authorizer described in KRS 160.1590(13)(a) or (b) shall provide a copy of a submitted charter application for a regional achievement academy within a regional achievement zone to the superintendents of the other local school districts of the regional achievement zone within three (3) days of submission by the applicant to the authorizer.

(6) An authorizer shall allow a resident local school district superintendent to file a letter with supporting evidence objecting to the approval of the charter application on the basis of the substantial hardship that may result for the students of the resident local school district who do not attend the charter school. An authorizer shall publish a copy of the letter and supporting evidence from the resident local school district superintendent on the authorizer's website within three (3) days of submission by the superintendent to the authorizer and the authorizer shall review this evidence prior to approving a charter application.

(7) An authorizer shall allow a resident local school district superintendent to file a letter of support for a charter application and shall publish a copy of the resident local school district superintendent letter on the authorizer's website within three (3) days of submission by the superintendent to the authorizer.

(8) An authorizer shall require a resident local school district superintendent to provide information and evidence regarding the academic performance of the students identified in the charter application as the targeted student body or community. An authorizer shall publish a copy of this information on the authorizer's website within three (3) days of submission by the superintendent to the authorizer, to the extent not prohibited by confidentiality laws.

(9) An authorizer shall comply with the following requirements in reviewing the charter application:

(a) Request and secure a certificate of existence from the Secretary of State, pursuant to KRS 14A.2-130, for any business entity or its designee included in the applicant or in the proposed charter school board of directors; and

(b) If the applicant or the board of directors includes a foreign entity, request and secure a certificate of authorization for the foreign entity from the Secretary of State, pursuant to KRS 14A.2-140.

(10) The department shall develop a charter application scoring rubric that an authorizer may utilize in reviewing a charter application.

(11) An authorizer shall require an applicant or proposed board of directors for a charter school to include in the charter application the following:

(a) Performance information, financial information, and closure information for any charter school under the applicant or board of directors;

(b) Details and documentation of the outreach the applicant or proposed board of directors has had with the students or community that is the focus of the charter application; and

(c) Details of whether the charter application replicates or substantially replicates:

1. A charter application that the applicant, the proposed board of directors, or another entity previously withdrew from consideration and the reasons the charter application was withdrawn;

2. A charter application that was rejected by an authorizer and the reasons the charter application was rejected; or

3. A charter school that was previously closed and the reasons for the closure.

(12) An authorizer shall provide on the authorizer's website the names of all persons, and their roles, who are involved in the review of charter applications. Review of charter applications shall be conducted pursuant to the requirements of the Open Meetings Act.

(13) An authorizer shall not approve a charter application that does not meet the requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(14) Within five (5) days of the authorizer's approval, the authorizer shall submit an approved charter application to the commissioner of education for review and approval commensurate with subsection (11) of Section 5.

Section 5. Standards of Authorizer Performance Concerning Charter Contracts. (1) Prior to negotiating a charter contract with a board of directors, an authorizer shall verify the charter school board of directors' registration as a non-profit business entity with the Kentucky Secretary of State pursuant to KRS Chapter 14A.

(2) An authorizer shall negotiate and enter a charter contract with a charter school board of directors in compliance with KRS 160.1590(5) and (6); 160.1591(2); 160.1592(3), (7), (8), (9), (10), (11), and (20); 160.1593(3); 160.1594(1); 160.1596(1); 160.1597(1), (2), and (6); 160.1598(1), (5), (6), and (7).

(3) An authorizer shall include pre-opening requirements or conditions in the charter contract as follows:

(a) An authorizer shall establish mutually agreed upon pre-opening requirements or conditions to:

1. Monitor the start-up progress of a newly approved public charter school;

2. Ensure that the charter school is prepared to open timely and smoothly on the date agreed; and

3. Ensure that the charter school meets all benchmarks related to facilities, health, safety, insurance, school personnel, enrollment, curriculum and instruction, operations and fiscal management, governance, and other legal requirements for the charter school opening; and

(b) Failure by the charter school to comply with the pre-opening requirements or conditions may result in the immediate revocation of the charter contract and:

1. May result in the delay in the opening of the charter school by up to one (1) year if the authorizer does not determine that the charter school is more likely than not to close during the school year; or

2. Shall result in the delay in the opening of the charter school by up to one (1) year if the authorizer does determine that the charter school is more likely than not to close during the school year.

(4) An authorizer shall include in the charter contract with the charter school board of directors provisions for charter school financial solvency and sustainability, including:

(a) A requirement that no member of the charter school board of directors, no education service provider, and no charter school employee shall knowingly recommend and no member of the charter school board of directors shall knowingly vote for an expenditure in excess of the charter school's income and revenue of any fiscal year, as shown by the budget adopted by the charter school board of directors and approved by the authorizer;

(b) A requirement that a member of the charter school board of directors, an education service provider, or a charter school employee who knowingly expends or authorizes the expenditure of charter school funds or who knowingly authorizes or executes any employment, purchase, or contract, in violation of this section, shall be jointly and severally liable in person and upon any official fidelity bond given to the authorizer to the extent of any payments on the void claim; and

(c) A requirement that, if at any time during any fiscal year of the charter school's existence, a member of the charter school board of directors, an education service provider, or a charter school employee knows or reasonably should know that the charter school has or will become unable to pay in full its projected expenses as they fall due, the charter school shall immediately so advise the department and the authorizer, and shall provide the department and the authorizer with all financial information relating to revenues and expenses of the charter school necessary for the department and the authorizer to determine the extent and cause of any potential operating deficit. If the member of the charter school board of directors, the education service provider, or the charter school employee fails to provide the notice to the

department and the authorizer required by this subsection or fails to cooperate with the department and the authorizer in the production of financial information pursuant to this subsection:

1. The authorizer shall determine whether grounds exist to revoke the charter contract; and

2. The knowingly acting member of the charter school board of directors, the education service provider, or the charter school employee may be subject to the liability described in paragraph (4)(b) of this section.

(5) An authorizer shall include in the charter contract the specific, exclusive reasons and timelines for closure initiated by the charter school board of directors, and the closure protocol and policies and procedures applicable to closure of the charter school.

(6) An authorizer shall require in the charter contract the closure requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(7) An authorizer shall require in the charter contract that the charter school shall not prohibit a student from attending and shall not unenroll or withdraw a student unless the charter school has complied with KRS 158.150.

(8) An authorizer shall require in the charter contract that the charter school board of directors maintain separate accountings of all funds received and disbursed by each charter school under the charter school board of directors.

(9) An authorizer shall require in the charter contract that any contract the charter school board of directors enters with an education service provider has to be approved by the authorizer prior to execution and that any contract the charter school board of directors enters with an education service provider shall comply with the following:

(a) Clearly establish the primacy of the charter contract over the contract between the charter board of directors and the education service provider;

(b) Clearly identify the charter school board of directors as the party ultimately responsible for the success or failure of the charter school, and clearly define the education service provider as a vendor of services;

(c) Prohibit the education service provider from selecting, approving, employing, compensating, or serving as members of the charter school board of directors;

(d) Require the charter school board of directors to directly select, retain, and compensate the charter school's legal counsel, finance staff, audit firm, and school leader;

(e) Provide for payments to the charter school to be made to an account controlled by the charter school board of directors, not the education service provider;

(f) Require all instructional materials, furnishings, and equipment purchased or developed with charter school funds be the property of the charter school, not the education service provider;

(g) Identify and describe the roles and responsibilities of the charter school board of directors and the education service provider, including all services to be provided under the contract between the charter school board of directors and the education service provider;

(h) Identify and describe the performance measures and consequences by which the charter school board of directors shall hold the education service provider accountable for performance, aligned with the performance measures in the charter contract;

(i) Identify and describe with specificity all compensation to be paid to the education service provider, including all fees, bonuses, and the conditions, consideration, and restrictions on such compensation;

(j) Identify and describe the terms of any facility agreement that may be part of the relationship between the charter school board of directors and the education service provider;

(k) Identify and describe financial reporting requirements and provisions for the charter school board of directors' financial oversight of the education service provider and the charter school;

(l) Identify and describe all other financial terms of the contract, including disclosure and documentation of all loans or investments by the education service provider to the charter school board of directors, and provision for the disposition of assets upon closure

in accordance with KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8;

(m) Include assurances that the charter school board of directors, at all times, shall maintain independent fiduciary oversight and authority over the charter school budget and ultimate responsibility for the charter school's performance;

(n) Include provisions for contract termination without penalties for the charter school and without costs beyond the pro-rated value of the services provided by the education service provider;

(o) Assure:

1. That the charter school board of directors shall be structurally independent from the education service provider and shall set and approve charter school policies;

2. That the terms of the contract between the charter school board of directors and the education service provider are reached through arm's-length negotiations in which the charter school board of directors is represented by legal counsel that does not also represent the education service provider; and

(p) Identify and describe the respective responsibilities of the charter school board of directors and the education service provider in the event of school closure.

(10) An authorizer shall prohibit a charter school board of directors, in the charter contract, from delegating the charter school board of directors' responsibilities in subsection (9) of this section to the education service provider.

(11) No authorizer shall enter a charter contract for start-up, conversion, or renewal of a charter school, or agree to any charter contract amendment, unless the charter contract or amendment is approved by the commissioner of education as follows:

(a) An authorizer shall provide the commissioner of education a copy of a proposed charter contract or proposed amendment;

(b) Within fifteen (15) days of receipt of the proposed charter contract or amendment from the authorizer, pursuant to KRS 160.1594(9), the commissioner of education shall provide to an authorizer and the charter school board of directors approval of the contract or:

1. The reasons for a denial and any suggestions for remedy of these reasons; and

2. Notice of the opportunity for resubmission of the remedied contract or amendment to the commissioner of education; and

(c) Any failure to meet the commissioner of education's requirements for approval shall render the charter contract or its amendment void.

Section 6. Standards of Authorizer Performance Concerning Charter School Monitoring. (1) An authorizer, that determines a charter school board of directors has governance over more than one (1) charter school and has failed to meet the requirements of KRS 160.1592, shall commence an investigation to determine if the charter school board of directors is in compliance with the charter contracts for every other charter school under the authorizer's jurisdiction.

(2) An authorizer shall monitor the performance of the charter contract by a charter school board of directors, and any educational service provider. If the authorizer believes there is an issue with any aspect of performance of the charter contract, or compliance with any of the requirements of KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8, the authorizer shall commence an investigation.

(3) An authorizer that verifies an issue with any aspect of performance of the charter contract, or compliance with any of the requirements of KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8, shall notify the commissioner of education and may request assistance from the commissioner of education in addressing and remedying the issue.

(4) An authorizer that verifies an issue with any aspect of the performance of the charter contract, or compliance with any of the requirements of KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8, shall notify the charter school of the issue and take necessary action, including unilateral imposition of conditions on the charter school, revocation, or nonrenewal of the charter contract, to resolve the issue and to provide notice of the issue and the resolution to the charter school's adult students, emancipated

youth students, parents, persons with custody or charge, and the department.

(5) An authorizer shall at least monthly review the financial budget reports of the charter school and take the following action:

(a) If the budget projections indicate that the charter school's annual operating expenses may at any time during the school year cause the annual operating revenues to fall below two (2) percent of the total projected annual operating revenues included in the school's approved budget, the charter school shall provide specific notice of this to the authorizer and the authorizer shall:

1. Require the charter school to implement a cash management plan approved by the authorizer;
2. Commence a more in-depth review, and an audit if necessary, of the charter school's financial budget reports, expenditures, and revenues;
3. Request financial management assistance for the charter school from the department; and
4. Restrict the charter school's expenditures and require the authorizer's approval prior to expenditure of charter school funds for the remainder of the school year; and

(b) If the charter school defaults on a financial obligation or if the authorizer otherwise suspects the charter school may close prior to the end of the school year or the charter contract term, the authorizer shall:

1. Consult with the commissioner of education;
2. Communicate with the charter school board of directors to determine the need for charter contract revocation;
3. Commence actions under (a) above;
4. Review the closure protocol;
5. Review the charter contract termination provisions;
6. Communicate with the charter school board of directors regarding the closure protocol and contract provisions for termination; and

7. Notify students and resident local school districts, as soon as necessary to ensure all students and resident local school districts are provided adequate time to prepare for the student transitions and to provide free and appropriate public education to any returning students.

(6) An authorizer shall revoke the charter contract and determine the timeline for closure if the authorizer determines the charter school:

- (a) Is financially insolvent;
- (b) Is financially unsustainable for the remainder of the school year or the charter contract term; or
- (c) Has violated or threatened the health and safety of the students of the public charter school, pursuant to KRS 160.1598(7).

(7) The department shall develop a charter contract performance framework that an authorizer may utilize in developing a charter contract performance framework. In addition to the requirements of KRS 160.1596, the authorizer's charter contract performance framework shall include academic, financial, and organizational performance frameworks, and targets in the following areas:

- (a) Student assessment and accountability;
- (b) Student graduation rates;
- (c) Student promotion rates;
- (d) Student attendance rates;
- (e) Student admission and enrollment in postsecondary institutions; and
- (f) Other outcomes.

Section 7. Standards of Authorizer Performance Concerning Charter Approval, Revocation, Renewal, and Nonrenewal. (1) An authorizer shall not approve a charter application, contract with, or renew a contract with a charter school board of directors for a charter school that:

- (a) Does not operate:
 1. A breakfast program under the Child Nutrition Act of 1966, 42 U.S.C. 1773, as amended (CNA), and a lunch program under the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq. (NSLA); or
 2. A breakfast and lunch program with provision of meals at no

cost to students who qualify for free meals under the CNA and NSLA and with the provision of meals at a reduced cost to students who qualify for reduced price meals under the CNA and NSLA; or

(b) Does not provide initial and continuing evidence and assurances of the charter school's financial solvency and financial sustainability, as demonstrated initially by the financial plan in the charter application, to cover the expenses of start-up or conversion, operation, and any foreseen or unforeseen closure of the charter school during the fiscal year or during the contract term.

(2) An authorizer shall require for approval of a charter application, for contracting with a charter board of directors, for performance of a charter contract, and for renewal of a charter contract, the following:

(a) Inclusion of at least two (2) local school district resident parents or persons with custody or charge of local school district resident students who will attend the charter school in a charter school board of directors;

(b) Exercise by a charter school board of directors of their authority in KRS 160.1592(3)(p)4 and 5 only as allowed for a local board of education in KRS 160.540;

(c) Participation of all members of a charter school board of directors in annual training, approved by the commissioner of education, on topics of charter school governance and operation including financial governance and transparency; ~~any~~ conflict of interest; curriculum and instruction; educational services provided for special needs, at risk, English learner, gifted, and other special population students; physical restraint and seclusion of students; and ethics. Fulfillment of this requirement shall occur through:

1. Twelve (12) hours of annual training for a new charter school board member or a member with zero to eight (8) years of experience as a charter school board member and eight (8) hours for a charter school board member with more than eight (8) years of experience as a charter school board member~~[Nine (9) hours of annual training, with six (6) additional hours of training for new charter school board members and members of newly approved charter schools during the first year after approval];~~ or

2. Competency-based annual training;

(d) Attendance by the authorizer, or its designee for authorizing, or at least one (1) member of the authorizer's board of directors at any due process hearing conducted pursuant to KRS 158.150 to suspend or expel a charter school student. A charter school board of directors, with the consent of the parent, person with custody or charge, adult student, or emancipated youth student, and as otherwise allowed by confidentiality laws, may invite the resident local district superintendent to attend the due process hearing and to provide information to the charter school board of directors as to the educational services the resident local school district would provide the student:

1. If the student is expelled from the charter school; and

2. If the charter school board of directors determines, on the record and supported by clear and convincing evidence that the charter school cannot provide or assure that educational services are provided to the student in an appropriate alternative program or setting because the expelled student posed a threat to the safety of other students or school staff and could not be placed into a state-funded agency program;

(e) Provision, to the authorizer by the charter school board of directors and any education service provider, of information and copies of all records of use of the Individual with Disabilities Education Act dispute resolution procedures, 707 KAR 1:340, regarding a student attending a charter school or the services provided by a charter school;

(f) Provision, to the authorizer by the charter school board of directors and any education service provider, of information and copies of all records of use of physical restraint or seclusion of charter school students;

(g) Provision, to the authorizer by the charter school board of directors and any education service provider, of information and copies of all records of allegations received or substantiation of violation of any health, safety, civil rights, and disability rights of students, staff, or parents or persons with custody or charge;

(h) Pursuant to KRS 160.1592(14), adherence by the charter school board of directors, and any education service provider, to the requirements of KRS 160.330 and 702 KAR 3:220 for the waiver of fees for students eligible for free or reduced price lunch;

(i) Provision, to the authorizer and to the public by the charter school board of directors and any education service provider, updates on the charter school's performance of the charter contract, according to the charter contract and performance framework;

(j) Restriction on expenditure of charter school resources and funds for school purposes only;

(k) Prohibition on the expenditure of charter school resources and funds in excess of the fair market value of the product, service, or consideration received;

(l) Prohibition on the disposal of charter school resources for less than the fair market value of the resource disposed;

(m) Restriction on the addition or moving of any location of the charter school without the written consent of the authorizer and amendment of the charter contract; and

(n) Provision, to the authorizer by the charter school board of directors and any education service provider, of student enrollment and attendance records and data at least monthly during the school year.

(3) An authorizer shall revoke, effective at the end of the school year, a charter contract for any of the reasons in KRS 160.1598(6).

(4) An authorizer shall require continuous enrollment at a charter school of at least eighty (80) percent of the charter contract minimum student enrollment requirements and shall monitor and take action as follows:

(a) The charter school shall provide reports to the authorizer on student enrollment and attendance at least twice a month; and

(b) Failure of the charter school to maintain this continuous, minimum student enrollment shall result in an immediate review by the authorizer of:

1. The charter school's operations;
2. The charter school's financial solvency;
3. The charter school's financial sustainability through the end of the school year and the end of the charter contract term;
4. The potential for closure;
5. Violation of the charter contract; and
6. The need for imposition of unilateral conditions, amendment, nonrenewal, or revocation of the charter contract, or immediate revocation of the charter contract pursuant to KRS 160.1598(7).

(5) An authorizer shall not approve a charter application for a start-up public charter school or conversion charter school if the applicant or proposed member of the board of directors has been previously found to have knowingly violated the requirements for interscholastic athletic activity sanctioned by the Kentucky Board of Education or its designated agency, and the authorizer shall ensure compliance with this requirement as follows:

(a) The authorizer shall consult with the Kentucky Board of Education's designated agency to ensure compliance with this requirement;

(b) The Kentucky Board of Education's designated agency may provide copies of its relevant written reports described in 702 KAR 7:065 Section 3(17) to the authorizer; and

(c) If the authorizer does determine a member of the applicant or the proposed board of directors has previously been found to have knowingly violated the requirements for interscholastic athletic activity sanctioned by the Kentucky Board of Education or its designated agency, the authorizer may only approve a charter application, contract with, or renew a charter for a start-up public charter school or conversion charter school that does not sponsor interscholastic athletic activities, unless the charter school's sponsorship of interscholastic athletic activities is approved by the Kentucky Board of Education.

(6) An authorizer shall remove a member of a board of directors that has been convicted of a crime described in KRS 61.040 and remove any or all of the members of the board of directors of the public charter school in connection with ensuring a smooth and orderly closure when the member or members threaten the health, safety, civil rights, or disability rights of the

students or the community pursuant to KRS 160.1598(11).

(7) An authorizer shall revoke or nonrenew a charter school contract if the commissioner of education has determined a member of the board of directors, or an education service provider at the direction of a member of the board of directors, or an employee at the direction of a member of the board of directors, has knowingly violated 703 KAR 5:080, Administration Code for Kentucky's Assessment Program or KRS 160.1592(3)(g), for a student assessment included in:

(a) The performance framework of the charter contract; or

(b) The state accountability system.

(8) For issues in a charter school's performance that do not require immediate action by the authorizer, as stated in KRS 160.1590 to 160.1599, and 701 KAR Chapter 8, or otherwise to protect the health, safety, civil rights, disability rights, and well-being of students and the community, an authorizer may utilize a progressive system of monitoring consequences including notices of deficiencies or conditions unilaterally imposed on the charter school prior to revocation or nonrenewal. An authorizer shall share publicly a notice of deficiency or a condition unilaterally imposed on the charter school as well as the underlying charter school performance issue and shall provide a copy to the commissioner of education and to the Kentucky Board of Education.

(9) An authorizer shall comply with the following prior to approving a charter application for a charter school or renewing a charter school contract:

(a) Holding in the resident local school district a public hearing to allow for public comment on the charter application; and

(b) Allowing public comment to be submitted in writing prior to the hearing, or oral or written public comment at the hearing and allowing comment at the public hearing by a resident superintendent who has filed an objection to the charter application.

Section 8. Standards of Authorizer Performance Concerning Charter Closure. (1) An authorizer's charter school closure protocol shall include the following:

(a) Provision, to the authorizer by the charter school, of contact information and resident local school district information for all parents, persons with custody or charge, adult students, and emancipated youth students;

(b) Notification to all parents, persons with custody or charge, adult students, and emancipated youth students of the following:

1. The closure decision;
2. The closure process;
3. Information on student instruction and reassignment;
4. Information on courses, levels, and credits completed by the student;

5. Information on the process for obtaining a copy of the student's education records; and

6. Contact information for additional information;

(c) Notification to the resident local school districts and the department of the following:

1. The closure decision;
2. The closure date;
3. The closure process;
4. Availability and timeline for appeals and their intersection with the closure protocol;

5. A copy of the notification provided to charter school parents, persons with custody or charge, adult students, and emancipated youth students;

6. Information on student instruction and reassignment; and

7. Contact information for additional information;

(d) Budget review and revision to limit expenditures to only those in the approved budget required for fulfilling the obligations through closure;

(e) Communication of the budget information to parents, persons with custody or charge, adult students, emancipated youth students, resident local school districts, the department, and the Kentucky Board of Education;

(f) Meeting of the authorizer with the charter school board of directors and charter school employees to notify and coordinate the following:

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1. The closure;
2. The closure process;
3. The closure timeline and dates;
4. Information on student instruction and reassignment;
5. Employment, payroll, and benefits information;
6. Transfer of federal and state funds and assets according to the federal and state requirements; and
7. Contact information for additional information;

(g) Additional and final notification to parents and resident local school districts, including the following:

1. Information on the existence and role of any appeal of the closure;
2. Identifying the last student attendance day;
3. Detailing end of the year activities and transition activities for students; and
4. Providing information and assistance for reassignment of students;

(h) Procedures and requirements for establishment of transition teams, development of closure plan, and assignment of roles for closure;

(i) Procedures and requirement for scheduling closure meetings with the transition team, parents, persons with custody or charge, adult students, emancipated youth students, resident local school districts, the department, and employees;

(j) Procedures and requirements for a final report from the charter school board of directors to the authorizer and the department detailing completion of the closure plan;

(k) Maintenance of the charter school facilities;

(l) Identification and notification of all creditors and debtors of the board of directors and the Teachers' Retirement System and the County Employees Retirement System;

(m) Notification of federal, state, local, and private grantors;

(n) Termination of any contract with an education service provider;

(o) Accounting, inventory, and protection of assets;

(p) Notification of employee benefit providers;

(q) Notification of all contractors and termination of all contracts;

(r) Transfer of student and personnel records;

(s) Notification of the IRS;

(t) Issuance of final grades to students;

(u) Dissolution of the charter school;

(v) Maintenance of records; and

(w) Completion of an independent final audit within six (6) months of the closure of the charter school that may function as the annual audit, and that includes at least the following:

1. An accounting of all financial assets, including cash and accounts receivable and an inventory of property, equipment, and other items of material value;

2. An accounting of the liabilities, including accounts payable and any reduction in apportionments as a result of audit findings or other investigations, loans or grants, and unpaid staff compensation; and

3. An assessment of the disposition of any restricted funds received by or due to the charter school.

(2) An authorizer's charter school closure protocol shall include the following regarding distribution of assets upon closure:

(a) The assets of the charter school, if sufficient to satisfy all the outstanding debts of the charter school, shall be distributed in the following order:

1. To satisfy outstanding payroll obligations for employees of the public charter school;

2. To creditors of the charter school; and

3. To the resident local school districts, in direct proportion to the percentage of the charter school student body that will be returning to each resident local school district after closure;

(b) If the assets of the public charter school are insufficient to satisfy all debts of the charter school, the prioritization of the distribution of assets may be determined by a court of law; and

(c) A charter school board of directors shall distribute its assets within six (6) months of closure of the charter school, unless granted an extension by the authorizer or ordered otherwise by a court of law.

(3) The commissioner of education, upon request by the authorizer, may appoint an independent third party, paid from the charter school's funds, to manage the closure with assistance from the department. The commissioner of education may remove an appointed independent third party for cause and appoint a replacement.

(4) The department shall develop a charter closure protocol guide that an authorizer may utilize in developing the closure protocol.

Section 9. Investigation of an Authorizer. (1) The Kentucky Board of Education shall conduct a special review of an authorizer as follows:

(a) If there is persistently unsatisfactory performance of the portfolio of the public charter schools of the authorizer;

(b) If there is a pattern of well-founded complaints about the authorizer or its public charter schools; or

(c) If the Kentucky Board of Education finds other objective circumstances warranting investigation.

(2) The Kentucky Board of Education shall request investigation by the commissioner of education.

(3) In reviewing and evaluating the performance of an authorizer, the Kentucky Board of Education shall apply nationally recognized standards for quality in charter authorizing, in addition to the standards of performance included in KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(4) If at any time the Kentucky Board of Education determines that an authorizer is not in compliance with an existing charter contract or the requirements for an authorizer, the Kentucky Board of Education shall either:

(a) Notify the authorizer in writing of any identified problem and the authorizer shall have a reasonable opportunity to respond and remedy the problem; or

(b) If deemed necessary, take action against the authorizer under Section 10.

Section 10. Consequences. (1) The Kentucky Board of Education may, in addition to its authority over authorizers and their action on a charter application, renewal, nonrenewal, revocation, charter amendment, or unilateral imposition of conditions on a charter school pursuant to KRS 160.1595(1), place an authorizer on probation and require the following during probation of an authorizer:

(a) Additional training for the authorizer;

(b) Meeting with the commissioner of education to provide status reports and solicit feedback on charter school performance during a charter contract;

(c) Written and in-person status reports to the Kentucky Board of Education on the authorizer's monitoring of charter schools and other authorizing activity;

(d) Approval by the commissioner of education on the authorizer's monitoring activities, imposition of unilateral conditions, and revocation decisions;

(e) Approval of the Kentucky Board of Education for any renewal, nonrenewal, revocation, charter amendment, or unilateral imposition of conditions on a charter contract; and

(f) Any other consequences the Kentucky Board of Education deems necessary to ensure compliance with KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(2) The Kentucky Board of Education shall set the length and extent of the probation of the authorizer's authority and reporting requirements for the authorizer to report on the progress of the charter schools authorized by the authorizer.

(3) The Kentucky Board of Education shall state in its order probating the authority of the authorizer the following:

(a) The extent of the probation of the authorizer's authority;

(b) The length of the probation of the authorizer's authority;

(c) The grounds under KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 for the probation of the authorizer's authority; and

(d) The anticipated changes that would have to occur for the Kentucky Board of Education to consider ending the probation of the authorizer's authority under KRS 160.1590 to 160.1599,

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161.141, and 701 KAR Chapter 8.

(4) The Kentucky Board of Education may entertain a request by the authorizer for termination of the probation if the authorizer submits, at least forty-five (45) days prior to the Kentucky Board of Education's regular meeting, the following:

- (a) The authorizer's request for ending the probation; and
- (b) The authorizer's evidence of:
 1. Its efforts to correct the grounds for the probation of its authorizing authority;
 2. The changes required in the Kentucky Board of Education's order; and
 3. Its plan to ensure future compliance with the requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

Section 11. Statewide Evaluation of Public Charter School Authorizers. (1) Beginning with the conclusion of the 2018-2019 fiscal year, the department shall provide an annual report on the state's public charter school authorizers and their charter schools to the Governor, the Interim Joint Committee on Education, the secretary of the Education and Workforce Development Cabinet, and the public that includes information from the annual reports submitted by every authorizer as well as any additional relevant data compiled by the department.

(2) The annual report shall include:

(a) For all public charter schools in the state, by individual charter school, and by authorizer, **and disaggregated by level, race, free and reduced price lunch eligibility status, and status as a student with special needs:**

- 1. The academic performance;
- 2. The number of students enrolled, withdrawn, suspended, and expelled;
- 3. Financial audit results;
- 4. Financial solvency and sustainability for the fiscal year and the contract term; **and**
- 5. Closure information; **and**

6. For charter schools with education service providers, information on the contracts and relationships between charter schools and education service providers and any financial risk, lack of accountability, and program performance risk resulting from the contracts and relationships between charter schools and education service providers:

- (b) A comparison of the performance and growth of public charter school students with the performance and growth of comparable groups of students in noncharter public schools;
- (c) A detailed update on the authorizing process;
- (d) Recommendations for adjustments to public charter school governance and oversight; and
- (e) The department's assessment of the successes, challenges, and areas for improvement in meeting the purposes of KRS 160.1591, including the department's recommendations as to any suggested changes in state law or policy necessary to strengthen the state's public charter schools.

Section 12. Incorporation by Reference. (1) "Kentucky Charter School Application and Addendum", February 2018, is incorporated by reference.

(2) "Notice of Intent", February 2018, is incorporated by reference. This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Legal, Legislative and Communication Services, 5th floor, 300 Building, 300 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

STEPHEN L. PRUITT, PH.D., Commissioner
MARY GWEN WHEELER, Chair

APPROVED BY AGENCY: December 14, 2017
FILED WITH LRC: December 15, 2017 at 9 a.m.

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 300 Sower Boulevard, Fifth Floor, Sower Building, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email kevin.brown@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation fulfills the regulation promulgation requirement of the agency in KRS 160.1590 to 160.1599 and 161.141.

(b) The necessity of this administrative regulation: KRS 160.1590 to 160.1599 and 161.141 became effective on June 29, 2017. This administrative regulation provides guidance on the evaluation of authorizer performance for authorizers of public charter schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 160.1590 to 160.1599 and 161.141 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations providing guidance on evaluation of authorizer performance for authorizers of public charter schools. This administrative regulation provides guidance from the agency on evaluation of authorizer performance for authorizers of public charter schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 160.1590 to 160.1599 and 161.141 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations providing guidance from the agency on evaluation of authorizer performance for authorizers of public charter schools. This new administrative regulation provides guidance to facilitate transparent and equitable evaluation of authorizer performance for authorizers of public charter schools, as required by KRS 160.1590 to 160.1599 and 161.141.

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

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

(b) The necessity of the amendment to this administrative regulation: The authorizing statute requires the agency to provide guidance on evaluation of authorizer performance for authorizers of public charter schools.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: School districts, public charter schools, students applying for enrollment in public charter schools, and the Kentucky Department of Education 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: Authorizers of public charter schools. The Kentucky Department of Education shall provide support to ensure the transparent and uniform evaluation of authorizer performance for authorizers of public charter schools.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance costs for school districts should be minimal to none because school districts are already facilitating the transfer of students to other schools. Compliance costs for public charter schools should be minimal to none because this administrative regulation should assist in the organized student application, lottery, and enrollment of students in public charter schools. Same for

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students and the Kentucky Department of Education.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This new administrative regulation will create standards for evaluation of authorizer performance for authorizers of public charter schools

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

(a) Initially: Compliance costs should be minimal to none.

(b) On a continuing basis: Compliance costs should be minimal to none.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Education general funds and school district funds, and funds provided to public charter schools.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: N/A.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts and all public charter schools.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts, public charter schools, and the Department of Education.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 160.1590 to 160.1599 and 161.141.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation should have no impact on the expenditures or revenues for school districts or public charter schools.

(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 should not impact school district or public charter school revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation should not impact school district or public charter school revenues.

(c) How much will it cost to administer this program for the first year? Administration costs to school districts or public charter schools should be minimal to none.

(d) How much will it cost to administer this program for subsequent years? Administration costs to school districts or public charter schools should be minimal to 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: There should be no fiscal impact resulting from the new administrative regulation.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (Amended After Comments)

701 KAR 8:030. Charter school appeal process.

RELATES TO: KRS Chapter 13B, 160.1590, 160.1591,

160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599

STATUTORY AUTHORITY: KRS 13B.170, 160.1598

NECESSITY, FUNCTION, AND CONFORMITY: KRS

160.1598 requires the Kentucky Board of Education to promulgate an administrative regulation to establish the process to appeal a decision of an authorizer denying a charter application or a charter contract amendment request, unilaterally imposing conditions on the applicant or charter school, or revoking or nonrenewing a charter contract. This administrative regulation provides the requirements for the appeal process.

Section 1. Definitions. (1) "Appellant" means the applicant or charter school board of directors filing the appeal of an authorizer's decision denying a charter application or a charter contract amendment request, unilaterally imposing conditions on the applicant or charter school, or revoking or nonrenewing a charter contract.

(2) "Applicant" is defined in KRS 160.1590(3).

(3) "Authorizer" or "public charter school authorizer" is defined in KRS 160.1590(13).

(4) "Charter" means charter contract.

(5) "Charter application" is defined in KRS 160.1590(4).

(6) "Charter contract" or "contract" is defined in KRS 160.1590(5).

(7) "Charter school" means a public charter school.

(8) "Charter school board of directors" is defined in KRS 160.1590(6).

(9) "Days" means calendar days calculated pursuant to KRS 446.030.

(10) "Knowingly" means that a person knew that in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of a statute or administrative regulation.

(11) "Local school district" is defined in KRS 160.1590(10).

(12) "Notice" means written notice.

(13) "Notify" means provide written notice.

(14) "Public charter school" is defined in KRS 160.1590(12).

(15) "Unilateral imposition of conditions" means the authorizer has placed or attempted to place conditions or requirements that are not required by KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8:

(a) On the applicant in the authorizer's formal action approving the charter application; or

(b) On the charter school in the charter contract or an amendment.

(16) "Unilaterally imposed conditions" or "Unilateral conditions" or "Conditions unilaterally imposed" means conditions or requirements not required by KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8 that the authorizer places or attempts to place:

(a) On the applicant in the authorizer's formal action approving the charter application; or

(b) On the charter school in the charter contract or an amendment.

Section 2. Policies and Procedures. (1) The authorizer shall create and publish on its website policies and procedures for its implementation of KRS 160.1595 and 160.1598 as follows:

(a) The authorizer shall include in its policies and procedures a rubric for its evaluation of a charter application and its rubric for evaluation of charter contract performance for renewal;

(b) The authorizer shall publish on its website its policies and procedures, including any rubric for evaluation of charter contract performance for renewal under KRS 160.1598;

(c) The authorizer shall include in its policies and procedures the circumstances that shall result in automatic revocation or nonrenewal of a charter contract, only as allowed in KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8;

(d) The authorizer shall include in its policies and procedures the requirements and timeline for timely notification of the prospect of revocation or nonrenewal of the charter contract and of the reasons for such possible closure;

(e) The authorizer shall include in its policies and procedures

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the reasonable deadline and requirements for a charter school's opportunity to respond to the authorizer's notice of the prospect of revocation or nonrenewal of the charter contract; and

(f) The authorizer shall include in its policies and procedures the requirements for appeal of an authorizer decision denying a charter application or a charter amendment request, nonrenewing or revoking a charter contract, or imposing unilateral conditions on an applicant or charter school.

Section 3. Appeal. (1) The appellant shall submit its appeal of an authorizer's decision denying a charter application or a charter amendment request, nonrenewing or revoking a charter contract, or imposing unilateral conditions on an applicant or charter school to the commissioner of education, to receive the appeal on behalf of the Kentucky Board of Education, as follows:

(a) The deadline for appeals to the Kentucky Board of Education under KRS 160.1595 shall be thirty (30) days, as evidenced by the face of the authorizer's notice to the charter school or applicant of the decision to deny a charter application or charter contract amendment request, to impose unilateral conditions on the applicant or the charter school, or to revoke or nonrenew the charter contract;

(b) The appeal shall include the name, phone number, mailing address, and email address of the contact for the appellant and any legal counsel;

(c) The appeal shall include a statement from the appellant whether there is a request for a hearing, and whether the hearing is requested to be held in the local school district in which the charter school lies or would lie; and

(d) The appeal shall be submitted on the Notice of Appeal and include any necessary additional documentation.

(2) The Kentucky Board of Education **shall affirm the decision of the authorizer based on the appellant's failure to timely file the appeal, pursuant to KRS 160.1595(2) and subsection 1(a) of this section, and** may affirm the decision of the authorizer based on the failure of an appellant to meet any of the **other** deadlines of this administrative regulation or the hearing process.

(3) Within five (5) days of the commissioner's receipt of the appeal, the commissioner of education on behalf of the Kentucky Board of Education shall provide notice to the appellant and the authorizer acknowledging receipt of the appeal, and:

(a) If a hearing is requested in the appeal, the commissioner of education shall designate a hearing officer to set the prehearing schedule, to conduct a KRS Chapter 13B public hearing before the Kentucky Board of Education on the appeal, and to set the location of the public hearing; or

(b) If a hearing is not requested in the appeal or if the appellant waives its right at any time to a hearing by providing written notice of its waiver to the commissioner of education or to any previously appointed hearing officer, the hearing officer shall set the schedule for written pleadings under KRS 13B.090(2) to be submitted to the Kentucky Board of Education without a hearing.

(4) The written decision of the Kentucky Board of Education shall be issued no later than seven (7) days after the conclusion of the hearing or the meeting to decide upon the written pleadings, which shall be held within the time allowed in KRS 160.1595(3)(a).

Section 4. Emergency action. (1) Emergency action taken by the authorizer pursuant to KRS 160.1598(7) shall be taken in accordance with KRS 13B.125.

Section 5. Automatic Revocation or Nonrenewal. (1) The Kentucky Board of Education shall affirm revocation or nonrenewal of a charter school for whom the commissioner of education has determined a member of the charter school board of directors, or an education service provider at the direction of a member of the board of directors, or an employee at the direction of a member of the board of directors, has knowingly violated 703 KAR 5:080, Administration Code for Kentucky's Assessment Program, or KRS 160.1592(3)(g) for a student assessment included in the performance framework of the charter contract or the state accountability system after:

(a) The department's presentation of a preponderance of evidence at a KRS Chapter 13B hearing before the Kentucky Board of Education that a member of the charter school board of directors, or an education service provider at the direction of a member of the charter school board of directors, or an employee at the direction of a member of the charter school board of directors, has knowingly violated 703 KAR 5:080, Administration Code for Kentucky's Assessment Program, or KRS 160.1592(3)(g) for a student assessment included in:

1. The performance framework of the charter contract; or

2. The state accountability system; or

(b) The charter school board of directors waives its right to a KRS Chapter 13B hearing under this section.

Section 6. Incorporation by Reference. (1) "Notice of Appeal", February 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Legal, Legislative and Communication Services, 5th floor, 300 Building, 300 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

STEPHEN L. PRUITT, PH.D., Commissioner
MARY GWEN WHEELER, Chair

APPROVED BY AGENCY: December 14, 2017

FILED WITH LRC: December 15, 2017 at 9 a.m.

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 300 Sower Boulevard, Fifth Floor, Sower Building, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email kevin.brown@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation fulfills the regulation promulgation requirement of the agency in KRS 160.1598.

(b) The necessity of this administrative regulation: KRS 160.1598 became effective on June 29, 2017. This administrative regulation provides guidance on the process for a public charter school appeal of an authorizer's decision to revoke or non-renew a charter school.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 160.1598 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations providing guidance on the process for a public charter school appeal of an authorizer's decision to revoke or non-renew a charter school. This administrative regulation provides guidance from the agency on the process for a public charter school appeal of an authorizer's decision to revoke or non-renew a charter school.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 160.1598 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations provides guidance from the agency on student application, lottery, and enrollment in the public charter schools. This new administrative regulation provides guidance to facilitate transparency and uniformity in the process for a public charter school appeal of an authorizer's decision to revoke or non-renew a charter school, as required by KRS 160.1598.

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

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

(b) The necessity of the amendment to this administrative regulation: The authorizing statute requires the agency to provide guidance on the process for a public charter school appeal of an

authorizer's decision to revoke or non-renew a charter school.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Charter school authorizers, public charter schools, students attending public charter schools, and the Kentucky Department of Education 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: Public charter schools, for whom the authorizer has decided to revoke or non-renew the charter contract, will have to appeal the authorizer's decision pursuant to this administrative regulation to prevent revocation or nonrenewal. Charter authorizers, that revoke or non-renew a charter school's contract, will have to allow the charter school the due process opportunity to challenge the revocation or nonrenewal decision. The Kentucky Department of Education shall provide support to ensure the transparent and uniform appeal process for public charter schools.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance costs for authorizers and charter schools should be minimal to none because the statutes require the substance of what the authorizer and the charter school will present in an appeal. Same for the Kentucky Department of Education.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This new administrative regulation will provide guidance on the process for a public charter school appeal of an authorizer's decision to revoke or non-renew a charter school.

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

(a) Initially: Compliance costs should be minimal to none.

(b) On a continuing basis: Compliance costs should be minimal to none.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Education general funds and school district funds, and funds provided to public charter schools.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: N/A.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts and all public charter schools.

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?: Charter school authorizers, public charter schools, and the Kentucky Department of Education.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 160.1598.

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

administrative regulation should have no impact on the expenditures or revenues for public charter schools, their authorizers, or the agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation should not impact school district or public charter school revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation should not impact school district or public charter school revenues.

(c) How much will it cost to administer this program for the first year? Administration costs to school districts or public charter schools should be minimal to none.

(d) How much will it cost to administer this program for subsequent years? Administration costs to school districts or public charter schools should be minimal to 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: There should be no fiscal impact resulting from the new administrative regulation.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amended After Comments)**

701 KAR 8:040. Conversion charter school petition, conversion, and operation.

RELATES TO: KRS 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599, 161.141

STATUTORY AUTHORITY: KRS 160.1599

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1599 requires the Kentucky Board of Education to promulgate an administrative regulation to govern the processes and procedures for the petition, the conversion, and the operation of a conversion public charter school. This administrative regulation provides requirements for conversion public charter schools.

Section 1. Definitions. (1) "Adult student" means a student who is eighteen (18) years or older who is still eligible for enrollment and attendance at a school program pursuant to KRS 158.030 and 158.100.

(2) "Applicant" is defined in KRS 160.1590(3).

(3) "Charter application" is defined in KRS 160.1590(4).

(4) "Charter contract" or "contract" is defined in KRS 160.1590(5).

(5) "Charter school" means a public charter school.

(6) "Charter school board of directors" is defined in KRS 160.1590(6).

(7) "Conversion public charter school" or "conversion charter school" is defined in KRS 160.1590(7).

(8) "Days" means calendar days calculated pursuant to KRS 446.030.

(9) "Emancipated youth" means a student under the age of eighteen (18) who is or has been married or has by court order or otherwise been freed from the care, custody, and control of the student's parents.

(10) "Enrollment" means the process for the charter school to register a student for attendance at the charter school.

(11) "Grade" or "Grade Level" means a single elementary, middle, or high school grade of school.

(12) "Local board of education" means local school board as defined in KRS 160.1590(9).

(13) "Local school district" is defined in KRS 160.1590(10).

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(14) "Lottery" means the transparent, open, equitable, and impartial process that is competently conducted with randomization in accordance with the targeted student population and service community as identified in KRS 160.1593(3) for the charter school to choose students for enrollment and attendance at the charter school when the student applications received by the charter school exceed the charter school's capacity.

(15) "Notice" means written notice.

(16) "Notify" means provide written notice.

(17) "Parent" is defined in KRS 160.1590(11).

(18) "Person with custody or charge" means any adult, pursuant to KRS 159.010, who falls within the definition of KRS 387.010(2) for interested person or entity and with whom the student resides.

(19) "Petitioner" means the persons or organizations initiating and circulating a petition to convert an existing public school to a charter school.

(20) "Public charter school" is defined in KRS 160.1590(12).

(21) "School level" or "Level" or "Educational level" means the configuration of grade levels that form elementary, middle, and high schools.

(22) "Student" is defined in KRS 160.1590(19) and includes any person who is entitled to enrollment and attendance at a school program as provided in KRS 158.030 and 158.100.

(23) "Student application" means an application submitted to a charter school for student enrollment in the charter school.

(24) "Superintendent" means the local school district employee tasked with the duties described in KRS 160.370.

(25) "Year" or "Academic year" or "School year" means school year as defined in KRS 158.050.

Section 2. Conversion Petition and Charter Application. (1) The department shall annually publish on its website a list of noncharter public schools, by school level, that are eligible for charter school conversion through the petition process pursuant to KRS 160.1599(2)(a).

(2) Prior to circulation of a petition to convert an existing public school to a charter school, a petitioner shall file a notice of intent with the resident board of education.

(3) If a charter application proposes that a newly converted charter school is to be established and prepared to enroll students for the next school year, both the charter application and the petition, determined to be valid pursuant to subsection (9) of this section, proposing the conversion of an existing public school to a charter school shall be submitted to the authorizer on or before October 30.

(4) A petitioner shall utilize the Public Charter School Conversion Petition and shall include the following information in a petition to convert an existing public school to a charter school:

(a) A written statement that the petition seeks to convert the existing public school to a charter school;

(b) A written statement of the reasons the petitioner believes the existing public school should be converted to a charter school, including descriptions of how the conversion public charter school shall accomplish the purposes of KRS 160.1591(2); and

(c) Information for filing a written complaint to the commissioner of education regarding the petition or the petitioner.

(5) For the signatures on the petition to count toward the requirements of KRS 160.1599(2)(a) or (b), a petitioner shall ensure inclusion of the following from each of the existing public school's resident parents, persons with custody or charge, adult students, or emancipated youth students signing the petition:

(a) Their printed names;

(b) Their mailing and street address, phone number, and email address, as available; and

(c) Their signature in ink or indelible pencil;

(6) The inclusion of signatures, from adult students, emancipated youth students, or parents or persons with custody or charge, on behalf of students who do not attend the existing public school as residents of the local school district and under the attendance zone boundary policies and procedures of the local board of education for the local school district, shall not count toward the requirements of KRS 160.1599(2)(a) or (b).

(7) Signatures from parents, persons with custody or charge, adult students, and emancipated youth students shall count toward the requirements of KRS 160.1599(2)(a) or (b) up to but not in excess of the number of students attending the existing public school for whom those individuals are parents or persons with custody or charge or the students themselves.

(8) The inclusion of an invalid signature on the petition shall not invalidate the entire petition, but shall instead result in the invalid signature being stricken and not counted.

(9) Within thirty (30) days of receipt of a petition for conversion of an existing public school, a local school district designee of the local board of education shall conduct and complete an examination of the signatures on the petition and any necessary investigation to make a determination of whether the petition contains enough signatures of qualified resident adult students, emancipated youth students, and parents and persons with custody or charge of students attending the existing public school to meet the requirements of KRS 160.1599(2)(a) or (b).

(10) Within three (3) days of making the determination in subsection (9) of this section, the local school district designee of **each[the]** local board of education **that has authority over the existing public school** shall provide notice as to whether the petition met the requirements of this administrative regulation and KRS 160.1599(2)(a) or (b):

(a) On the local school district website; and

(b) To the following:

1. The petitioner;

2. The existing public school's principal;

3. Any school-based decision making council of the existing public school established under KRS 160.345; and

4. **Each[The]** local board of education **with authority over the existing public school**.

(11) For a petition under KRS 160.1599(2)(b), **each[the]** local board of education's majority vote to convert the existing public school to a charter school shall be conducted at its next regular meeting or an earlier special meeting.

(12) Any person who has reason to believe that the petition process was not conducted pursuant to the requirements of this administrative regulation or that the signatures on the petition were procured through fraud, intimidation, bribery, or harassment, may file a written complaint with the commissioner of education and the commissioner of education shall:

(a) Cause an investigation to determine the validity of the petition;

(b) Ensure the investigation is completed within thirty (30) days of receipt of the complaint; and

(c) Render a determination as to the validity of the petition.

(13) If the petition fails to meet the requirements of this administrative regulation and KRS 160.1599(2)(a) or (b) or if the commissioner of education determines the petition to be invalid, the existing public school shall not be eligible for conversion to a charter school unless:

(a) **Each[The]** local board of education **with authority over the existing public school** acts pursuant to KRS 160.1599(2)(c); or

(b) Another petition is circulated and determined to be valid pursuant to KRS 160.1599(a) or (b) and this administrative regulation.

(14) After any vote by **each[the]** local board of education required pursuant to KRS 160.1599(2)(b) or (c), an applicant shall submit to the authorizer a charter application to convert an existing public school to a charter school during the same school year as:

(a) **Each[The]** local board of education's vote to convert an existing public school to a charter school pursuant to KRS 160.1599(2)(c); or

(b)1. The circulation of a petition pursuant to KRS 160.1599(2)(a) or (b);

2. The issuance of the determination in subsection (9) of this section that the petition is valid; and

3. A majority vote of **each[the]** local board of education **with authority over the existing public school**, if required by KRS 160.1599(2)(b).

(15) After any vote by **each[the]** local board of education

required pursuant to KRS 160.1599(2)(b) or (c), the authorizer shall allow submission of a charter application to convert the existing public school to a charter school during the same school year as:

(a) Each[The] local board of education's vote to convert the existing public school to a charter school, pursuant to KRS 160.1599(2)(c); or

(b)1. The circulation of a petition pursuant to KRS 160.1599(2)(a) or (b);

2. The issuance of the determination in subsection (9) of this section that the petition is valid; and

3. A majority vote of each[the] local board of education with authority over the existing public school, if required by KRS 160.1599(2)(b).

(16) The authorizer shall commence the charter application review and approval process pursuant to KRS 160.1594 and 701 KAR Chapter 8 upon receipt of a charter application to convert an existing public school to a charter school within the same school year as either:

(a) Each[The] local board of education's vote to convert an existing public school to a charter school pursuant to KRS 160.1599(2)(c); or

(b)1. The circulation of a petition pursuant to KRS 160.1599(2)(a) or (b);

2. The issuance of the determination in subsection (9) of this section that the petition is valid; and

3. A majority vote of each[the] local board of education, if required by KRS 160.1599(2)(b).

(17) The authorizer shall review the petition and a submitted charter application and only approve the conversion of an existing public school if the charter application meets the requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 and if:

(a) The petition meets the requirements of KRS 160.1599 and this administrative regulation during the same school year as the filing of the charter application, and if the commissioner of education has not determined the petition to be invalid; or

(b) Each[The] local board of education with authority over the existing public school has voted within the same school year to convert an existing public school to a charter school.

(18) The department shall create a charter school conversion petition and application guidance document that petitioners, applicants, authorizers, and local boards of education may utilize.

Section 3. Conversion. (1) No conversion public charter school shall begin operation after the beginning of a school year.

(2) After each[the] local board of education's vote to convert an existing public school to a charter school or completion of the petition process requirements of KRS 160.1599(2)(a) or (b) and this administrative regulation, and after the authorizer's approval of a charter application to establish a conversion public charter school, each[the] superintendent of a district with authority over the existing public school shall:

(a) Notify resident students of the conversion of the existing public school and provide information for student application to the conversion charter school during the time that information on other school programs in the local school district is provided;

(b) Create with the conversion charter school board of directors a plan for conversion of the existing public school which will include, at a minimum, timelines, roles, responsibilities, and notification requirements for the following:

1. Coordination of student application, lottery, enrollment, and transfer to and from the conversion charter school; and

2. Transfer of management and operation of the conversion charter school in the same public school facility for the school years included in the conversion charter school's operation under the charter contract;

(c) Meeting during the first year of the charter contract with the charter school board of directors to coordinate student application, lottery, enrollment, and transfer of students; and

(d) Meeting throughout the charter contract with the charter school board of directors regarding the usage and maintenance of the facility by the charter school board of directors.

(3) Each[The] local board of education with authority over the existing public school and the conversion charter school board of directors shall execute a lease for the public school facility prior to the operation of a conversion public school.

(4) The department shall create a charter school conversion process guidance document that an authorizer, local board of education, and a charter school board of directors may utilize.

Section 4. Employees. (1) Local school district employees placed in the existing public school prior to conversion, who are not hired by the conversion charter school board of directors to work in the converted charter school, shall retain their employment rights with the local school district, pursuant to KRS Chapter 161 and under the provisions of any collective bargaining agreement with the local school district. Conversion of an existing public school of the local school district may result in the circumstances described in KRS 161.800 and 161.011 necessitating the local school district superintendent's review of the necessity for a reasonable reduction in the number of teachers and classified employees employed by the local school district under KRS 161.800 and 161.011.

(2) A teacher, with continuing status pursuant to KRS Chapter 161, who is employed by a Kentucky local school[the] district, who is hired by the conversion charter school board of directors to work in the converted charter school, and who is granted leave by the employing local board of education pursuant to KRS 160.1593(22), shall notify the local school district of the teacher's intent to work in the converted charter school or to return to employment with the local school district the next school year by April 15 of each year of the granted leave.

(3) The department shall create a charter school conversion employee transition guidance document that an authorizer, local board of education, and a conversion charter school may utilize.

Section 5. Students. (1) Each local school[The] district with authority over the existing public school shall provide, to the students and parents and persons with custody or charge of students who attend an existing public school that has been approved for conversion to a charter school, information and any plan the local school district shall[will] use to address the educational needs and placements of students who choose not to attend the conversion charter school.

(2) The department shall create a charter school conversion student transition guidance document that an authorizer, local board of education, and a conversion charter school may utilize.

Section 6. Operation and Reversion of a Conversion Charter School. (1) An authorizer may otherwise renew, non-renew, revoke, or take other action regarding a conversion public charter school as provided in KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(2) If a closed conversion charter school is reverting back to its noncharter status, each[the] local board of education with authority over the existing public school shall solicit feedback on the future of the school from parents, persons with custody or charge, adult students, and emancipated youth students of the school prior to the reversion.

Section 7. Incorporation by Reference. (1) "Public Charter School Conversion Petition", February 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Legal, Legislative and Communication Services, 5th floor, 300 Building, 300 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

STEPHEN L. PRUITT, PH.D., Commissioner

VOLUME 44, NUMBER 7 – JANUARY 1, 2018

MARY GWEN WHEELER, Chair

APPROVED BY AGENCY: December 14, 2017

FILED WITH LRC: December 15, 2017 at 9 a.m.

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 300 Sower Boulevard, Fifth Floor, Sower Building, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email kevin.brown@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation fulfills the regulation promulgation requirement of the agency in KRS 160.1590 to 160.1599 and 161.141.

(b) The necessity of this administrative regulation: KRS 160.1590 to 160.1599 and 161.141. became effective on June 29, 2017. This administrative regulation provides guidance on student application, lottery, and enrollment in public charter schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 160.1590 to 160.1599 and 161.141 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations providing guidance on student application, lottery, and enrollment in the public charter schools. This administrative regulation provides guidance from the agency on student application, lottery, and enrollment in the public charter schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 160.1590 to 160.1599 and 161.141 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations providing guidance from the agency on conversion charter school creation and operation.

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

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

(b) The necessity of the amendment to this administrative regulation: The authorizing statute requires the agency to provide guidance on conversion charter school creation and operation.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: School districts, public charter schools, students applying for enrollment in public charter schools, and the Kentucky Department of Education 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: School districts, whose students seek enrollment in public charter schools, will have to verify valid conversion petitions. Public charter schools, who seek to enroll students, will not be impacted. Students, who seek enrollment in a public charter school, will need to determine if the conversion school still meets their education needs. The Kentucky Department of Education shall provide support to ensure the transparent and uniform guidance on conversion charter school creation and operation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance costs for school districts should be minimal to none because school districts are already facilitating the transfer of students to other schools. Compliance costs for

public charter schools should be minimal to none because this administrative regulation should provide guidance and relevant documents on conversion charter school creation and operation. Same for students and the Kentucky Department of Education.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This new administrative regulation will provide guidance and relevant documents on conversion charter school creation and operation.

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

(a) Initially: Compliance costs should be minimal to none.

(b) On a continuing basis: Compliance costs should be minimal to none.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Education general funds and school district funds, and funds provided to public charter schools.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: N/A.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts and all public charter schools.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts, public charter schools, and the Department of Education.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 160.1590 to 160.1599 and 161.141.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation should have no impact on the expenditures or revenues for school districts or public charter schools.

(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 should not impact school district or public charter school revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation should not impact school district or public charter school revenues.

(c) How much will it cost to administer this program for the first year? Administration costs to school districts or public charter schools should be minimal to none.

(d) How much will it cost to administer this program for subsequent years? Administration costs to school districts or public charter schools should be minimal to 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: There should be no fiscal impact resulting from the new administrative regulation.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
 Kentucky Board of Education
 Department of Education
 (Amended After Comments)

703 KAR 5:270. Kentucky's Accountability System.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455,
 20 U.S.C. 6311

STATUTORY AUTHORITY: KRS 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools, and districts; complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor; and ensures accountability. KRS 158.6455 requires the Kentucky Board of Education to create an accountability system to classify schools and districts, including a process for annual summative performance evaluations and goals for improvement. This administrative regulation establishes the statewide system of accountability, and meets requirements set forth in the federal Every Student Succeeds Act of 2015 at 20 U.S.C. 6311.

Section 1. Definitions. (1) "Achievement gap closure" means a combined measure of reducing the performance difference between student demographic groups to each other and to proficiency for each of the tested areas.

(2) "Behavior events" are student infractions involving drugs, weapons, harassment including bullying, alcohol, tobacco, assault first degree, other assault or violence, and state resolutions not reported.

(3) "Career counselor" or "career coach" means an individual who advises middle and high school students on academic and career opportunities, as well as the post-secondary education and training plans necessary to achieve such careers.

(4) "Catch up" means individual student performance below proficient grows enough to achieve proficiency or to be on track to become proficient.

(5) "Chronic absenteeism" means a student who misses ten (10) percent or more of his/her enrolled academic year.

(6) "Comparison student group" means the student demographic group being contrasted to the reference group.

(7) "Consolidated student groups" means a non-duplicated aggregation of student groups ~~too small to be publically reported individually~~ that includes: African American, Hispanic, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, two or more races, students with disabilities who have an individual education program (IEP), and English learners.

(8) "English learners" in the indicators of growth and transition readiness means students currently identified on an English language proficiency exam. For all other areas, it means students currently identified and those who continue to be monitored~~means students currently identified in the area of growth on an English language proficiency exam. For all other areas, it includes students currently identified and those who continue to be monitored~~.

(9) "Essential skills" means the foundational abilities that include attendance, positive dispositions, and communication needed to successfully complete academic, workplace, or military responsibilities as demonstrated through a variety of co-curricular learning and leadership experiences.

(10) "Federal student group designation" means~~includes~~ target support and improvement, and comprehensive support and improvement as provided in KRS 160.346.

(11) "Federally defined student demographic groups" include White, African American, Hispanic, Asian, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, two or more races, free/reduced-price meal eligible, students with disabilities who have an IEP, and English learners.

(12) "Full academic year" means 100 or more instructional days of student enrollment within the school year.

(13) "Graduation rate" means the percentage of students who

enter high school and receive a diploma based on their cohort in four (4) and five (5) years, adjusting for transfers in and out, émigrés, and deceased students.

(14) "Growth" means a student's continuous improvement toward proficiency or above.

(15) "Indicator" means a component of the accountability system that provides specific information on the school or district.

~~(16)~~(15) "Individual education program" or "IEP" means an individual education program as defined in 707 KAR 1:002.

~~(17)~~(16) "Keep up" means individual student performance at or above proficient that grows at a rate to maintain proficiency or above.

~~(18)~~(17) "Less than catch up" means individual student performance below proficient and not on track to become proficient.

~~(19)~~(18) "Local education agency" or "LEA" for the purposes of this administrative regulation shall mean a local school district as provided in KRS 161.010 and KRS 161.020 or a charter school board of directors as provided in KRS 161.1590.

~~(20)~~(19) "Locally determined measure" means a LEA objective for students or schools to achieve that is specific, measurable, achievable, relevant, and time bound.

~~(21)~~(20) "Move up" means individual student performance at proficient that grows at a rate to be on track to become distinguished.

~~(22)~~(21) "Opportunity and access" means equitable availability to research-based student experiences and school factors that impact student success.

~~(23)~~(22) "Practical significance" means a measure of the differences between student groups has real meaning.

~~(24)~~(23) "Proficiency indicator" means the measure of academic status or performance for reading/writing and mathematics on state assessments.

~~(25)~~(24) "Proficient" or "proficiency" means reaching the desired level of knowledge and skills as measured on academic assessments.

~~(26)~~(25) "Rating" means the process of inclusion of an indicator in the formal overall rating of the school or district.

~~(27)~~(26) "Reference group" means a student demographic group to which another group is contrasted to provide a benchmark for performance.

~~(28)~~(27) "Separate academic indicator for science and social studies" means the measure of academic status or performance for science and social studies on state assessments.

~~(29)~~(28) "Transition readiness" means the attainment of the necessary knowledge, skills, and dispositions to successfully transition to the next level.

~~(30)~~(29) "Value table" means a set of numbers that are used to attribute scores to different performance levels.

~~(31)~~(30) "Work ethic certification" means a process by which a student demonstrates~~is assessed based upon his/her demonstration of~~ essential skills and workplace readiness.

~~(32)~~(31) "Writing" means the content area that includes on-demand writing, and editing and mechanics.

Section 2. Kentucky's accountability system that is used to classify schools and LEAs shall include the indicators of proficiency, separate academic indicator for science and social studies, growth, transition readiness, achievement gap closure, opportunity and access, and graduation rate. (1) The proficiency indicator shall be measured by student performance on state tests in reading/writing and mathematics.

(2) A separate academic indicator shall be measured by student performance on state tests in science and social studies.

(3) The growth indicator shall be calculated at the elementary and middle school levels. The growth indicator shall be measured~~by awarding credit as follows~~:

(a) ~~Based on a growth value table~~The percentage of students who meet or are on track to meet their annual personal target for improvement based on an individual student trajectory toward proficiency in reading and mathematics; and

(b) Progress toward achieving English proficiency by English learners.

(4) The achievement gap closure indicator shall be measured **[by awarding credit]** as follows:

(a) Reducing the gap in performance between the following comparison groups and reference group in the combined content areas of reading/writing, mathematics, science, and social studies:

1. African American, Hispanic, Asian, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, White, and two (2) or more races compared to the reference group, which shall be the highest of these;
2. Free/reduced-price meal eligible **students** compared to non-free/reduced-price meal eligible **students**;
3. Students with disabilities who have an IEP compared to students without IEPs; and
4. English learners compared to non-English learners.

(b) Reducing the gap to proficiency for the combined content areas of reading/writing, mathematics, science and social studies by the following groups: White, African American, Hispanic, Asian, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, two (2) or more races, free/reduced-price meal eligible, students with disabilities who have an IEP, English learners, and a consolidated student group.

(5) The opportunity and access indicator shall be measured **[by awarding credit]** for rich curricula, equitable access, school quality, and whole child supports, as follows:

(a) Elementary schools that provide all students opportunities and access to:

1. Rich curricula annually including:
 - a. Visual and performing arts;
 - b. Health and physical education;
 - c. Science; and
 - d. Social studies.
2. School quality as measured by a lack of student chronic absenteeism, behavior events, and physical restraint and seclusion.

3. Equitable access by federally defined student demographic groups in proportion to the school population to gifted and talented services **excluding the primary talent pool [in grades four (4) and five (5)].**

4. Whole child supports **[as the school determines]** by selecting two (2) of the following:

- a. School-based counselor or mental health services provider;
- or**
- b. School nurse; **or**
 - c. **[Library media specialist;**
 - d. **Family resource/youth services center; or**

e.] Teachers with specialist certification and delivering instruction in visual art, music, dance, theatre, media arts, physical education, health, **or [and]** world languages.

(b) Middle schools that provide all students opportunities and access to:

1. Rich curricula annually including:
 - a. Visual and performing arts;
 - b. Health and physical education;
 - c. Science;
 - d. Social studies; and
 - e. Career exploration including career and technical education courses, other courses that focus on essential skills and co-curricular learning and leadership experiences.
2. School quality as indicated by a lack of student chronic absenteeism, behavior events, and physical restraint and seclusion.
3. Equitable access of federally defined student demographic groups in proportion to the school population to gifted and talented services.

4. Whole child supports **[as determined by the school]** by selecting two (2) of the following:

- a. School-based counselor or mental health services provider;
- or**
- b. School nurse; **or**
 - c. **[Library media specialist;**
 - d. **Family resource/youth services center;**

e.] Teachers with specialist certification and delivering instruction in visual arts, music, dance, theatre, media arts, physical education, health, **or [and]** world languages;

or
d. Career [f. Access to a] counselor or career coach.

(c) High schools that provide all students with opportunities and access to:

1. Rich curricula including:
 - a. Visual and performing arts;
 - b. Health and physical education;
 - c. Cultural studies or world language;
 - d. Career and technical education (CTE), including specialized career pathways in state and regional high demand sectors as approved by Kentucky's Workforce Innovation Board; and
 - e. Essential skills demonstrated as part of a work ethic certification.
2. School quality as indicated by a lack of student chronic absenteeism, behavior events, and restraint and seclusion.
3. Equitable access of federally defined student demographic groups to the following advanced coursework: advanced placement, international baccalaureate, Cambridge Advanced International and dual credit.

4. Whole child supports **[as determined by the school]** by selecting two (2) of the following:

- a. School-based counselor or mental health services provider;
- or**
- b. School nurse; **or**
 - c. **[Library media specialist;**
 - d. **Family resource/youth services center;**

e.] Teachers with specialist certification and delivering instruction in visual arts, music, dance, theatre, media arts, physical education, health, **or [and]** world languages; or

d. Career [f. Access to a] counselor or career coach. **[5. Within opportunity and access, the locally determined indicator shall be included in the accountability rating of each LEA. Each LEA shall propose to the department the targeted goal or objective that is specific, measurable, achievable, relevant, and time bound. Through discussion and deliberation, the LEA and the department shall enter into an agreement on the goals or objectives of the locally determined indicator.]**

(6) The transition readiness indicator shall be measured **[by awarding credit]** for students meeting the following criteria:

(a) At the elementary and middle school level, students meet or exceed the benchmark on a composite score that combines student performance on state-required assessments for reading/writing, mathematics, science, and social studies. A composite score shall include the most recent content area assessment by grade level available for each school. Students participating in the alternate assessment program will have criteria based on alternate assessment requirements.

(b) At the high school level, **students:**

1. Earn a regular or alternative high school diploma; and
2. Achieve academic readiness **or [;] career readiness [; or military readiness. as follows:]**
 - a. A school shall receive credit for each student demonstrating academic readiness by:
 - (i) Scoring at or above the benchmark score as determined by the Council on Postsecondary Education (CPE) on the college admissions examination; **or**
 - (ii) Completing six (6) or more hours of **Kentucky Department of Education [department]** approved dual credit and receiving a **[course]** grade of B or higher **in each course; or**
 - (iii) Completing two (2) or more advanced placement (AP) courses and receiving a score of three (3) or higher on **each [the]** AP assessment; **or**
 - (iv) Receiving a score of five (5) or higher on two (2) examinations for international baccalaureate courses; or
 - (v) Scoring at or above the benchmark on two (2) or more Cambridge Advanced International examinations **[;]; or**
 - (vi) **Completing a combination of academic readiness indicators listed above.**
 - (vii) **Demonstration of academic readiness listed in paragraph 6 (b) 2a of this section shall include one (1)**

quantitative reasoning or natural sciences and one (1) written or oral communication, or arts and humanities, or social and behavioral sciences learning outcomes.

b. A school shall receive credit for each student demonstrating career readiness by:

~~(i)~~ Scoring at or above the benchmark on industry certifications as approved by the Kentucky Workforce Innovation Board on an annual basis; or

~~(ii)~~ Scoring at or above the benchmark on the **career and technical education end-of-program assessment** [~~Kentucky Occupational Skill Standards Assessment (KOSSA) as appropriate~~] for articulated credit; ~~or~~ **and**

~~(iii)~~ Completing six (6) or more hours of **Kentucky Department of Education** [~~department~~] approved CTE dual credit, and receiving a ~~course~~ grade of B or higher **in each course**; or

~~(iv)~~ **Completing two (2) credits in a career and technical education program of study and was enrolled in a third credit in a CTE program of study; or**

~~v.~~ Completing a **Kentucky Department of Education** [~~department~~] approved or labor cabinet-approved apprenticeship; or

~~(v)~~ Completing a **Kentucky Department of Education** [~~department~~] approved alternate process to verify exceptional work experience.

~~c. [A school shall receive credit for each student demonstrating military readiness by:~~

~~i. Scoring at or above the department-approved benchmark of the Armed Forces Quality Test (AFQT) on the Armed Services Vocational Aptitude Battery (ASVAB); and~~

~~ii. Enlisting in a branch of military service; or~~

~~iii. Completing two (2) certificates of training and was enrolled in the third credit within a Junior Reserve Officer Training Corps (JROTC) program.~~

~~d.] For students who qualify as English learners in high school: Meeting criteria for English language proficiency to be English language ready.~~

~~d.] Students participating in the alternate assessment program shall meet criteria based on **academic or career** alternate assessment requirements. **and employability skills**~~

(7) The graduation rate indicator shall be measured for each high school using the four (4)-year and extended five (5)-year cohort rate. The graduation rate shall be reported for all students and student groups.

Section 3. Classification of Schools and **LEAs** [~~districts~~] in the State Accountability System. (1) Data shall be included in the overall rating for schools and LEAs for the following indicators:

- (a) Proficiency (reading/writing and mathematics);
- (b) Separate academic indicator (science and social studies);
- (c) Growth (elementary and middle school);
- (d) Transition readiness;
- (e) Achievement gap closure;
- (f) Opportunity and access (school quality/student success);

and

(g) Graduation rate (high school).

(2) Data from individual student performance on state assessments administered as required in KRS 158.6451 and KRS 158.6453 shall be included in the overall rating of each school and LEA. This data shall include students with disabilities with IEPs who participate in the alternate assessment program.

(3) Data in the overall rating shall be attributed to grade level spans for schools and LEA as established in this subsection.

(a) Elementary schools shall include data from proficiency, separate academic indicator for science and social studies, growth, achievement gap closure, transition readiness, opportunity and access, and federal student group designation.

(b) Middle schools shall include data from proficiency, separate academic indicator for science and social studies, growth, achievement gap closure, transition readiness, opportunity and access, and federal student group designation.

(c) High schools shall include data from proficiency, separate academic indicator for science and social studies, achievement

gap closure, transition readiness, graduation rate, opportunity and access, and federal student group designation.

(d) LEAs shall include data from school proficiency, separate academic indicator for science and social studies, growth, achievement gap closure, transition readiness, graduation rate, and opportunity and access, including a locally determined measure.

(e) Within opportunity and access, the locally determined measure shall be included in the accountability rating of each LEA. Each LEA shall propose to the department the targeted goal or objective that is specific, measurable, achievable, relevant, and time bound. Through discussion and deliberation, the LEA and the department shall enter into an agreement on the goals or objectives of the locally determined measure.

Section 4. Calculations for Reporting Categories. (1) Proficiency for reading/writing and mathematics shall be rated equally in elementary, middle and high schools and **LEAs** [~~in districts~~] by awarding points as described in paragraph 2(c) of this section.

(2) The separate academic indicator for science and social studies shall be rated equally in elementary, middle and high schools and in LEAs [~~for science and social studies~~] by awarding points as described in paragraph 2(c) of this section.

(a) For proficiency and the separate academic indicator, weights shall be equal across content areas.

(b) ~~For any~~ [~~if data is not available for the~~] content area (reading/writing, mathematics, science, and social studies) **where data are not available**, the weight shall be redistributed proportionally across proficiency and separate academic indicator.

(c) The following chart shall be used to calculate the points for proficiency and the separate academic indicator:

Proficiency Levels	Points Awarded for Each Percent of Students
Novice	0
Apprentice	.5
Proficient	1
Distinguished	1.25

(3) The achievement gap closure indicator **that includes gap to group and gap to proficiency** shall be calculated as established in this subsection.

(a) School achievement gap closure between student demographic comparison groups and reference groups shall be determined by:

1. Determining the student demographic groups to be included in this subsection, which shall include the following student demographic groups that have at least ten (10) students: **African American, Hispanic, Asian, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, two (2) or more races, and White.**

a. ~~Comparing~~ [~~Reference group compared to~~] African American, Hispanic, Asian, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, two (2) or more races, and White **to a reference group**. The reference group shall be the highest performing racial/ethnic student group that has at least ten (10) students and constitutes at least ten (10) percent of the students enrolled in the school;

b. Free/reduced-price meal eligible **students** compared to non-free/reduced-price meal eligible **students**;

c. Students with disabilities who have an IEP compared to students without IEPs; and

d. English learners compared to non-English learner students.

2. Combining scores for each tested content area assessment using points in accordance with paragraph 2(c) of Section 4 of this administrative regulation for each student demographic group.

3. Using a statistical analysis for each pair of comparison-reference groups, the department shall determine if a significant gap has been sufficiently reduced between the comparison group and reference group and is both statistically and practically significant. If so, the gap closure for the student demographic group will be considered "significant" and the school will receive one (1) gap closure point. If the gap between groups is not

significantly reduced, the gap will be considered "not significant" and the school will receive zero gap closure points.

(b) School achievement gap closure between student demographic groups and proficiency shall be determined as follows:

1. Determine which student demographic groups have at least ten (10) students that are to be included in this subsection. Student demographic groups included in the subsection shall include:

- a. White;
- b. African American;
- c. Hispanic or Latino;
- d. Asian;
- e. Native Hawaiian or other Pacific Islander;
- f. American Indian or Alaska Native;
- g. Two (2) or more races/ethnicities;
- h. Students in poverty based on eligibility for free/reduced-price meals;
- i. Students with disabilities who have an IEP;
- j. English learners; and
- k. A consolidated student group.

2. Combining scores for all content area assessments **into an index** using points in accordance with paragraph 2(c) of Section 4 of this administrative regulation for each student demographic group.

3. Compare the **index[percent proficient and above]** to the current year's annual target **developed by the Kentucky Department of Education** for each student demographic group in the combined content areas of reading/writing, mathematics, science, and social studies.

4. If the current year **index[percent proficient]** is equal to or greater than the current year's annual target for each student demographic group in the combined content areas of reading/writing, mathematics, science, and social studies, the student demographic group gap shall be considered "reduced" and the school **shall[will]** receive two (2) gap closure points.

5. If the current year **index[percent proficient]** is equal to or greater than the current year's annual target for each student demographic group in the combined content areas of reading/writing, mathematics, science, and social studies minus a sufficient percentage point, the student demographic group gap is considered "partially reduced" and the school shall receive one (1) gap closure point.

6. If the current year **index[percent proficient]** is less than the current year's annual target for each student demographic group in the combined content areas of reading/writing, mathematics, science, and social studies minus a sufficient percentage point, the student demographic group gap is considered "not reduced" and the school shall receive zero gap closure points.

(c) Sum the total achievement gap closure points across all student demographic groups **and divide by the number of student demographic groups** for gap to group and gap to proficiency.

(d) Based on total achievement gap closure points, **the**

WIDA ACCESS score previous year	WIDA ACCESS score current year							
	1	1.5	2.0	2.5	3.0	3.5	4.0	4.5
4.0	-1.25	-1.25	-1.0	-.75	-.50	-.25	0	4.5
3.5	-1.0	-1.0	-.75	-.50	-.25	0	.25	.25
3.0	-1.0	-.75	-.50	-.25	0	.25	.50	.5
2.5	-.75	-.50	-.25	0	.25	.50	.75	.75
2.0	-.50	-.25	0	.25	.50	.75	1.0	1.0
1.5	-.25	0	.25	.50	.75	1.0	1.25	1.25
1.0	0	.25	.50	.75	1.0	1.0	1.0	1.25

Kentucky Department of Education shall conduct a standards setting process involving Kentucky educators and advised by technical experts shall place the school and LEA into categories of very low, low, medium, high, or very high.

(e) Each student demographic group shall have a minimum of

ten (10) students per content area in the school or LEA in order to **include[report]** gap data **in accountability**.

(f) In calculating the achievement gap closure indicator, the reduction of achievement gap between student demographic groups shall be weighted thirty-three (33) percent and the reduction of the gap to proficiency shall be weighted sixty-seven (67) percent.

(4) Growth shall be rated for elementary and middle schools as established in this subsection.

(a) Novice and apprentice performance levels for growth calculations shall be subdivided into novice high, novice low; and apprentice high, apprentice low.

(b) Based on prior and current year performance, points for student performance level shall be assigned **from a growth value table** based on a projection of student performance **[from a growth value table]** and reported using the following terms: less than catch up, catch up, keep up, and move up.

(c) The school calculation for mathematics shall be the sum of the total points from the growth value table for **all students[each student]** divided by the total number of scores.

(d) The values in the growth value table below shall be used in calculating growth in this subsection.

Growth Value Table						
Projected	Novice		Apprentice		Proficient	Distinguished
	Low	High	Low	High		
Distinguished	-1.50 (L)	-1.25 (L)	-1.00 (L)	-0.75 (L)	0.00 (K)	0.25 (K)
Proficient	-1.00 (L)	-0.75 (L)	-0.50 (L)	-0.25 (L)	0.25 (K)	0.50 (M)
Apprentice High	-0.75 (L)	-0.50 (L)	-0.25 (L)	0 (L)	0.25 (C)	0.75 (M)
Apprentice Low	-0.50 (L)	-0.25 (L)	0 (L)	0.25 (L)	0.50 (C)	1.00 (M)
Novice High	-0.25 (L)	0 (L)	0.25 (L)	0.50 (C)	0.75 (C)	1.25 (M)
Novice Low	0 (L)	0.25 (L)	0.50 (C)	0.75 (C)	1.00 (C)	1.50 (M)

Less than Catch Up (L)

Moving Up (M)

Catching Up (C)

Keeping Up (K)

(e) The school calculation for reading shall be the sum of the total points for **all students[each student]** from the growth value table plus growth for English language proficiency as described in Section 4(4)(g) of this administrative regulation divided by the total number of scores.

(f) Progress toward achieving English proficiency by English learners shall be calculated as follows:

1. Individual growth shall be compared to prior year performance on an English proficiency exam.

2. **The exit benchmark and English learner growth value table created [A standards setting process shall be conducted] involving Kentucky educators and advised by technical experts shall be utilized [to determine exit criteria and a value table shall be generated]**

3. Points for each English learner based on the English learner growth value table shall be summed.

a. Depending on further analysis, Kentucky may modify the value table and its use to reflect factors that may impact English learners' progress toward language proficiency, including age upon entry to U.S. schools, initial English language proficiency level, and degree of interrupted schooling.

b. The values in the growth value table below shall be used in calculating growth in this subsection.

4. Total points for English learners shall be added to the sum of the reading growth points for **all[non-English learner]** students in reading as described in Section 4(4)(g) of this administrative

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regulation.

(g) For an overall school growth score, an average of reading scores that includes growth for English learners on an English proficiency exam and mathematics growth scores shall be calculated.

(5) The opportunity and access indicator shall be rated for elementary, middle, ~~and~~ high schools, and LEAs as established in this subsection.

(a) Opportunity and access school calculation shall sum the total number of points for the categories for rich curricula, equitable access, school quality, and whole child supports based on data collected from Kentucky's student information system and other statewide systems for individual students.

(b) The Kentucky Board of Education shall approve the measures of opportunity and access including the accumulation of credit.

(c) A standard setting process shall be conducted involving Kentucky educators and advised by technical experts to determine very low to very high performance levels within opportunity and access.

(6) Transition readiness shall be rated as established by this subsection.

(a) A transition readiness percentage shall be calculated by dividing the number of high school graduates who have met measures of transition readiness plus the number of English learners who have achieved English language proficiency by the total number of graduates plus the number of graduates who have received English language services during high school. Credit for students obtaining an industry-recognized certification, licensure, or credential in specialized career pathways in state and regional high demand sectors as approved by Kentucky's Workforce Innovation Board is one and one-quarter (1.25) points. Credit for students obtaining all other readiness indicators is one (1.0) point.

(b) A transition readiness percentage shall be calculated for elementary and middle schools by dividing the number of students who have met a benchmark on a composite score that combines student performance on state-required tests in reading/writing, mathematics, science, and social studies for transition readiness by the total number of accountable students.

(7) Graduation rate is the percentage of students completing the requirements for a Kentucky high school diploma compared to the cohort of students beginning in grade nine. Kentucky shall include a four (4) year cohort rate and an extended five (5) year cohort rate. Each rate shall be weighted equally.

(8) The overall rating shall be assigned as follows:

(a) The indicators for each school and LEA[district] as identified in Section 3 of this administrative regulation shall contribute to the overall rating of schools and LEAs.

(b) Indicators identified in Section 3 shall have a rating of very low, low, medium, high, or very high by school and LEA level.

(9) An overall rating based upon performance on the set of indicators for elementary and middle schools, high schools, and LEAs shall be assigned during a standards setting process. The tables below illustrate some of the combinations of performance for each star rating:

(a) Overall ratings shall be reported using a five (5) star rating system to communicate performance of schools, LEAs, and the state with one (1) star being the lowest rating and five (5) stars being the highest rating.

(b) Each star rating reflects a combination of school performance on indicators. The range of performance in the tables elementary/middle schools, high schools and LEAs as shown below indicate the upper bound and the lower bound of performance described as very low, low, medium, high, and very high.

Elementary/Middle Schools								
Overall Rating	Proficiency (Reading/ Writing & Mathematics)	Separate Academic Indicator (Science & Social Studies)	Growth (including English Language Learners)	Achievement Gap Closure	Opportunity & Access	Transition Readiness (Composite scores at grades 5 and 8)	Federal Student Group Designation	Notes
Note: Standard setting will confirm level of indicator performance necessary for the Star ratings.								Can receive no higher than a 3-Star rating if Achievement Gap Closure is "Low (L)," "Very Low (VL)" or if identified for Targeted Support and Improvement (TSI).
5 Stars	Very High	Very High	Very High	Very High	Very High	Very High	No designation	
	High	High	Low	High	High	High		
4 Stars	Any 5-star combination except Achievement Gap Closure is Medium					High Medium	No designation	
	One Medium, four High Three Medium, two High							
3 Stars	Any 4- or 5-Star combination except Achievement Gap Closure is Low Or Any 4- or 5-Star combination					High Medium High Low	No designation TSI	*Schools identified for Comprehensive Support and Improvement (CSI) are classified with a 1 Star rating.
	Four Medium, one High Four Medium, one Low						No designation or TSI	
2 Stars	Three Medium, two Low					Medium Low	No designation or TSI	
	One Medium, four Low							
1 Star	Six Low or Very Low Or bottom 5%*					TSI		

High Schools

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Overall Rating	Proficiency (Reading/ Writing & Mathematics)	Separate Academic Indicator (Science & Social Studies)	Other Academic Indicator Transition Readiness (including English Language Learners)	Achievement Gap Closure	Opportunity & Access	Graduation Rate	Federal Student Group Designation	Notes
Note: Standard setting will confirm level of indicator performance necessary for the Star ratings.								
5 Stars	Very High	Very High	Very High	Very High	Very High	Very High	No designation	Can receive no higher than a 3-Star rating if Achievement Gap Closure is "Low (L)," "Very Low (VL)" or if identified for Targeted Support and Improvement (TSI). *Schools identified for Comprehensive Support and Improvement (CSI) are classified with a 1 Star rating.
	High	High	High	High	Very High	Very High		
4 Stars	Any 5-star combination except Achievement Gap Closure is Medium						No designation	
	One Medium, four High Three Medium, two High					High Medium	No designation	
3 Stars	Any 4- or 5-Star combination except Achievement Gap Closure is Low Or Any 4- or 5-Star combination						No designation TSI	
	Four Medium, one High Four Medium, one Low					High Medium High Low	No designation or TSI	
2 Stars	Three Medium, two Low One Medium, four Low					Medium Low	No designation or TSI	
	Six Low or Very Low Or bottom 5%*						TSI	

LEA								
Overall Rating	Proficiency (Reading/ Writing & Mathematics)	Separate Academic Indicator (Science & Social Studies)	Growth (including English Language Learners)	Achievement Gap Closure	Opportunity & Access	Transition Readiness (Composite at grades 5 and 8, High school includes English language learners)	Graduation Rate (4 and 5 year cohort)	Notes
Note: Standard setting will confirm level of indicator performance necessary for the Star ratings.								
5 Stars	Very High	Very High	Very High	Very High	Very High	Very High	Very High	Can receive no higher than a 3-Star rating if Achievement Gap Closure is "Low (L)," "Very Low (VL)" or there is a significant number of schools identified as CSI or TSI.
	High	High	Low	High	Very High	High	High	
4 Stars	Any 5-star combination except Achievement Gap Closure is Medium						High Medium	
	One Medium, five High Three Medium, three High							
3 Stars	Any 4- or 5-Star combination except Achievement Gap Closure is Low Or Any 4- or 5-Star combination						High Medium High Low	
	Five Medium, one High Five Medium, one Low							
2 Stars	Four Medium, two Low Two Medium, four Low						Medium Low	
	Six Low or Very Low						Low	

(c) The relationship between each category and the approximate weight of proficiency, a separate academic indicator for science and social studies, achievement gap closure, growth, transition readiness, opportunity and access, and graduation rate shall be included in the overall rating.

(d) The **individual indicators and the** overall rating shall be developed through a standard setting process involving Kentucky educators

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and advised by technical experts. During the standard setting process, the approximate weights in the following table shall be considered. The proposed ranges in the table indicate the relative emphasis between indicators. The ranges are set to guide Kentucky educators to determine the combination of performance from very high to very low within the indicator during standard setting.

Overall Accountability Weights							
	Proficiency (Reading/ Writing and Mathematics)	Separate Academic Indicator (Science and Social Studies)	Growth (including English Language Learners)	Achievement Gap Closure	Opportunity & Access	Transition Readiness (Composite at grades 5 & 8) (High school includes English language learners)	Graduation Rate (4 and 5 year cohort)
Elementary/ Middle Schools	15-25	15-25	20-30	15-25	10-20	5-10	---
High Schools	10-20	10-20	---	15-25	10-20	20-30	5-15
Districts	10-20	10-20	10-20	10-20	10-20	10-20	5-15

(e) A school shall receive a federal student group designation for statistically significant achievement gaps or low-performing students ~~and shall [Schools or LEAs with statistically significant achievement gaps may]~~ not be rated above three stars.

(f) Schools and LEAs shall not be rated above three (3) stars if they:

1. Have an achievement gap closure indicator of low (L) or very low (VL), or

2. Are identified for targeted support and improvement (TSI), or

3. Have statistically significant achievement gaps.

~~(g)(f)~~ Using the pool of schools identified in the lowest star ratings, Kentucky will rank schools to determine bottom five (5) percent and ten (10) percent based on the indicators of proficiency, separate academic indicator for science and social studies, and growth at elementary and middle and the indicators of proficiency, separate academic indicator for science and social studies, and transition readiness at high school.

~~(h)(g)~~ If data cannot be calculated for an indicator, the weights shall be redistributed using an equal proportion to **remaining** indicators that shall be reported for the school or LEA.

(10) School accountability indicators shall be assigned as follows:

(a) Students enrolled for a full academic year shall be included in the calculations for proficiency, a separate academic indicator for science and social studies, achievement gap closure, growth, and transition readiness for a school and LEA.

(b) Opportunity and access calculations shall be based on the students' enrollment.

(c) Graduation rate calculations shall be based on the students' final enrollment.

(d) Student demographic groups shall have a minimum of ten (10) students to be included in school rating calculations.

(e) In accordance with KRS 158.6455, schools and districts shall be placed into one (1) of five (5) star ratings established by a standards-setting process utilizing results from the first operational administration of assessments in 2018-19. The process shall:

1. Be advised by the National Technical Advisory Panel on Assessment and Accountability; the School Curriculum, Assessment and Accountability Council; and the Office of Education Accountability; and

2. Use accepted technical procedures and involve Kentucky school and district administrators and teachers.

Section 5. Public reporting requirements. (1) The Kentucky Department of Education shall report disaggregated data for each indicator of the state assessment and accountability system.

(2) Progress on long-term and interim goals shall be reported publicly as required by the federal Every Student Succeeds Act. Goals shall be developed for every student group, including all students, for academic achievement in each content area of reading/writing, mathematics, science, social studies, and the content areas combined; graduation rate based on four (4) year

and five (5) year adjusted cohorts; and progress on English proficiency for English learners.

(3) The goal for academic achievement operationalizes both the improvement of proficient and distinguished performance for all students and each student group and the reduction of gaps in student group performance by fifty (50) percent by 2030. Each student group of ten (10) or more students shall be compared to the reference group of the highest performing student group that is at least ten (10) percent of the student population.

(4) Goals for graduation rate shall be generated for a four (4) year adjusted cohort to ninety-five (95) percent for all students and an extended five (5) year cohort to ninety-six (96) percent for all students. The goal for progress on English language proficiency shall be based on the percent of students making progress toward attainment of the English language.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

STEPHEN L. PRUITT, PH.D., Commissioner
MARY GWEN WHEELER, Chairperson

APPROVED BY AGENCY: December 14, 2017

FILED WITH LRC: December 15, 2017 at 9 a.m.

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 300 Sower Boulevard, Fifth Floor, Sower Building, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email kevin.brown@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes state accountability requirements for Kentucky's public local education agencies (LEAs) and schools.

(b) The necessity of this administrative regulation: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools and districts, complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specific details for establishing the indicators and measures of the state-required accountability system for Kentucky public LEAs and schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific details for establishing

the statewide accountability program that rates LEAs and schools based on performance of multiple indicators: proficiency (reading/writing and mathematics), separate academic indicator (science and social studies), growth (elementary and middle schools only), graduation rate (high school only), transition readiness, achievement gap closure, and opportunity and access. The multiple indicators incorporate the student test results and school quality measures. The regulations complies with state statute and the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public LEAs and schools in Kentucky with schools grade 3 or higher and supporting staff in the Kentucky Department of Education (KDE).

(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: KDE, LEAs and schools shall implement the specific details of the assessment and accountability system. The regulation defines the indicators and measures to be included in the accountability system used to evaluate and rate the performance of Kentucky's public LEAs and schools. The system is a multi-dimensional model that uses student- and school-based data to differentiate performance. The Kentucky Department of Education implements and manages the accountability system, as established and promulgated in regulation by the Kentucky Board of Education. LEAs and schools implement the required assessments and processes that generate data reported annually in the accountability system. The data reported help schools and districts improve student achievement and growth, close the achievement gap among groups, ensure students are ready to transition to the next step of education or life, and provide opportunity and access for all students.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The accountability system requires no additional direct costs to the LEAs and schools. LEA's and schools may choose to implement new programs or services in response to the new accountability system that may result in additional costs for LEA's and schools, however, this would be a locally determined decision. KDE anticipates additional indirect cost to implement new accountability system. Additional costs are expected to implement new assessments and reporting requirements codified in Senate Bill 1 (2017 Kentucky General Assembly).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The accountability system has several key goals: promote higher levels of student learning and achievement, reduce achievement gaps and ensure equity, establish opportunity and access for students to receive a quality education, build a culture of high expectation and continuous improvement, and communicate a clear and honest understanding of strengths and opportunities for improvement in LEAs and schools.

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

(a) Initially: The transition to the new accountability system will require KDE to implement activities such as standard setting, additional staff time, and the support of experts, each with

associated costs. The accountability system requires no additional cost to the LEAs and schools. KDE anticipates additional costs to implement new assessments and reporting requirements codified in Senate Bill 1 (2017 Kentucky General Assembly). The results of these assessments are used to rate schools in the accountability system established by this regulation.

(b) On a continuing basis: Senate Bill 1 requires continual reviews of standards and assessments. There will be ongoing costs to implement new assessments and meet reporting requirements, particularly the release of some assessment items annually. These activities directly support the accountability system established in this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general and federal 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 increased fees or funding are anticipated as a result of this regulation, however activities related to this regulation as required by SB 1 (2017) may require additional funding as described above.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and LEAs.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public Local Education Agencies (LEAs) and schools.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453; KRS 158.6455; 20 U.S.C. secs. 6301 et seq.

(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? The transition to the new accountability system will require the Kentucky Department of Education (KDE) to implement activities such as standard setting, additional staff time, and the support of experts, each with associated costs. The accountability system requires no additional cost to the LEAs and schools. KDE anticipates additional costs to implement new assessments and reporting requirements codified in Senate Bill 1 (2017 Kentucky General Assembly). The results of these assessments are used to rate schools in the accountability system established by this regulation.

(d) How much will it cost to administer this program for subsequent years? Senate Bill 1 requires continual reviews of standards and assessments. There will be ongoing costs to implement new assessments and meet reporting requirements, particularly the release of some assessment items annually. These activities directly support the accountability system established in this regulation.

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

Revenues (+/-): N/A

Expenditures (+/-): The transition to the new accountability

system will require KDE to implement activities such as standard setting, additional staff time, and the support of experts, each with associated costs. The accountability system requires no additional cost to the LEAs and schools. KDE anticipates additional costs to implement new assessments and reporting requirements codified in Senate Bill 1 (2017 Kentucky General Assembly). The results of these assessments are used to rate schools in the accountability system. Senate Bill 1 requires continual reviews of standards and assessments. There will be ongoing costs to implement new assessments and meet reporting requirements, particularly the release of some assessment items annually. These activities directly support the accountability system established in this regulation.

Other Explanation: N/A

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Kentucky Department of Education
(Amended After Comments)

704 KAR 3:370. Kentucky Framework for Personnel Evaluation~~Professional Growth and Effectiveness System~~.

RELATES TO: KRS 156.557, 156.800(7), 161.740

STATUTORY AUTHORITY: KRS 156.070, 156.557(2), (5)(c),

(7) NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.557(2) and (5)(c), and (7) require the Kentucky Board of Education to promulgate administrative regulations to establish a statewide ~~framework~~professional growth and effectiveness system for the purposes of supporting and improving the performance of all certified school personnel,~~and~~ to develop written guidelines for local school districts to follow in implementing ~~a~~statewide system of evaluation for certified school personnel, and to establish an appeals procedure for certified school personnel. This administrative regulation establishes a statewide ~~framework~~professional growth and effectiveness system to support and improve the performance of all certified school personnel as well as an appeals procedure for certified personnel.

Section 1. Definitions. (1)~~Artifact~~ means a product of a certified school personnel's work that demonstrates knowledge and skills.

(2) "Assistant principal" means a certified school personnel who devotes the majority of employed time in the role of assistant principal, for which administrative certification is required by the Education Professional Standards Board pursuant to 16 KAR Chapter 3.

(2)~~(3)~~ "Certified administrator" means a certified school personnel, other than principal or assistant principal, who devotes the majority of employed time in a position for which administrative certification is required by the Education Professional Standards Board pursuant to 16 KAR Chapter 3.

(3) "Certified evaluation plan" means the procedures and forms for evaluation of certified personnel below the level of superintendent developed by an evaluation committee and meeting all requirements of the Kentucky Framework for Personnel Evaluation.

(4) "Certified school personnel" means a certified employee, below the level of superintendent, who devotes the majority of employed time in a position in a district for which certification is required by the Education Professional Standards Board pursuant to Title 16 KAR and includes certified administrators, assistant principals, principals, other professionals, and teachers.

(5) "Conference" means a meeting between the evaluator and the evaluatee for the purposes of providing feedback, analyzing the results of an observation or observations, reviewing other evidence to determine the evaluatee's accomplishments and areas for growth, and leading to the establishment or revision of a professional growth plan.

(6) "Evaluatee" means the certified school personnel who is being evaluated.

(7) "Evaluation committee" means a group, consisting of an equal number of teachers and administrators, who develop personnel evaluation procedures and forms for a local school district as described in KRS 156.557(5)(c)(1).

(8)~~(7)~~ "Evaluator" means the primary evaluator as described in KRS 156.557(5)(c)2.

(9) "Evaluator certification" means successful completion of certified evaluation training to ensure that certified school personnel who serve as observers of evaluatees demonstrate proficiency in rating teachers and other professionals for the purposes of evaluation and feedback.

(10)~~(8)~~ "Formative evaluation" is defined by KRS 156.557(1)(a). ~~(9)~~ "Improvement plan" means a plan for improvement of up to twelve (12) months in duration for:

(a) Teachers and other professionals who are rated ineffective in professional practice and have a low overall student growth rating; and

(b) Principals who are rated ineffective in professional practice and have high, expected, or low overall student growth rating.]

(11)~~(40)~~ "Job category" means a group or class of certified school personnel positions with closely related functions.

(12) "Kentucky Framework for Personnel Evaluation" means the statewide framework a school district uses to develop a local certified personnel evaluation system.~~(14)~~ "Local contribution" means a rating based on the degree to which a teacher, other professional, principal, or assistant principal meets student growth goals and is used for the student growth measure.

(12) "Local formative growth measures" is defined by KRS ~~156.557(1)(b).~~

(13) "Observation" means a data collection process conducted by a certified evaluator~~observer~~, in person or through video, for the purpose of evaluation, including notes, professional judgments, and examination of artifacts made during one (1) or more classroom or worksite visits of any duration.~~(14)~~ "Observer calibration" means the process of ensuring that certified school personnel have maintained proficiency and accuracy in observing teachers and other professionals for the purposes of evaluation and providing feedback.

(15) "Observer certification" means a process of training and ensuring that certified school personnel who serve as observers of evaluatees have demonstrated proficiency in rating teachers and other professionals for the purposes of evaluation and feedback.]

(14)~~(46)~~ "Other professionals" means certified school personnel, except for teachers, administrators, assistant principals, or principals **for which certification is required by the Education Professional Standards Board** pursuant to Title 16 KAR.~~(47)~~ "Overall student growth rating" means the rating that is calculated for a teacher or other professional evaluatee pursuant to the requirements of Section 7(9) and (10) of this administrative regulation and that is calculated for an assistant principal or principal evaluatee pursuant to the requirements of Section 10(8) of this administrative regulation.]

(15)~~(48)~~ "Peer observation" means observation and documentation by~~trained~~ certified school personnel below the level of principal or assistant principal and trained to perform such observations.

(16)~~(49)~~ "Performance criteria" means the areas, skills, or outcomes on which certified school personnel are evaluated as described in KRS 156.557(4).

(17) "Performance measure" means one (1) of four (4) measures defined in the Kentucky Framework for Personnel Evaluation. Measures include planning, environment, instruction, and professionalism.

(18)~~(20)~~ "Performance rating" means the rating for each performance measure for~~summative description of~~ a teacher, other professional, principal, or assistant principal as determined by the local district certified evaluation plan aligned to the Kentucky Framework for Personnel Evaluation. Ratings include exemplary, accomplished, developing, and ineffective~~evaluatee's performance, including the ratings listed in Section 7(8) of this administrative regulation~~.

(19) "Personnel Evaluation System" or "system" means an evaluation system to support and improve the performance of

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certified school personnel that meets the requirements of KRS 156.557 and that uses clear and timely formative feedback to guide professional growth.

~~(20)~~(24) "Principal" means a certified school personnel who devotes the majority of employed time in the role of principal, for which administrative certification is required by the Education Professional Standards Board pursuant to Title 16 KAR. ~~(22)~~ "Professional growth and effectiveness system" or "system" means an evaluation system to support and improve the performance of certified school personnel that meets the requirements of KRS 156.557(1)(c), (2), and (3) and that uses clear and timely feedback to guide professional development.

(23) "Professional growth plan" means an individualized plan for a certified personnel that is focused on improving professional practice and leadership skills, aligned with performance standards and the specific goals and objectives of the school improvement plan or the district improvement plan, built using a variety of sources and types of data that reflect student needs and strengths, evaluatee data, and school and district data, produced in consultation with the evaluator as described in Section 9(1), (2), (3), and (4) and Section 12(1), (2), (3), and (4) of this administrative regulation, and includes:

(a) Goals for enrichment and development that are established by the evaluatee in consultation with the evaluator;

(b) Objectives or targets aligned to the goals;

(c) An action plan for achieving the objectives or targets and a plan for monitoring progress;

(d) A method for evaluating success; and

(e) The identification, prioritization, and coordination of presently available school and district resources to accomplish the goals.

(24) "Professional practice" means the demonstration, in the school environment, of the evaluatee's professional knowledge and skill.

(25) "Professional practice rating" means the rating that is calculated for a teacher or other professional evaluatee pursuant to Section 7(8) of this administrative regulation and that is calculated for a principal or assistant principal evaluatee pursuant to the requirements of Section 10(7) of this administrative regulation.

(26) "Self-reflection" means the annual process by which certified school personnel assess the effectiveness and adequacy of their knowledge and performance for the purpose of identifying areas for professional learning and growth.]

~~(21)~~(27) "Sources of evidence" means the district approved evidences aligned to the performance measure and used by evaluators to inform performance measure ratings[multiple measures] listed in Section 8[KRS 156.557(4) and in Sections 7 and 10] of this administrative regulation. ~~(28)~~ "State contribution" means the student growth percentiles, as defined in 703 KAR 5:200, Section 1(11), for teachers and other professionals, and the next generation learners goal for principals and assistant principals.

(29) "Student growth" is defined by KRS 156.557(1)(c).

(30) "Student growth goal" means a goal focused on learning, that is specific, appropriate, realistic, and time-bound, that is developed collaboratively and agreed upon by the evaluatee and evaluator, and that uses local formative growth measures.

(31) "Student growth percentile" means each student's rate of change compared to other students with a similar test score history.

(32) "Student voice survey" means the student perception survey provided by the department that is administered annually to a minimum of one (1) district-designated group of students per teacher or other professional evaluatee if the evaluatee directly instructs students throughout the school year, and provides data on specific aspects of the instructional environment and professional practice of the teacher or other professional evaluatee.]

~~(22)~~(33) "Summative evaluation" is defined by KRS 156.557(1)(d).

(23) "Summative rating" means the overall rating for certified school personnel below the level of superintendent as determined by the district certified evaluation plan aligned to the Kentucky

Framework for Personnel Evaluation.

~~(24)~~(34) "Teacher" means a certified school personnel who has been assigned the responsibility for student learning in a classroom, grade level, subject, or course and holds a teaching certificate under Title 16 KAR. ~~(35)~~ "Working conditions survey goal" means a school improvement goal set by a principal or assistant principal every two (2) years with the use of data from the department-approved working conditions survey.]

Section 2. District Evaluation Procedures and Forms. (1) An evaluation committee, including teachers as defined in this administrative regulation, shall develop the certified evaluation plan for the evaluation of certified school personnel below the level of superintendent. The evaluation committee shall submit the certified evaluation plan to the local board of education for review and approval.

(2) The local board of education shall review and approve the certified evaluation plan that meets the requirements of KRS 156.557 (5)(c) and this administrative regulation.

(a) The district certified evaluation plan may require the use of additional trained administrative personnel to observe and provide information to the evaluator.

(b) Peer observations may be used as a source of evidence only if requested by the teacher or other professional and would be used to inform summative ratings.

(c) The district certified evaluation plan shall establish uniform requirements for the length, frequency, and nature of observations conducted by an evaluator for the purpose of evaluation. The district certified evaluation plan shall require a conference between the evaluator and the evaluatee within five (5) working days following each observation.

(d) The district certified evaluation plan shall require the summative evaluation to be held at the end of the evaluation cycle pursuant to KRS 156.557 and to include all applicable system data.

(e) The district certified evaluation plan shall require a summative evaluation to occur annually for each certified personnel below the level of superintendent who has not attained continuing service status pursuant to KRS 161.740 or continuing status pursuant to KRS 156.800(7) and shall incorporate the formative data collected during the Kentucky Teacher Internship Program, pursuant to 16 KAR 7:010, in the summative evaluation of a teacher intern.

(f) The district certified evaluation plan shall require a summative evaluation at least once every three (3) years for a teacher, other professional, principal, or assistant principal who has attained continuing service status pursuant to KRS 161.740 or continuing status pursuant to KRS 156.800(7).

(g) The evaluation criteria and process used to evaluate certified personnel shall be explained to and discussed with the evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of reporting for employment each school year.

(h) The district certified evaluation plan shall require a summative evaluation of certified school personnel to be documented in writing and to be included in the evaluatee's official personnel record.

(i) All evidence used to produce certified school personnel's overall performance rating shall be included in the documentation of the summative evaluation.

(j) The district certified evaluation plan shall provide an opportunity for the evaluatee to submit a written statement in response to the summative rating and require the response to be included in the official personnel record. Implementation Timeline. (1) Beginning with the 2015-2016 school year, all local districts shall fully implement the requirements of KRS 156.557 and this administrative regulation for all certified school personnel except certified school personnel of career and technical education in area technology centers.

(2) Beginning with the 2015-2016 school year, a local school district shall use the results from the system to inform personnel decisions for teachers, principals, and assistant principals.

(3) Beginning with the 2016-2017 school year:

(a) The Office of Career and Technical Education shall fully implement the requirements of KRS 156.557 and this

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administrative regulation for all certified school personnel of career and technical education in area technology centers.

(b) A local school district shall use the results from the system to inform personnel decisions for other professionals, certified administrators, and teachers in career and technical education in area technology centers.]

Section 3. District Personnel Evaluation Policies[Approval of Local Professional Growth and Effectiveness System Plan and Procedures]. (1) Each local school district shall establish a written policy for implementing the certified evaluation plan for all certified school personnel below the level of superintendent in the district, consistent with the requirements of KRS 156.557 and this administrative regulation. The local board of education shall develop, adopt, and submit to the department for approval a policy and procedure for evaluation of the district superintendent.[submit to the department a professional growth and effectiveness system plan and procedures to establish the district's evaluation system for all certified school personnel.

(2) The department shall approve each local school district's plan and procedures that comply with the requirements established in KRS 156.557 and this administrative regulation.].

Section 4. Department Approval of District Personnel Evaluation Plan[Local Professional Growth and Effectiveness Policies]. The department shall review and approve each local school district's certified evaluation plan.[local board of education shall establish a written policy for implementing the system for all certified school personnel in the district, consistent with the requirements of KRS 156.557 and this administrative regulation. The local board of education shall develop, adopt, and submit to the department for approval a policy for evaluation of the district superintendent], consistent with the requirements of KRS 156.557[(6)] and this administrative regulation.

Section 5. Revisions to Previously Approved District Evaluation Plan[Local Evaluation Procedures and Forms]. (1) The local board of education shall review, as needed, the district's certified evaluation plan to ensure compliance with KRS 156.557 and this administrative regulation.[A local evaluation committee shall develop, and the local board of education shall review and approve, system procedures and forms for the evaluation of certified school personnel positions].

(2) If a source of evidence is added or removed from the certified evaluation plan or if a decision rule or calculation is changed in the summative rating, the revised certified evaluation plan shall be reviewed and approved by the local board of education. If the local board of education determines the changes do not meet the requirements of KRS 156.557, the certified evaluation plan shall be returned to the certified evaluation committee for revision.[The local board of education shall review and approve procedures and forms that meet the requirements of KRS 156.557(5)(c) and include the requirements established in this subsection:

(a) The district may require the utilization of additional trained administrative personnel to observe and provide information to the evaluator.

(b) The district shall require a minimum of one (1) peer observation of a teacher or other professional evaluatee during the summative evaluation year and sharing the documentation with the teacher or other professional for formative evaluation purposes. Documentation of peer observations may be documented in the department approved technology platform. At the request of a teacher or other professional, peer observations may be used in the summative process.

(c) Beyond the minimum observation requirements set forth in KRS 156.557 and this administrative regulation, the district may establish uniform requirements for the length, frequency, and nature of observations conducted by an evaluator for the purpose of evaluation.

(d) The district shall require a teacher or other professional evaluator to conduct a minimum of three (3) observations of a teacher or other professional evaluatee during the summative

evaluation cycle, except that the district may reduce the number of minimum observations of a teacher or other professional evaluatee during the summative evaluation cycle for teacher or other professional evaluatees who do not report for work sixty (60) or more consecutive school days. A district shall include a detailed plan for reduction of minimum observations of teachers or other professional evaluatees who do not report for work sixty (60) or more consecutive school days in the district's system plan and procedures submitted to the department for approval pursuant to Section 3 of this administrative regulation. At a minimum, one (1) full observation shall be conducted during the summative year. Observations may be documented in the department approved technology platform.

(e) The district shall require a principal evaluator to conduct a minimum of two (2) site visits each year.

(f) The district shall create a process for selection of peer observers.

(g) The district shall require a formative evaluation conference between the evaluator and the evaluatee within five (5) working days following each observation by the evaluator.

(h) The district shall require the summative evaluation conference to be held at the end of the summative evaluation cycle and to include all applicable system data.

(i) The district shall require summative evaluation, with multiple observations, to occur annually for each teacher or other professional who has not attained continuing service status under KRS 161.740 or continuing status under KRS 156.800(7) and may utilize the formative data collected during the beginning teacher internship period, pursuant to 16 KAR 7:010, in the summative evaluation of an intern teacher.

(j) The district shall require multiple observations of a certified school personnel who has attained continuing service status under KRS 161.740 or continuing status under KRS 156.800(7) and whose observation results are determined to be ineffective.

(k) The district shall require summative evaluation at least once every three (3) years for a teacher or other professional who has attained continuing service status under KRS 161.740 or continuing status under KRS 156.800(7).

(l) The district, upon the request of a teacher or other professional, may use peer observation data in the formative process.

(m) The district shall require summative evaluation annually for a certified administrator, assistant principal, or principal. The evaluation criteria and process used to evaluate a certified administrator, assistant principal, or principal shall be explained to and discussed with the evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of reporting for employment each school year.

(n) The district shall require a summative evaluation of a certified school personnel to be documented in writing and to be included in the evaluatee's official personnel record.

(o) The district shall require documentation of a summative evaluation of a teacher, other professional, principal, and assistant principal in the department approved technology platform.

(p) All evidence used to produce a certified school personnel's overall performance rating shall be included in the documentation of the summative evaluation.

(q) The district shall provide an opportunity for a written response by the evaluatee and require the response to be included in the official personnel record.].

Section 6. Training and Testing of Evaluators[and Observers].

(1) The district shall include evaluation and observation training in the district's certified evaluation[system] plan[and procedures] submitted to the department for approval pursuant to Section 3 of this administrative regulation.

(2) The district shall ensure an evaluator meets the requirements in[of] the district's evaluation[system] plan[and procedures] prior to conducting a formative or summative evaluation[evaluating a certified school personnel].

(3) An evaluator shall be trained, tested, and approved according to this administrative regulation and the district's certified evaluation plan[on a four (4) year cycle].

(4) Evaluator training shall include ~~Year one (1) of the district's evaluator training cycle shall include the following training requirements:~~

(a) Initial certified evaluation training and testing provided by the Kentucky Department of Education or a provider approved by the department;

(b) ~~(a) Training on KRS 156.557 and the requirements of this administrative regulation;~~

(c) ~~(b) Training in identifying effective teaching and management practices, in effective observation and conferencing techniques, in development of student growth goals, in providing clear and timely feedback, in establishing and assisting with a professional growth plan, and in summative decision techniques;~~ (e) Training provided by the department for all certified administrator evaluators who have never evaluated certified school personnel. Other certified administrators who have not received training in the skill areas listed in paragraph (b) of this subsection may also be trained by the department; and

(d) A minimum of six (6) hours annually of personnel evaluation system training ~~Training, for all other evaluators, by a provider who has been approved by the department as a trainer for the Effective Instructional Leadership Act [Improvement Program] established in 704 KAR 3:325.~~ (5) ~~Year one (1) of the district's evaluator training cycle shall include the testing requirements established in this subsection.~~

(a) ~~An evaluator shall successfully complete testing of research-based and professionally accepted teaching and management practices and effective evaluation techniques.~~

(b) ~~The testing shall be conducted by the department or an individual or agency approved by the department.~~

(c) ~~The testing shall include certification as an observer through the department-approved observer certification process for an evaluator who is evaluating teachers or other professionals.~~

(6) ~~The department shall issue year one (1) approval as an evaluator upon the evaluator's successful completion of the required evaluation training and testing program and successful completion of observer certification.~~

(7) ~~Years two (2) and three (3) of the district's evaluator training and testing cycle shall include a minimum of six (6) hours in each year and shall include:~~

(a) ~~Observer calibration training, in the department-approved technology platform, for all evaluators who observe teachers or other professionals for the purpose of evaluation;~~

(b) ~~Update training on professional growth and effectiveness statutes and administrative regulations; and~~

(c) ~~Training for evaluators on any changes to the Professional Growth and Effectiveness System and certified evaluation plan, policies, or procedures.~~

(8) ~~Year four (4) of the district's evaluator training and testing cycle shall include refresher evaluator training and, if evaluating teachers or other professionals, recertification training and testing.~~

(9) ~~The district shall require peer observers to complete the department-approved peer observer training at least once every three (3) years.~~

(10) ~~The district shall designate a contact person responsible for monitoring evaluator training and for implementing the system.]~~

Section 7. Training of Peer Observers. (1) The district shall require peer observations be performed by individuals who are trained in peer observation techniques and responsibilities prior to the first peer observation.

(2) Peer observation training shall include training in effective observation and conferencing techniques as well as roles and responsibilities.

Section 8. Performance Measure [Professional Practice Rating and Student Growth Rating for Teachers and Other Professionals].

(1) The district's certified evaluation plan ~~[professional practice rating form]~~ shall utilize the Kentucky Framework for Personnel Evaluation ~~[The Framework for Teaching Evaluation Instrument, 2011 Edition, in conjunction with the Teacher and Other Professionals Evaluation Crosswalk,]~~ in compliance with KRS 156.557 and the requirements of this administrative regulation and

shall include the following performance measures:

(a) Planning ~~[and Preparation Domain];~~

(b) [Classroom] Environment ~~[Domain];~~

(c) Instruction ~~[Domain]; and~~

(d) Professionalism ~~[Professional Responsibilities Domain].~~

(2) The district's certified evaluation plan shall define criteria for each performance measure from the Kentucky Framework for Teaching, the Kentucky Framework for Teaching: Specialist Frameworks, and the Principal and Assistant Principal Performance Standards ~~[professional practice rating evaluation form shall list, in each component, the performance criteria] that characterize effective practice and apply to the evaluatee.~~ (3) ~~The district shall explain and discuss the professional practice rating domains, components, and performance criteria, and the evaluation process with an evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of reporting for employment each school year. Amendments to local systems of teacher evaluation approved by the department after the end of the evaluatee's first thirty (30) calendar days of the school year shall not apply to the evaluatee until the following school year.~~

(4) ~~A professional practice rating evaluation form shall be specific to the evaluatee's job category.~~

(5) ~~The evaluator shall utilize The Framework for Teaching Evaluation Instrument, 2011 Edition, in conjunction with the Teacher and Other Professional Evaluation Crosswalk, in compliance with KRS 156.557 and the requirements of this administrative regulation, to determine ratings for the evaluatee on each of the four (4) domains.~~

(3) ~~(6) The evaluator shall use sources of evidence [from professional growth plans and self-reflection, observation, and student voice surveys,] in combination with professional judgment, to inform the teacher's or other professional's rating on each of the four (4) performance measures [domains] listed in subsection (1) of this section.~~ (7) ~~The evaluator may, if included in the district's approved evaluation plan, use additional district-determined sources of evidence to inform the teacher's or other professional's professional practice rating.~~

(8) ~~The evaluator shall utilize the decision rules in this subsection for determining the professional practice rating for a teacher or other professional.]~~

(a) The evaluator shall use the following ratings:

1. "Exemplary" shall be the rating for performance that consistently exceeds expectations for effective performance;

2. "Accomplished" shall be the rating for performance that consistently meets expectations for effective performance;

3. "Developing" shall be the rating for performance that inconsistently meets expectations for effective performance; and

4. "Ineffective" shall be the rating for performance that consistently fails to meet expectations for effective performance.

(b) ~~At a minimum, the evaluator shall use the decision rules in this paragraph to determine a professional practice rating.~~

1. ~~If a teacher or other professional is rated ineffective in the classroom environment domain or in the instruction domain, the teacher's or other professional's professional practice rating shall be not be exemplary or accomplished.~~

2. ~~If a teacher or other professional is rated ineffective in the classroom environment domain and in the instruction domain, the teacher's or other professional's professional practice rating shall be ineffective.~~

3. ~~If a teacher or other professional is rated ineffective in any domain, the teacher's or other professional's professional practice rating shall be accomplished, developing, or ineffective.~~

4. ~~If a teacher or other professional is rated developing in two (2) domains and accomplished in two (2) domains, the teacher's or other professional's professional practice rating shall be accomplished.~~

5. ~~If a teacher or other professional is rated developing in two (2) domains and exemplary in two (2) domains, the teacher's or other professional's professional practice rating shall be accomplished.~~

6. ~~If a teacher or other professional is rated accomplished in two (2) domains and exemplary in two (2) domains, the teacher's or other professional's professional practice rating shall be~~

exemplary.

(9) The district shall determine the teacher's or other professional's overall student growth rating as established in this subsection.

(a) The student growth measure shall consist of a state contribution, if available, and a local contribution.

(b) The Kentucky Board of Education shall determine the scale for low, expected, and high growth regarding the state contribution, and the department shall provide the scale to local school districts.

(c) Student growth goals shall be determined as established in this paragraph.

1. The teacher or other professional shall develop and implement a minimum of one (1) student growth goal each year.

(b)[2-] Because individual[individualized] education program[plan] (IEP) goals are student-specific, IEP goals may inform, but shall not be used as a single source of evidence for any performance measure[, student growth goals.

3. The district shall ensure that student growth goals and measures of student growth are rigorous and comparable across schools in the local school district.

(d) The local school district shall determine the scale for low, expected, and high student growth goal ratings. In determining the scale, local school districts shall consider the definition of typical yearly growth contained in 703 KAR 5:200, Section 1(12).

(10) The local school district shall develop a process for using professional judgment and the following sources of evidence to determine the overall student growth rating:

(a) Growth trends consisting of the three (3) most recent years of student growth percentile data, if available, for teachers; and

(b) Growth trends consisting of the three (3) most recent years of student growth goal data, if available, for all teachers and other professionals].

Section 9[8]. Summative Rating of Teachers, Other Professionals, Principals, and Assistant Principals[Overall Performance Category of Teachers or Other Professionals]. (1) The overall performance category for teachers or other professionals, principals, and assistant principals shall be a district determined rating by combining the four (4) performance measures provided in Section 8 [teacher's or other professional's professional practice rating and overall student growth rating, as illustrated by the Kentucky Professional Growth and Effectiveness System Model for Summative Evaluation of Teachers or Other Professionals.

(2) The district shall determine the teacher's or other professional's overall performance category with the decision rules established in this subsection.

(a) A teacher's or other professional's overall performance rating shall be exemplary if:

1. The professional practice rating is exemplary and the overall student growth rating is high;

2. The professional practice rating is exemplary and the overall student growth rating is expected; or

3. The professional practice rating is accomplished and the overall student growth rating is high.

(b) A teacher's or other professional's overall performance rating shall be accomplished if:

1. The professional practice rating is accomplished and the overall student growth rating is expected; or

2. The professional practice rating is developing and the overall student growth rating is high;

(c) A teacher's or other professional's overall performance category shall be developing if:

1. The professional practice rating is exemplary and the overall student growth rating is low;

2. The professional practice rating is accomplished and the overall student growth rating is low;

3. The professional practice rating is developing and the overall student growth rating is expected;

4. The professional practice rating is developing and the overall student growth rating is low; or

5. The professional practice rating is ineffective and the overall student growth rating is high.

(d) A teacher's or other professional's overall performance category shall be ineffective if:

1. The professional practice rating is ineffective and the overall student growth rating is expected; or

2. The professional practice rating is ineffective and the overall student growth rating is low.]

Section 10[9]. Evaluation of Certified Personnel Assigned to the District Level for Purposes of Evaluation. (1) The district's certified evaluation plan for certified personnel assigned to the district level for purposes of evaluation shall:

(a) Utilize the performance criteria outlined in KRS 156.557(4), in compliance with KRS 156.557 and the requirements of this administrative regulation; and

(b) List the performance criteria applicable to the evaluatee that characterizes professional effectiveness.

(2) The district certified evaluation plan for certified personnel assigned to the district level for purposes of evaluation shall be specific to the evaluatee's job category [Professional Growth Plan and Cycle for Tenured Teachers or Other Professionals. A teacher or other professional shall be placed on an appropriate plan and summative evaluation cycle based on the professional practice rating and the overall student growth rating, as illustrated by the Kentucky Professional Growth Plan and Cycle for Tenured Teachers or Other Professionals. (1) A teacher or other professional whose professional practice rating is exemplary or accomplished and who has an expected or high overall student growth rating shall have a professional growth plan that includes: goals set by the teacher or other professional, with evaluator input; activities that are evaluatee-directed and implemented with colleagues; a formative review annually; and a summative evaluation that occurs at the end of year three (3) of the evaluation cycle.

(2) A teacher or other professional whose professional practice rating is accomplished or exemplary, with a low overall student growth rating, or developing, with a high overall student growth rating, shall have a professional growth plan that includes: goals set by the teacher or other professional with evaluator input; if there is a low student growth rating, one (1) goal shall focus on low student growth outcome; an annual formative review; and a summative evaluation that occurs at the end of year three (3) of the evaluation cycle.

(3) A teacher or other professional whose professional practice rating is developing, with an expected overall student growth rating, shall have a professional growth plan that includes: goals set by the teacher or other professional with evaluator input; one (1) goal that addresses professional practice or student growth; activities that are evaluatee-directed and implemented with colleagues; an annual formative review; and a summative evaluation that occurs at the end of year three (3) of the evaluation cycle.

(4) A teacher or other professional whose professional practice rating is developing, with a low overall student growth rating, or whose professional practice rating is ineffective, with an expected or high overall student growth rating, shall have a professional growth plan that includes goals determined by the evaluator: goals shall focus on professional practice and student growth, include an annual formative review, and include a summative evaluation that occurs at the end of one (1) year.

(5) A teacher or other professional whose professional practice rating is ineffective, with a low overall student growth rating, shall have an improvement plan with goals determined by the evaluator: the goals shall focus on low performance areas and a summative evaluation shall occur at the end of the plan, whose duration is determined by the evaluator and may last up to one (1) year.

Section 10. Professional Practice Rating and Overall Student Growth Rating for Principals and Assistant Principals. (1) The district's professional practice rating form shall utilize the Principal and Assistant Principal Performance Standards and the Principal and Assistant Principal Performance Standards Crosswalk, in compliance with KRS 156.557 and the requirements of this administrative regulation, and shall include the performance

standards and descriptors established in this subsection.

(a) ~~Instructional Leadership Performance Standard.~~ This standard shall be met if the evaluatee fosters the success of all students by facilitating the development, communication, implementation, and evaluation of a shared vision of teaching and learning that leads to student academic growth and school improvement.

(b) ~~School Climate Performance Standard.~~ This standard shall be met if the evaluatee fosters the success of all students by developing, advocating, and sustaining an academically rigorous, positive, and safe school climate.

(c) ~~Human Resources Management Performance Standard.~~ This standard shall be met if the evaluatee fosters effective human resources management by assisting with selection and induction and by supporting, evaluating, and retaining quality instructional and support personnel.

(d) ~~Organizational Management Performance Standard.~~ This standard shall be met if the evaluatee fosters the success of all students by supporting, managing, and overseeing the school's organization, operation, and use of resources.

(e) ~~Communication and Community Relations Performance Standard.~~ This standard shall be met if the evaluatee fosters the success of all students by communicating and collaborating effectively with stakeholders.

(f) ~~Professionalism Performance Standard.~~ This standard shall be met if the evaluatee fosters the success of all students by demonstrating professional standards and ethics, engaging in continuous professional learning, and contributing to the profession.

(2) The district's professional practice rating evaluation form for assistant principals and principals shall list, in each standard, the performance criteria that characterize professional effectiveness and apply to the evaluatee.

(3) The district shall explain and discuss the professional practice rating standards, indicators, and performance criteria, and the evaluation process to assistant principal and principal evaluatees no later than the end of the evaluatee's first thirty (30) calendar days of the school year. Amendments to local systems of certified personnel evaluation approved by the department after the end of an evaluatee's first thirty (30) calendar days of the school year shall not apply to the evaluatee until the following school year.

(4) The district's professional practice rating evaluation form shall be specific to the evaluatee's job category. The district, at its discretion, may utilize forms for pre- and post-evaluation conferences.

(5) The evaluator shall utilize the Principal and Assistant Principal Performance Standards and the Principal and Assistant Principal Performance Standards Crosswalk, in compliance with KRS 156.557 and the requirements of this administrative regulation, to determine ratings for an assistant principal or principal evaluatee on each of the performance standards.

(6) The evaluator shall use evidence from professional growth plans and self-reflection, the department-approved survey of perception of superintendents, district personnel, and teachers on principal practice; and the department-approved working conditions survey goal. The evaluator shall also use evidence from site visits, for principals only. The evaluator may, if included in the district's approved evaluation plan, use additional district-determined sources of evidence to inform the evaluatee's rating on each of the six (6) standards listed in subsection (1) of this section.

(7) At a minimum, the evaluator shall use the decision rules in this subsection to determine a professional practice rating.

(a) If the evaluatee is rated exemplary in at least four (4) of the standards and no standard is rated developing or ineffective, the professional practice rating shall be exemplary.

(b) If the evaluatee is rated accomplished in at least four (4) standards and no standard is rated ineffective, the professional practice rating shall be accomplished.

(c) If the evaluatee is rated developing in at least five (5) standards, the professional practice rating shall be developing.

(d) If the evaluatee is rated ineffective in two (2) or more standards, the professional practice rating shall be ineffective.

(8) The overall student growth rating for principals and

assistant principals shall be determined as established in this subsection.

(a) The student growth measure for principals and assistant principals shall consist of a state contribution and a local contribution.

(b) The state contribution for principals and assistant principals shall be based on the degree to which the evaluatee meets the next generation learners goal. A principal's next generation learners goal shall be the assistant principal's next generation learners goal as well. For schools that do not receive state assessment data, principals shall develop two (2) local student growth goals.

(c) The local contribution for the student growth measure for principals and assistant principals shall be a rating based on the degree to which the principal or assistant principal meets student growth goals. Assistant principals shall share the principal's student growth goals.

(d) All principals and assistant principals shall develop and implement a minimum of two (2) student growth goals each year, one (1) of which shall focus on school gap population data.

(e) One (1) goal shall be based on local student growth data.

(f) The district shall ensure that student growth goals are rigorous and comparable across schools in the local district.

(g) The scale for low, expected, and high student growth goal ratings shall be determined by the local school district. In determining the scale, local school districts shall consider the schools goals and measures of success in the comprehensive school improvement plan required in 703 KAR 5:225, Section 9.

(h) The district shall develop a process for using professional judgment and evidence from the following sources of evidence to determine the overall student growth rating:

1. Growth trends over the three (3) most recent years of next generation learners student growth data, calculated pursuant to 703 KAR 5:200; and

2. Growth trends over the three (3) most recent years of student growth goal data.

Section 11. Overall Performance Category of Principals and Assistant Principals. (1) The overall performance category for principals and assistant principals shall be determined by combining the principal or assistant principal's professional practice rating and overall student growth rating, as illustrated by the Kentucky Professional Growth and Effectiveness System Model for Summative Evaluation of Assistant Principals and Principals.

(2) The district shall determine the overall performance category for principals and assistant principals with the decision rules established in this subsection.

(a) An evaluatee's overall performance category shall be exemplary if:

1. The professional practice rating is exemplary and the overall student growth rating is high;

2. The professional practice rating is exemplary and the overall student growth rating is expected; or

3. The professional practice rating is accomplished and the overall student growth rating is high.

(b) An evaluatee's overall performance category shall be accomplished if:

1. The professional practice rating is accomplished and the overall student growth rating is expected; or

2. The professional practice rating is developing and the overall student growth rating is high.

(c) An evaluatee's overall performance category shall be developing if:

1. The professional practice rating is exemplary and the overall student growth rating is low;

2. The professional practice rating is accomplished and the overall student growth rating is low;

3. The professional practice rating is developing and the overall student growth rating is expected; or

4. The professional practice rating is developing and the overall student growth rating is low.

(d) An evaluatee's overall performance category shall be

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ineffective if the professional practice rating is ineffective.

~~Section 12. Professional Growth Plan for Principals and Assistant Principals. The evaluator shall place an assistant principal or principal evaluatee on an appropriate professional growth plan based on the professional practice rating and the overall student growth rating, as illustrated by the Kentucky Professional Growth Plan for Assistant Principals and Principals.~~

~~(1) An evaluatee whose professional practice rating is exemplary, with an expected to high overall student growth rating, shall have, at a minimum, a professional growth plan with goals set by the evaluatee with evaluator input and a summative evaluation that occurs at the end of each school year.~~

~~(2) An evaluatee whose professional practice rating is accomplished, with an expected to high student overall student growth rating, shall have, at a minimum, a professional growth plan with goals set by the evaluatee with evaluator input and a summative evaluation that occurs at the end of each school year.~~

~~(3) An evaluatee whose professional practice rating is developing, with a high overall student growth rating, shall have, at a minimum, a professional growth plan with goals set by the evaluatee with evaluator input and a summative evaluation that occurs at the end of each school year.~~

~~(4) An evaluatee whose professional practice rating is developing, with a low to expected overall student growth rating, shall have, at a minimum, a professional growth plan with goals determined by the evaluator and a summative evaluation at the end of each school year.~~

~~(5) An evaluatee whose professional practice rating is ineffective shall have, at a minimum, an improvement plan with the goals determined by the evaluator and a summative evaluation at the end of the plan, as determined by the evaluator, not to exceed one (1) year in duration.~~

~~Section 13. Evaluation of Certified Administrators Assigned to the District Level for Purposes of Evaluation. (1) The district's evaluation form for certified administrators assigned to the district level for purposes of evaluation shall:~~

~~(a) Utilize the performance criteria outlined in KRS 156.557(4), in compliance with KRS 156.557 and the requirements of this administrative regulation; and~~

~~(b) List the performance criteria that characterizes professional effectiveness and apply to the evaluatee.~~

~~(2) The district shall explain and discuss performance criteria and the evaluation process to an evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of the school year. Amendments to local systems of certified personnel evaluation approved by the department after the end of an evaluatee's first thirty (30) calendar days of the school year shall not apply to the evaluatee until the following year.~~

~~(3) The district evaluation form for certified administrators assigned to the district level for purposes of evaluation shall be specific to the evaluatee's job category. The district, at its discretion, may utilize forms for pre and post evaluation conferences.~~

~~(4) The evaluator shall use evidence from professional growth plans and self-reflection, one (1) site visit, student growth, and professional judgment to determine the overall performance of certified administrators assigned to the district level for purposes of evaluation.~~

~~Section 14. District Evaluation Plan. (1) The local board of education shall review, as needed, the district's evaluation plan to ensure compliance with KRS 156.557 and this administrative regulation.~~

~~(2) If a substantive change is made to the district's evaluation plan, the local board of education shall utilize the evaluation committee, described in KRS 156.557(5)(c)1, in formulating the revision. Examples of substantive change shall include changes in the evaluation cycle, observation frequency, forms, or appeal procedures.~~

~~(3) The local board of education shall review and approve revisions to the plan and submit the amended plan to the~~

~~department for approval.~~

~~Section 15. Reporting. (1) Districts shall report to the department the percentage of principals, assistant principals, teachers, and other professionals in each professional practice rating category, student growth rating category and overall performance category listed in Sections 7, 8, 10, and 11 of this administrative regulation.~~

~~(2) The department shall publicly report, by district, the aggregate number of principals, assistant principals, teachers, including other professionals, in each overall performance category.~~

~~Section 16. Monitoring. A district implementing an alternative professional growth and effectiveness plan or system approved by the department pursuant to KRS 156.557(7) shall be monitored within three (3) years of the initial implementation of the alternative plan, and subsequently at the discretion of the department.]~~

~~Section 11[47]. District[Local] Evaluation Appeals Panel. The district shall provide the following in its system plan for an appeal to the district[local] evaluation appeals panel:~~

~~(1) A right to a hearing as to every appeal;~~

~~(2) An opportunity, five (5) days in advance of the hearing, for the evaluator and evaluatee to adequately review all documents that are to be presented to the district[local] evaluation appeals panel; and~~

~~(3) A right to have the evaluatee's chosen representative present at the hearing.~~

~~Section 12[48]. State Evaluation Appeals Panel. (1) A certified school personnel who believes that the local district is not properly implementing the district certified evaluation plan as approved by the department shall have the opportunity to appeal to the Kentucky Board of Education.~~

~~(2) The appeal procedures shall be as established in this subsection.~~

~~(a) The Kentucky Board of Education shall appoint a committee of three (3) state board members to serve on the state evaluation appeals panel (SEAP). The SEAP's jurisdiction shall be limited to procedural matters already addressed by the local appeals panel related to the district's alleged failure to implement an evaluation plan as approved by the department. The SEAP shall not have jurisdiction of a complaint involving the professional judgment conclusion of an evaluation, and the SEAP's review shall be limited to the record of proceedings and documents therein, or lack thereof, at the local district level.~~

~~(b) No later than thirty (30) calendar days after the final action or decision at the local district level, a certified school personnel may submit a written request to the chief state school officer for a review before the SEAP. If a certified school personnel does not appeal within the time frame listed in this paragraph, the request shall not be considered. A specific description of the complaint and grounds for appeal shall be submitted with the request.~~

~~(c) A brief, written statement or other document that a party wishes to submit for consideration by the SEAP shall be filed with the panel and served on the opposing party at least twenty (20) days prior to the scheduled review.~~

~~(d) A decision of the SEAP shall be rendered within fifteen (15) working days after the review.~~

~~(e) A determination of district noncompliance with the district[local] evaluation plan or absence of a district local evaluation plan shall render the evaluation void[, and the certified employee shall have the right to be reevaluated].~~

~~Section 13[49]. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Kentucky Framework for Teaching", February 2014["The Framework for Teaching Evaluation Instrument, 2011 Edition", May 2014];~~

~~(b) "Kentucky Framework for Teaching with Specialist Frameworks for Other Professionals", June 2015["Principal and Assistant Principal Performance Standards", May 2014"]; and~~

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(c) "~~Principal and Assistant Principal Performance Standards, May 2014~~" [~~Kentucky Professional Growth and Effectiveness System Model for Summative Evaluation of Teachers and Other Professionals~~], April 2015;

(d) "~~Kentucky Professional Growth and Effectiveness System Model for Summative Evaluation of Assistant Principals and Principals~~", May 2014;

(e) "~~Teacher and Other Professional Evaluation Crosswalk~~", April 2015;

(f) "~~Principal and Assistant Principal Performance Standards Crosswalk~~", May 2014;

(g) "~~Kentucky Professional Growth Plan and Cycle for Tenured Teachers and Other Professionals~~", April 2015; and

(h) "~~Kentucky Professional Growth Plan for Assistant Principals and Principals~~", July 2014].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Teaching and Learning, 300 Sower Blvd, 5th Floor [Office of Next Generation Learners, 18th Floor, Capital Plaza Tower, 500 Mero Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

STEPHEN L. PRUITT, PH.D., Commissioner

MARY GWEN WHEELER, Chairperson

APPROVED BY AGENCY: December 14, 2017

FILED WITH LRC: December 15, 2017 at 9 a.m.

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 300 Sower Boulevard, Fifth Floor, Sower Building, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email kevin.brown@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: Amends administrative regulation 704 KAR 3:370 by removing language related to the Professional Growth and Effectiveness System (PGES). The regulation aligns with KRS 156.557, a statute requiring the Kentucky Department of Education (KDE) to develop a statewide framework for teaching that promotes the continuous professional growth and development of skills necessary to become a highly effective teacher or a highly effective administrator in a school or district. Development of the framework occurs in consultation with Kentucky's teacher and principal steering committees and other groups identified by the commissioner of education.

(b) The necessity of this administrative regulation: This regulation amends 704 KAR 3:370 related to district personnel evaluation. The amendment ensures the development of a framework to provide multiple measures for the evaluation process of all certified school district employees below the superintendent level.

(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation conforms to the authority given to the Kentucky Board of Education in KRS 156.060 and 156.070.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation removes language related to PGES, including timelines, procedures and forms, teacher observer training cycle requirements, student growth ratings for teachers, overall performance category ratings and the professional growth plan.

(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 the state system for

personnel evaluation of certified staff below the level of superintendent and allows district choice for personnel evaluation of certified staff below the level of superintendent within the framework described in the regulation.

(b) The necessity of the amendment to this administrative regulation: Senate Bill 1 (2017) requires the Kentucky Board of Education (KBE) to remove the single state evaluation system and replace it with a personnel evaluation framework to guide districts in development of their own personnel evaluation system.

(c) How the amendment conforms to the content of the authorizing statute: The amendment removes state directives on sources of evidence within the evaluation systems, but provides multiple measures as described in the statute.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows districts local control of their personnel evaluation systems within the framework as described in this regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by this amendment are: all local school districts, schools, and certified school district employees below the superintendent level, as they are the intended audience for the Kentucky Framework for Personnel Evaluation.

(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: This amendment changes the system of personnel evaluation for all certified school district employees below the level of superintendent, requiring local districts to establish their own evaluation systems for teachers, principals and other certified staff.

(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): No costs

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Amendment of this regulation establishes a Kentucky Framework for Personnel Evaluation based upon multiple evaluation measures that are the same for all personnel. Also, the amendment adds language to ensure districts establish their own systems related to the evaluation and rating of teachers, principals, assistant principals and other professionals.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and districts. N/A

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? There will be no change to local district operations or fiscal impact.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.060 and 156.070.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

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(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect.

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

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

(c) How much will it cost to administer this program for the first year? The regulation is being amended and there will be no cost associated with the amendment.

(d) How much will it cost to administer this program for subsequent years? The regulation is being amended and there will be no cost associated with the amendment.

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

Revenues (+/-): N/A

Expenditures (+/-):N/A

Other Explanation: N/A

PROPOSED AMENDMENTS

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(Amendment)

16 KAR 2:010. Kentucky Professional and Provisional Teacher Certificates~~teaching certificates~~.

RELATES TO: KRS ~~[158.6451, 160.380,]~~ 161.020, 161.028(1), 161.030

STATUTORY AUTHORITY: KRS 161.028(1)(a), ~~[(b);]~~(f), 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(a) requires the Education Professional Standards Board (EPSB) to establish the standards for obtaining and maintaining a teaching certificate. KRS 161.028(1)(b) requires the board to set standards for programs for the preparation of teachers and other professional school personnel. KRS 161.028(1)(f) requires the board to issue and renew any certificate. This administrative regulation establishes the Kentucky certification to be issued for teaching positions.

Section 1. Definitions. (1) "Approved program of preparation" means a program which has been approved by the ~~Education Professional Standards]~~ board pursuant to 16 KAR 5:010 for a specific certification ~~[or which has been approved for certification by the state education agency of another state]~~.

(2) ~~["Assessments" means the tests of knowledge and skills authorized by KRS 161.030 and established in 16 KAR 6:010.~~

(3) ~~]"Base certificate" means a professional certificate that allows a teacher~~ ~~[stand-alone license]~~ to teach ~~[which encompasses authorization to teach]~~ introductory and interdisciplinary courses in related fields.

~~(3) [(4)] "Beginning teacher internship" means one (1) year of supervision, assistance, and assessment required by KRS 161.030 and established in 16 KAR 7:010.~~

~~(5) "Certificate endorsement" means an addition to a base or restricted base certificate, which is limited in scope, [and awarded on the basis of completion of an endorsement program or a combination of educational requirements, assessments, and experience as outlined in Section 5 of this administrative regulation.]~~

~~(4) [(6)] "Certificate extension" means an additional base or restricted base certificate in a content area or grade range.~~

~~(5) "Restricted base certificate" means a certificate that allows a teacher to teach in a specific limited content area. [(7) "Kentucky teacher standards" means the standards established in 16 KAR 1:010 that identify what a Kentucky teacher shall know and be able to do.~~

~~(8) "Major" means an academic area of concentration consisting of at least thirty (30) hours of coursework.~~

~~(9) "Professional teaching certificate" means the document issued to:~~

~~(a) An individual upon successful completion of the beginning teacher internship; or~~

~~(b) An applicant for whom the testing and internship requirement is waived under KRS 161.030 based on preparation and experience completed outside Kentucky.~~

~~(10) "Provisional teaching certificate" means the document issued to an individual for the duration of the beginning teacher internship program.~~

~~(11) "Restricted base certificate" means a stand-alone license to teach in a specific subject area of certification which is the only subject area that can be taught under this limited certificate.]~~

~~(6) [(12)] "Statement of eligibility" means a candidate has met the requirements necessary to receive a provisional certificate. [the document issued to an applicant upon completion of an approved program of preparation and successful completion of the assessments.]~~

Section 2. Types of Certificates Issued. (1) Provisional certificate:

- ~~(a) Conditional certificate;~~
- ~~(b) Provisional internship certificate-one (1) year certificate;~~
- ~~(c) Temporary provisional certificate;~~
- ~~(d) Probationary provisional certificate;~~
- ~~(e) Proficiency provisional certificate;~~
- ~~(f) Occupation-based career and technical education provisional certificate;~~
- ~~(g) One (1) year provisional alternative certificate;~~
- ~~(h) Adjunct certificate;~~
- ~~(i) Emergency certificate;~~
- ~~(j) Temporary certificate for Instructional Leadership:~~
 - ~~1. In-state; and~~
 - ~~2. Out-of-state;~~
- ~~(k) Temporary certificate; and~~
- ~~(l) Provisional certificate for "other school professionals".~~
 - ~~(2) Professional certificate.~~
 - ~~(a) Initial certificate-four (4) year certificate;~~
 - ~~(b) Initial certificate- five (5) year certificate;~~
 - ~~(c) Renewal certificate - five (5) year certificate;~~
 - ~~(d) Occupation-based career and technical education professional certificate; and~~
 - ~~(e) Professional certificate for "other school professionals".~~
 - ~~(3) Junior Reserve Officer Training Corps (JROTC) Certificate.~~
 - ~~(4) Additional Certification:~~
 - ~~(a) Certificate extension; and~~
 - ~~(b) Certificate endorsement.~~
 - ~~(5) Substitute teaching certificate.~~
 - ~~(a) Certified substitute certificate; and~~
 - ~~(b) Emergency substitute certificate.~~
 - ~~(6) All other existing certificates shall remain valid and the terms for renewal shall be determined by the laws and regulations in effect at the time the certificate was issued pursuant to KRS 161.020.~~

Section 3. Certificate Issuance. (1) Prior to the issuance of a certificate or statement of eligibility, the applicant shall disclose certain background information as outlined in Section 7 of this administrative regulation. If the applicant answers "yes" to any of the questions set forth in Section 7(1)(a)-(f) of this administrative regulation, the EPSB may still issue a certificate or statement of eligibility for that applicant, but the board shall retain final authority to deny a request for certification or statement of eligibility if the board so chooses.

(2) The EPSB shall issue a statement of eligibility to a teacher candidate who:

(a) Has successfully completed a traditional initial preparation program that resulted in the issuance of a bachelor's degree or higher with either:

- 1. A cumulative grade point average of 2.75 on a 4.0 scale; or
- 2. A grade point average of 3.0 on a 4.0 scale on the last thirty (30) hours of credit completed, including undergraduate and graduate coursework.

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

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

(b) Earns a passing score on all assessments required for the certification sought as set forth in 16 KAR Chapter 6:

If the teacher candidate is unable to earn a passing score on all assessments required for the certification sought, the EPSB may consider issuing that teacher candidate a conditional certificate; and

(c) Receives a recommendation from an educator preparation provider (EPP) for certification.

(3) All certificates issued shall either be a base or restricted base certificate in accordance with Section 4 of this administrative regulation.

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(4) Provisional Certificates.

(a) Conditional Certificate.

1. The EPSB may issue a conditional certificate to a teacher candidate unable to earn a passing score on all assessments required for the certification sought pursuant to KRS 161.030(3)(b), if the teacher candidate meets the requirements of 16 KAR 2:180.

2. A teacher candidate with only a conditional certificate is not eligible to participate in the Kentucky Teacher Internship Program (KTIP).

(b) Provisional Internship Certificate. The EPSB shall issue a provisional internship certificate to a teacher candidate who has completed a traditional preparation program upon confirmation of employment in an assignment for the grade level and content area identified on an unexpired statement of eligibility for the duration of the KTIP.

(c) Temporary Provisional Certificate.

1. The EPSB shall issue a temporary provisional certificate in accordance with KRS 161.048 with a grade level and content area recommended by the institution that will be valid for employment in the area of certification sought.

2. The certificate shall be issued at the appropriate rank in accordance with the requirements established in 16 KAR 8:020.

3. Prior to issuance of the certificate, in accordance with chapter 9 of this title the:

a. Teacher candidate shall submit to the EPSB an official transcript from each college or university attended; and

b. The institution shall submit to the EPSB a mentoring collaboration agreement with the district if the teacher candidate is seeking certification through the enrollment of a university-based alternative certification program.

4. The EPSB shall renew the temporary provisional certificate yearly upon the recommendation of the institution. The institution shall base its recommendation pursuant to KRS 161.048 and chapter 9 of this title.

5. A teacher candidate shall be eligible for KTIP upon completion of all program requirements and after successfully passing all applicable assessments in accordance with 16 KAR 6:010.

(d) Probationary Provisional Certificate.

1. A probationary provisional certificate shall be initiated by the school district to fill an area of need.

2. The EPSB shall issue a probationary provisional certificate in accordance with 16 KAR 2:110, 16 KAR 2:130, 16 KAR 2:140, 16 KAR 2:150, 16 KAR 2:160, 16 KAR 2:170, 16 KAR 2:200, 16 KAR 3:030, or 16 KAR 3:040.

(e) Proficiency Provisional Certificate.

1. The EPSB shall issue a proficiency provisional certificate in accordance with a grade level and content area recommended by the university that will be valid for employment in the area of certification sought.

2. The certificate shall be issued at the appropriate rank in accordance with the requirements established in 16 KAR 8:020.

3. Prior to issuance of the certificate, in accordance with 16 KAR 5:030 the:

a. Teacher candidate shall submit to the EPSB an official transcript from each college or university attended; and

b. College or university shall submit to the EPSB an educator learning plan (ELP); and

c. Candidate shall have a written offer of employment in the content area in which certification is being sought.

4. The EPSB shall renew the proficiency provisional certificate yearly upon the recommendation of the college or university. The college or university shall base its recommendation on the ELP in accordance with 16 KAR 5:030.

(f) Occupation-based Career and Technical Education Provisional Certificate. The EPSB shall issue an occupation-based career and technical education provisional certificate following the completion of the appropriate requirements set forth in 16 KAR 2:020.

(g) One (1) year Provisional Alternative Certificate. The EPSB shall issue a one (1) year provisional alternative certificate to a teacher candidate who is enrolled in a local school district training program following the completion of the appropriate requirements

set forth in 16 KAR 9:050, 16 KAR 9:060, and 16 KAR 9:070.

(h) Adjunct Certificate. The EPSB shall issue an adjunct instructor certificate following completion of the appropriate requirements set forth in 16 KAR 9:020.

(i) Emergency Certificate. The EPSB shall issue an emergency certificate in accordance with 16 KAR 2:120.

(j) Temporary Certificate for Instructional Leadership.

1. In-state. The EPSB shall issue a temporary certificate for instructional leadership pursuant to KRS 161.027(6) and 16 KAR 6:030 Section 8.

2. Out-of-state. The EPSB shall issue a temporary certificate for institutional leadership pursuant to KRS 161.027(6).

(k) Temporary Certificate.

1. The EPSB shall issue a temporary certificate to out-of-state teachers with less than two (2) years of experience pursuant to KRS 161.030(3)(c).

2. A temporary certificate may be issued for a period up to six (6) months, not to exceed the end of the semester in which the temporary certificate is issued, during which the teacher must successfully pass all required assessments pursuant to 16 KAR 6:010.

(l) Provisional Certificate for "Other School Professionals". The EPSB shall issue a provisional certificate for "other school professionals" in accordance with 16 KAR 2:060, 16 KAR 2:080, 16 KAR 2:090, or 16 KAR 3:060.

(5) Professional Certificates.

(a) Initial Four (4) Year Certificate. The EPSB shall issue an initial four (4) year certificate to a teacher candidate who has successfully completed KTIP while holding a provisional internship certificate issued by the EPSB unless otherwise waived under KRS 161.030 based on preparation and experience completed outside of Kentucky.

(b) Initial Five (5) Year Certificate.

1. The EPSB shall issue an initial five (5) year certificate to a teacher candidate who has successfully completed KTIP while holding a temporary provisional certificate issued by the EPSB; or

2. To a teacher candidate based on preparation and experience completed outside of Kentucky pursuant to KRS 161.030.

(c) Renewal Five (5) Year Certificate.

1. The first five (5) year renewal shall require:

a. Completion of a minimum of fifteen (15) semester hours of graduate credit applicable to the fifth-year approved program of preparation established in 16 KAR 8:020 by September 1 of the year of expiration of the certificate; or

b. Completion of the required components of the continuing education option for initial certificate renewal as established in 16 KAR 8:030.

2. The second five (5) year renewal shall require:

a. Completion of the fifth-year approved program of preparation established in 16 KAR 8:020 by September 1 of the year of expiration of the certificate; or

b. Successful completion of the continuing education option as established in 16 KAR 8:030.

3. Each subsequent five (5) year renewal shall require completion of the renewal requirements established in 16 KAR 4:060.

(d) Occupation-based Career and Technical Education Professional Certificate. The EPSB shall issue an occupation-based career and technical education professional certificate in accordance with 16 KAR 2:020.

(e) Professional certificate for "Other School Professionals". The EPSB shall issue a professional certificate for other school professionals in accordance with 16 KAR 2:060, 16 KAR 2:070, 16 KAR 2:090, or 16 KAR 3:060.

(6) Junior Reserve Officer Training Corps (JROTC) Certificate. The EPSB shall issue a JROTC certificate in accordance with 16 KAR 2:100.

(7) Certificate Extensions and Endorsements.

(a) A certificate extension may be issued to a certified teacher for any base or restricted base certificate offered in Section 4(1) through Section 4(4) of this administrative regulation and shall require:

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1. An unexpired base or restricted base certificate, including a statement of eligibility;

2. Successful completion of the applicable assessments; and

3. Recommendation from an approved preparation program upon the demonstration of competency in the relevant teaching methodology verified via coursework, field experience, portfolio, or proficiency evaluation.

(b) A certificate endorsement may be issued for any area listed in Section 4(5) of this administrative regulation and shall require:

1. An unexpired base or restricted base certificate, including statement of eligibility;

2. Successful completion of the applicable assessments; and

3. Recommendation from an approved program of preparation upon the demonstration of competency in the relevant teaching methodology verified via coursework, field experience, portfolio, or proficiency evaluation.

(8) Substitute Certificates. The EPSB shall issue a certified substitute teaching certificate or an emergency substitute certificate in accordance with 16 KAR 2:030 and 16 KAR 2:120 Section 2. [Certificate Issuance. (1)(a) Until December 31, 2014, a statement of eligibility for a provisional teaching certificate shall be issued to an applicant who has submitted a completed TC-1 application form and has successfully completed:

1.a. At least a bachelor's degree with:

(i) A cumulative grade point average of 2.50 on a 4.0 scale; or

(ii) A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework; or

b. As required by Section 4(2)(g)6 of this administrative regulation, a master's degree with:

(i) A cumulative grade point average of 2.50 on a 4.0 scale; or

(ii) A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework;

2. An approved program of preparation; and

3. The assessments corresponding to the certificate identified in Section 4 of this administrative regulation for which application is being made.

(b) Beginning January 1, 2015, a statement of eligibility for a provisional teaching certificate shall be issued to an applicant who has submitted a completed CA-1 application form and has successfully completed:

1.a. At least a bachelor's degree with:

(i) A cumulative grade point average of 2.50 on a 4.0 scale; or

(ii) A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework; or

b. As required by Section 4(2)(g)6 of this administrative regulation, a master's degree with:

(i) A cumulative grade point average of 2.50 on a 4.0 scale; or

(ii) A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework;

2. An approved program of preparation;

3. The assessments corresponding to the certificate identified in Section 4 of this administrative regulation for which application is being made; and

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

(2) Upon confirmation of employment in an assignment for the grade level and specialization identified on a valid statement of eligibility, a Provisional Teaching Certificate shall be issued for the duration of the beginning teacher internship established under KRS 161.030.

(3) Upon successful completion of the internship, a Professional Teaching Certificate shall be issued, valid for a four (4) year period.

Section 3. Professional Teaching Certificate Renewal. (1) The renewal shall require completion of a fifth-year approved program of preparation which is consistent with:

(a) The Kentucky teacher standards established in 16 KAR

1:010; or

(b) The standards adopted by the Education Professional Standards Board for a particular professional education specialty and established in an applicable administrative regulation in KAR Title 16.

(2) The first five (5) year renewal shall require:

(a) Completion of a minimum of fifteen (15) semester hours of graduate credit applicable to the fifth-year approved program of preparation established in 16 KAR 8:020 by September 1 of the year of expiration of the certificate; or

(b) Completion of the required components of the continuing education option for initial certificate renewal as established in 16 KAR 8:030.

(3) The second five (5) year renewal shall require:

(a) Completion of the fifth-year approved program of preparation established in 16 KAR 8:020 by September 1 of the year of expiration of the certificate; or

(b) Successful completion of the continuing education option as established in 16 KAR 8:030.

(4) Each subsequent five (5) year renewal shall require completion of the renewal requirements established in 16 KAR 4:060.]

Section 4. Grade Levels and Specializations. (1) Preparation for a teaching certificate shall be based on:

(a) The Kentucky teacher standards established in 16 KAR 1:010;

(b) The accreditation and program approval standards established in 16 KAR 5:010, including the content standards of the relevant national specialty program associations; and

(c) The goals for the schools of the Commonwealth specified in KRS 158.6451 and the student academic expectations established in 703 KAR 4:060.

(2) A base certificate shall be issued specifying one (1) or more of the following grade levels[level] and specialization authorizations:

(a) Interdisciplinary early childhood education[;] birth to primary, established in 16 KAR 2:040; and

(b) Elementary school: primary through grade 5 to include preparation in the academic disciplines taught in the elementary school.

1. The elementary certificate shall be valid for teaching grade 6 if grade 6 is taught in a self-contained classroom or in a school organization in which grade 6 is housed with grade 5 in the same building.

2. A candidate for the elementary certificate may simultaneously prepare for certification for teaching exceptional children.

(c) 1. Middle school option 1: grades 5 through 9 with the equivalent of one (1) major to be selected from:

a. English and communications;

b. Mathematics;

c. Science; or

d. Social studies; or

2. Middle school option 2: grades 5 through 9 with two (2) middle school teaching fields to be selected from:

a. English and communications;

b. Mathematics;

c. Science; or

d. Social studies;

(d) Secondary school shall be valid for teaching students in: grades 8 through 12 with one (1) or more of the following majors:

1. English;

2. Mathematics;

3. Social studies;

4. Biology;

5. Chemistry;

6. Physics; or

7. Earth science;

(e) Grades 5 through 12 with one (1) or more of the following majors:

1. Agriculture;

2. Business and marketing education;

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- 3. Family and consumer science;
- 4. Industrial education; or
- 5. Engineering and technology;
- (f) All grade levels with one (1) or more of the following specialties:

- 1. Art;
- 2. A foreign language;
- 3. Health;
- 4. Physical education;
- 5. Integrated music;
- 6. Vocal music;
- 7. Instrumental music; or
- 8. School media librarian; or

(g) Grades primary through 12 for teaching exceptional children and for collaborating with teachers to design and deliver programs for preprimary children, for one (1) or more of the following disabilities:

- 1. Learning and behavior disorders;
- 2. Moderate and severe disabilities;
- 3. Hearing impaired;
- 4. Hearing impaired with sign proficiency;
- 5. Visually impaired;

6. Communication disorders, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, which shall require a master's degree in communication or speech language pathology, in accordance with 16 KAR 2:050, Section 2; or

7. Communication disorders - SLPA only, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, which shall require a baccalaureate degree in communication or speech language pathology, in accordance with 16 KAR 2:050, Section 3.

(3)(a) The grades 5 through 9 mathematics certificate issued under subsection (2)(c)1.b. or 2.b. of this section shall be valid for teaching Algebra I grades 10 and 11.

(b) A candidate who chooses to simultaneously prepare for teaching in the middle school and for an additional base or restricted base certificate issued under subsection (2) or (4) of this section, including certification for teaching exceptional children, shall be required to complete one (1) middle school teaching field established in subsection (2)(c) of this section.

(4) A restricted base certificate shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

- (a) Psychology, grades 8-12;
- (b) Sociology, grades 8 through 12;
- (c) Journalism, grades 8 through 12;
- (d) Speech/media communications, grades 8-12;
- (e) Theater, primary through grade 12;
- (f) Dance, primary through grade 12;
- (g) Computer information systems, primary through grade 12;

or

- (h) English as a second language, primary through grade 12.

(5) An endorsement to a certificate identified in subsection (2) or (3) of this section shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

- (a) Computer science, grades 8-12;
- (b) English as a second language, primary through grade 12;
- (c) Gifted education, primary through grade 12;
- (d) Driver education, grades 8-12;
- (e) Literacy specialist, primary through grade 12;
- (f) Reading, primary through grade 12;
- (g) Instructional computer technology, primary through grade 12;

- (h) Teacher Leader, all grades;

(i) Other instructional services - school safety, primary through grade 12;

(j) Other instructional services - environmental education, primary through grade 12;

(k) Other instructional services - elementary mathematics specialist, primary through grade 5; or

(l) Learning and behavior disorders, grades 8 through 12. This endorsement shall be issued:

1. Following completion of the requirements of Section 5(2) of this administrative regulation; and

2. Only to candidates with preparation and certification for a base or restricted base certificate for the secondary grades 8-12; or

(m) American Sign Language, primary through grade 12.

Section 5. Certification through Proficiency Evaluation. (1) Proficiency evaluations shall be conducted in accordance with 16 KAR 5:030 by a Kentucky college or university with an approved educator preparation program.

(2) The EPSB may issue a proficiency provisional certificate or a professional certificate to a certified teacher upon request pursuant to this section as long as the certified teacher meets the requirements set forth in Section 3 of this administrative regulation or any certificate area offered in Section 4 of this administrative regulation in accordance with 16 KAR 5:030.

(3)(a) A certified teacher may also obtain a certificate endorsement or a certificate extension by a proficiency evaluation performed by a Kentucky college or university in accordance with 16 KAR 5:030.

(b) The EPSB shall issue the proficiency provisional certificate and the professional certificate for the certificate endorsement and the certificate extension upon request as long as the certified teacher meets the requirements set forth in Section 3 of this administrative regulation. [Additional Certification. (1) A certificate extension may be issued for any base or restricted base certificate area offered in Section 4(2) or (4) of this administrative regulation and shall require:

(a) A valid base or restricted base certificate, including a statement of eligibility;

(b) Successful completion of the applicable assessments; and

(c) Recommendation from an approved preparation program upon demonstration of competency in the relevant teaching methodology verified via coursework, field experience, portfolio, or other proficiency evaluation.

(2) A certificate endorsement may be issued for any area listed in Section 4(5) of this administrative regulation and shall require:

(a) A valid base or restricted base certificate, including a statement of eligibility;

(b) Successful completion of the applicable assessments; and

(c) Recommendation from an approved preparation program upon demonstration of competency in the relevant teaching methodology verified via coursework, field experience, portfolio, or other proficiency evaluation.

(3)(a) A professionally certified teacher may add a certificate endorsement or extension if the teacher meets the requirements established in paragraph (c) of this subsection.

(b)1. Until December 31, 2014, an application for a certificate endorsement or extension shall be made on a Form TC-HQ.

2. Beginning January 1, 2015, an application for a certificate endorsement or extension shall be made on a Form CA-HQ.

(c) A certificate extension or certificate endorsement shall be issued if an educator:

1. Holds a valid Kentucky professional teaching certificate;

2. Submits proof that the educator has:

a. Current employment in a certified position;

b. A bona fide offer of employment in a certified position in a Kentucky public school; or

c. Approval of the local district superintendent;

3. Successfully completed the applicable content assessments; and

4. Has either:

a. A declared major in the area of certification being sought; or

b. A combination of education, experience, professional development, awards, and achievements in the area of certification being sought sufficient to demonstrate subject matter competency as evidenced by a score of ninety (90) points on the index contained within the application forms TC-HQ or CA-HQ.

(i) Points shall be granted only for experience, professional development, awards, or achievements earned relative to the specific content area, student population taught, and grade range served.

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(ii) Coursework shall be validated on the application by a Kentucky college or university approved by the EPSB to serve as a "clearinghouse" for the purposes of this option.

(iii) Successful completion of the appropriate content assessment or assessments for the certificate area being added shall count for forty-five (45) points.

(4) If a teacher currently holds a professional certificate in the secondary grades 8-12, and applies for a certificate extension or endorsement in the same content area for middle school grades 5-9, the teacher shall not be required to complete the content assessment.

(5) A certificate extension or endorsement issued under the requirements established in subsection (3)(c) of this section shall be permitted in the areas of English, mathematics, sciences, foreign languages, or social studies. Health and physical education areas shall be added only if the teacher holds the correlative certificate.]

Section 6. A candidate pursuing certification via an alternative route to certification shall receive the same certificates delineated in Section 4 of this administrative regulation following completion of the appropriate requirements specific to each alternative route.

Section 7. Disclosure of Background Information. (1) Teachers and teacher candidates shall disclose certain background information to the EPSB whenever those teachers and teacher candidates apply for the issuance and renewal of the provisional certificate and the professional certificate by answering the following questions:

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

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

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

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

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

(f) Do you have any criminal charges pending against you?

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

(2) The EPSB shall provide teachers and teacher candidates with the opportunity to submit a narrative to the board to consider before the board approves the request for issuance or renewal of a provisional certificate or a professional certificate. The teacher or teacher candidate may include in his or her narrative any dates, locations, school systems, court records, or any other information the teacher or teacher candidate would like the board to consider. [(1) Until December 31, 2014, application for certification or additional certification shall be made on Form TC-1 and shall be accompanied by the fees required by 16 KAR 4:040.

(2) Beginning January 1, 2015, application for certification or additional certification shall be made on Form CA-1 and shall be accompanied by the fees required by 16 KAR 4:040.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Form CA-1", 03-14;

(b) "Form CA-HQ", 03-14;

(c) "Form TC-1", 10/05; and

(d) "Form TC-HQ", 10/2009.

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

ROB AKERS, Board Chair

APPROVED BY AGENCY: December 11, 2017

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2018 at 9:00 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 January 31, 2018. 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, phone (502) 564-4606, fax (502) 564-7080, Lauren.Graves@ky.gov.

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 implements the Kentucky certification requirements for teachers as set forth in KRS 161.030. This administrative regulation also identifies the types of Kentucky professional and provisional teacher certificates available as well as the content areas associated with each certification. It also sets forth the different procedures that may be used to obtain a Kentucky teaching certificate.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide notice to applicants, educator preparation providers, and administrators of Kentucky public school districts of the types of certificates issued by the Education Professional Standards Board (EPSB) as well as the content areas associated with each certificate. It also provides notice to applicants, educator preparation providers, and administrators of Kentucky public school districts of the different procedures that may be used to obtain a Kentucky teaching certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 provides that no person shall be eligible to hold the position of a teacher for which a certificate may be issued, or receive a salary for services rendered in the position, unless he or she holds a certificate of legal qualifications for the position. KRS 161.028 provides the EPSB with the authority and responsibility to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030 provides that the EPSB alone has the authority to certify all teachers in public schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation implements the Kentucky certification requirements for teachers as set forth in KRS 161.030. This administrative regulation also identifies the types of Kentucky professional and provisional teacher certificates available as well as the content areas associated with each certification. It also sets forth the different procedures that may be used to obtain a Kentucky teaching certificate.

(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 has been brought forward primarily to remove certification barriers by adding additional processes and procedures for certification (proficiency evaluations by educator preparation providers and competency evaluation by the EPSB). This amendment also includes a new section regarding certification types and requirements. This amendment includes additions and revisions to the existing regulation as a result of recent 2017 Regular Legislative Session (SB17). This amendment updates terms used. This amendment removes references to application forms. This amendment adds a section regarding background disclosure questions. This amendment removes the background check requirement.

(b) The necessity of the amendment to this administrative regulation: This amendment has been brought forward primarily to remove certification barriers by adding additional processes and procedures for certification (proficiency evaluations by educator preparation providers and competency evaluation by the EPSB). This amendment also includes additions and revisions to the existing regulation as a result of recent 2017 Regular Legislative Session (SB17) and updates existing language.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.020, 161.028, and 161.020 require that teachers hold legal qualifications for their respective positions to be issued upon completion of programs prescribed by the EPSB. KRS 161.030 sets forth basic requirements for certification.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides information relating to new and existing processes and procedures for certification.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will potentially impact teacher candidate seeking a certificate to teach for the first time, teachers who already have a teaching certificate, all Kentucky public school, and approved providers of educator preparation programs.

(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 should be little, if any, additional action needed from the regulated entities identified in question (3) to comply with the implementation of this new regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be little, if any, cost associated the implementation of this new regulation.

(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. Compliance with this regulation will help Kentucky public schools fill positions that have been difficult to fill with new teachers and also with experienced teachers.

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

(a) Initially: There will be no cost to the EPSB to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the EPSB 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: 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? No, tiering will not apply because all applicants for certification are required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Education Professional Standards Board, Kentucky institutions of higher education with approved preparation programs, Kentucky public school, and applicants for certification.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.030 provides that the certification of all public school teachers in Kentucky is vested in the EPSB. KRS 161.028(1)(a) requires that the EPSB establish requirements for obtaining and maintaining a teaching certificate.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 will be no additional cost to administer this regulation.

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

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(Amendment)

16 KAR 5:030. Proficiency evaluation.

RELATES TO: KRS 161.020, ~~[161.025,]~~ 161.030

STATUTORY AUTHORITY: KRS ~~[156.070,]~~161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020,~~[161.025,]~~ and 161.030 require that educators~~[teachers]~~ and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation~~[prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board of Education]~~. The traditional~~[and formal]~~ means of recognizing competency and proficiency for educator~~[teacher]~~ preparation is by earning academic~~[in terms of standard college credits and the teacher certification requirements are generally stated in terms of college]~~ credits. This administrative regulation provides an alternate~~[a]~~ means for recognizing competency and proficiency~~[that might have been attained in some manner]~~ other than academic credit for educators already holding initial certification~~[college preparation]~~.

Section 1. Definitions. (1) "Approved program of preparation" means a program approved by the Education Professional

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Standards Board (EPSB) under 16 KAR 5:010 for a specific certification.

(2) "Comparable experience" means professional activity of equivalent quality requiring similar skills and knowledge.

(3) "Educator preparation provider" or "EPP" for the purposes of this regulation means a Kentucky-based college or university that offers educator preparation programs approved by the board.

(4) "Proficiency evaluation" means the process by which an EPP may evaluate an educator who currently holds a valid Kentucky professional certificate in accordance with 16 KAR 2:010 seeking another certification area, endorsement, or extension to recognize competency and proficiency[A state-accredited teacher education institution may evaluate and accept competency for teacher certification purposes for any of the specific curriculum requirements when the teacher candidate can demonstrate proficiency by reason of previous education, unusual experience, or proficiency examination at a level comparable to the usual requirements in that curriculum area].

Section 2. (1) An EPP shall be required to meet the following requirements before conducting proficiency evaluations:

(a) The EPP shall provide notice to the EPSB of its intent to conduct proficiency evaluations; and

(b) The EPP shall provide to the EPSB a plan for approval that sets forth the process by which the EPP shall conduct proficiency evaluations. The evaluation must assess a candidate's attainment of the applicable educational program standards.

(2) Failure to satisfy the requirements of this administrative regulation may result in the following action:

(a) The board may take action against the EPP's state accreditation; and

(b) The board may notify the Council of Postsecondary Education that the EPP has not met the requirements of KRS 164.097.

Section 3. Educators holding a valid Kentucky certificate seeking another certification area shall not be required to meet the admission requirements in 16 KAR 5:020(1)(2)(b) and 16 KAR 5:020(1)(3)(b).

Section 4. The EPP shall only conduct proficiency evaluations for the EPP's existing programs approved by the board.

Section 5. When conducting a proficiency evaluation, the EPP may assess proficiency by considering any of the following factors:

(1) Previous education;

(2) Comparable experience; or

(3) Proficiency assessment at a level comparable to the usual requirements in the content area in which the educator is seeking certification.

Section 6. Additional Certification for Certified Educators. (1) After completing the proficiency evaluation, the EPP shall:

(a) Prepare an educator learning plan (ELP) for the certified educator outlining all necessary requirements to complete a program for additional content area or grade range along with a timeline for completion not to exceed two (2) years; and

(b) Recommend that the EPSB issue a one (1) year provisional certificate in accordance with 16 KAR 2:010.

(2) Upon successful completion of the ELP, the EPP shall recommend that the EPSB issue the educator a professional certificate, a certificate endorsement, or a certificate extension in the additional area in accordance with 16 KAR 2:010, Section 4.

Section 7. (1) The EPSB shall issue a certificate endorsement or extension in accordance with the process set forth in 16 KAR 2:010, Section 3, upon receipt of the educator's request for certification; proof that the educator has successfully achieved a passing score on any required assessment; and recommendation of the EPP.

(2) The EPSB shall not require an educator to complete Kentucky Teacher Internship Program (KTIP) for the issuance of an endorsement or an extension if the certified educator previously

completed KTIP for initial certification.

Section 8. Recency. (1) The certified educator seeking another certification shall submit a request for certification no later than five (5) years after successfully completing all requirements set forth in the ELP; or

(2) Within twelve (12) months after the EPP discontinues the educator preparation program identified in the ELP, whichever occurs first.

ROB AKERS, Board Chair

APPROVED BY AGENCY: December 11, 2017

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2018 at 9:00 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 January 31, 2018. 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, phone (502) 564-4606, fax (502) 564-7080, email Lauren.Graves@ky.gov.

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 an alternate process by which an educator preparation provider may recognize the competency and proficiency of a certified educator based on something other than college credit to recommend certification in another area.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that there is a means by which a certified educator can establish proficiency and competency based on that certified teacher's teaching experience or past college coursework.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 and 161.030 require that educators and other professional school personnel hold certificates of legal qualifications for their respective positions. KRS 161.028 provides the EPSB with the authority and responsibility to establish standards and requirements for obtaining and maintaining a teaching certificate; and KRS 161.028 also provides the EPSB with the authority and responsibility to set standards for and approve programs for the preparation of teachers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the process by which an educator preparation provider must comply in order to recognize the competency and proficiency of a current educator through a means other than just completing college courses.

(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 a regulation originally promulgated, in part, based on statutes that have been long since repealed (KRS 156.070 and KRS 161.025). This amendment will provide a process for currently certified educators. This amendment will provide the means by which the EPSB will

exercise oversight authority over the proficiency evaluation process used by educator preparation providers. This amendment will provide consequences to those educator preparation providers that fail to abide by the requirements of this regulation. This amendment will provide an expedited process for currently certified educators to obtain certificate endorsements or certificate extensions. This amendment will allow currently certified educators to teach additional content areas or age ranges while taking the coursework needed for the additional areas. This amendment will provide school districts with a greater pool of candidates to fill areas of teacher shortages.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because the regulation is based, in part, on statutes that have long since been repealed. This amendment is necessary to provide current educators a means by which they can establish proficiency and competence for skills they previously developed outside of college coursework. This amendment is necessary to help school districts fill local teaching shortages. This amendment is necessary to set forth the process by which the EPSB will exercise authority over educator preparation providers and their use of this regulation. This amendment is necessary to set forth the consequences for non-compliance by educator preparation programs.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.020, KRS 161.020 and 161.030 require that educators and other professional school personnel hold certificates of legal qualifications for their respective positions. KRS 161.028 provides the EPSB with the authority and responsibility to establish standards and requirements for obtaining and maintaining a teaching certificate; and KRS 161.028 also provides the EPSB with the authority and responsibility to set standards for and approve programs for the preparation of teachers.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation sets forth the process by which an educator preparation provider must comply in order to recognize the competency and proficiency of a current educator through a means other than just completing college courses.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact the Education Professional Standards Board and all educator preparation programs. This administrative regulation will also impact currently certified teachers that choose to request proficiency evaluations from an accredited educator preparation provider, and all Kentucky public schools.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An educator preparation provider that would like to do proficiency evaluations will need to: 1) notify the EPSB of its plans to conduct proficiency evaluations; 2) provide the EPSB with a copy of the procedure it will use to conduct the proficiency evaluations; 3) work with currently certified educators to create a plan for obtaining a certification; and 4) recommend currently certified educators for certification. The EPSB will need to receive, review, and approve proficiency evaluation plans. There are no additional requirements placed on currently certified educators, and school districts by this regulation. This regulation is removing barriers to certification.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost should be minimal to educator preparation providers. Some educator preparation providers charge currently certified educators to do proficiency evaluations. There will be a cost to currently certified educators, but the EPSB has no control over what an educator preparation provider charges for proficiency evaluations.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): Currently certified educators will be able to obtain certificate endorsements and certificate extensions while teaching in the area in which they are seeking the certificate endorsement or the certificate extension.

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

(a) Initially: The EPSB does not anticipate there being any cost associated with the initial implementation of this regulation.

(b) On a continuing basis: The EPSB does not anticipate there being any continuing cost associated with the implementation of this 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 a need for 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 collected by the EPSB.

(9) TIERING: Is tiering applied? No, tiering will not apply because all educator preparation providers are required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Education Professional Standards Board, educator preparation providers, currently certified educators, and Kentucky public school districts.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020 and 161.030 require that educators and other professional school personnel hold certificates of legal qualifications for their respective positions. KRS 161.028 provides the EPSB with the authority and responsibility to establish standards and requirements for obtaining and maintaining a teaching certificate; and KRS 161.028 also provides the EPSB with the authority and responsibility to set standards for and approve 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. There should be no effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The EPSB does not anticipate that this regulation will result in revenue for state or local government in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The EPSB does not anticipate that this regulation will result in revenue for state or local government in the subsequent years.

(c) How much will it cost to administer this program for the first year? The EPSB does not anticipate that there will be any additional cost to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? The EPSB does not anticipate that there will be any 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:

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(Amendment)**

16 KAR 5:040. Admission, placement, and supervision in student teaching.

RELATES TO: KRS 161.020, 161.028, 161.030, 161.042

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.042

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028 requires that an educator preparation institution be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.030 requires that a certificate be issued to a person who has completed a program approved by the Education Professional Standards Board. KRS 161.042 requires the Education Professional Standards Board to promulgate an administrative regulation relating to student teachers, including the qualifications for cooperating teachers. This administrative regulation establishes the standards for admission, placement, and supervision in student teaching.

~~Section 1. [Definition. "Cooperating teacher" means a teacher employed in a public school or a nonpublic school which meets the state performance standards as established in KRS 156.160 or which has been accredited by a regional or national accrediting association who is contracting with an educator preparation institution to supervise a student teacher for the purpose of fulfilling the student teaching requirement of the approved educator preparation program.~~

~~Section 2.] Cooperating Teacher Eligibility Requirements. (1) The cooperating teacher, whether serving in a public or nonpublic school, shall have:~~

- ~~(a) A valid teaching certificate or license for each grade and subject taught; and~~
- ~~(b) At least three (3) years of teaching experience as a certified educator.~~

~~(2) A teacher assigned to a teaching position on the basis of a provisional[, probationary,] or emergency certificate issued by the Education Professional Standards Board shall not be eligible for serving as a cooperating teacher. [(3) The district and educator preparation program shall select teachers to be cooperating teachers who demonstrate the following:~~

- ~~(a) Effective classroom management techniques that promote an environment conducive to learning;~~
- ~~(b) Best practices for the delivery of instruction;~~
- ~~(c) Mastery of the content knowledge or subject matter being taught;~~
- ~~(d) Aptitude and ability to contribute to the mentoring and development of a preservice educator;~~
- ~~(e) Usage of multiple forms of assessment to inform instruction; and~~
- ~~(f) Creation of learning communities that value and build upon students' diverse backgrounds.~~

~~(4) An educator preparation program shall give a teacher who holds a teacher leader endorsement pursuant to 16 KAR 5:010, Section 12(3), priority consideration when selecting a cooperating teacher.]~~

~~[(5) Beginning September 1, 2013,] Prior to student teacher placement, a cooperating teacher shall receive training approved by the Education Professional Standards Board and provided at no cost to the cooperating teacher by the educator preparation institution which shall include the following components:~~

- ~~(a) Basic responsibilities of a cooperating teacher;~~
- ~~(b) Best practice in supporting the student teacher; and~~
- ~~(c) Effective assessment of the student teacher.~~

~~[(6) Beginning September 1, 2013, educator preparation programs shall maintain a pool of cooperating teachers who have met the requirements of this section.~~

~~[(7) Beginning September 1, 2013,] Each educator preparation institution shall file an electronic report with the Education~~

Professional Standards Board every semester which identifies the following:

- ~~(a) Each candidate at the educator preparation institution enrolled in student teaching;~~
- ~~(b) The candidate's assigned school;~~
- ~~(c) The cooperating teacher assigned to each candidate;~~
- ~~(d) The cooperating teacher's area of certification;~~
- ~~(e) The cooperating teacher's years of experience as a certified or licensed educator; and~~

~~(f) The number of days the cooperating teacher supervised the student teacher during the semester. [The date the cooperating teacher completed the training required in subsection (5) of this section.~~

~~Section 3. Admission to Student Teaching. In addition to the appropriate sections of the National Council for Accreditation of Teacher Education (NCATE) standards which are incorporated by reference in 16 KAR 5:010, each educator preparation institution shall determine minimum standards for admission to student teaching which shall include the procedures established in this section.]~~

~~Section 2. Admission to Student Teaching. Admission to student teaching shall include a formal application procedure for each teacher candidate. (1) [A record or report from a valid and current medical examination, which shall include a tuberculosis (TB) risk assessment, shall be placed on file with the admissions committee.~~

~~[(2)] Prior to and during the student teaching experience, the teacher candidate shall adhere to the Professional Code of Ethics for Kentucky School Personnel established in 16 KAR 1:020.~~

~~[(2)] [(3) Beginning September 1, 2013,] Prior to admission to student teaching, each teacher candidate shall complete a minimum of 200 clock hours of field experiences in a variety of primary through grade 12 (P-12) school settings which allow the candidate to participate in the following:~~

~~(a) Engagement with diverse populations of students which include:~~

- ~~1. Students from a minimum of two (2) different ethnic or cultural groups of which the candidate would not be considered a member;~~
- ~~2. Students from different socioeconomic groups;~~
- ~~3. English language learners;~~
- ~~4. Students with disabilities; and~~
- ~~5. Students from across elementary, middle school, and secondary grade levels;~~

~~(b) Observation in schools and related agencies, including:~~

- ~~1. Family Resource Centers; or~~
- ~~2. Youth Service Centers;~~
- ~~(c) Student tutoring;~~
- ~~(d) Interaction with families of students;~~
- ~~(e) Attendance at school board and school-based council meetings;~~

~~(f) Participation in a school-based professional learning community; and~~

~~(g) Opportunities to assist teachers or other school professionals.~~

~~[(3)] [(4) The educator preparation program shall require the candidate to submit a record of clinical hours for review and confirmation that the candidate has fulfilled the field experiences required in subsection (3) of this section.~~

~~[(5)] The educator preparation institution [program] shall maintain electronic records that confirm [that] all candidates enrolled in student teaching [after September 1, 2013,] have fulfilled the field experiences required in subsection (2) [(3)] of this section. Beginning July 1, 2019, the educator preparation institution shall maintain electronic records in the Kentucky Field Experience Tracking System (KFETS) that confirm all candidates enrolled in student teaching have fulfilled the field experiences required in subsection (2) of this section.~~

~~Section 3. [(4)] Cooperating Teacher to Student Teacher Ratio. The ratio of student teachers to cooperating teachers shall be one-~~

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to-one.

~~Section 4.[5.] University Supervisor. (1) The university supervisor shall conduct a minimum of four (4) observations of the student teacher in the actual teaching situation, a portion of which may be remote. Requests for remote observation(s) shall be submitted to and approved by EPSB prior to observation(s). The university supervisor shall make periodic observations of the student teacher in the classroom and shall prepare a written report on each observation and share it with the student teacher.~~

~~(2) The observation reports shall be filed as a part of the student teacher record and used as a validation of the supervisory function.~~

~~(3) [A student teacher shall receive periodic and regular on-site observations and critiques of the actual teaching situation a minimum of four (4) times, excluding seminars and workshops.~~

~~(4) The university supervisors shall be available to work with the student teacher and personnel in the cooperating school regarding any problems that may arise relating to the student teaching situation.~~

~~(4)[(5) The educator preparation program shall select a clinical faculty member to serve as a university supervisor who demonstrates the following:~~

~~(a) Effective classroom management techniques that promote an environment conducive to learning;~~

~~(b) Best practices for the delivery of effective instruction;~~

~~(c) Dispositions that contribute to the mentoring and development of a preservice educator;~~

~~(d) Knowledge and skills in the use of formative and summative assessments; and~~

~~(e) The ability to participate in a community of professionals committed to supporting the effective instructional practice of each student teacher.~~

~~(6) Beginning September 1, 2013, University supervisors shall receive training approved by the Education Professional Standards Board and provided at no cost to the university supervisor by the educator preparation institution which shall include the following components:~~

~~(a) Basic responsibilities of a university supervisor;~~

~~(b) Best practice in supporting the student teacher; and~~

~~(c) Effective assessment of the student teacher. [(7) Beginning September 1, 2013, educator preparation programs shall maintain a pool of clinical faculty members who have met the requirements of this section.]~~

~~Section 5.[6.] Professional Experience. (1)[In addition to the appropriate NCATE standards incorporated by reference in 16 KAR 5:010.] The educator preparation institution shall provide opportunities for the student teacher to assume major responsibility for the full range of teaching duties, including extended co-teaching experiences, in a real school situation under the guidance of qualified personnel from the educator preparation institution and the cooperating elementary, middle, or high school. The educator preparation institution[program] and the school district shall make reasonable efforts to place student teachers in settings that provide opportunities for the student teacher to develop and demonstrate the practical skills, knowledge, and professional dispositions essential to help all P-12 students learn and develop.~~

~~(2) A student teacher shall not be placed in a setting that is not consistent with his or her planned certification content and grade range.~~

~~(3)[Beginning September 1, 2013,] The student teacher placement shall provide the student teacher with the opportunity to engage with diverse populations of students.~~

~~(4)[Beginning September 1, 2013,] Each educator preparation institution shall provide a full professional semester to include a period of student teaching for a minimum of seventy (70) full days, or its equivalent, in instructional settings that correspond to the grade levels and content areas of the student teacher's certification program. Institutions unable to locate a placement aligned with grade level requirements in this section shall submit an alternative placement request to EPSB staff. EPSB staff may pre-approve the alternative placement request if the alternative placement request~~

includes:

(a) A description of the efforts of the institution to locate a placement aligned with grade level requirements in this section;

(b) The rationale for the choice of the identified alternative placement;

(c) Statements of support for the alternative placement from the principal and the cooperating teacher; and

(d) Evidence of the candidate's variety of field experiences prior to student teaching. All alternative placement requests shall be placed on the consent agenda for the next regularly scheduled meeting of the board and shall be contingent upon board approval. The EPSB waiver committee may review submissions prior to the board meeting and recommend that the board move items from the consent items to the action or waiver items on the agenda. Pre-approval shall not be granted if the alternative placement does not meet the criteria set forth in this subsection. All alternative placements that are not eligible for pre-approval shall be placed on the agenda of the next regularly scheduled meeting of the board as a waiver item for consideration.

1.[(a)] Candidates pursuing a primary through grade 12 certificate shall have their student teaching balanced between an elementary school placement and middle school or high school placement.

2.[(b)] Candidates pursuing an elementary certificate shall have their student teaching balanced between a placement in primary through grade 3 and a placement in grade 4 or grade 5.

3.[(c)] Candidates seeking dual certification in either middle school or secondary content areas shall have equal placements in both content areas. [(5) Beginning September 1, 2013, the educator preparation program shall support the student teacher's placement and classroom experiences by:

(a) Cooperating with the district in determining the specific placement of the student teacher;

(b) Collaborating with the district to provide necessary program resources and expertise;

(c) Using multiple performance assessments to document the student teacher's ability to support learning for all P-12 students;

(d) Requiring the use of technology by the student teacher to:

1. Enrich the learning of P-12 students; and

2. Support the student teacher's professional growth and communication; and

(e) Providing opportunities for the student teacher to:

1. Engage in extended co-teaching experiences with an experienced teacher;

2. Engage in reflective self-assessment that informs practice;

3. Maintain regular professional conversations with experienced teachers other than the cooperating teacher;

4. Participate in regular and extracurricular school activities;

5. Participate in professional decision-making; and

6. Engage in collegial interaction and peer review with other student teachers.]

(5)[(6)] The educator preparation institution[program] shall use the Kentucky Teacher Internship Program Teacher Performance Assessment documents[tasks] established in 16 KAR 7:010[Section 2, or a variation of these tasks to meet the requirement specified in subsection (5) of this section].

(6)[(7)] A student teacher shall not have responsibility for the supervision or instruction of P-12 students without the direct supervision of a certified educator.

(7) A student teacher shall not receive direct compensation for student teaching[(8) A student teacher shall not be employed within the school in which he or she is assigned concurrent with student teaching].

(8)[(9)] The educator preparation institution[program] shall maintain electronic records that confirm that all students[admitted after September 1, 2013,] meet the requirements of this section.

Section 6.[7.] Compensation of Cooperating Teachers. (1) The Education Professional Standards Board may make arrangements with local school districts to compensate a cooperating teacher.

(2) (a) The educator preparation institution shall electronically submit a report of all cooperating teachers and their corresponding student teachers to the Education Professional Standards Board:

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1. On or before ~~September 30~~[October 15] for a cooperating teacher supervising a student teacher during the fall semester; or

2. On or before February 1[15] for a cooperating teacher supervising a student teacher during the spring semester.

(b) Each report shall include:

1. The number of contract weeks that the cooperating teacher is working with each student teacher for that semester;

2. The cooperating teacher's full name and Social Security number;

3. The student teacher's full name, Social Security number, demographic data, and contact information;

4. The student teacher's preparation and certification area by assigned certification code; and

5. The names of the school district and school where the cooperating teacher is employed and the student teaching requirement is being fulfilled. If the certified cooperating teacher is employed in a nonpublic school which meets the state performance standards as established in KRS 156.160 or which has been accredited by a regional or national accrediting association, the institution shall submit the name of the school.

(c) If an educator preparation institution fails to provide the report by the date established in paragraph (a) of this subsection, the Education Professional Standards Board shall not be liable for payment under this administrative regulation.

~~(3)(a) [Upon receipt of the report, the Education Professional Standards Board shall contact each cooperating teacher by electronic mail and forward a copy of the Instructions for Electronic Payment Vouchers to the cooperating teacher to provide instructions on how to create and electronically sign an electronic payment voucher.~~

~~(b)] The electronic[payment] voucher shall be electronically signed by the cooperating teacher[, building principal,] and the university[college] supervisor as verification of the cooperating teacher's service to the student teacher and submitted to the Education Professional Standards Board:~~

~~1. On or before December 15 during the fall semester; or~~

~~2. On or before May 1 during the spring semester.~~

~~(b) If a cooperating teacher fails to provide the completed electronic payment voucher by the date established in paragraph (a) of this subsection, the cooperating teacher shall not be eligible to receive any compensation available under this administrative regulation.~~

~~(4)(a) The payment to a cooperating teacher shall be determined based upon available funding allocated under the biennial budget bill and the total number of days[weeks] served by all cooperating teachers reported for the fiscal year.~~

~~(b) The payment shall be allocated to a cooperating teacher based upon the number of days[weeks] the teacher supervised a student teacher as reported in subsections (2) and (3) of this section, not to exceed more than seventy (70) days in a semester.~~

~~(5) Payments to cooperating teachers shall be disbursed to the school districts or to cooperating teachers in nonpublic schools by the Education Professional Standards Board:~~

~~(a) On an annual basis; and~~

~~(b) On or before June 30.~~

~~(6) Any payment of state funds under this administrative regulation shall:~~

~~(a) Be a supplement to the compensation provided by an educator preparation institution to a cooperating teacher who is supervising an institution's student teacher; and~~

~~(b) Not supplant the educator preparation institution's compensation responsibility.~~

ROB AKERS, Board Chair

APPROVED BY AGENCY: December 11, 2017

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2018 at 9:00 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 January 31, 2018. 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, phone number (502) 564-4606, fax (502) 564-7080, email Lauren.Graves@ky.gov.

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 requirements for admission, placement, and supervision for student teaching.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that candidates for certification are prepared for student teaching, placed in appropriate settings for the specific certification being sought, and provided supervision and support during the student teaching experience.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028 requires that an educator preparation institution be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.030 requires that a certificate be issued to a person who has completed a program approved by the Education Professional Standards Board. KRS 161.042 requires the Education Professional Standards Board to promulgate an administrative regulation relating to student teachers, including the qualifications for cooperating teachers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the requirements for educator preparation programs' student teaching component ensuring placement aligns with the certification being sought and proper training is required of supervisors.

(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 language of the regulation previously promulgated to reflect current practices aligned with statutes. This amendment allows for a portion of university supervisor observations to be conducted remotely upon approval from the EPSB. This amendment will provide the means by which the EPSB staff may pre-approve placements outside of the certification grade range being sought when efforts from the educator preparation provider have been exhausted. The EPSB will have make the final decision at the closest following board meeting. This amendment will require educator candidates to report all field experience hours to the EPSB via the Kentucky Field Experience Tracking System (KFETS).

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to address technological changes allowing additional methods for observing and supporting a student teacher. This amendment is necessary to ensure appropriate, meaningful placements of student teachers.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.028 requires that an educator preparation institution be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.030 requires that a certificate be issued to a person who has completed a program

approved by the Education Professional Standards Board. KRS 161.042 requires the Education Professional Standards Board to promulgate an administrative regulation relating to student teachers, including the qualifications for cooperating teachers.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation sets forth the requirements for educator preparation programs' student teaching component ensuring placement aligns with the certification being sought and proper training is required of supervisors.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact the Education Professional Standards Board and all educator preparation providers. This administrative regulation will also impact educator candidates, student teachers, and supervisors.

(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 EPSB staff may pre-approve placements of student teachers when placements aligned with the regulations are not available; the EPSB may approve the placement at the closest following board meeting. An educator preparation provider would be required to ensure admission, placement, and training of supervisors align with the regulation and are tracked for verification purposes. The university supervisor may conduct a portion of the required observations remotely. Educator candidates will be required to report field experience hours completed prior to student teaching in the EPSB Kentucky Field Experience Tracking System (KFETS). There are no additional requirements placed on educator candidates, student teachers, or supervisors.

(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 to the entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be flexibility in placement of student teachers in grade ranges unavailable to ensure experience is gained for the certificate area being sought. University supervisors will be able to conduct a portion of observations remotely to continue support of student teachers when unable to conduct required observations in person. This may allow for placements in various districts across the state.

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

(a) Initially: The EPSB does not anticipate there being any cost associated with the initial implementation of this regulation.

(b) On a continuing basis: The EPSB does not anticipate there being any continuing cost associated with the implementation of this 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 a need for 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 collected by the EPSB.

(9) TIERING: Is tiering applied? No, tiering will not apply because all educator preparation providers are required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Education Professional Standards Board, educator preparation providers, educator candidates, student teachers, and supervisors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028 requires that an educator preparation institution be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.030 requires that a certificate be issued to a person who has completed a program approved by the Education Professional Standards Board. KRS 161.042 requires the Education Professional Standards Board to promulgate an administrative regulation relating to student teachers, including the qualifications for cooperating 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. There should be no effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The EPSB does not anticipate that this regulation will result in revenue for state or local government in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The EPSB does not anticipate that this regulation will result in revenue for state or local government in the subsequent years.

(c) How much will it cost to administer this program for the first year? The EPSB does not anticipate that there will be any additional cost to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? The EPSB does not anticipate that there will be any 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:

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)**

103 KAR 1:010. Protests and appeals.

RELATES TO: KRS 49.220, 49.250, 131.010, 131.030, 131.081, 131.110, 131.180, and 13B[131.340, 131.345, 131.360, 131.370, 139.760, 139.980(4)]

STATUTORY AUTHORITY: KRS[~~Chapter 13A,~~]131.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130 authorizes the Kentucky Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws of this state. This administrative regulation provides guidance regarding a taxpayer's[summarizes significant portions of the statutes dealing with taxpayer] protest and appeal rights and outlines procedures to facilitate the filing, processing and disposition of a protest or[such protests and] appeal.

Section 1. Definitions. As used in this administrative regulation, "Notice" means a letter, memorandum, or other document from the department notifying the taxpayer that tax has been assessed and is due.

Section 2. Protest - Assessments. (1) Taxpayers will be notified of additional tax assessments by mail. Payment including interest from the original due date, in the absence of protest, must

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be made within forty-five (45) days from the date of the notice informing the taxpayer that tax is owed.

(2) A written protest may be filed by the taxpayer, or other persons representing the taxpayer, against additional assessments. The department may require the taxpayer to furnish a "Declaration of Representative," Form 20A100 if a representative is serving on behalf of the taxpayer. The protest and supporting statements shall be filed with the Revenue Cabinet within forty-five (45) days from the date of notice.

(3) A taxpayer or taxpayer representative may submit a written protest and supporting statements to the department by one (1) of the following methods:

(a) Hand delivery to the department at 501 High Street, Frankfort, Kentucky 40601, or a department Taxpayer Service Center location as listed on the department's website;

(b) By the United States postal service or express mail service to the address listed in the notice; or

(c) Electronically to an email address, if provided, listed in the assessment or notice.

(4) When determining if the protest was timely filed, the department shall record the submission as:

(a) The date stamped as received by the department, if hand delivered;

(b) The postmark date from the United States post office, if the postal service is used, but excluding the date from a postage meter;

(c) The delivery confirmation date when received by the department, if an express mail service is used; or

(d) The electronic date and time received, if electronically delivered. If the protest is submitted to the department electronically, the taxpayer shall also mail a copy of the protest and supporting statements to the department at the address listed in the notice.

(5) The department shall acknowledge receipt of the taxpayer's protest in writing within ninety (90) calendar days from the date received by the department.

(6) In the absence of a protest, payment of the tax assessed in the notice, including any fees, shall be due on or before the due date listed in the notice.

(7) Scheduling options for a conference shall be communicated to the taxpayer by the department within forty-five (45) days of the taxpayer's written request for a conference. Audio recordings of the conference are permitted in accordance with KRS 131.081.

Section 3. Protest - Refund Denials. (1) The department shall send the taxpayer a notice by mail of any denial or partial denial of any refund applied for, including a refund claimed upon any return.

(2) The department shall include with each notice of the denial:

(a) A clear and concise explanation of the reason for the denial by the department;

(b) References to the statutes and administrative regulations that are the basis for the denial; and

(c) The date by which the taxpayer must protest the denial.

(3) A If the taxpayer disagrees with the disallowance of any refund, the taxpayer may file a written protest and supporting statements with the department by the methods set forth in Section 2 of this administrative regulation.

(4) If the taxpayer or taxpayer representative has submitted all supporting statements and documentation requested by the department but has not received a determination regarding the refund request from the department within 180 calendar days from the date the request was submitted, the taxpayer may file a protest on the claim as if the refund has been denied by the department.

Section 4. Protest – Transfer (1) Unless the assessment results from an audit performed by the Office of Field Operations, the department shall attempt to resolve the protest within the taxing area from which the assessment was issued.

(2) If the protest cannot be resolved at the assessment level, the taxing area shall transfer the protest to the Division of Protest Resolution.

(3) A taxpayer may request in writing that a protest be transferred to the Division of Protest Resolution by the methods

outlined in Section (2) of this administrative regulation for consideration by the department.

(4) The department shall complete the transfer within forty-five (45) days of receipt of the taxpayer's written request to transfer the protest to the Division of Protest Resolution.

(5) The Division of Protest Resolution shall acknowledge receipt of the protest in writing to the taxpayer within forty-five (45) days of the department transferring the protest. The acknowledgement by the Division of Protest Resolution shall contain:

(a) The name and contact information of the department employee assigned to the taxpayer's protest; and

(b) The name and contact information of the employee's direct supervisor.

Section 5. Final Ruling. (1) The department shall issue a final ruling on all unresolved protests after transfer to the Division of Protest Resolution.

(2) The taxpayer may request in writing a final ruling at any time after the filing of a timely protest and supporting statements.

(3) If requested in writing, the department shall issue a final ruling to the taxpayer within thirty (30) days from the date the request is received by the department by one of the methods described in Section 2 of this administrative regulation.

Section 6. Failure by the department to meet any of the deadlines imposed by this administrative regulation:

(1) May justify a waiver of penalties; and

(2) Shall not be interpreted to allow a reduction in any tax, interest, or fees assessed by the department. (3) A hearing may also be requested. The taxpayer may appear in person or by representative. If a taxpayer is not present in person, or if a corporation is not represented by an authorized officer, the cabinet may require the taxpayer's representative to furnish evidence of his authority to act for the taxpayer. Consideration will be given to additional information presented in the protest and at hearings and the additional assessment may be adjusted accordingly.

(4) As provided in KRS 131.081, a taxpayer may make an audio recording of any conference with or hearing by the Revenue Cabinet. However, the Revenue Cabinet may make such a recording only if the taxpayer is given prior written notice. If the conference or hearing is recorded by the Revenue Cabinet, the taxpayer may obtain a copy or transcript thereof as provided in KRS 61.874.

Section 2. Protests – Refund or Credit Denials. (1) Taxpayers will also be notified by mail of disallowance or partial disallowance of any refund or credit claim including a refund or credit requested upon any return.

(2) A taxpayer may protest such disallowance or partial disallowance by written protest filed with the Revenue Cabinet, within forty-five (45) days of the disallowance. Procedures governing protests and hearings for refunds and credits are the same as for assessments.

Section 3. Final Ruling. If the taxpayer's protest of an assessment or refund or credit denial cannot be resolved through correspondence and/or conferences with officials of the Revenue Cabinet and he desires to exercise his rights of further appeal, the taxpayer may request in writing a final ruling at any time after the filing of a timely protest and supporting statements. The final ruling shall be given to the taxpayer within thirty (30) days from the date the request is received by the cabinet.

Section 4. Appeal – Kentucky Board of Tax Appeals. (The following procedure is prescribed by rules and administrative regulations of the board):

(1) If a taxpayer desires to appeal a final ruling of the cabinet he may, within thirty (30) days from the date of such ruling, apply for a hearing before the Kentucky Board of Tax Appeals. The appeal:

(a) Must be filed in quintuplicate;

(b) Must contain a brief statement of the law and facts in issue;

(c) Must state the petitioner's position regarding the law, facts, or both; and

- (d) Must contain a copy of the final ruling of the cabinet.
- (2) The board will set a date for a formal hearing. The hearing procedure before the board will be in accordance with the board's rules.
- (3) On the basis of the hearing, briefs, and other documents, the board will issue a written order which will affirm, reverse, modify or remand the final ruling, and will forward a copy of the order to the taxpayer and the cabinet. Assessments upheld by the board shall be due and payable thirty (30) days after the date of the board's order. In the absence of appeal, penalties for failure to pay tax when due apply if payment is not made within thirty (30) days after the date of the board's order.
- (4) Interest from the original due date of the return until the tax is paid shall be added to the additional assessments.
- (5) As provided in KRS 131.355, all hearings before the board are required to be officially reported and all records of proceedings shall be public records except in the case of appeals of unmined minerals assessments in which, under specified circumstances, the statute prohibits disclosure of records or any recorded or transcribed testimony concerning such records. In such cases, a protective order is required to be entered and remain in effect during the entire appeals process, including appeals to the courts, and thereafter, preventing the parties, their agents and representatives, except the taxpayer, from disclosing the confidential records or testimony concerning them outside the appeals proceedings.

~~Section 5. Appeal—Circuit Court. Any party aggrieved by a final order of the Kentucky Board of Tax Appeals may, within thirty (30) days after such order becomes final, file a notice of appeal with the Kentucky Board of Tax Appeals and shall serve a copy of said notice upon all other parties to the appeal. A statement of appeal must then be filed within (30) days after the date on which the notice of appeal was filed with the appropriate circuit court, with a copy of the ruling made before the Kentucky Board of Tax Appeals. The statement of appeal must conform to that required to be filed in the Kentucky Supreme Court. Pursuant to KRS 131.370, if the appeal is from an order sustaining a tax assessment, collection of the tax may be stayed by the filing of a supersedeas bond in the manner directed by the Rules of Civil Procedure, or by payment of the tax as provided in KRS 134.580(1).~~

~~Section 6. Appeal—Kentucky Court of Appeals and Kentucky Supreme Court. Any party may appeal to the Kentucky Court of Appeals and to the Kentucky Supreme Court under rules provided by those courts.]~~

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: December 12, 2017

FILED WITH LRC: December 13, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2018, at 1:00pm in Room 11A, State Office Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 January 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Finance and Administration Cabinet, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40602, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation updates regulatory language to conform to statutory revisions and provide the most accurate and up to date information on filing a protest or appeal with the Department of Revenue.

(b) The necessity of this administrative regulation: In March of 2017 the Kentucky General Assembly passed HB 453 creating the Kentucky Claims Commission, and combining the functions of the Kentucky Board of Claims, Kentucky Board of Tax Appeals and the Crime Victims Compensation Board. This administrative regulation is necessary to remove outdated information and references to the Kentucky Board of Tax Appeals in 103 KAR 1:010, and make other changes needed to conform to the provisions of Kentucky Acts Chapter 74 (HB 453).

(c) How this administrative regulation conforms to the content of the authorizing statutes: It updates outdated references and language the Kentucky Board of Tax Appeals to conform.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will provide the most up-to-date guidance for all parties who wish to file a protest with the Department of Revenue against tax assessed by the department, or a refund reduction issued by the department.

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

(a) How the amendment will change this existing administrative regulation: This amendment describes multiple methods for filing a timely protest with the department, sets forth new time frames and deadlines for notifications by the department, and removes all references to the Kentucky Board of Tax Appeals.

(b) The necessity of the amendment to this administrative regulation: To conform to recent statutory revisions made in HB 453 during the 2017 Regular Session.

(c) How the amendment conforms to the content of the authorizing statutes: Updates regulatory language to comply with statutory guidance.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide up-to-date information to taxpayers for the most efficient and effective administration of the law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact any individual, business or organization wishing to file a protest or appeal against tax owed to the Commonwealth of Kentucky, or a refund reduction issued by the Department of Revenue.

(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, unless they wish to file a protest or appeal, in which case they will follow the parameters set forth herein.

(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 to impacted entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Taxpayers will be able to file a protest of tax assessed by the Department of Revenue in a timely fashion, including electronically, and will be afforded additional administrative processes to ensure that their protests are handled fairly and efficiently by department personnel.

(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. Current staff and department resources will be utilized to implement the provisions of this amendment.

(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: The implementation and enforcement of this administrative regulation will be done using existing department funding and personnel.

(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. Only current department budgeted funding will be used to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees were created or increased by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as the provisions of this administrative regulation will apply equally to all applicants for a protest or appeal with the Department of Revenue.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 131.130.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There is no expected increase or decrease in revenues or expenditures for any state or local government agency as a result of this administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None. This amendment only addresses the procedures to be taken for a taxpayer to file a protest of taxes, penalties, interest or fees assessed by the department.

(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 costs will be incurred in the first year of this regulation being in effect. Current processes are already in place to administer protests and the resolution of protests.

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

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

- Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amendment)

105 KAR 1:140. Employer's administrative duties.

RELATES TO: KRS 16.583, 16.645(18), 18A.105, 61.546, 61.552(23), 61.560, 61.565, 61.569, 61.597, 61.598, 61.637(17), 61.675, 61.685, 61.702, 78.545(33), (37), 78.616, 78.625, 78.652, 26 U.S.C. 401(a)(17), (31), 403(b), 408(a), (b), 414(g)(6), 457(b), 3121(b)(10), Pub. L. 104-191, Pub. L. 111-5, Div. A, Title XIII, Div. B, Title IV, 26 C.F.R. 31.3121(b)(10)-2, 29 C.F.R. 519.2(a), 42 C.F.R. 423.504(b)(4)(vi), 45 C.F.R. Parts 160, 162, 164

STATUTORY AUTHORITY: KRS 16.645(18), 61.565, 61.645(9)(g), 61.675, 78.545(33), 78.625

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of the Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. Employers participating in the Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System are required by KRS 16.645(18), 61.565, 61.675, 78.545(33), and 78.625 to make contributions to the retirement systems, to report creditable compensation to the retirement systems and other information that the Board of Trustees may require, and perform other duties and responsibilities as participating employers. 26 U.S.C. 401(a)(17) places a limit on the amount of creditable compensation on which contributions may be made. This administrative regulation sets out the reporting requirements for all participating agencies.

Section 1. (1) Each employer shall submit the reports required under KRS 61.675 and KRS 78.625 electronically using the secure Kentucky Retirement Systems' Employer Self Service Web site by:

- (a) The Enter Report Details Module; or
(b) Uploading an electronic file that meets the requirements of the Employer Contribution Record Layout.

The employer shall submit a test file to the retirement systems, which shall be reviewed for compliance with the requirements of the Employer Contribution Record Layout. If the test file is in compliance with the requirements of the Employer Contribution Record Layout, the retirement systems shall certify the electronic file and inform the employer of the month when the employer may begin using the electronic file for submitting reports. If the test file is not in compliance with the requirements of the Employer Contribution Record Layout, the retirement systems shall inform the employer of the needed corrections to the test file. The employer shall not submit a report by electronic file pursuant to this subsection until the test file is certified by the retirement systems.

(2) The retirement systems shall notify each employer of the Web address of the secure Kentucky Retirement Systems' Employer Self Service Web site and shall notify each employer if the Web address of the secure Kentucky Retirement Systems' Employer Self Service Web site changes.

(3) Each employer shall submit the contributions required by KRS 61.675 and KRS 78.625:

- (a) Electronically using the secure Kentucky Retirement Systems' Employer Self Service Web site;
(b) By mailing or hand delivering a check;
(c) By the eMARS system maintained by the Finance and Administration Cabinet; or
(d) By wire transfer.

(4) The employer shall report all creditable compensation paid during a month by the tenth day of the following month.

(a) The employer shall designate the month to which the creditable compensation should be applied if it is not the month for which the employer is reporting and if the month the creditable compensation was earned is the month in which the employee:

- 1. Became employed;
2. Became eligible to participate in one of the systems administered by Kentucky Retirement Systems;
3. Was transferred to hazardous coverage from nonhazardous participation;
4. Was transferred from hazardous coverage to nonhazardous participation;
5. Terminated from employment; or
6. Became ineligible to participate in one (1) of the systems administered by Kentucky Retirement Systems.

(b) If the employee is paid creditable compensation in a lump sum or nonrecurring payment, the employer shall designate the reason for the lump sum or nonrecurring payment.

- 1. If the lump sum or nonrecurring payment was earned during a specific time period, the employer shall designate the time period during which the lump sum or nonrecurring payment was earned.
2. If the employer fails to designate a specific time period during which the lump sum or nonrecurring payment was earned, the payment shall be considered a lump sum bonus pursuant to

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KRS 16.505(8), 61.510(13), or 78.510(13).

(5) The provisions of subsection (1) of this section shall not apply to the Kentucky Personnel Cabinet or agencies that are reported by the Kentucky Personnel Cabinet.

(6) Each employer shall report employees who are regular full-time employees as defined by KRS 61.510(21) and 78.510(21) and shall remit employer and employee contributions for those employees.

(7) If an employer fails to withhold from an employee's creditable compensation the full amount of contributions due from the employee in accordance with KRS 16.583, 61.560, 61.597, or 61.702:

(a) The retirement systems shall notify the employer of the additional amount of employee contributions due from the employee;

(b) The employer shall withhold the additional contributions due from the employee in accordance with KRS 16.583, 61.560, 61.697, or 61.702 from the employee's creditable compensation and remit the additional contributions to the retirement systems;

(c) If the employee is no longer employed by the employer, the employer shall notify the retirement systems and the retirement systems shall refund the contributions submitted by the employer on behalf of the employee to the employer, which shall withhold the applicable taxes from the contributions and remit the remaining money to the employee; and

(d) If the contributions are refunded in accordance with paragraph (c) of this subsection, then that service credit shall be omitted service in accordance with KRS 61.552(23).

(8) Each employer shall report employees who are not regular full-time employees as defined by KRS 61.510(21) and 78.510(21), but shall not remit employer or employee contributions for those employees unless required to do so pursuant to KRS 61.680(6), except:

(a) Student employees of public universities participating in the Kentucky Employees Retirement System who are enrolled as full-time students in a course of study at the university and who are exempt from FICA withholding pursuant to 26 U.S.C. 3121(b)(10) and 26 C.F.R. 31.3121(b)(10)-2; and

(b) Student employees of public universities participating in the Kentucky Employees Retirement System who are enrolled as full-time students in a course of study at the university and are classified as full-time students throughout the fiscal year pursuant to 29 C.F.R. 519.2(a).

(9)(a) An employer participating in Kentucky Employees Retirement System or County Employees Retirement System shall not classify an employee in more than one (1) non-participating position status during the fiscal year, except an employer participating in the County Employees Retirement System may classify an employee as probationary pursuant to KRS 78.510(21)(c) in the same fiscal year that the employer classifies the employee as seasonal, emergency, or part-time.

(b) An employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System shall not change an employee's position status from full-time to seasonal, temporary, or interim in the same fiscal year.

(c) An employer shall not classify an employee as a seasonal employee pursuant to KRS 61.510(21)(a) or 78.510(21)(a) unless the duties of the job can only be performed during a defined time period during a fiscal or calendar year. If the employer classifies an employee as seasonal and the employee is terminated after the defined time period during a fiscal or calendar year, there shall be a three (3) calendar month break in employment before the employer may again classify the employee as a seasonal employee, except for employers that are school boards. If an employer that is a school board classifies an employee as seasonal and the employee is terminated after the defined time period during a fiscal or calendar year, there shall be a six (6) calendar month break in employment before the employer may again classify the employee as a seasonal employee.

(d) If an employer violates the provisions of this subsection, the retirement systems shall determine if the employee worked or averaged the necessary hours to be in a regular full-time position as provided in KRS 61.510(21) or 78.510(21). If the employee

worked or averaged the necessary hours to be in a regular full-time position as defined by KRS 78.510(21), the service credit shall be omitted service in accordance with KRS 61.552(23).

Section 2. (1) Each employer shall submit electronic mail to the retirement systems by logging on to the Kentucky Retirement Systems' secure electronic mail server.

(2)(a) If an employer submits personal information about its employees to the retirement systems in an unsecure electronic format or submits personal information regarding its employees intended to be submitted to the retirement systems to another person or entity by hand delivery, mail, fax, or in an electronic format; the employer shall notify affected employees in writing of the disclosure of personal information and provide information regarding obtaining credit reports.

(b) Personal information includes the member's first name or first initial and last name in combination with the member's:

1. Social Security number;
2. Driver's license number;
3. Personal Identification Number permitting access to the member's account; or
4. Medical Information.

(c) The retirement systems shall notify the employer of a disclosure upon discovery.

(d) The employer shall notify the retirement systems of a disclosure upon discovery.

(e) The employer shall submit a draft of the written notification to be made to affected employees to the retirement systems for approval or denial.

(f) The employer shall submit copies of the written notifications made to affected employees to the retirement systems after the notifications have been made.

(g) If the retirement systems is required by federal or state law to provide notification to affected members about the employer's disclosure of personal information or if the retirement systems determines that it should provide the notification to its affected members because of the nature or magnitude of the employer's disclosure, the employer shall reimburse the retirement systems for its costs in notifying members affected by the employer's disclosure.

(h) In transmitting any medically related personal information, the employer shall comply with all statutes and regulations comprising the Health Insurance Portability and Accountability Act of 1996 "HIPAA", Pub.L. 104-191 and the Health Information Technology for Economic and Clinical Health Act "HITECH", Pub.L. 111-5.

(i) Each employer shall execute a data use agreement with retirement systems.

Section 3. (1)(a) The retirement systems shall submit an invoice to employers for any payments owed to the retirement systems, which were not paid through the normal monthly reports.

(b) The employer shall remit payment to the retirement systems by the due date provided on the invoice.

(2) The retirement systems may offset funds owed by the employer to the retirement systems with funds owed to the employer by the retirement systems.

Section 4. (1) An employer shall pay interest at the rate adopted by the board for any creditable compensation paid as a result of an order of a court of competent jurisdiction, the Personnel Board, or the Human Rights Commission or for any creditable compensation paid in anticipation or settlement of an action before a court of competent jurisdiction, the Personnel Board, or the Human Rights Commission including notices of violations of state or federal wage and hour statutes or violations of state or federal discrimination statutes.

(2) The interest shall be assessed from the time period for which the creditable compensation has been reinstated.

Section 5. If an employer refuses to provide the retirement systems access to records or information requested in accordance with KRS 61.685 or does not respond to a request for information

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or records by the retirement systems, the retirement systems may, if appropriate, hold all payments of:

- (1) Any funds due to the employer; or
- (2) Refunds or initial retirement allowances to any employee or former employee of the employer whose refund or retirement may be affected by the records or information requested by the retirement system.

Section 6. (1) Effective July 1, 1996, and before July 1, 2002, the creditable compensation on which contributions are reported shall not exceed the maximum annual compensation limit contained in 26 U.S.C. 401(a)(17), \$150,000, as adjusted for cost-of-living increases under 26 U.S.C. 401(a)(17)(B). The retirement system shall notify employers of the maximum annual compensation limit. Each employer shall report contributions on all creditable compensation up to the maximum annual limit. Once an employee's creditable compensation has reached the maximum annual limit, the employer shall continue to report the employee's creditable compensation but shall not report any further employer or employee contributions on the employee's creditable compensation. If excess contributions are erroneously reported, the retirement system shall refund the excess contributions to the employer for distribution to the employee after making payroll deductions in accordance with federal and state law.

(2) Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration under this provision, the rules of 26 U.S.C. 414(g)(6) shall apply, except that in applying these rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age nineteen (19) before the close of the year.

(3) Effective with respect to plan years beginning on and after July 1, 2002, a plan member's annual compensation that exceeds \$200,000 (as adjusted for cost-of-living increases in accordance with 26 U.S.C. 401(a)(17)(B)) shall not be taken into account in determining benefits or contributions due for any plan year. Annual compensation shall include compensation during the plan year or any other consecutive twelve (12) month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year shall apply to annual compensation for the determination period that begins with or within the calendar year. If the determination period consists of fewer than twelve (12) months, the annual compensation limit shall be an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve (12). If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for this prior determination period shall be subject to the applicable annual compensation limit in effect for that prior period.

(4) A participating member may pay contributions for the creditable compensation over the maximum annual compensation limit for the years used to determine the member's final compensation for purposes of retirement if:

(a) The member's creditable compensation has exceeded the maximum annual compensation limit contained in 26 U.S.C. 401(a)(17) in years prior to the fiscal year beginning July 1, 2002;

(b) The member has filed a notification of retirement; and

(c) The excess creditable compensation is within the maximum annual compensation limit applicable in 2002-2003. Upon receipt of employee contributions, the retirement systems shall bill the employer for the employer contributions on the excess creditable compensation, and the employer shall remit the employer contributions to the retirement systems. The excess shall only be included in retirement calculations if both the employee and employer have paid their respective contributions. ~~[Section 7. (1) An employer may request that the retirement systems make a determination if a change in position or hiring of an employee is a bona fide promotion or career advancement prior to the employee's change of position or hiring as provided in KRS 61.598.~~

~~(2) An employer may submit a Form 6480, Employer Request for Pre-Determination of Bona Fide Promotion or Career Advancement, describing the proposed change in position or hiring of an employee or potential employee including:~~

~~(a) The employee's or potential employee's full name;~~

~~(b) The employee's or potential employee's Kentucky Retirement Systems Member Identification Number or Social Security Number;~~

~~(c) The potential employee's current employer;~~

~~(d) The employee's current job description;~~

~~(e) The job description for the employee's proposed job;~~

~~(f) Documentation of additional training, skills, education, or expertise gained by the employee or potential employee;~~

~~(g) Employer's organizational chart; and~~

~~(h) Any additional information the employer wants to be considered by the retirement systems.~~

~~(3) The employer shall provide any additional information requested by the retirement systems.~~

~~(4) The retirement systems may require the employer to make certifications regarding the information and documentation submitted.~~

~~(5) In determining if a change in position or hiring would be a bona fide promotion or career advancement, the retirement systems shall consider the factors listed in KRS 61.598(1)(a).~~

~~(6) Increases or proposed increases in an employee's creditable compensation caused by overtime, compensatory time other than lump-sum payment made at the time of termination, or bonuses shall not be a bona fide promotion or career advancement.~~

~~(7) The retirement systems shall issue a final administrative decision in writing informing the employer whether the employee's change in position or potential employee's hiring is a bona fide promotion or career advancement. The retirement systems' determination shall be specific to the employee or potential employee and shall be based on the information and documentation provided by the employer. If the information or documentation provided by the employer is not accurate, the final administrative decision of the retirement systems shall not be binding on the retirement systems pursuant to KRS 61.685.~~

~~(8) An employer who disagrees with the retirement systems' final administrative decision may request an administrative hearing in accordance with KRS Chapter 13B. The request for administrative hearing shall be made in writing within thirty (30) days of the date of the final administrative decision of the retirement systems.]~~

Section 7.[8.] (1) For members retiring on or after January 1, 2014, but prior to July 1, 2017, ~~[After the member retires,]~~ the retirement systems shall determine if annual increases in a member's creditable compensation greater than ten (10) percent occurred over the member's last five (5) fiscal years of employment.

(a) For each of the member's last five (5) fiscal years of employment, the retirement systems shall multiply the member's creditable compensation for the previous fiscal year by 110 percent. If the member's creditable compensation in any of his or her last five (5) fiscal years of employment is greater than the member's creditable compensation from the previous fiscal year multiplied by 110 percent, the retirement systems shall determine that an annual increase in the member's creditable compensation greater than ten (10) percent has occurred.

(b) For purposes of performing the calculations in paragraph (a) of this subsection, the member's creditable compensation shall be annualized by dividing the member's creditable compensation for the fiscal year by the number of months of service credit, and multiplying by twelve (12).

(2) If the retirement systems determines~~[determine]~~ that the member received annual increases in creditable compensation greater than ten (10) percent over his or her~~[the member's]~~ last five (5) fiscal years of employment, the retirement systems shall send written notice to the member's last participating employer of the retirement systems' determination that the member has experienced annual increases in creditable compensation greater

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than ten (10) percent over the member's last five (5) fiscal years of employment, and the amount of the additional actuarial cost to the retirement systems attributable to the increases.

(3) If the employer believes that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment was due to a bona fide promotion or career advancement, the employer shall file a Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, for a determination that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment were due to a bona fide promotion or career advancement. The Form 6481 shall be filed within sixty (60) days of the date on[~~of~~] the notice. If the retirement systems had previously provided a determination that a change in position or hiring of the member would be a bona fide promotion or career advancement, the employer shall submit the determination and provide documentation that the increase in creditable compensation for that fiscal year was due to the employer implementing the proposed change in position or hiring.

(4) The employer shall provide any additional information requested by the retirement systems.

(5) The retirement systems may require the employer to make certifications regarding the information and documentation submitted.

(6) In determining if a change in position or hiring was a bona fide promotion or career advancement, the retirement systems shall consider the factors listed in KRS 61.598(1)(a).

(7) The retirement systems shall issue a final administrative decision in writing informing the employer whether the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment were due to a bona fide promotion or career advancement.

(8) If the employer fails to submit a Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, within sixty (60) days of the date on[~~of~~] the notice, the employer shall pay the additional actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment.

(9) If the employer disagrees with the final administrative decision by the retirement systems, the employer shall file a written request for an administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of the date on[~~of~~] the final administrative decision. The hearing shall be limited to the issue of whether the retirement systems correctly determined that the annual increases in the member's creditable compensation greater than ten (10) percent were not due to a bona fide promotion or career advancement.

(10) If the employer fails to file a written request for administrative hearing within thirty (30) days of the date on[~~of~~] the final administrative decision, the employer shall pay the additional actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment.

(11) The retirement systems shall issue an invoice to the last participating employer representing the actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment. The employer may request that the retirement systems allow the employer to pay the cost over a period, not to exceed one (1) year, without interest and the retirement systems shall establish a payment plan for the employer.

(12) If the member was employed by more than one (1) participating employer when the member retired, the actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment shall be divided equally among the member's last participating employers.

(13) An employer who is required to pay the additional actuarial cost pursuant to KRS 61.598 shall be treated as a participating employer in the system to which the employer is

required to pay the additional actuarial cost solely for purposes of making the payment required pursuant to KRS 61.598.

Section 8. (1) For members retiring on or after January 1, 2018, the retirement systems shall determine if annual increases in a member's creditable compensation greater than ten (10) percent occurred over the member's last five (5) fiscal years of employment.

(a) For each of the member's last five (5) fiscal years of employment, the retirement systems shall multiply the member's creditable compensation for the previous fiscal year by 110 percent. If the member's creditable compensation in any of his or her last five (5) fiscal years of employment is greater than the member's creditable compensation from the previous fiscal year multiplied by 110 percent, the retirement systems shall determine that an annual increase in the member's creditable compensation greater than ten (10) percent has occurred.

(b) The fiscal year immediately preceding the member's last five (5) fiscal years shall be used for comparison to determine if an increase in creditable compensation greater than ten (10) percent occurred in the initial fiscal year of the member's last five (5) fiscal years.

(c) For purposes of performing the calculations in paragraph (a) of this subsection, the member's creditable compensation shall be annualized by dividing the member's creditable compensation for the fiscal year by the number of months of service credit, and multiplying by twelve (12).

(2) The member shall receive a refund of all pre-tax and post-tax member contributions and interest directly attributable to the reduction in creditable compensation.

(a) Pre-tax member contributions shall be refunded to the member by the employer who picked-up the contributions.

(b) Post-tax member contributions shall be refunded to the member directly from the retirement systems.

(c) Interest earned on pre-tax and post-tax member contributions shall be refunded to the member directly from the retirement systems.

Section 9. (1) If the retirement systems determines that the member received annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment, the retirement systems shall send the member's employer the Form 6487, Request for Member Pension Spiking Exemption Amounts.

(a) Pursuant to KRS 16.645, 61.675, and 78.545, the employer shall furnish the information required by the retirement systems in the discharge of its duties. The employer shall complete the Form 6487 in its entirety and provide supporting documentation.

(b) The employer shall submit a completed Form 6487 at the retirement office within sixty (60) days from the date the Form 6487 was mailed. If the employer fails to submit a completed Form 6487 within that sixty (60) day time period, Kentucky Retirement Systems shall issue a final administrative decision and provide adjustment correspondence to the member.

(2) If the employer believes that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment was not due to a bona fide promotion or career advancement, a lump-sum payment for compensatory time, a lump-sum payment made pursuant to alternate sick leave, leave without pay, overtime attributable to a state or federally funded grant, or overtime attributable to a state of emergency, the employer shall indicate on the Form 6487 that none of the listed exemptions are applicable.

(a) The employer shall report any increases in creditable compensation directly attributable to a lump-sum payment for compensatory time, a lump-sum payment made pursuant to alternate sick leave, or leave without pay during the employer's normal monthly reporting. If, upon review of the Form 6487, the employer believes that adjustments to the reported salaries are required, then the employer shall make those adjustments during the next monthly reporting cycle pursuant to KRS 16.645, 61.675, and 78.545.

(3) If the employer believes that the annual increases in

creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment was due to a bona fide promotion or career advancement, overtime attributable to a state or federally funded grant, or overtime attributable to a state of emergency, the employer shall include the salary directly attributable to each exemption in Part 2 of the Form 6487.

(a) If the employer believes that any of the salary is directly attributable to a bona fide promotion or career advancement, the employer shall complete Part 3 of the Form 6487.

(b) The employer shall provide an explanation and documentation supporting the assertion that the increase in creditable compensation resulted from a bona fide promotion or career advancement.

(c) In determining if a change in position or hiring was a bona fide promotion or career advancement, the retirement systems shall consider the factors listed in KRS 61.598(1)(a).

(4) The employer shall provide any additional information requested by the retirement systems.

(a) The retirement systems may require the employer to make certifications regarding the information and documentation submitted.

(5) If the increases in creditable compensation are not directly attributable to any of the listed exemptions and no reporting information needs to be corrected, then any annual increase in creditable compensation greater than ten (10) percent shall not be used to calculate the member's retirement allowance.

(6) The retirement systems shall not issue a refund to the employer for the excess employer contributions. The retirement systems shall utilize any employer contributions directly attributable to the reduction in creditable compensation to pay the unfunded liability of the pension fund in which the retiring member participated.

Section 10.[9-] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ~~Form 6481, "Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement", September 2013; [Form 6480, "Employer Request for Pre-Determination of Bona Fide Promotion or Career Advancement", July 2013;]~~ and

(b) ~~Form 6487, "Request for Member Pension Spiking Exemption Amounts", November 2017; [Form 6481, "Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement", September 2013.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m.

DAVID L. EAGER, Interim Executive Director

APPROVED BY AGENCY: December 15, 2017

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2018 at 9:00 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2018. 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: Joseph P. Bowman, Special Detail General Counsel, Division of Non-Advocacy, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8615, email joseph.bowman@kyret.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Joseph P. Bowman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements for employers to provide reports and contributions to Kentucky Retirement Systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures and requirements for employers to provide reports and contributions to Kentucky Retirement Systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes provide that employers must file contributions and reports at the retirement systems. This administrative regulation provides the procedures and requirements for employers to file reports and contributions at the retirement systems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by providing the procedures and requirements for employers to file reports and contributions with the retirement systems.

(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 provides the procedure and documentation an employer will have to demonstrate to show that an increase in creditable compensation greater than ten percent (10%) during a member's last five fiscal years of employment is subject to the listed exemptions and capable of being used to calculate the retiring member's retirement benefits.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide the procedure and documentation an employer will have to demonstrate to show that an increase in creditable compensation greater than ten percent (10%) during a member's last five fiscal years of employment is subject to the listed exemptions and capable of being used to calculate the retiring member's retirement benefits.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by providing the procedure and documentation an employer will have to demonstrate to show that an increase in creditable compensation greater than ten percent (10%) during a member's last five fiscal years of employment is subject to the listed exemptions and capable of being used to calculate the retiring member's retirement benefits.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by providing the procedure and documentation an employer will have to demonstrate to show that an increase in creditable compensation greater than ten percent (10%) during the member's last five fiscal years of employment is subject to the listed exemptions and capable of being used to calculate the retiring member's retirement benefits.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 1800 participating employers of Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Employers shall provide information regarding whether a member's increase in creditable compensation greater than ten percent (10%) during the his or her last five fiscal years of employment is subject to the listed exemptions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The additional cost to employers should be minimal because they already report electronically. Kentucky Retirement Systems will have a cost of staff time and resources.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Employers will know how to report the required pension spiking exemption amounts.

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

- (a) Initially: \$0.00
- (b) On a continuing basis: \$0.00

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Retirement Systems are paid from the Retirement Allowance Account (trust and 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: There is no increase in fees or funding required.

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

(9) TIERING: Is tiering applied? Procedures are the same for all members and participating employers; therefore, tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state and local government employers participating in Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 16.645(18), 61.565, 61.598(6), 61.645(9)(g), 61.675, 78.545(33), and 78.625.

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

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

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

(c) How much will it cost to administer this program for the first year? The additional cost to employers should be minimal because they already report electronically. Kentucky Retirement Systems will have a cost of staff time and resources.

(d) How much will it cost to administer this program for subsequent years? There is no additional cost as employers have always been required by statute to report.

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:

**DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(Amendment)**

106 KAR 1:350. Rescue squad minimum equipment.

RELATES TO: KRS 39F.030(1)(d), 39F.040(5), 39F.050(3)(d), 39F.070(3)(d), 39F.120(12), 42.738, 186.650, 189.010, 33 C.F.R.

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STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3), 39F.100, 39F.110, 39F.120(12), 39F.130, 39F.140, 39F.150, 338.031

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39F.120(12) requires a rescue squad to have the minimum equipment necessary to perform a mission and~~[-KRS 39F.120(12)]~~ requires the division to promulgate an administrative regulation establishing minimum equipment for a rescue squad. This administrative regulation establishes the minimum equipment requirements for a rescue squad.

Section 1. Definitions. (1) "ANSI" means the American National Standards Institute.

(2) "CE" means the European Community.

(3) "County" means county, including urban-county governments and consolidated local governments.

(4) "Equine rescue squad" means a rescue squad utilizing two (2) or more horses, with a minimum of twelve (12) total members.

(5) "Fund" means the rescue aid fund established in KRS 39F.100(2).

(6) "High angle rescue service" means any rescue-related activity in which a patient or rescuer is raised or lowered vertically or near vertically by means of a rope or cable, or moved across or up or down a fifty (50) degree or greater slope or grade.

(7) "Mission" means one or more activities in which the rescue squad is involved, and which is listed in the mission statement provided by the rescue squad to the Kentucky Division of Emergency Management.

(8) "NFPA" means the National Fire Protection Association.

(9) "Vehicle" means:

(a) A motor vehicle as defined by KRS 189.010(19) that is lawfully operated on the roadways of the commonwealth and that is capable of carrying two (2) or more passengers within an enclosed passenger compartment and carrying the minimum equipment required for the owning rescue squad within an enclosed area or;

(b) Any fully enclosed "trailer" as defined by KRS 186.650(1) with a cargo capacity of at least 1,200 pounds; or

(c) Any covered or enclosed horse trailer used by a rescue squad that performs search functions for lost or missing persons and utilizes two (2) or more horses and riders to assist in the performance of the search function. Any trailer, as defined by KRS 186.650(1) and 189.010(19) shall include a standard size ball, and the ball, receiver slide, and pin, as well as the electric adapter, shall remain with the trailer continuously, including if not connected to towing vehicle.

(10) "UIAA" means the Union Internationale des Associations d'Alpinisme. (1) "Fund" means the rescue aid fund established in KRS 39F.100(2).

(2) "New or replacement equipment" means equipment that a rescue squad is not required to have prior to becoming eligible to participate in the fund.

(3) "Replacement only equipment" means equipment that a rescue squad shall have in its possession before becoming eligible to participate in the fund.]

Section 2. The minimum equipment for a rescue squad that has as a light duty rescue and extrication of persons from vehicles mission [new or replacement equipment for a general rescue squad] shall be:

(1) Twelve (12) pairs of protective eyewear;

(2) Twelve (12) protective coats or jumpsuits;

(3) Twelve (12) rescue helmets;

(4) Two (2) first aid kits, twenty-four (24) unit industrial type or equivalent;

(5) Two (2) full backboards;

(6) One (1) basket litter;

(7) 100 feet of one (1) inch diameter of tubular nylon webbing;

(8) One (1) twelve (12) foot chain, grade 80 or greater, recovery rated;

(9) Two (2) hacksaw frames with spare blades or equivalent saws;

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(10) Two (2) pairs of pliers, slip-joint;
(11) One (1) pair of locking pliers;
(12) Two (2) pairs wire cutters with insulated grips;
(13) One (1) center or rescue punch;
(14) Four (4) screwdrivers, flat blade (slot head), assorted sizes;
(15) Four (4) Phillips head screwdrivers, Allen Wrench, torx drive, and Robertson square head screwdriver, assorted sizes;
(16) One (1) seat belt cutter;
(17) One (1) pair tin snips;
(18) One (1) claw hammer;
(19) Two (2) adjustable wrenches;
(20) Two (2) pipe wrenches;
(21) Two (2) axes, single bit;
(22) One (1) mattock;
(23) One (1) bow saw;
(24) One (1) pair of bolt cutters;
(25) One (1) sledge hammer;
(26) One (1) chain saw with fourteen (14) inch bar;
(27) One (1) rounded point shovel, short handle;
(28) Two (2) wrecking or pry bars;
(29) One (1) minimum of one and one-half (1 1/2) ton cable puller or come-along;
(30) One (1) minimum of ten (10) ton manual hydraulic power supply;
(31) One (1) minimum of five (5) ton hydraulic jack;
(32) One (1) halligan tool, or equivalent;
(33) Two (2) rescue pulleys;
(34) 200 feet of utility rope;
(35) 100 feet of half-inch inch static rescue kernmantle rope;
(36) One (1), eight (8) foot ladder;
(37) Two (2) tarps or salvage covers;
(38) One (1), three (3) gallon gas can, safety type;
(39) Two (2), ten (10) pound fire extinguishers, ABC rated;
(40) One (1), two-point-five (2.5) KVA portable generator, or equivalent;
(41) One (1), fifty (50) foot section of No. 10 electrical extension cord, GFI equipped;
(42) One (1), 100 foot section of No. 10 electrical extension cord, GFI equipped;
(43) One (1), 100 foot section of No. 12 electrical extension cord, GFI equipped;
(44) Twelve (12) ANSI-approved traffic safety reflective vests, and
(45) Five (5), thirty-six (36) inch traffic cones with reflective collars (only required for rescue squads that perform vehicle extrication.);(1) Twelve (12) pairs of gloves;
(2) Twelve (12) pairs of safety goggles;
(3) Twelve (12) squad coats;
(4) Twelve (12) helmets;
(5) Twelve (12) pairs of boots with protective toe;
(6) Two (2) first aid kits, twenty-four (24) unit industrial type or equivalent;
(7) Two (2) full backboards;
(8) Two (2) half backboards;
(9) One (1) basket litter;
(10) Four (4) sections of fifteen (15) foot by one (1) inch tubular nylon webbing;
(11) One (1) splint kit, with half arm, half leg, full arm, full leg;
(12) One (1) twelve (12) foot tow chain;
(13) Two (2) hacksaw frames;
(14) Twelve (12) hacksaw blades;
(15) Two (2) pairs of pliers, minimum of eight (8) inch, slip joint;
(16) One (1) pair of locking pliers;
(17) Two (2) pairs wire cutters with insulated grips;
(18) One (1) center punch;
(19) Four (4) screwdrivers, flat blade, assorted sizes;
(20) Four (4) Phillips screwdrivers, assorted sizes;
(21) One (1) seat belt cutter;
(22) One (1) pair of minimum of eight (8) inch tin snips;
(23) One (1) claw hammer;
(24) Two (2) crescent wrenches;
(25) Two (2) twenty-four (24) inch pipe wrenches;

(26) Two (2) axes, single butt, four (4) pound head;
(27) One (1) mattock;
(28) One (1) eighteen (18) inch bow saw;
(29) One (1) pair of thirty-six (36) inch bolt cutters;
(30) One (1) eight (8) pound sledge hammer;
(31) One (1) minimum of fourteen (14) inch chain saw;
(32) One (1) rounded point shovel, (short handle);
(33) One (1) rounded point shovel, (long handle);
(34) Two (2) one half (1/2) inch by twelve (12) inch gooseneck wrecking bars;
(35) Two (2) one (1) inch by thirty (30) inch gooseneck wrecking bars;
(36) One (1) six (6) foot pry bar;
(37) One (1) minimum of one and one-half (1 1/2) ton come-along;
(38) One (1) air chisel with extra tank;
(39) One (1) minimum of ten (10) ton porta-power;
(40) One (1) minimum of five (5) ton hydraulic jack;
(41) One (1) thirty-six (36) inch, hooligan tool;
(42) Two (2) rescue pulleys;
(43) Four (4) minimum of fifty (50) foot sections of nylon rope;
(44) Two (2) minimum of 150 foot by one-half (1/2) inch static kernmantle rope;
(45) One (1) minimum of eight (8) foot straight ladder;
(46) Two (2) fire retardant blankets or salvage covers;
(47) Two (2) five (5) gallon gas cans, safety type;
(48) Two (2) minimum of ten (10) pound fire extinguishers, ABC rated;
(49) One (1) minimum of two-point-five (2.5) KVA portable generator;
(50) One (1) minimum of fifty (50) foot section of No. 10 electrical extension cord, GFI equipped;
(51) One (1) minimum of 100 foot section of No. 10 electrical extension cord, GFI equipped;
(52) One (1) minimum of 100 foot section of No. 12 electrical extension cord, GFI equipped;
(53) Four (4) portable (hand-held) radios;
(54) One (1) mobile radio with antenna per vehicle;
(55) One (1) encoder;
(56) One (1) base station radio with antenna; and
(57) One (1) base station radio tower.
(58) The requirement for one (1) encoder in subsection (55) of this section, one (1) base station radio with antenna in subsection (56) of this section, and one (1) base station tower in subsection (57) of this section is not required minimum new or replacement equipment if the rescue squad is dispatched by another agency, city or county public safety communications center.]

Section 3. The minimum equipment for a rescue squad specializing in water rescue and recovery operations not utilizing divers and not classified as swiftwater shall be:

(1) One (1) rigid hull boat, a minimum of (12) feet in length with U.S. Coast Guard required lighting and equipment (33 C.F.R. 183);
(2) One (1) boat motor, appropriate for boat;
(3) Two (2) marine-type gas tanks;
(4) One (1) boat anchor;
(5) One (1) boat trailer, appropriate for boat;
(6) Two (2) boat oars or paddles;
(7) Four (4), Type III personal flotation devices approved by the U.S. Coast Guard (33 C.F.R. 183.101-335);
(8) Two (2) electric lanterns or spot lights;
(9) Four (4) buoy markers;
(10) One (1) tool box;
(11) One (1) flat blade (slot head) screwdriver;
(12) One (1) Phillips head screwdriver;
(13) One (1) pair of pliers, slip joint;
(14) One (1) pair of locking pliers;
(15) One (1) pair of wire cutters;
(16) Two (2) grappling irons or drag hooks;
(17) Two (2) pike poles, shepherd's hooks, or boat hooks;
(18) 500 feet of half-inch diameter nylon or polypropylene rope, with rope bags;
(19) Two (2) water throw bags with seventy-five (75) feet of nylon rope for each bag;

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- (20) Two (2) rescue pulleys;
- (21) One (1) full backboard, basket litter, or equivalent;
- (22) One (1) first aid kit, twenty-four (24) unit industrial-type or equivalent; and
- (23) Two (2) flashlights, [(1) New or replacement equipment:
 - (a) One (1) john boat, in excess of nineteen (19) feet;
 - (b) One (1) minimum of twenty five (25) horse power boat motor;
 - (c) Two (2) marine type gas tanks;
 - (d) One (1) boat anchor;
 - (e) One (1) electronic depth finder;
 - (f) Four (4) Type III personal flotation devices approved by the United States Coast Guard;
 - (g) Two (2) electric lanterns;
 - (h) Four (4) buoy markers;
 - (i) Two (2) spot lights;
 - (j) One (1) tool box;
 - (k) One (1) flat blade screwdriver;
 - (l) One (1) Phillips head screwdriver;
 - (m) One (1) pair of pliers, minimum of eight (8) inch slip joint;
 - (n) One (1) pair of locking pliers;
 - (o) One (1) pair of eighteen (18) inch bolt cutters;
 - (p) One (1) bow saw;
 - (q) Four (4) pairs of rubberized gloves;
 - (r) Two (2) grappling irons or drag hooks;
 - (s) One (1) body bag;
 - (t) Two (2) pike poles or shepherd's hooks;
 - (u) Two (2) sections of minimum of 250 feet by one-half (1/2) inch nylon or polypropylene rope;
 - (v) Two (2) water throw bags with a minimum of fifty (50) feet of nylon rope for each bag;
 - (w) Two (2) minimum of 250 foot line bags;
 - (x) Two (2) rescue pulleys;
 - (y) One (1) full backboard;
 - (z) One (1) first aid kit, twenty-four (24) unit industrial-type or equivalent;
 - (aa) One (1) basket litter;
 - (bb) Two (2) signal lights; and
 - (cc) Two (2) flash lights.
- (2) Replacement equipment only:
 - (a) One (1) vehicle dedicated to water rescue and recovery;
 - (b) One (1) john boat, sixteen (16) foot or larger;
 - (c) One (1) boat motor with a minimum capacity of fifteen (15) horse power;
 - (d) One (1) boat trailer; and
 - (e) Two (2) boat oars.]

Section 4. The minimum equipment for a rescue squad specializing in water rescue and recovery operations utilizing divers shall be:

- (1) For Level 1:
 - (a) One (1) full or partial face mask suitable for snorkeling;
 - (b) One (1) snorkel;
 - (c) One (1) pair of swim fins; and
 - (d) Appropriate swimwear and snorkeling shoes for the environment;
- (2) For Level 2:
 - (a) One (1) full face mask per certified diver;
 - (b) One (1) drysuit per certified diver; and
 - (c) One (1) independent back-up air supply;
- (3) For Level 3, in addition to the equipment established in paragraph (b) of this subsection, at a minimum:
 - (a) Surface supplied air and redundant air supply; and
- (4) For Level 4, in addition to the equipment established in paragraphs (b) and (c) of this subsection, at a minimum:
 - (a) Fully encapsulated HAZMAT drysuit.
- (5) In addition to the equipment established in subsection (1) of this section, all squads under this section shall have the minimum equipment listed in Section 3 of this administrative regulation. [(1) New or replacement equipment:
 - (a) One (1) mask per certified diver;
 - (b) One (1) pressure gauge per certified diver;
 - (c) One (1) knife per certified diver;

- (d) One (1) wet suit per certified diver;
- (e) One (1) snorkel per certified diver;
- (f) One (1) buoyancy compensator per certified diver;
- (g) One (1) weight belt per certified diver;
- (h) One (1) depth gauge per certified diver;
- (i) One (1) waterproof flashlight per certified diver;
- (j) One (1) pair of fins per certified diver;
- (k) One (1) air tank per certified diver; and
- (l) One (1) regulator per certified diver.
- (2) Replacement equipment only:
 - (a) The water rescue and recovery equipment established in Section 3 of this administrative regulation;
 - (b) Two (2) extra tanks per certified diver;
 - (c) One (1) dry suit per certified diver;
 - (d) Three (3) dive flags; and
 - (e) One (1) underwater radio communications system.]

Section 5. The minimum equipment for a rescue squad specializing in cave rescue shall be:

- (1) One (1) litter, basket style;
- (2) One (1) litter, flexible, full length, vertical lift capability;
- (3) One (1) splint kit;
- (4) Thirty (30) carabiners, locking, D's;
- (5) Twelve (12) rescue helmets, with hands-free or helmet lighting;
- (6) Four (4) friction devices, G-rated, 5 bar minimum, with tie-off;
- (7) Two hundred (200) feet of webbing;
- (8) Two (2) pulleys, two (2) inch, single, prusik minding;
- (9) Four (4) pulleys, two (2) inch double, prusik minding;
- (10) One (1) pulley - knot passing;
- (11) Four (4) sets of prusik cords, matched for pulleys;
- (12) Six (6) edge protection, appropriate for cave environment;
- (13) One (1) flexible ladder, fifteen (15) feet;
- (14) One (1) swivel;
- (15) One (1) radium load release hitch, or equivalent;
- (16) Six (6) rope grabs, mechanical;
- (17) Three (3) ropes, seven-sixteenths (7/16), two hundred (200) static kernmantle lifeline;
- (18) One (1) rope, ten and five-tenths (10.5) mm, or 7/16 inches, 150 feet, dynamic kernmantle lifeline (UIAA approved);
- (19) 400 feet, half-inch diameter static kernmantle lifeline;
- (20) 200 feet, half-inch diameter static kernmantle lifeline; and
- (21) Six (6) rope bags, with drain hole or waterproof. [(1) New or replacement equipment:
 - (a) Twenty-four (24) minimum of twenty (20) feet by one (1) inch tubular nylon webbing;
 - (b) Six (6) pairs of rappelling gloves;
 - (c) Six (6) rappelling, climbing seat, or full-body harnesses;
 - (d) Two (2) minimum of 300 feet by one-half (1/2) inch static kernmantle rope;
 - (e) Two (2) minimum of 200 feet by seven-sixteenths (7/16) inch static kernmantle rope;
 - (f) Two (2) minimum of 300 feet by seven-sixteenths (7/16) inch static kernmantle rope;
 - (g) Minimum of 200 feet of accessory cord;
 - (h) Eight (8) rope bags;
 - (i) Six (6) rescue pulleys;
 - (j) Six (6) brake bar rappel racks, six (6) bar type;
 - (k) Twenty (20) large "D" locking carabiners, steel;
 - (l) Twenty (20) large "D" offset locking carabiners, steel;
 - (m) Ten (1) extra large "D" offset locking carabiners, steel;
 - (n) Eighteen (18) mechanical ascenders;
 - (o) Four (4) figure-eight descenders;
 - (p) One (1) SKED stretcher or equivalent;
 - (q) Two (2) miles of field phone wire;
 - (r) Three (3) field phones for underground communications;
 - (s) Two (2) waterproofed first aid kits, twenty-four (24) unit industrial type or equivalent;
 - (t) One (1) splint kit with half arm, half leg, full arm, full leg;
 - (u) One (1) set assorted sizes of rigid or semirigid cervical collars;
 - (v) One (1) Kendrick Extrication Device or Oregon spine splint

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or equivalent; and

(w) Three (3) wool blankets, or one (1) synthetic sleeping bag and vapor barrier.

(2) Replacement equipment only:

(a) One (1) vehicle dedicated to cave rescue;

(b) One (1) basket litter;

(c) Six (6) rappelling helmets, UIAA approved, with helmet head lamps;

(d) Six (6) sturdy caving packs;

(e) Twelve (12) rugged waterproof flashlights with extra batteries and bulbs;

(f) Three (3) field phones for underground communications;

(g) 4,000 feet of field phone wire;

(h) One (1) 200 foot length of seven sixteenths (7/16) inch static kernmantle rope;

(i) Four (4) large "D" locking carabiners, steel;

(j) One (1) figure-eight descender with ears; and

(k) Twelve (12) twenty (20) feet by one (1) inch tubular nylon webbing.]

Section 6. The minimum equipment for a rescue squad specializing in high angle rescue service shall be:

(1) Six (6) helmets with chin straps and designed for working at heights and meeting ANSI Z89.1-2014 or equivalent standard;

(2) Six (6) pairs of gloves, styled for rope rescue work;

(3) Six (6) flashlights designed for hands-free operation;

(4) Four (4) full body (Class III) harnesses designed for rope rescue work and meeting ANSI Z359.11 NFPA 1983, or equivalent;

(5) 400 feet of half-inch diameter rescue rope;

(6) 300 feet of webbing;

(7) Ten (10) sets of prusik or utility cord;

(8) Two (2) load release straps or web system configured for load release systems;

(9) Two (2) pick-off straps;

(10) Two (2) etrier, ladder, or multi-loop straps;

(11) Six (6) rope storage bags;

(12) Thirty (30) locking carabiners;

(13) Four (4) anchor plates;

(14) Six (6) rescue pulleys

(15) Four (4) friction devices;

(16) Six (6) rope grabs or ascenders;

(17) One (1) large knot passing pulley;

(18) One (1) victim seat or harness;

(19) One (1) litter or basket;

(20) One (1) litter harness;

(21) One (1) litter patient tie in system;

(22) Two (2) edge protectors; and

(23) One (1) radium load release hitch, or equivalent. [(1) New or replacement equipment:

(a) Four (4) rappelling helmets UIAA approved;

(b) Twelve (12) minimum of fifteen (15) feet by one (1) inch tubular nylon webbing;

(c) Four (4) pairs of rappelling gloves;

(d) Four (4) helmet head lamps;

(e) Four (4) rappelling, climbing seat, or full-body harnesses;

(f) Four (4) rugged waterproof flashlights with extra batteries and bulbs;

(g) Two (2) minimum of 300 feet by one-half (1/2) inch static kernmantle rope;

(h) Two (2) minimum of 200 feet by seven sixteenths (7/16) inch static kernmantle rope;

(i) Two (2) minimum of 300 feet by seven sixteenths (7/16) inch static kernmantle rope;

(j) Six (6) rope bags;

(k) Four (4) rescue pulleys;

(l) Two (2) brake bar rappel racks, six (6) bar type;

(m) Ten (10) large "D" locking carabiners, steel;

(n) Ten (10) large "D" offset locking carabiners, steel;

(o) Twelve (12) mechanical ascenders;

(p) Four (4) figure-eight descenders with ears;

(q) One (1) SKED stretcher or equivalent;

(r) Two (2) waterproofed first aid kits, twenty-four (24) unit industrial type or equivalent;

(s) One (1) splint kit with half-arm, half-leg, full-arm, full-leg;

(t) One (1) set assorted sizes of rigid or semirigid cervical collars;

(u) One (1) Kendrick Extrinsic Device or Oregon spine splint or equivalent; and

(v) Three (3) wool blankets or one (1) synthetic sleeping bag with vapor barrier.

(2) Replacement equipment only:

(a) One (1) vehicle dedicated to high angle rescue;

(b) One (1) basket litter;

(c) One (1) 200 foot length of seven sixteenths (7/16) inch static kernmantle rope;

(d) Four (4) large "D" locking carabiners, steel;

(e) One (1) figure-eight descender with ears; and

(f) Four (4) fifteen (15) feet by one (1) inch tubular nylon webbing.]

Section 7. The minimum equipment for a rescue squad specializing in swiftwater [each member of a search dog rescue squad specializing in a search for lost, trapped or missing persons] shall be:

(1) All equipment listed in Section 3(4) through (23) of this administrative regulation;

(2) Six (6) Personal Flotation Devices (PFD), Class V, with tethers;

(3) Six (6) rescue or dive knives;

(4) Six (6) whistles;

(5) Six (6) vented helmets suitable for water rescue;

(6) 400 feet of 7/16 inches polypropylene or nylon rope;

(7) One (1), twelve (12) foot self-bailing, inflatable rescue raft or inflatable rescue boat, or equivalent;

(8) Six (6) seventy-five (75) foot throw bags (in addition to those required by Section 3 of this administrative regulation);

(9) Four (4) dry suits;

(10) Four (4) paddles; and

(11) 100 feet of messenger line or rope. [(1) Replacement equipment:

(a) One (1) rescue vest;

(b) One (1) pair of leather gloves;

(c) One (1) pair of boots, lug soles;

(d) One (1) fanny pack or equivalent;

(e) One (1) rescue helmet with headlamp;

(f) Three (3) one (1) quart canteens with belt;

(g) Three (3) flashlights with extra batteries;

(h) One (1) compass, two (2) degree increments.

(2) New or replacement equipment only: none.]

Section 8. The minimum equipment for a single-handler rescue squad utilizing dogs and specializing in a search for lost, trapped, or missing persons [search and rescue squad specializing in a search for lost, trapped or missing persons] shall be:

(1) Three (3) flashlights with extra batteries;

(2) One (1) GPS unit, capable of U.S. Geographic Service (USGS) data; and

(3) Two (2) rolls, 100 feet each flagging or surveyor tape.

(4) One (1) portable radio with two (2) batteries or battery packs and one (1) charger per radio (or equivalent multi-charger unit). This requirement may be satisfied by the handler being

accompanied by another individual with appropriate communications. [(1) New or replacement equipment:

(a) One (1) vehicle dedicated to search and rescue;

(b) One (1) minimum of two and five tenths (2.5) KVA portable generator with lights;

(c) One (1) mobile radio with antenna;

(d) One (1) basket litter;

(e) Laminated topographical maps of response area, 1:24000;

(f) Twelve (12) two (2) way portable (hand-held) radios;

(g) One (1) first aid kit, twenty-four (24) unit industrial type or equivalent; and

(h) Twelve (12) rescue helmets with headlamps.

(2) Replacement equipment only: none.]

Section 9. The core equipment for a rescue squad specializing

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in a search for lost, trapped, or missing persons shall be:

- (1) One (1) basket litter;
- (2) Topographical maps of primary response area, 1:24000m (may be electronic);
- (3) Two (2) full backboards;
- (4) One (1) basket litter;
- (5) 100 feet of one (1) inch diameter tubular nylon webbing;
- (6) One (1) first aid kit, twenty-four (24) unit industrial type or equivalent; and
- (7) Twelve (12) reflective or high-visibility vests or clothing.

Section 10. The core equipment for an equine rescue squad utilizing horses (equines) shall be:

- (1) All equipment listed in Section 9 of this administrative regulation;
- (2) Fifty (50) feet, 1,850-lb rated braided rope;
- (3) One (1) equine first aid kit;
- (4) Two (2) portable corrals;
- (5) Two (2) carabiners – locking;
- (6) Two (2) USTM or SEI certified equine rider helmets;
- (7) Two (2) equine tack mounted flashlights;
- (8) Two (2) equine care multi-purpose tools; and
- (9) Two (2) sets of reflective tack for identification.

Section 11. The core communications equipment established in this section shall be required for rescue squads, in addition to any other minimum equipment required for that rescue squad by any other section of this administrative regulation.

(1) A rescue squad that performs light duty rescue or vehicle crash extrication functions shall have:

- (a) One (1) base radio;
- (b) One (1) antenna for the base radio;
- (c) One (1) radio antenna tower or functional alternative structure for elevating the base radio antenna at least fifty (50) feet above ground level;
- (d) One (1) mobile radio with mobile antenna for the rescue squad's required vehicle, if the vehicle is a motor vehicle; and
- (e) Six (6) portable radios with two (2) batteries or battery packs and one (1) charger per radio (or equivalent multi-charger unit).

(2) A rescue squad providing search and rescue functions for lost or missing persons (except a search team utilizing dogs covered by Section 8 of this administrative regulation and water rescue, covered by Sections 3, 4, and 7 of this administrative regulation), shall have:

- (a) One (1) mobile radio with mobile antenna for the rescue squad's required vehicle, if the vehicle is a motor vehicle; and
- (b) Six (6) portable radios with two (2) batteries or battery packs and one (1) charger per radio (or equivalent multi-charger unit).

(3) All requirements for base and mobile radios and antennas established by this section shall include all required signal transmission line or coaxial cable, connectors, power supplies, and other ancillary items required to render the radio functional for voice communications.

(4) Any portable (hand-held) or mobile radio owned by another agency, or by a city or county, and assigned to the rescue squad for its exclusive use may be counted toward the requirement established by subsection (1)(c) and (f) of this section, regardless of if the rescue squad does not hold actual ownership of the radios.

(5) A rescue squad that performs light duty rescue or vehicle crash extrication functions shall not be required to have the equipment required by subsection (1)(a) through (c) of this section if dispatch services for the rescue squad are provided by another agency or by a public safety dispatch center.

(6) Any rescue squad receiving rescue aid funds for the purchase of radio equipment shall, prior to expending the funds, provide the Division of Emergency Management with documentation verifying the completion of a written agreement or memorandum of understanding between the rescue squad and the Kentucky State Police, authorizing the rescue squad and its members to use the Kentucky Mutual Aid and Interoperability (KMAI) radio frequencies for mutual aid and multi-agency

interoperability purposes.

(7) Any radio purchased with rescue aid funds shall comply with all standards established by the Kentucky Wireless Interoperability Executive Committee (KWIEC), or any lawful successor to that body, including a project review as required by KRS 42.738.

Section 12. Sections 2 through 11 of this administrative regulation, unless otherwise indicated, shall be the minimum for a rescue squad based upon the mission or missions included in the affiliation agreement, and shall not include equipment personally owned by a rescue squad member, including headgear, eyewear, clothing, footwear, handwear, personal packs, and lighting sources.

(1) In the case of equine teams and K9 teams, most, if not all, animal tack, gear, harnesses, as well as the animal itself, will be personally owned by the member.

(2) All rescue squads shall ensure the provision of any equipment required to ensure compliance with relevant standards under the Occupational Safety and Health Administration (OSHA), including high-visibility clothing and protective headgear, eyewear, clothing, footwear, and handwear, whether squad provided or personally owned, depending upon the mission.

Section 13. Unless otherwise listed in another section of this administrative regulation, the following minimum criteria shall apply to webbing, rescue ropes, carabiners, rescue pulleys, harnesses, and high angle rescue harnesses purchased after July 1, 2017 with rescue aid funds, and to any item purchased by rescue squads using funds from any source after July 1, 2017 if the item in question is used to meet the requirements of any section of this administrative regulation:

(1) All carabiners required by this administrative regulation that are not to be used for a lifeload shall have a rated strength along the long axis, with the gate closed and secured, of not less than twenty-seven (27) kiloNewtons (3,034 lbf). These items may also be called "T" rated under NFPA 1983, Selected Equipment Performance Requirements – Carabiners;

(2) All carabiners required by this administrative regulation that may be used for a rescue or lifeload shall have a rated strength along the long axis, with the gate closed and secured, of not less than forty (40) kiloNewtons (8,992 lbf). These items may also be called "G" rated under NFPA 1983, Selected Equipment Performance Requirements – Carabiners;

(3) All pulleys required by this administrative regulation that are listed or described as "rescue" pulleys but that are not also listed or described as "large" shall have a minimum rated strength of twenty-two (22) kiloNewtons (4,946 lbf);

(4) All pulleys required by this administrative regulation that are listed or described as "rescue" pulleys and that are also listed or described as "large" shall have a minimum rated strength of thirty-six (36) kiloNewtons (8,093 lbf);

(5) All mechanical ascenders required by this administrative regulation shall hold a test load of five (5) kiloNewtons (1,124 lbf) without causing permanent damage to the rope;

(6) All rope grabs required by this administrative regulation shall hold a test load of eleven (11) kiloNewtons (2,473 lbf) without causing permanent damage to the rope;

(7) Mechanical descenders, including figure 8 descenders and rappel racks, shall withstand a load of thirteen and five-tenths (13.5) kiloNewtons (3,34 lbf) without failure;

(8) Nylon webbing required by this administrative regulation shall be one (1) inch or greater in diameter, with a minimum breaking strength of seventeen and eight-tenths (17.8) kiloNewtons (4,000 lbf);

(9) Rescue rope with a minimum required diameter of 7/16 inch required by this administrative regulation shall have a minimum breaking strength of twenty (20) kiloNewtons (4,496 lbf);

(10) Rescue rope with a minimum required diameter of one half (1/2) inch required by this administrative regulation shall have a minimum breaking strength of forty (40) kiloNewtons (8,992 lbf);

(11) Rescue rope required by this administrative regulation that is listed or described as "static" shall have a maximum elongation,

if loaded at ten (10) percent of its rated minimum breaking strength, of ten (10) percent or less of its total length;

(12) Helmets required by this administrative regulation for use in high angle rescue service shall be designed and intended for climbing, rappelling, working at heights, or high angle rescue use and shall be certified or approved under the standards of the UIAA, NFPA, ANSI, or CE;

(13) Harnesses required by this administrative regulation shall be deemed by the manufacturer to be suitable for rappelling, climbing, working at heights, or high angle rescue and shall be certified or approved under the standards of the UIAA, NFPA, ANSI, or CE;

(14) Manufacturers' written or published specifications for the equipment established in subsections (1) through (13) of this section shall be sufficient to establish compliance with this section. A rescue squad shall not be required to conduct independent testing to verify the compliance of equipment where written or published specifications from the equipment manufacturer indicate that the equipment is compliant with this section;

(15) A rescue squad may request rescue aid funds to replace any equipment listed or referenced in subsections (1) through (13) of this section that has a maximum safe service life specified by the manufacturer, upon the expiration of the equipment's maximum service life, without need to demonstrate that the equipment is otherwise unserviceable. The equipment may be requested as new minimum equipment as established in this administrative regulation; and

(16) Any equipment replaced under the provisions of subsection (15) of this section shall be:

(a) Returned to the Division of Emergency Management for disposal or for use in nonlife safety training activities; or

(b) Retained by the rescue squad, with the written approval of the Director of the Division of Emergency Management, for use only in non-life safety training activities. Any item of equipment retained for training use under the provisions of this sub-section shall be clearly and permanently marked to indicate that it is for non-life safety training use only and shall not be used in any life safety application.

Section 14. If a rescue squad engages in more than one (1) specialized rescue squad activity or general rescue squad activity, the equipment listed for rescue squads specializing in water rescue and recovery, water rescue and recovery utilizing divers, high angle rescue service, cave rescue, or search for lost, trapped, or missing persons, shall not have to be duplicated in order to meet the requirements of this administrative regulation. The provisions of this section shall not apply to radio communications equipment required by Section 11 of this administrative regulation, which shall be required in addition to any other equipment required by other sections of this administrative regulation.

Section 15. The capacities and sizes of equipment, as well as the number of units of each item of equipment, established within this administrative regulation are minimum requirements. Unless specifically prohibited by the text of the applicable subsection, the requirement for any particular item of equipment may be met by an item of the same type having greater size, length, capacity, or capability than the stated minimum required by this administrative regulation.

Section 16. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Mutual Aid and Interoperability (KMAI) radio frequencies", October 4, 2011; and

(b) "Mutual Aid and Interoperability Memorandum of Understanding for the Commonwealth of Kentucky", October 1, 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Military Affairs, Division of Emergency Management, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [When a rescue squad engages in more than one (1) specialized rescue squad

activity or general rescue squad activity, the equipment listed as new or replacement equipment or replacement only equipment for rescue squads specializing in water rescue and recovery, water rescue and recovery utilizing divers, high angle rescue, cave rescue, or search for lost, trapped, or missing persons, shall not have to be duplicated in order to meet the requirements of this administrative regulation.]

STEVEN P. BULLARD, Director, Administrative Services

APPROVED BY AGENCY: November 22, 2017

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 26, 2018, at 1 p.m., at 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601-6168 at the Emergency Operations Center in Room 202. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2018. 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: Mr. Steven P. Bullard, Director of Administrative Services, Office of Management and Administration, Department of Military Affairs, phone 502-607-1738, fax 502-607-1240, email steven.p.bullard.nfg@mail.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Steven P. Bullard

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum equipment requirements for a rescue squad.

(b) The necessity of this administrative regulation: This regulation is critical to provide guidance in the execution of this program pursuant to the basic law, specifically by identifying the minimum equipment requirements for a rescue squad.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 39F.120(12) requires a rescue squad to have the minimum equipment necessary to perform a rescue mission. KRS 39F.120(12) requires the division to promulgate an administrative regulation establishing minimum equipment for a rescue squad. This administrative regulation establishes the minimum equipment requirements for a rescue squad.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation codifies in detail the minimum equipment requirements for a rescue squad, as coordinated through the Kentucky Emergency Response Commission.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes outdated information and establishes technical updates to accurately define the current minimum equipment requirements for a rescue squad.

(b) The necessity of the amendment to this administrative regulation: This amendment was necessary to bring the administrative regulation up to date with current Statutory Authority and compliance practices. Members of the Commonwealth's 114 state-affiliated rescue teams requested this update to allow them to incorporate new technology. The old minimum equipment list was dated 20 years and required updating.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment brings the administrative regulation up to date with current Statutory Authority, compliance and equipment practices.

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(d) How the amendment will assist in the effective administration of the statutes: This amendment brings the administrative regulation up to date with current Statutory Authority and compliance practices, allowing for the proper purchases and maintenance of response equipment to be in compliance with the applicable Kentucky Revised Statutes and outlining current procedures for funding requests.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 114 state-affiliated rescue teams across the Commonwealth. These teams exist under the authority of County Judge Executives and Emergency Management Directors. The Kentucky Revised Statutes require every county to have a Search and Rescue Coordinator (normally the Emergency Management Director, unless directed otherwise by the County Judge Executive). (KRS 39F.020 – Rescue squads may be formed and duly authorized to perform in the public interest. Authorization to operate within a jurisdiction may be granted by the chief elected official of each urban-county government, charter county government, county, or city which the squad proposes to serve. Rescue squads shall have a formal affiliation with the local disaster and emergency services organization. The statement of affiliation shall be renewed annually.)

(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 state's rescue squads will have to inventory their equipment, identify shortfalls in equipment, and purchase or otherwise obtain the equipment required to ensure their inventories meet the requirements of this regulation. The rescue squad must have the minimum required equipment in this regulation in order to conduct operations related to the associated rescue squad activity.

(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 direct answer to this question, as costs vary from county to county. Teams that perform Water Rescue and Recovery and High-Angle Rescue would have higher costs to purchase the required boats, motors, dive equipment, ropes, repelling gear, etc. than teams with less technical rescue requirements. A general estimate of funding for all 114 teams in the Commonwealth would be approximately \$1.3M – an average of \$11,404 per team. The Commonwealth provides \$80,000 annually under the Rescue Air Program to assist in funding Search and Rescue teams to meet the specific requirements established in the KRS. However, obviously the amount of requested grant funds far exceeds the amount provided by the Commonwealth to fund the grant requests. The KRS directs that state affiliated teams may not charge for their services. In addition to the grant program above (note that 27 teams requested a total of \$330,000 in grants for State Fiscal Year 2018), they may conduct fund raising events to raise funds to support the purchase of equipment. Clearly there is staff time required to manage the programs and equipment for each county, but we cannot directly define that cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will accurately reflect statutory guidance, simplifying compliance. In addition, it will enable counties to ensure they are properly equipped to support their Search and Rescue teams.

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

(a) Initially: As noted in (4)(b) above, a general estimate of funding for all 114 teams in the Commonwealth is approximately \$1.3M – an average of \$11,404 per team. Clearly there is staff time required to manage the programs and equipment for each county, but we cannot directly define that cost.

(b) On a continuing basis: Annual staff time to monitor, maintain and acquire related equipment, and to apply for grants under the Rescue Air Program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding is internal to each county. The Commonwealth provides \$80,000 annually under the Rescue Air Program to assist in funding Search and Rescue teams to meet the specific requirements established in the KRS. The KRS directs that state affiliated teams may not charge for their services. In addition to the grant program above (note that 27 teams requested a total of \$330,000 in grants for State Fiscal Year 2018), they may conduct fund raising events to raise funds to support the purchase of equipment.

(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 required or intended.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees or fee increases are established.

(9) TIERING: Is tiering applied? Tiering was not used. The regulations will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify or reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections or other compliance activities, or delay compliance timetables.

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 Military Affairs, which administers the Rescue Air Grant program, and the 114 state-affiliated rescue teams across the Commonwealth. These teams exist under the authority of County Judge Executives and Emergency Management Directors. The Kentucky Revised Statutes require every county to have a Search and Rescue Coordinator (normally the Emergency Management Director, unless directed otherwise by the County Judge Executive). (KRS 39F.020 – Rescue squads may be formed and duly authorized to perform in the public interest. Authorization to operate within a jurisdiction may be granted by the chief elected official of each urban-county government, charter county government, county, or city which the squad proposes to serve. Rescue squads shall have a formal affiliation with the local disaster and emergency services organization. The statement of affiliation shall be renewed annually.)

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 39A.050, 39A.070, 39F.100, 39F.110, 39F.120, 39F.130, 39F.140, 39F.150, 338.031.

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 general estimate of funding for all 114 teams in the Commonwealth is approximately \$1.3M – an average of \$11,404 per team. Clearly there is staff time required to manage the programs and equipment for each county, but we cannot directly define that cost.

(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? A general estimate of funding for all 114 teams in the Commonwealth is approximately \$1.3M – an average of \$11,404 per team. Clearly there is staff time required to manage the programs and equipment for each county, but we cannot directly define that cost.

(d) How much will it cost to administer this program for subsequent years? There is staff time required to manage the

programs and equipment for each county, including equipment maintenance and purchase of replacement equipment, but we cannot directly define that cost, which will be highly variable by Search and Rescue team. Cost will be significantly less than the average start-up (initial acquisition) cost of \$11,404.

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

Revenues (+/-): N/A

Expenditures (+/-): Well under \$10,000.

Other Explanation: Annual costs will be highly variable by Search and Rescue team.

**DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(Amendment)**

106 KAR 1:390. Search and rescue training requirements.

RELATES TO: KRS 39F.040(3), 39F.050(3)(c), 39F.070(3)(c), 39F.120(8), 39F.200, 39F.210

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3), 39F.200, 39F.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39F.200 and 39F.210 authorize the division to establish minimum training requirements for persons engaged in search and rescue activities. This administrative regulation establishes minimum training requirements for a general rescue squad, or a specialized rescue squad, and a local search and rescue coordinator.

Section 1. Definition[Definitions]. "Successfully complete" means to attend or participate in search and rescue training and acquire and submit to a local director a copy of an instructor-provided training completion certificate or record.

Section 2. Minimum training requirements for a local search and rescue coordinator, or a search dog handler, shall be to successfully complete:

(1) A twenty (20) hour division offered[~~or approved~~] search and rescue course or equivalent;

(2) A twenty (20) hour division offered[~~or approved~~] search management course; and

(3) An incident command or incident management system (ICS or IMS) training course[~~approved by the division~~] of at least eight (8) hours covering the eight (8) component elements of an incident command system or incident management system, to include practical application, and to include a search and rescue module.

Section 3. The minimum training requirements for a single-handler rescue squad utilizing dogs and specializing in a search for lost, trapped, or missing persons shall be:

(1) An incident command training course to the level of ICS 200; and

(2) A twenty (20) hour division offered search and rescue course or equivalent.

Section 4. Minimum training requirements for members of a rescue squad specializing in cave rescue shall be to successfully complete[~~the following~~]:

(1) The National Cave Rescue Commission (NCRC) offered[~~and approved~~] Cave Rescue Orientation Course or its equivalent[~~approved by the division~~]; and

(2) A National Cave Rescue Commission offered[~~and approved~~] Cave Operations and Management Seminar or its equivalent[~~approved by the division~~] for squad members who manage response to cave rescues.

Section 5[4]. Minimum training requirements for members of a search and rescue squad specializing in search for lost, trapped, or missing persons shall be to successfully complete:

(1) An incident command training course, to the level of ICS 200; and

(2) A twenty (20) hour division offered search and rescue course or equivalent. This requirement shall apply to all rescue squads that utilize dogs, including a single-handler rescue squad as established in Section 3 of this administrative regulation[~~the requirements established in Section 2 of this administrative regulation~~].

Section 6[5]. Minimum training requirements for members of a rescue squad specializing in dive rescue and recovery shall be:

(1) Certification in open water by one (1) of the following nationally recognized organizations or equivalents:

(a) International Diving Educators Association (IDEA);

(b) Multinational Diving Educators Association (MDEA);

(c) National Association of Underwater Instructors (NAUI);

(d) National Association of SCUBA Diving Schools (NASDS);

(e) National Association of SCUBA Instructors (NASI);

(f) Professional Association of Diving Instructors (PADI);

(g) Professional Diving Instructors Corporation (PDIC);

(h) SCUBA Schools International (SSI);

(i) United States Navy (USN);[~~]~~

(j) YMCA National SCUBA Program (YMCA); or

(k) Dive Rescue International; and[~~]~~

(2) Annually, a minimum of ten (10) hours underwater training in rescue diving techniques developed and administered by the individual organization specializing in water rescue utilizing divers.

Section 7[6]. A rescue squad specializing in urban search and rescue shall meet standards developed by the Federal Emergency Management Agency, Urban Search and Rescue Program, or equivalent[~~, approved by the division~~].

Section 8[7]. The minimum training, testing, and certification requirements for[~~the~~] search dog evaluators, search dogs, and handlers shall be:

(1) The handler shall be at least eighteen (18) years of age[~~]~~;

(2) Annual testing of search dogs[~~shall~~] include[~~but not be limited to~~] the following:

(a) The dog shall demonstrate its ability to overcome obstacles;

(b) The dog shall not be trained in attack methods;

(c) The dog shall not show aggression to other dogs or individuals;

(d) The dog shall obey verbal or nonverbal commands by the handler;

(e) The dog shall give a recognizable found-victim indication or alert;

(f) The dog shall demonstrate its obedience by performing a long-sit or down;

(g) The dog shall be left in a sitting position and at the direction of the evaluator; the handler shall down his or her dog with a hand or voice signal;

(h) During an open terrain search (air scenting) the handler and dog shall be given a minimum of one (1) hour to locate one (1) subject in fifteen (15) to twenty-five (25) acres of a forested area.[~~find a hidden subject;~~]

1. The handler shall provide a search plan as well as a description of the dog's alert of finding the subject to the evaluators.

2. The team shall pass all requirements.

3. This test may be conducted day or night, depending on conditions; and

(i) During a hasty search (air scenting), the team shall have a maximum of fifteen (15) minutes to perform this test.

1.[.] The dog shall locate a victim within twenty (20) feet of a quarter-mile (1/4 mi.)[~~the~~] trail;

2. The location of the subject shall be unknown to the handler;

3. The handler shall provide a description of the dog's alert of finding the subject to the evaluators;

4. The handler shall not leave the trail until the dog provides its alert.

(3) Testing for tracking or trailing dogs[~~bloodhounds~~] shall consist of at least the following: (a) A trailing dog team shall successfully complete a four (4) hour old, one (1) mile long trail

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and establish the correct direction of travel within the first fifty (50) yards.

1. The trail shall be in a contaminated area with more than two (2) turns with multiple cross tracks;

2. The dog team shall be presented with a scent article such as a sock, shoe, hat, or jacket, in a clear plastic or paper bag located in a marked minimum four (4) foot square area. Both the square and the bag containing the scent article shall be identified so that both items can be matched;

3. The trail layer shall have the matching identifying marking, material, or signage identifying the trail layer as the matching subject of the scent article bag that was presented to the dog team, ensuring that the dog team has located the correct subject;

4. The dog team will have one (1) hour to complete this test;

(b) Testing for tracking dogs shall consist of a minimum of three (3) to a maximum of five (5) of the following terrains:

1. Field;

2. Gravel;

3. Leaves;

4. Creek bed;

5. Dirt;

6. Concrete;

7. Woods;

8. Asphalt; and

9. High grass; and

(c) The track shall be a minimum of thirty (30) minutes and a maximum of one (1) hour old, with a minimum length of 700 yards and a maximum length of 900 yards.

1. There shall be one (1) scent article placed along the track and the dog shall locate the article;

2. The tracking team shall be given a starting point by the evaluator;

3. There shall be one (1) cross track laid. This person shall remain in the area of the actual track, but at a distance of 200 yards from the actual track-layer. This cross-track may be laid prior to, or after, the actual track;

4. There shall be a forty-five (45) minute time limit to complete the track;

5. The team shall successfully pass this certification by locating the actual track-layer, locating the scent article placed along trail, and staying within 10 (ten) feet of the track;

6. GPS (Global Positioning System) shall be used to determine track accuracy and distance;

7. If it is obvious to the evaluator the dog is not tracking, the evaluator may stop the test; ~~three (3) scent trails shall be established, one (1) scent trail four (4) hours old, one (1) scent trail twelve (12) hours old, and one (1) scent trail twenty-four (24) hours old, identified by the evaluators at the time of the test.~~

(4) The following shall be the ~~are~~ minimum testing requirements for search dog handlers:

(a) The handler and dog shall be compatible;

(b) The handler shall be able to recognize when his or her dog is alerting on human scent;

(c) The handler shall inform the evaluators of the characteristics of the dog's alert; and

(d) The handler shall demonstrate his or her ability to work and control ~~the~~ ~~their~~ dog; ~~[-]~~

(5) Testing of search dogs shall be conducted annually between August 1 and November 30; ~~[-]~~

(6) The organization, association, or handler shall submit a letter requesting to be tested to the Division of Emergency Management that contains ~~the following~~:

(a) ~~The~~ Full name of the organization, association or handler requesting to be tested;

(b) ~~The~~ Address for correspondence with the organization, association, or handler requesting to be tested; and

(c) ~~The~~ Name of the individual who shall serve as the point of contact for the organization, association, or handler requesting to be tested; ~~[-]~~

(7) If it is determined during the test by the search dog evaluator that a dog fails to alert on an obvious find or fails to meet the requirements as ~~established~~ ~~identified~~ in subsections (2) and (3) of this section, the handler and dog shall be given one (1)

opportunity to retest ~~the~~ ~~their~~ dog during the same test date.

(a) In the event of a retest, a different search dog evaluator shall be utilized for the retest; ~~[-]~~

(b) Search dog evaluators shall not evaluate any dog or handler from their organization, association, or group; ~~[-]~~

(c) If the dog or handler fails the retest, they may retest at the next annual testing date; ~~[-]~~

(8) Evaluators utilized for the conduct of all search dog tests shall be appointed by the state search and rescue coordinator from a list of individuals supplied by the search dog associations, organizations, or groups headquartered in Kentucky or individual search dog handlers residing in Kentucky.

(a) A letter of recommendation for search dog evaluators from search dog organizations, associations, or groups, or individual search and rescue dog handlers for search dog evaluators shall be submitted annually to the search and rescue coordinator no later than 30 July; ~~[-]~~

(b) A search dog test evaluator shall have at least a minimum of five (5) years' experience and have met all training requirements as ~~established~~ ~~identified~~ in Section 2 of this administrative regulation; ~~[-]~~

(9) An individual, agency, organization, or association, public or private, who provides or who advertises to provide search dogs for any search and rescue mission shall comply with Section 2 of this administrative regulation and subsections (2) and (3) of this section.

(a) An individual, agency, organization, or association, public or private, who has not met the requirements of Section 2 of this administrative regulation and subsections (2) and (3) of this section shall be considered an "apprentice"; ~~[-]~~

(b) The decision to utilize any "apprentice" dog handler or dog on a search mission shall be at the discretion of the county search and rescue coordinator; ~~[-]~~

1. If there is a state-certified dog handler on-scene, the county search and rescue coordinator shall consult with the state-certified dog handler prior to making any decision to utilize an apprentice dog or handler; ~~[-]~~

2. If there is more than one (1) state-certified dog handler on-scene, the county search and rescue coordinator only needs to consult with one (1) certified dog handler; ~~and~~ ~~[-]~~

(10) The certification length for a search dog handler who successfully meets all requirements shall be valid for two (2) years. The certification length for a search dog that meets all requirements shall be valid for two (2) years.

Section ~~9~~ ~~8~~. Minimum training requirements for members of a rescue squad specializing in high angle rescue shall be to successfully complete ~~the following~~:

(1) A basic rope rescue course as taught by the Kentucky Community Technical and College System, State Fire Rescue Training Program or equivalent ~~as approved by the division~~;

(2) An intermediate rope rescue course as taught by the Kentucky Community Technical and College System, State Fire Rescue Training Program or equivalent ~~as approved by the division~~, for those members responsible to perform extrication of both conscious and incapacitated patients, to establish and operate simple mechanical advantage systems, to control and direct the lowering of a packaged patient, to use ascenders to maintain mobility and control on rope, and to perform as a litter attendant and maintain mobility and control; ~~and~~

(3) An advanced rope rescue course as taught by the Kentucky Community Technical and College System, State Fire Rescue Training Program or equivalent ~~as approved by the division~~, for those members responsible to establish complex mechanical advantage systems, to perform rescue operations in limited light conditions, to operate rappel or lowering systems while using self-contained breathing apparatus or supplied air systems such as may be used in hazardous atmospheres, to establish and operate highline systems, and to establish and operate tripod and high directional systems.

Section ~~10~~ ~~9~~. The role and training of rescue squad support personnel shall be the responsibility of the individual rescue squad

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and shall be identified in a locally-written guideline or procedure.

Section 11[49]. Level of medical training for each rescue squad member shall be:

- (1) [Be]The responsibility of each rescue squad; and
- (2) [Be]Identified in a locally-written guideline or procedure.

Section 12. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Federal Emergency Management Agency (FEMA) National Urban Search & Rescue (US&R) Response System Rescue Field Operations Guide (US&R-23-FG)", September 15, 2006; and

(b) "Federal Emergency Management Agency (FEMA) National Urban Search & Rescue (US&R) Response System Field Operations Guide (US&R-2-FG)", September 25, 2003.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Military Affairs, Division of Emergency Management, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN P. BULLARD, Director, Administrative Services

APPROVED BY AGENCY: November 22, 2017

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 26, 2018, at 1 p.m., at 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601-6168 at the Emergency Operations Center in Room 202. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2018. 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: Mr. Steven P. Bullard, Director of Administrative Services, Office of Management and Administration, Department of Military Affairs, phone 502-607-1738, fax 502-607-1240, email steven.p.bullard.nfg@mail.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Steven P. Bullard

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum training requirements for persons engaged in search and rescue activities. This administrative regulation establishes minimum training requirements for a general rescue squad, or a specialized rescue squad, and a local search and rescue coordinator.

(b) The necessity of this administrative regulation: This regulation is critical to provide guidance in the execution of this program pursuant to the basic law, specifically by identifying the minimum training requirements for a general rescue squad, or a specialized rescue squad, and a local search and rescue coordinator.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 39F.200 and 39F.210 authorize the division to promulgate administrative regulations establishing minimum training requirements for persons engaged in search and rescue activities, specifically the requirements for a general rescue squad, or a specialized rescue squad, and a local search and rescue coordinator.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation codifies in detail the minimum training requirements for persons engaged in search and rescue activities, specifically the requirements for a general rescue squad, or a

specialized rescue squad, and a local search and rescue coordinator.

(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 outdated information and establishes technical updates to accurately define the current minimum training requirements for a general rescue squad, or a specialized rescue squad, and a local search and rescue coordinator.

(b) The necessity of the amendment to this administrative regulation: This amendment was necessary to bring the administrative regulation up to date with current training practices. Members of the Commonwealth's 114 state-affiliated rescue teams requested this update to allow them to incorporate new technology.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment brings the administrative regulation up to date with current training practices.

(d) How the amendment will assist in the effective administration of the statutes: This amendment brings the administrative regulation up to date with current training practices, providing for more effective response to public needs utilizing the most up-to-date procedures and equipment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 114 state-affiliated rescue teams across the Commonwealth. These teams exist under the authority of County Judge Executives and Emergency Management Directors. The Kentucky Revised Statutes require every county to have a Search and Rescue Coordinator (normally the Emergency Management Director, unless directed otherwise by the County Judge Executive). (KRS 39F.020 – Rescue squads may be formed and duly authorized to perform in the public interest. Authorization to operate within a jurisdiction may be granted by the chief elected official of each urban-county government, charter county government, county, or city which the squad proposes to serve. Rescue squads shall have a formal affiliation with the local disaster and emergency services organization. The statement of affiliation shall be renewed annually.)

(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 state's rescue squads will have to review this administrative regulation and use it as a guide to update their current training practices.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The primary cost of this requirement is staff time to comply with the new standards and manage the programs and equipment for each county, but we cannot directly define that cost. Overall program management costs vary from county to county. A general estimate of funding for all 114 teams in the Commonwealth would be approximately \$1.3M – an average of \$11,404 per team. Teams that perform Water Rescue and Recovery and High-Angle Rescue would have higher costs to purchase the required boats, motors, dive equipment, ropes, repelling gear, etc. than teams with less technical rescue requirements. The Commonwealth provides \$80,000 annually under the Rescue Air Program to assist in funding Search and Rescue teams to meet the specific requirements established in the KRS. However, obviously the amount of requested grant funds far exceeds the amount provided by the Commonwealth to fund the grant requests. The KRS directs that state affiliated teams may not charge for their services. In addition to the grant program above (note that 27 teams requested a total of \$330,000 in grants for State Fiscal Year 2018), they may conduct fund raising events to raise funds to support the purchase of equipment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation

establishes current training practices, providing for more effective response to public needs utilizing the most up-to-date procedures and equipment.

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

(a) Initially: As noted in (4)(b) above, a general estimate of funding for all 114 teams in the Commonwealth is approximately \$1.3M – an average of \$11,404 per team. Clearly there is staff time required to manage the programs and equipment for each county, but we cannot directly define that cost.

(b) On a continuing basis: Annual staff time to monitor, maintain and acquire related equipment, apply for grants under the Rescue Air Program, and ensure training programs are up to date.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding is internal to each county. The Commonwealth provides \$80,000 annually under the Rescue Air Program to assist in funding Search and Rescue teams to meet the specific requirements established in the KRS. The KRS directs that state affiliated teams may not charge for their services. In addition to the grant program above (note that 27 teams requested a total of \$330,000 in grants for State Fiscal Year 2018), they may conduct fund raising events to raise funds to support the purchase of equipment.

(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 required or intended.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees or fee increases are established.

(9) TIERING: Is tiering applied? Tiering was not used. The regulations will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify or reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections or other compliance activities, or delay compliance timetables.

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 Military Affairs, which administers the Rescue Air Grant program, and the 114 state-affiliated rescue teams across the Commonwealth. These teams exist under the authority of County Judge Executives and Emergency Management Directors. The Kentucky Revised Statutes require every county to have a Search and Rescue Coordinator (normally the Emergency Management Director, unless directed otherwise by the County Judge Executive). (KRS 39F.020 – Rescue squads may be formed and duly authorized to perform in the public interest. Authorization to operate within a jurisdiction may be granted by the chief elected official of each urban-county government, charter county government, county, or city which the squad proposes to serve. Rescue squads shall have a formal affiliation with the local disaster and emergency services organization. The statement of affiliation shall be renewed annually.)

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 39A.050, 39A.070, 39F.200, 39F.210

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 general estimate of funding for all 114 teams in the Commonwealth is approximately \$1.3M – an average of \$11,404 per team. Clearly there is staff time required to manage the training programs and equipment for each county, but we cannot directly define that cost.

(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? A general estimate of funding for all 114 teams in the Commonwealth is approximately \$1.3M – an average of \$11,404 per team. Clearly there is staff time required to manage the programs and equipment for each county, but we cannot directly define that cost.

(d) How much will it cost to administer this program for subsequent years? There is staff time required to manage the programs and equipment for each county, including equipment maintenance and purchase of replacement equipment, but we cannot directly define that cost, which will be highly variable by Search and Rescue team. Cost will be significantly less than the average start-up (initial acquisition) cost of \$11,404.

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

Revenues (+/-): N/A

Expenditures (+/-): Well under \$10,000.

Other Explanation: Annual costs will be highly variable by Search and Rescue team.

GENERAL GOVERNMENT Kentucky Board of Optometric Examiners (Amendment)

201 KAR 5:130. Controlled substances.

RELATES TO: KRS 218A.205(3)

STATUTORY AUTHORITY: KRS 218A.205(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3) requires the board to promulgate administrative regulations on: prescribing standards for controlled substances; a procedure to temporarily suspend, limit, or restrict a license if unrestricted practice poses a danger to the health, welfare, or safety of patients or the public; a procedure for the expedited review of complaints pertaining to controlled substances; and penalties for convictions of offenses related to controlled substances. This administrative regulation establishes the requirements relating to controlled substances in the practice of optometry.

Section 1. Prescribing Standards. (1) A Kentucky licensed optometrist authorized to prescribe controlled substances for humans shall:

- (a) Have a current and valid DEA number;
- (b) Register with Kentucky All Schedule Prescription Electronic Reporting (KASPER);
- (c) Prescribe controlled substances only for the treatment or relief of pain for a condition of the eye and its appendages;
- (d) Prescribe only Schedule III, IV, or V controlled substances;
- (e) Prescribe controlled substances for a quantity therapeutically sufficient, up to seventy-two (72) hours;
- (f) Examine the patient face-to-face and in-person prior to prescribing a controlled substance;
- (g) Verify the fact that the patient that is prescribed a controlled substance is who the patient claims to be;
- (h) Establish a documented diagnosis through the use of accepted medical practices; and
- (i) Keep accurate, readily accessible medical records which shall include:
 1. History and eye examination;
 2. Diagnostic, therapeutic, and laboratory results;
 3. Evaluations and consultations;
 4. Treatment objectives;
 5. Discussions of risk, benefits, and limitations of treatments;
 6. Treatments;
 7. Medication including date, type, dosage, and quantity prescribed; and

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8. Instructions and agreements.

(2) A Kentucky licensed optometrist authorized to prescribe controlled substances for humans shall not:

(a) Dispense any controlled substances;

(b) Write a prescription for a controlled substance that is refillable; and

(c) Prescribe:

1. With the intent or knowledge that a medication will be used, or is likely to be used, for other than a medicinal or an accepted therapeutic purpose; or

2. With the intent to evade any law with respect to sale, use, or disposition of the medication.

Section 2. Temporary Suspension, Limit, or Restriction of License. (1) The board may, without benefit of a hearing, temporarily suspend, limit, or restrict the license of an optometrist authorized to prescribe controlled substances if the board finds on the basis of reasonable evidence that the licensee has violated a statute or administrative regulation the board is empowered to enforce, and continued unrestricted practice by the licensee would constitute a danger to the health, welfare, or safety of the licensee's patients or of the general public.

(2) The temporary suspension, limit, or restriction of a license shall take effect upon receipt by the licensee of written notice, delivered by certified mail or in person, specifying the statute or administrative regulation violated. At the time the temporary suspension, limit, or restriction order issues, the board shall schedule a disciplinary hearing to be held in accordance with the provisions of KRS Chapter 13B within ten (10) days.

Section 3. Complaints. (1) The board shall consider all written complaints and sufficient anonymous complaints pertaining to the improper, inappropriate, or illegal prescribing of controlled substances. An anonymous complaint shall be considered sufficient if it is accompanied by sufficient corroborating evidence as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the complaint is meritorious.

(2) Upon receipt of a complaint pertaining to the improper, inappropriate, or illegal prescribing of controlled substances, the board shall:

(a) Send a copy of the complaint to the Office of the Attorney General, the Department of the Kentucky State Police, and the Cabinet for Health and Family Services within three (3) business days;

(b) Commence an investigation within seven (7) business days of the complaint; and

(c) Produce a charging decision within 120 days of the complaint, unless an extension for a definite time period is requested in writing by a law enforcement agency due to an ongoing criminal investigation.

Section 4. Penalties. (1) Pursuant to the provisions of KRS 218A.205(3):

(a) A licensee convicted of a felony offense related to [prescribing] a controlled substance shall, at a minimum, have a lifetime revocation on prescribing any and all controlled substances;

(b) The board shall impose restrictions short of a permanent ban from prescribing controlled substances on a licensee convicted of a misdemeanor offense related to the prescribing of controlled substances. A licensee who has been convicted of any misdemeanor offense after July 20, 2012 relating to prescribing or dispensing controlled substances in any state shall have his or her authority to prescribe controlled substances suspended for at least three (3) months, and shall be further restricted as determined by the board; and

(c) A licensee disciplined by a licensing board of another state related to the improper, inappropriate, or illegal prescribing of controlled substances shall, at a minimum, have the same disciplinary action imposed by the licensing board of the other state.

(2) A licensee who is authorized to prescribe controlled

substances shall be subject to discipline by the board if:

(a) A licensee who is required to register for an account with KASPER fails to do so or does not maintain continuous registration during the licensee's term of licensure; or

(b) A licensee or applicant fails to report to the board, within thirty (30) days of the action:

1. Any conviction involving controlled substances; or

2. Disciplinary action taken by another licensure board involving controlled substances.

(3) Pursuant to the provisions of KRS 218A.205(3)(f), the board shall submit all disciplinary actions to the National Practitioner Data Bank of the United States Department of Health and Human Services either directly or through a reporting agent.

WILLIAM REYNOLDS, O.D., Chair

APPROVED BY AGENCY: December 14, 2017

FILED WITH LRC: December 14, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2018, at 1 p.m., in the Board office, 2365 Harrodsburg Road, Suite A240, Lexington, Kentucky 40504. Individuals interested in attending this hearing shall notify the agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 day on January 31, 2018. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Connie Calvert, Kentucky Board of Optometric Examiners, 2365 Harrodsburg Road, Suite A240, Lexington, Kentucky 40504, phone 859-246-2744, fax 859-246-2746, email connie.calvert@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Connie Calvert

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation requires the board clarify the penalties permanent ban regarding controlled substances.

(b) The necessity of this administrative regulation: This regulation is necessary to clarify a permanent ban from dispensing and prescribing controlled substances per KRS 218A.205.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity, as the authorizing statute requires that the board permanently ban any licensee from prescribing or dispensing controlled substances after a felony conviction related to controlled substances per KRS 218A.205.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation will assist by establishing and clarifying a permanent ban from prescribing and dispensing controlled substances per KRS 218A.205.

(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 only requires a licensee have any felony conviction related to a controlled substance versus an offense related to prescribing a controlled substance.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with KRS 218A.205.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 218A.205 requires the board to establish a permanent ban based on any felony conviction regarding controlled substances.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides the licensees with clear guidance regarding a permanent ban from prescribing and dispensing any controlled substance per KRS 218A.205.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Optometric Examiners currently has approximately 200 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 are no additional actions required.

(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 associated with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board is complaint with standards set forth in KRS 218A.205.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

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

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

(9) TIERING: Is tiering applied? Tiering was not used, all licensees 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 Kentucky Board of Optometric Examiners

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 320.240, KRS 218A.205.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT
Kentucky Board of Hairdressers and Cosmetologists
(Amendment)

201 KAR 12:030. Licensing, permits, and examinations.
[License required.]

RELATES TO: KRS 317A.020, 317A.050, 317A.062, 317A.100, 317B.025

STATUTORY AUTHORITY: KRS 317A.060, 317B.020
NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 and 317B.020 require the board to promulgate administrative regulations governing the operation of schools and salons of cosmetology, nail technology, and esthetics. This administrative regulation establishes procedures for examinations and licensing[special licensing requirements].

Section 1. Fees. License and permit fees are set forth in 201 KAR 12:260.

Section 2. Reciprocal Licensing. (1) A license issued by another state shall be considered comparable if the laws of that state require at a minimum:

(a) 1,500 hours of curriculum for cosmetology;

(b) 600 hours of curriculum for nail technology;

(c) 1,000 hours of curriculum for esthetics; or

(d) 1,000 hours of curriculum for cosmetology instructors.

(2) An out of state applicant who meets the requirements of KRS 317A.100(1) or 317B.040(1) may be licensed by reciprocity by submitting the Out of State Transfer Application and the following:

(a) Two (2) or more years' documentation of tax records corresponding to the out of state license;

(b) Certification of the out of state license from the issuing state board;

(c) Diploma or certified testing documents proving 12th grade equivalency education; and

(d) Payment of the applicable license and endorsement fees required by 201 KAR 12:260.

(3) An out of state applicant who meets the requirements of KRS 317A.100(2) or (3) shall:

(a) Submit the documentation required by subsection (2)(a)-(c);

(b) Pay the applicable license and endorsement fees required by 201 KAR 12:260 and, if required by the board;

(c) Pay the applicable examination fees established in 201 KAR 12:260.

(4) Active duty military family members shall apply for a reciprocal license by using the Military Transfer Application and including the following:

(a) Certification of a current license from the out of state licensing agency;

(b) A copy of the military sponsor's active duty orders listing the applicant as an accompanying family member; and

(c) Payment of a twenty-five (25) dollar fee.

(5) All certification of hours or a license issued by the board shall be requested using the Certification Request Form and payment of the fee as set forth in 201 KAR 12:260.

Section 3. Threading Permit. Any person who engages in the practice of threading shall first obtain a threader permit from the board by completing the Threading Permit Application and paying the fee established in 201 KAR 12:260.

Section 4. Examination Registration. (1) Applicants shall register with the board and submit an Application for Examination as follows:

(a) A graduate of a licensed cosmetology school must register with the board at least eight (8) months prior to the requested apprentice cosmetologist examination date;

(b) A nail technician graduate must register with the board at least seventy-five (75) days prior to the requested nail technician examination date; and

(c) An esthetician graduate must register with the board at

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least six (6) months prior to the requested esthetician examination date.

(2) No person shall take the board's examination unless the board has received a completed Application for Examination at least ten (10) business days prior to the beginning examination date.

(3) Apprentice cosmetologists must complete the Affidavit of Apprenticeship included with the Application for Examination when applying to take the Cosmetology examination.

(4) An applicant with curriculum hours obtained in another state shall include with the Out of State Application for Examination the following:

(a) Certification of curriculum hours from the state licensing board or agency where the hours were obtained, if the state requires the reporting of curriculum hours; or

(b) Certification of the valid licensing status of the school attended from the state board or licensing authority and an official transcript certified by the school; and

(c) Payment of the applicable license fees as set forth in 201 KAR 12:260.

(5) Examination applicants shall wear a full set of solid color medical scrubs and bring all instruments and supplies as listed on the board website for the practical examination. White colored scrubs or other clothing is prohibited.

Section 5. Examination Components. (1) The examination shall consist of a written test and a practical demonstration taken from the curriculum requirements specified in 201 KAR 12:082.

(2) The practical demonstration shall be performed on a:

(a) Mannequin head and hand for the cosmetology practical examination;

or
(b) Mannequin head for the esthetician practical examination;

or
(c) Mannequin hand for the nail technician practical examination.

(3) The applicant shall provide a mannequin head or hand as needed for an examination.

Section 6. Grading. (1) A minimum passing grade of seventy (70) percent for both the written examination and the practical demonstration shall be required for the apprentice cosmetologist, nail technician, and esthetician examinations.

(2) A minimum passing grade of eighty (80) percent on the written examination and eighty-five (85) percent on the practical demonstration shall be required for all instructor examinations.

Section 7. Practice before Examination Prohibited. A student engaging in the practice of cosmetology, nail technology, or esthetics prior to the board examination shall be ineligible to take the examination for a period of one (1) year from the date of the unauthorized practice.

Section 8. License Application. (1) An applicant who passes the state board examination shall have ninety (90) days following the examination to apply for a license.

(2) Failure to apply for a license as required by subsection (1) of this section shall require payment of the appropriate restoration and licensing fees under 201 KAR 12:260 before a license may be issued.

(3) An applicant who fails to apply for a license within one (1) year of passing the examination must retake the examination and pay the appropriate examination fee under 201 KAR 12:260.

Section 9. Retaking Examinations. Any applicant who:

(1) Fails the state board examination may retake the examination upon submitting a Examination Re-Take Application and paying the examination fee required by 201 KAR 12:260;

(2) Is caught cheating or impersonating another shall not be allowed to retake the examination for a minimum of one (1) year from the date of the original examination; and

(3) Fails to report for the examination on the date specified by the board shall submit a new examination application and pay the examination fee as required by 201 KAR 12:260 prior to being

rescheduled for examination. The board may waive the examination fee for good cause shown. "Good cause" includes:

(a) An illness or medical condition of the applicant that prohibits the applicant from reporting to the examination; or

(b) A death, illness, or medical condition in the applicant's immediate family that prohibits the applicant from reporting to the examination site.

(4) Documents and certificates submitted with an examination application are valid for one (1) year following the date of submission after which time applicants must submit updated documents and certificates with the Examination Re-Take Application.

Section 10. Duplicate Licenses and Restoration. (1) If a license is lost, destroyed, or stolen after issuance, a duplicate license may be issued. The licensee shall submit a statement verifying the loss of the license using the Duplicate License Application and pay the duplicate license fee listed in 201 KAR 12:260. Each duplicate license shall be marked "duplicate".

(2) To restore an expired license, a License Restoration Application must be submitted to the board along with payment of the restoration and license fees set forth in 201 KAR 12:260.

Section 11. Salon and Facility Applications. (1) Each person, firm, or corporation applying for a license to operate a new or relocating beauty salon, nail salon, esthetic salon, or threading facility must submit the Salon Application or Threading Facility Application and the applicable fee set forth in 201 KAR 12:260 and be inspected by the board inspector a minimum of five (5) business days prior to opening for business.

(2) A new or relocating salon or threading facility shall comply with all applicable city, county, state zoning, building, and plumbing laws, administrative regulations, and codes.

(3) A salon or facility may be located on the premises of a nursing home or assisted living facility if the salon or facility meets all requirements of this Section.

(4) Any salon or facility located in a residence shall have a dedicated outside entrance separate from that of the residence. This subsection shall not apply to a nursing home or assisted living facility if the home or facility has obtained a salon license from the board.

(5) A salon or facility shall not open for business prior to issuance of a license or permit.

(6) A change to the owner, manager, or location of a licensed salon or threading facility shall require a New Salon Application or Manager Change Application to be submitted to the board and payment of the license or change fee under 201 KAR 12:260.

Section 12. Cosmetology School Licenses. (1) Each person, firm, or corporation applying for a license to operate a school of cosmetology shall submit a Cosmetology School Application and the applicable fee set forth in 201 KAR 12:260.

(2) The Cosmetology School Application must be accompanied by a proposed student contract listing all financial charges to enrolling students.

(3) All schools must comply with city, county, and state zoning, building, and plumbing laws, administrative regulations and codes.

(4) An inspection of the school shall be conducted by the board inspector and two (2) board members, or the board inspector, one (1) board member, and the board administrator, prior to issuance of the license.

(5) The inspection must be completed within twelve (12) months of the date that the school application is submitted unless the board extends the time period for good cause. Requests for an extension of time must be submitted in writing to the board and include the following:

(a) The reason for extension and the term of request; and

(b) Supportive documentation of the extension request.

(6) A license to operate a cosmetology school shall be valid only for the location and person, firm, or corporate owner named on the application. A cosmetology school license shall not be transferable from one (1) location to another or from one owner to another.

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(7) The cosmetology school license shall contain:

(a) The name of the proposed school; and

(b) A statement that the proposed school is authorized to operate educational programs beyond secondary education.

Section 13. Change in School Ownership or Management. (1) The owners, firm, or corporation operating a licensed cosmetology school shall submit to the board a new Cosmetology School Application or a Manager Change Form and payment of the applicable fee set forth in 201 KAR 12:260 no later than thirty (30) business days prior to selling, transferring, or changing ownership or changing school managers.

(2) A prospective owner(s) or manager shall meet all qualifications of KRS Chapter 317A, KRS Chapter 317B, and 201 KAR Chapter 12, and have the approval of the board before assuming operation of the school.

Section 14. Classification as School. Any person, establishment, firm, or corporation that accepts, directly or indirectly, compensation for teaching any subject of cosmetology as defined in KRS 317A.010 shall be classified as a cosmetology school and shall comply with KRS Chapter 317A, Chapter 317B, and 201 KAR Chapter 12.

Section 15. Owner and Manager Student Prohibited. An owner, partner, stockholder, corporate officer, or a manager of a licensed cosmetology school shall not be enrolled as a student in the school.

Section 16. Board Member Disclosure. A board member shall disclose to the board a financial interest in a salon or school when submitting an application for a salon or school license.

Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Out of State Transfer Application", October 2017;

(b) "Military Transfer Application", October 2017;

(c) "Certification Request Form " October 2017;

(d) "Threading Permit Application", October 2017;

(e) "Application for Examination", October 2017;

(f) "Out of State Application for Examination", October 2017;

(g) "Examination Re-Take Application", October 2017;

(h) "Duplicate License Application", October 2017;

(i) "License Restoration Application", October 2017;

(j) "Salon Application", October 2017;

(k) "Threading Facility Application", October 2017;

(l) "Manager Change Form", October 2017; and

(m) "Cosmetology School Application", October 2017, are incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [An establishment or licensee of this board shall not employ an unlicensed person to perform or practice cosmetology, nail technology or esthetics.

—Section 2.]

R. KAY SWANNER, Board Chair

APPROVED BY AGENCY: December 12, 2017

FILED WITH LRC: December 13, 2017 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2018, 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 is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31,

2018. 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 examinations, licenses, and permits provided by the Kentucky Board of Hairdressers and Cosmetologists.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify the necessary steps for persons to apply for examinations, licenses, and permits issued by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment details the necessary steps for persons to apply for examinations, licenses, and permits issued by the board as authorized by KRS 317A.050, 317A.060, and 317B.020.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment provides a method for all interested persons to apply for and receive a license or permit to practice cosmetology, nail technology, or esthetics in the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: Currently, the subjects of board examinations, licenses, and permits are spread across eight separate administrative regulations. With this amendment (and subsequent repeal of other administrative regulations), these subjects will be consolidated into one administrative regulation that outlines all necessary steps for a person to take a board examination and apply for a license or permit.

(b) The necessity of the amendment to this administrative regulation: This amendment is needed to cut red tape currently existing in the eight separate administrative regulations. Additionally, this amendment provides reformatted digital forms that will ease the process of applying for examinations, licenses, and permits.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides the necessary steps to apply for a board examination and for a license or permit as authorized by KRS 317A.050, 317A.060, and 317B.020.

(d) How the amendment will assist in the effective administration of the statutes: Through one understandable administrative regulation, this amendment will greatly simplify and facilitate the public's ability to apply for and receive the necessary license or permit to practice cosmetology, nail technology, or esthetics in the Commonwealth.

(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 cosmetology students, approximately 25,000 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 will not impose any new requirements on those entities identified in question (3) above. Rather, it will facilitate the steps necessary for those persons identified in question (3) to apply to take a board examination and to obtain a license or permit.

(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 because of this amendment. All fees referenced in this amendment are taken from existing administrative regulations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will simplify the necessary steps for applicants and licensees to apply for board examinations, licenses, and permits. All such requirements are now consolidated into 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 because of this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this amendment apply equally to all cosmetology schools, school students, licensees, and salon owners.

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, 317A.060, and 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. This amendment will not affect the expenditures and revenues already generated by the existing administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? No additional cost is anticipated from this amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? No additional cost is anticipated from this amendment 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 (+/-): Not applicable
Expenditures (+/-): Not applicable
Other Explanation: Not applicable

GENERAL GOVERNMENT
Kentucky Board of Hairdressers and Cosmetologists
(Amendment)

201 KAR 12:060. Compliance[Inspections].

RELATES TO: KRS[~~317A.050;~~] 317A.060, 317A.070, 317A.140, 317A.145, 317B.020, 317B.045, 317B.050, 317B.055[317B.025]

STATUTORY AUTHORITY: KRS 317A.060, 317B.020
NECESSITY, FUNCTION, AND CONFORMITY: KRS [317A.050;] 317A.060[.] and 317B.020 require the board to promulgate administrative regulations governing the operation of any schools and salons of cosmetology, nail technology, threading, and esthetics, and to protect the health and safety of the public. This administrative regulation establishes inspection and health and safety requirements for all schools and salons of cosmetology, nail technology, threading, and esthetics. It also provides for inspection requirements, licensee ethical standards, and complaint processes and hearing procedures.

Section 1. Public Display. (1) Each licensed facility, licensee or permit holder shall attach his or her picture to the license or permit as required by this Chapter and place it in a conspicuous area in the salon or school.

(2) A conspicuous area shall be visible to the public and shall include:

- (a) The main entrance door or window of the premises; and
- (b) The workstation of the employee.

(3) A salon or school manager shall have the manager's license posted with a picture in a conspicuous area at all times.

(4) A school shall, at all times, display in a centralized conspicuous public place the student permits of all students enrolled.

(5) Each licensed salon, facility, or school shall post the most recent inspection report in a conspicuous area.

Section 2. Inspections. (1) Any board member, administrator, or inspector may enter any establishment licensed by this board or any place purported to be practicing cosmetology, nail technology, threading, or esthetics, during normal working hours or at any time when the establishment is open to the public, for the purpose of determining if an individual, salon, or school is complying with KRS Chapters 317A or 317B, and 201 KAR Chapter 12.

(2) A board member, administrator, or inspector may require the licensee or permittee to produce for inspection and copying books, papers, or records required by the board or pertaining to licensed activity.

(3) Each establishment licensed by the board shall be inspected a minimum of two (2) times per year.

(4) A salon or school shall schedule an inspection of the salon or school after an inspector twice attempts, but is unable, to inspect the salon or school.

(5) Failure of the salon or school owner or manager to schedule an inspection within thirty (30) days of two (2) failed inspection attempts shall constitute unprofessional conduct.

(6) The owner and manager of each establishment licensed by the board shall be responsible for compliance with KRS Chapters 317A and 317B, and 201 KAR Chapter 12.[Section 2.(1) Each licensee or permit holder shall attach his or her picture to the license or permit and place it in a conspicuous area in the salon or school.

(2) A conspicuous area shall be visible to the general public and shall include:

- (a) The main entrance door or window of the premises;
- (b) The work station of the employee or independent contractor; or
- (c) A public area within twenty (20) feet of the main entrance.

(3) A manager shall have the manager's license posted with a picture in a conspicuous area at all times.

(4) A salon or school shall post its license without a picture in a conspicuous area at all times.

Section 3.(1) Each salon or school shall post the most recent

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inspection report in a conspicuous area in the salon or school.

(2) A conspicuous area shall be visible to the general public and shall include:

- (a) The main entrance door or window of the premises; or
- (b) A public area within twenty (20) feet of the main entrance.

Section 4.(1) Each establishment licensed by this board shall be inspected a minimum of two (2) times per year.

(2) The owner and manager of each establishment licensed by the board shall be responsible for compliance with KRS Chapters 317A and 317B, and 201 KAR Chapter 12.]

Section 3.[5-] Unprofessional Conduct. (1) Unprofessional conduct under KRS 317A.140 includes the following:

(a) Intentionally withholding information or lying [It shall be unprofessional conduct to withhold information or lie] to a board member or board employee [an inspector] who is conducting a lawful inspection or investigation of an alleged or potential violation of KRS Chapters 317A or 317B, or 201 KAR Chapter 12;

(b) A [Section 6.(1) A salon or school shall schedule an inspection of the salon or school after an inspector twice attempts, but is unable, to inspect the salon or school.

(2) Failure of the owner or manager to schedule an inspection within thirty (30) days of two (2) attempts to inspect shall constitute unprofessional conduct.

Section 7. (1) It shall be unprofessional conduct for a salon or school remaining [to remain] open to the public if [it is] not appropriately licensed by the board;

(c) Providing[-

(2) It shall be unprofessional conduct for a person to provide] cosmetology, nail technology, esthetic, or threading services unless appropriately licensed or permitted by the board under 201 KAR Chapter 12; or[-]

(d) Failure to comply with the lawful request of the board, or the board administrator, inspector, or agent for the following:

- 1. Permit inspection of the licensed premises; or
- 2. Permit inspection of or the copying or production of books, papers, documents, or records of information or material pertaining to activity licensed by the board or related to the provisions of Chapter 317A, Chapter 317B, or the administrative regulations promulgated by the board.

Section 4. Demonstration Permits. Professional services performed outside a licensed facility must have approval of the board and display the proper permit. Permits may be obtained by completing the Demonstration Permit Application and paying the applicable fee set forth in 201 KAR 12:260.

Section 5. Signage. The main entrance to any establishment licensed by the board shall display a sign indicating a beauty salon, nail salon, esthetic salon or cosmetology school. The sign shall indicate the name of the salon or school and shall be clearly visible at the main entrance of the establishment.

Section 6. School Requirements. (1) A licensed school of cosmetology shall have all equipment and supplies needed to meet the curriculum outlined in 201 KAR 12:082.

(2) A licensed cosmetology school shall be physically separated from any other place of business.

(3) A licensed cosmetology school shall maintain, at a minimum, the following physical characteristics:

(a) At least thirty-six (36) square feet in the clinical area for each student involved on the floor of the clinical area at any one (1) time;

(b) At least eighteen (18) square feet in the mannequin area for each student involved on the floor of the mannequin area at any one (1) time; and

(c) A reasonable amount of area allotted for training of students in all areas other than those previously mentioned.

(4) All licensed cosmetology schools shall have a separate room for demonstration and study. This room shall have all necessary equipment to carry out the curriculum, a blackboard or

smartboard, and classroom chairs or desks for the students' use.

(5) All licensed cosmetology schools shall maintain sufficient lavatory facilities for student enrollment.

(6) Booths or partitions in the student clinical area shall be low enough to permit observation of students while they are working.

(7) Each licensed cosmetology school shall furnish a supply or dispensing room for which each student shall obtain actual experience for a period of time as indicated by the course of instruction.

(8) The supply room shall contain additional supplies and products necessary to follow the educational curriculum as prescribed in 201 KAR 12:082 and meet the sanitation standards set forth in 201 KAR 12:100.

(9) A licensed cosmetology school shall not guarantee a student's work.

(10) Within ten (10) business days of the termination, employment, or other change in school faculty personnel, a licensed cosmetology school shall notify the board of the change.

(11) Licensed cosmetology schools shall, at all times, maintain a minimum faculty to student ratio of one (1) instructor for every twenty (20) cosmetology, nail technology, or esthetician students enrolled.

(12) The board may approve a licensed cosmetology school to offer an esthetics course if the school maintains the following minimum equipment and supplies:

- (a) A private student changing area;
- (b) A minimum of one (1) fully equipped facial machine in the esthetics area;
- (c) One (1) sink in the clinic area with hot and cold running water;
- (d) One (1) steamer for hot towels;
- (e) Sharps container; and
- (f) All necessary supplies and products to meet the educational curriculum as prescribed in 201 KAR 12:082. All such supplies and products must also meet the sanitation standards set forth in 201 KAR 12:100.

Section 7. Code of Ethics. A licensee shall:

- (1) Provide competent professional services to the consumer;
- (2) Provide a clear explanation of the services offered and the cost of those services;
- (3) Follow appropriate disinfection and sanitation requirements as established in KRS Chapter 317A and 317B and the administrative regulations promulgated thereunder;
- (4) Follow proper health profile procedures before application of any product;
- (5) Perform a thorough evaluation and consultation for each client to determine if the procedure or product is appropriate before application; and
- (6) Discuss and outline realistic expectations with the client after the evaluation.

Section 8. Esthetic Restrictions. (1) An esthetician licensed by the board may not perform any of the activities listed in KRS 317B.015(1) unless under the immediate supervision of a licensed physician. "Immediate supervision" is defined as situations where a licensed physician is physically present in the same room and overseeing the activities of the esthetician at all times.

(2) Glycolic peels are limited as follows. A glycolic peel is defined as a cosmetic resurfacing exfoliating substance which includes cosmetic use of the following:

(a) Mixtures of thirty (30) percent alpha hydroxy acid (AHAs which include glycolic and lactic acids with a pH of three (3.0) or higher);

(b) Zero percent beta hydroxy acid (BHAs which include salicylic acid with a pH of three (3.0) or higher);

(c) Trichloroacetic acid (TCA) with levels less than twenty (20) percent; and

(d) Jessner's solutions fourteen (14) percent salicylic acid, lactic acid, and two (2) percent resorcinol.

(3) Glycolic peels exclude all other chemical and mechanical exfoliation or peeling procedures and substances, including:

- (a) Carboic acid (phenol); and

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(b) Products listed above that exceed the stated maximum levels or combinations thereof.

(4) Other prohibited practices include the following:

(a) Lancets when used to penetrate the stratum corneum or remove hair or the use of lancets with blades two (2) millimeters or more;

(b) The use of all adulterated chemical exfoliating or peeling substances;

(c) The use of devices that penetrate beyond the stratum corneum of the epidermis; and

(d) The use of FDA Class II devices.

Section 9. Complaint and Disciplinary Process. (1) "Complaint" means any writing received by the board, which contains the name of the complainant and alleges a violation of KRS Chapter 317A, KRS Chapter 317B, or 201 KAR Chapter 12 by a licensee.

(2) Complaints against a person or establishment licensed by the board shall be submitted on the board's Complaint Form, signed by the person making the complaint, and describe with sufficient detail the alleged violation(s) of KRS Chapter 317A, 317B, or the administrative regulations promulgated by the board. The Complaint Form shall be made available on the board's website.

(3) The board may, at any time, on its own volition conduct an investigation or inspection and initiate a complaint against licensee for a violation of KRS Chapter 317A, Chapter 317B, or 201 KAR Chapter 12.

(4) A copy of the complaint shall be provided to the licensee along with a written request for the licensee's response to the complaint. The licensee shall have ten (10) days from the date of receipt to submit a written response. The board may forward a copy of the licensee's written response to the complainant with instructions to submit a written reply within seven (7) days of receipt of the response.

(5) The board shall review the complaint, the response, and any reply, and any other relevant information or material available and take action, as it deems necessary.

(6) Any board member who has participated in the investigation of a complaint or who has substantial personal knowledge of facts concerning the complaint, which could influence an impartial decision, shall disqualify himself or herself from participating in the adjudication of the complaint.

(7) If, in the opinion of the board, it finds a violation of KRS Chapter 317A, Chapter 317B, or the administrative regulations promulgated by the board, but the violation is minor in nature, the board may issue a written admonishment to the licensee.

(a) A copy of the admonishment shall be placed in the board's permanent file of the licensee.

(b) The licensee shall have the right to file a written response to the admonishment within thirty (30) days of its receipt and may have it placed with the admonishment in the licensee's permanent file.

(8) The board may discipline an applicant, licensee, or permittee by fine, reprimand, refusal to issue or renew a license, or by suspending or revoking a license or permit, or imposing probationary conditions or any combination thereof. The board may impose discipline based upon the grounds set forth in KRS 317A.140 or violation of KRS Chapter 317A, Chapter 317B, or the administrative regulations promulgated by the board.

(9) If the board finds that grounds for discipline exist, it shall send written notice informing the applicant, licensee, or permittee of the following:

(a) The nature of the discipline to be imposed;

(b) The grounds upon which potential discipline is based;

(c) The right to request a hearing under KRS Chapter 13B;

(d) The right to be represented by counsel;

(e) The right to present witnesses on his or her behalf; and

(f) The right to cross-examine any opposing witnesses.

(10) Within twenty (20) days of receipt of the board's notice, an applicant, licensee, or permittee may request, in writing, a hearing before the board takes final action. Hearings shall be conducted in accordance with KRS Chapter 13B.

(11) At any time during the investigative or hearing processes,

the board may enter into an agreed order of settlement or accept an assurance of voluntary compliance as resolution of a complaint.

(12) The board may resolve disciplinary matters through informal means including mediation.

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

(a) "Demonstration Permit Application", October 2017; and

(b) "Complaint Form", September 2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

R. KAY SWANNER, Board Chair

APPROVED BY AGENCY: December 12, 2017

FILED WITH LRC: December 13, 2017 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this amendment shall be held on January 22, 2018, at 9:30 a.m., at the Kentucky Board of Hairdressers and Cosmetologists. Individuals interested in being heard at this hearing shall notify this agency in writing of the intent to attend no later than five workdays prior to the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written transcript is requested. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed amendment. Written comments shall be accepted through 11:59 p.m. on January 31, 2018. 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 compliance standards and complaint procedures for all licensees under the jurisdiction of the Kentucky Board of Hairdressers and Cosmetologists.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to standardize compliance for cosmetology schools, salons, cosmetologists, estheticians, and nail technicians.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets compliance standards as the Board is authorized to do under Chapters 317A and 317B. This amendment places the compliance requirements in one administrative regulation for all licensed persons and establishments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation clarifies and facilitates compliance by licensees and the Board's enforcement of KRS Chapters 317A and 317B. The administrative regulation outlines and defines all compliance standards in one understandable administrative regulation. Additionally, this amendment details the necessary steps for filing complaints against licensees for alleged violations of KRS Chapters 317A and 317B, and 201 KAR Chapter 12.

(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: Currently, the standards of compliance applicable to licensed persons and establishments reside across multiple administrative regulations. This amendment consolidates all such standards into one administrative regulation, eliminating duplicative and unnecessary language where appropriate.

(b) The necessity of the amendment to this administrative

regulation: This amendment is needed to assist current and prospective licensees in understanding compliance standards enforced by the board and to assist the consumer public in understanding how to file complaints against licensees for alleged violations of KRS Chapters 317A and 317B, and 201 KAR Chapter 12.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides compliance standards for all licensees based on current statutory requirements in KRS Chapters 317A and 317B.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide a simple and straightforward regulatory scheme for all compliance issues consistent with the authorizing statutes. It will also assist licensees in complying with the law and assist the public in determining the necessary steps to file complaints against licensees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 38,000 licensees affected by the existing administrative regulations that address the various issues of compliance. Consumers wishing to file complaints against such licensees will also be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment does not change the current processes, definitions, or requirements of the administrative regulations compiled. All items addressed in this amendment are currently addressed in other administrative regulations.

(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 due to the clarity in this amendment. Current and prospective licensees will gain an easier and better understanding of the regulatory requirements for maintaining licensure.

(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 will be needed at this time.

(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 current and 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? The Kentucky Board of Hairdressers and Cosmetologist 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 317A.060 and 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. This amendment will not have any added effect beyond those resulting from existing administrative regulations.

(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 revenue for the state or local government 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 will not generate revenue for the state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No additional cost is anticipated to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No additional cost is anticipated to administer this program for subsequent years.

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

Revenues (+/-): No impact
Expenditures (+/-): No impact
Other Explanation: None

**GENERAL GOVERNMENT
Kentucky Board of Hairdressers and Cosmetologists
(Amendment)**

201 KAR 12:260. ~~Fees~~[License fees, examination fees, renewal fees, restoration fees and miscellaneous fees].

RELATES TO: KRS 317A.050, 317A.062, 317B.020, 317B.025
STATUTORY AUTHORITY: KRS 317A.062, 317B.020
~~[317A.050, 317A.062]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.062 and 317B.020 ~~require~~[requires] the board to promulgate administrative regulations establishing a reasonable schedule of fees and charges for examinations, licenses, and renewal of licenses. This administrative regulation establishes fees relating to cosmetology, esthetics, and nail technology.

Section 1. The initial license fees shall be as follows:

- (1) Apprentice cosmetologist - twenty-five (25) dollars;
- (2) Cosmetologist - twenty-five (25) dollars;
- (3) Nail technician - twenty-five (25) dollars;
- (4) Esthetician - seventy-five (75) dollars;
- ~~(5)~~[(4)] Apprentice instructor - thirty-five (35) dollars;
- ~~(6)~~[(5)] Cosmetology instructor - fifty (50) dollars;
- ~~(7)~~ Esthetic instructor - \$100;
- ~~(8)~~[(6)] Beauty salon - thirty-five (35) dollars;
- ~~(9)~~[(7)] Nail salon - thirty-five (35) dollars;
- ~~(10)~~ Esthetic salon - \$125;
- ~~(11)~~ Esthetic independent contractor - \$125;
- ~~(12)~~[(8)] Cosmetology school – \$1,500;
- ~~(13)~~[(9)] Student enrollment permits – fifteen (15) dollars;
- ~~(14)~~[(49)] School of cosmetology, transfer of ownership – \$1,500;
- ~~(15)~~[(44)] School manager change – \$250;
- ~~(16)~~[(42)] Threading facility permit – twenty-five (25) dollars;~~and~~
- ~~(17)~~ Threading ~~[(43) Threader]~~ permit - twenty (20) dollars; and
- ~~(18)~~ Out of state endorsement application fee – \$100.

Section 2. The annual renewal license fees shall be as follows:

- (1) Apprentice cosmetologist - twenty (20) dollars;
- (2) Cosmetologist - twenty (20) dollars;

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- (3) Nail technician - twenty (20) dollars;
- (4) Esthetician - fifty (50) dollars;
- ~~(5) [(4)]~~ Apprentice instructor - twenty-five (25) dollars;
- ~~(6) [(5)]~~ Cosmetology instructor - thirty-five (35) dollars;
- ~~(7) Esthetic instructor - seventy-five (75) dollars;~~
- ~~(8) [(6)]~~ Beauty salon - twenty-five (25) dollars;
- ~~(9) [(7)]~~ Nail salon - twenty-five (25) dollars;
- ~~(10) Esthetic salon - seventy-five (75) dollars; and~~
- ~~(11) Esthetic independent contractor - seventy five (75) dollars.~~
- ~~(12) [(8)]~~ Cosmetology school – \$150;
- ~~(13) [(9)]~~ Threading facility permit – twenty-five (25) dollars; and
- ~~(14) Threading [(10) Threader] permit - twenty (20) dollars.~~

Section 3. Applications for examination required by KRS Chapter 317A and 317B shall be accompanied by an examination fee as follows:

- (1) Apprentice cosmetologist - seventy-five (75) dollars;
- (2) Cosmetologist - seventy-five (75) dollars;
- (3) Nail technician - seventy-five (75) dollars;
- ~~(4) Esthetician - \$125;~~
- ~~(5) [(4)]~~ Cosmetology instructor – \$100;
- ~~(6) Esthetic instructor - \$125;~~
- ~~(7) [(5)]~~ Out-of-state cosmetologist – \$120; ~~and~~
- ~~(8) Out-of-state esthetician -\$175;~~
- ~~(9) [(6)]~~ Out-of-state cosmetology instructor – \$200; ~~and~~
- ~~(10) Out-of-state esthetic instructor -\$250.~~

Section 4. The fees for retaking an examination or any portion of an examination that an applicant has not successfully completed shall be as follows:

- (1) Apprentice cosmetologist - thirty-two (32) dollars;
- (2) Cosmetologist - thirty-two (32) dollars;
- (3) Nail technician - thirty-two (32) dollars;
- ~~(4) Esthetician - \$125;~~
- ~~(5) [(4)]~~ Cosmetology instructor - fifty (50) dollars;
- ~~(6) Esthetic instructor - \$125;~~
- ~~(7) [(5)]~~ Out-of-state cosmetologist - sixty (60) dollars; ~~and~~
- ~~(8) Out-of-state esthetician -\$175;~~
- ~~(9) [(6)]~~ Out-of-state cosmetology instructor – \$100; ~~and~~
- ~~(10) Out-of-state esthetic instructor -\$250.~~

Section 5. The fee for the restoration of an expired license where the period of expiration does not exceed five (5) years from date of expiration, shall be as follows:

- (1) Apprentice cosmetologist - seventy-five (75) dollars;
- (2) Cosmetologist - seventy-five (75) dollars;
- (3) Nail technician - seventy-five (75) dollars;
- ~~(4) Esthetician - \$125;~~
- ~~(5) [(4)]~~ Beauty salon - seventy-five (75) dollars;
- ~~(6) [(5)]~~ Nail salon - seventy-five (75) dollars; ~~and~~
- ~~(7) Esthetic salon - \$150;~~
- ~~(8) Esthetic independent contractor - \$150;~~
- ~~(9) [(6)]~~ Cosmetology school – \$750;
- ~~(10) Cosmetology Instructor - \$100; and~~
- ~~(11) Esthetic instructor - \$150.~~

Section 6. Miscellaneous fees shall be as follows:

- (1) Demonstration permit~~[for a guest artist]~~ - fifty (50) dollars;
- (2) Certification of a license - twenty (20) dollars;
- (3) Duplicate license - twenty-five (25) dollars;
- ~~(4) Beauty or nail salon owner, manager, or location change – thirty-five (35) dollars; and~~
- ~~(5) Esthetics salon owner, manager, or location change – \$125 [Reciprocity application—\$400; and~~
- ~~(6) School manager change—\$250].~~

R. KAY SWANNER, Board Chair

APPROVED BY AGENCY: December 12, 2017

FILED WITH LRC: December 13, 2017 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2018, 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 is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2018. 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, 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 fee schedules for all licensees and facilities under the jurisdiction of the Kentucky Board of Hairdressers and Cosmetologists.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide a fee schedule for cosmetology schools, salons, cosmetologists, estheticians, and nail technicians.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment consolidates the fee requirements under Chapters 317A and 317B and places them in one administrative regulation for all licensee and facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment outlines all fees for the issuance of licenses and permits, board exams, and fees for license restoration and other miscellaneous services offered 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: Currently, fees for the Kentucky Board of Hairdressers and Cosmetologists reside across two administrative regulations. This amendment consolidates all fees into one administrative regulation and eliminates duplicative and unnecessary language where appropriate.

(b) The necessity of the amendment to this administrative regulation: This amendment is needed to assist current and prospective applicants, licensees, and permittees in identifying and understanding costs to obtain licensure and, when necessary, to update licensee information with the board.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment sets forth fees for licensing based on the current statutory requirements in KRS Chapters 317A and 317B.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide a simple regulatory framework for all fees consistent with the authorizing statutes and assist the public and licensees in determining the costs to obtain demonstration permits, licenses, board exams, and all other necessary fees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 38,000 licensees affected by this amendment across the various cosmetology disciplines and student enrollments.

(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 change the current processes, definitions, or intent of the regulations compiled.

All items addressed in this amendment are currently addressed in other administrative regulations.

(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. All existing fees are now consolidated into one administrative regulation.

(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 due to the clarity provided by this amendment. Current and prospective licensees will gain an easier and better understanding of the regulatory fees for licensure.

(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 as a result of this amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment sets forth fees for licensing based on the current statutory requirements in KRS Chapters 317A and 317B.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this administrative regulation apply equally to all current and 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? The Kentucky Board of Hairdressers and Cosmetologists 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 317A.050, 317A.060, and 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.

(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 consolidates current fees based on existing administrative regulations and therefore will not generate any additional revenue for the state or local government 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 consolidates current fees based on existing administrative regulations and therefore will not generate any additional revenue for the state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No additional cost is anticipated as a result of this amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? No additional cost is anticipated for subsequent years as a result of this amendment.

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

Revenues (+/-): No impact
Expenditures (+/-): No impact
Other Explanation: None

GENERAL GOVERNMENT Kentucky Board of Podiatry (Amendment)

201 KAR 25:090. Prescribing and dispensing controlled substances.

RELATES TO: KRS 218A.205, 218A.172

STATUTORY AUTHORITY: KRS 218A.205(3)(a), 311.410(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(a) requires the board to establish standards for prescribing controlled substances. KRS 218A.172 requires the board to promulgate administrative regulations governing the prescribing or dispensing of any Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone. KRS 218A.205(3)(b) requires the board to establish standards for prescribing a Schedule II controlled substance for more than a three (3) day supply if the prescription is intended to treat pain as an acute medical condition. This administrative regulation establishes the standards for prescribing or dispensing controlled substances.

Section 1. Prescribing or dispensing a controlled substance.

(1) This administrative regulation governs the prescribing and dispensing of controlled substances listed in Schedule II through V as classified in KRS 218A.060, 218A.070, 218A.080, 218A.090, 218A.100, 218A.110, 218A.120, and 218A.130.

(2) If initially prescribing or dispensing a controlled substance, a licensee shall:

(a) Obtain a complete medical history and conduct a physical examination of the patient;

(b) Complete a written treatment plan which states the objectives of the treatment underlying the prescription of the controlled substance and which includes an outline of any further diagnostic examinations that may be required;

(c) Discuss the risks and benefits of the use of controlled substances with the patient or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence;

(d) Verify that the patient is the person that he or she has identified himself or herself as being by requiring the person to produce proper government issued identification;

(e) Query the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER) for all information available on the patient if prescribing controlled substances that are included in:

1. Schedule II;
2. Schedule III; and
3. The following from Schedule IV:

- a. Ambien;
- b. Anorexics;
- c. Ativan;
- d. Klonopin;
- e. Librium;
- f. Nubain;
- g. Oxazepam;
- h. Phentermine;
- i. Soma;
- j. Stadol;
- k. Stadol NS;
- l. Tramadol;
- m. Valium;
- n. Versed; and
- o. Xanax;

(f) Obtain consent for the treatment from the patient in writing; and

(g) Document the patient's file as required by Section 2 of this administrative regulation.

(3) If it is necessary to continue the prescription or dispensation of a controlled substance after the initial supply is completed, a licensee shall:

(a) Conduct, at reasonable intervals under the circumstances presented, all clinically indicated steps;

(b) Review the course of treatment that he initially prepared to

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determine if any changes are required;

(c) Provide any new information about the course of treatment or any changes made to the patient;

(d) Query KASPER for all information available on the patient no less than once every three (3) months for all available data on the patient to review that data before issuing any new prescription or refill for the patient for controlled substance specified in subsection (2)(e) of this section; and

(e) Document the patient's file as required by Section 2 of this administrative regulation.

Section 2. Podiatric medical records for patients being prescribed controlled substances, [substance] shall include at a minimum:

(1) The patient's name;

(2) The patient's date of birth;

(3) The information concerning the patient's medical history and physical examination required by Section 1 of this administrative regulation;

(4) The podiatrist's diagnosis of the patient's condition;

(5) The procedures and treatments to be undertaken and their objectives;

(6) The date of the procedures or treatments;

(7) [Whether local or general anesthetics were used, including the type and the amount administered;

(8) Diagnostic, therapeutic, and laboratory results;

(9) The findings and recommendations of any other evaluations or consultations;

(10) All medications administered or prescribed by the podiatrist, including the date, type, dosage, and quantity administered or prescribed;

(11) Any post-treatment instructions from the podiatrist; and

(12) Documentation that the KASPER query required by Section 3 of this administrative regulation was completed.

Section 3. If a prescription for a controlled substance is written, a podiatrist shall:

(1) Obtain and document in the patient's podiatric medical record the information concerning the patient's medical history and physical examination required by Section 1 of this administrative regulation;

(2) Query the [~~Kentucky All Scheduled Prescription Electronic Reporting System (KASPER)~~] for all available data on the patient if the controlled substance is one specified in Section 1(2)(e) of this administrative regulation and record the results of the query in the patient's record;

(3) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence; and

(4) Obtain consent for the treatment from the patient in writing.

Section 4. Dispensing Schedule II or Schedule III controlled substances containing hydrocodone. (1) A licensee shall not dispense more than a forty-eight (48) hour supply of Schedule II or Schedule III controlled substances containing hydrocodone.

(2) If a patient continues to present with pain after the initial supply has been completed and the podiatrist believes that an additional prescription for a controlled substance is medically appropriate, the podiatrist shall at a minimum:

(a) Follow the requirements of Section 1 of this administrative regulation; and

(b) Prescribe only that amount of the controlled substance that is appropriate under accepted and prevailing practice standards.

Section 5. Prescribing a Schedule II Controlled Substance. In accordance with the CDC Guideline for Prescribing Opioids for Chronic Pain published in 2016, a licensee shall not issue a prescription for a Schedule II controlled substance for more than a three (3) day supply of a Schedule II controlled substance if the prescription is intended to treat pain as an acute medical condition, with the following exceptions:

(1) The licensee, in his or her professional judgment, believes that more than a three (3) day supply of a Schedule II controlled substance is medically necessary to treat the patient's pain as an acute medical condition and lack of alternative treatment options which justifies deviation from the three (3) day supply limit established in this subsection in the patient's medical records;

(2) The prescription for a Schedule II controlled substance is prescribed to treat chronic pain;

(3) The prescription for a Schedule II controlled substance is prescribed to treat pain associated with a valid cancer diagnosis;

(4) The prescription for a Schedule II controlled substance is prescribed to treat pain as part of a hospice or end-of-life treatment;

(5) The prescription for a Schedule II controlled substance is prescribed as part of a narcotic treatment program, licensed by the Cabinet for Health and Family Services;

(6) The prescription for a Schedule II controlled substance is prescribed to treat pain following a major surgery or the treatment of significant trauma, as defined by the state licensing board in consultation with the Kentucky Office of Drug Control Policy;

(7) The Schedule II controlled substance is dispensed or administered directly to an ultimate user in an inpatient setting; or

(8) Any additional treatment scenario deemed medically necessary by the state licensing board in consultation with the Kentucky Office of Drug Control Policy.

Section 6. Authority to Prescribe Controlled Substances. (1) A podiatrist licensed by the board may prescribe any medicine necessary for the treatment of a patient that comes within the practice of podiatry as defined by KRS 311.380(2), including Schedule II and Schedule III controlled substances containing hydrocodone, if the licensee:

(a) Has obtained a license number from the Drug Enforcement Administration;

(b) Registers with and utilizes the [~~Kentucky All Schedule Prescription Electronic Reporting System (KASPER)~~] as required by KRS 218A.202;

(c) Follows the requirements of this administrative regulation; and

(d) Meets all the requirements for utilizing KASPER promulgated by the Cabinet as well as the requirements set forth in KRS 218A.202.

(2) A licensed podiatrist shall not prescribe or dispense:

(a) With the intent or knowledge that a medication will be used or is likely to be used for any purpose other than one that is necessary for medical treatment or therapeutic use;

(b) With the intent to evade any law governing the sale, use, or disposition of the medication;

(c) When the licensee knows or has reason to know that the abuse of the controlled substance is occurring or may result therefrom; and

(d) In amounts that the licensee knows or has reason to know, under the circumstance, that the amount prescribed is excessive under accepted and prevailing practice standards.

(3) After a hearing conducted under KRS Chapter 13B and 201 KAR 25:051, the board shall fine a licensee who otherwise has the authority to prescribe controlled substances, but who has failed to register for an account with KASPER, an amount not less than \$250 per prescription for each prescription that individual has written while not properly registered.

ANN FARRER, DPM, President

APPROVED BY AGENCY: December 15, 2017

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2018 at 10:00 AM Eastern Time at the Office of the Attorney General, 1024 Capital Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be

given an opportunity to comment on the proposed 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 on January 31, 2018. 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: Shan Dutta, Board Counsel, Asst. Attorney General, Office of the Attorney General, 1024 Capital Drive, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-6801, email Shan.Dutta@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shan Dutta

(1) Provide a brief summary of: This administrative regulation requires all licensed podiatrists to

(a) What this administrative regulation does: This administrative regulation establishes the professional standards for licensed podiatrists for prescribing and dispensing controlled substances in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: These changes are necessary under KRS 218A.205, that the Podiatry Board promulgate a regulation establishing professional standards for prescribing and dispensing controlled substances.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation updates and amends the mandatory prescribing and dispensing standards related to controlled substances.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment is necessary to establish the prescribing and dispensing standards for controlled substances for licensed podiatrists per statutory requirement.

(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 regulation sets forth the professional standards for prescribing and dispensing opioids, as well as, the professional standard of a 3-day prescribing limit on Schedule II controlled substances for acute pain in conformity with the 2017 General Assembly's enactment of HB 333.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because it establishes prescribing and dispensing standards per KRS 218A.205.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is consistent with KRS 218A.205.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide Schedule II controlled substance prescribing standards and requirements for practicing podiatrists in the Commonwealth of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 200 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: This amendment will provide the mandatory prescribing and dispensing standards and CDC Guideline for Prescribing Opioids for Chronic Pain per HB333 and KRS 218A.205.

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

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): The applicants for licensure as a podiatrist will continue to have their profession regulated by the Kentucky Board of Podiatry.

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

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the registration 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 increase in fees is necessary to implement this regulation.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.205, 311.420.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Expenditures will not be affected by this amendment.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional 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? N/A

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other/Explanation: N/A

GENERAL GOVERNMENT CABINET Board of Licensure and Certification for Dietitians and Nutritionists (Amendment)

201 KAR 33:070. Telehealth and telepractice.

RELATES TO: KRS 310.070, 310.200

STATUTORY AUTHORITY: KRS 310.200(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 310.200 requires the Board of Licensure and Certification for Dietitians and Nutritionists to adopt administrative regulations to further the objectives stated therein. This administrative regulation establishes procedures necessary 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 dietitian and nutrition services, and in the provision of continuing education.

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Section 1. Definitions. (1) "Client" means the person receiving the services of the dietitian or nutritionist.

(2) "Educator" means a presenter speaking to a group of individuals on a topic generally without a focus on the specific needs of any particular individual.

(3) "Licensed healthcare professional" means a medical doctor, registered nurse, practical nurse, nurse practitioner, advanced practice registered nurse, physician's assistant, chiropractor, certified diabetes educator, pharmacist, speech-language pathologist, registered dietitian, certified nutritionist, podiatrist, audiologist, or psychologist licensed in the jurisdiction where he or she is physically located.

(4) "Practitioner" means a licensed dietitian or certified nutritionist.

(5) "Telehealth" is defined by KRS 310.200(3).

(6) "Telepractice" means the practice of dietetics or nutrition as defined by KRS 310.005(2) and provided by using communication technology that is two (2) way, interactive, simultaneous audio and video.

Section 2. Client Requirements. ~~[A practitioner-patient relationship shall not commence via telehealth. An initial, in-person meeting for the practitioner and patient who will prospectively utilize telehealth shall occur in order to evaluate if the potential or current client is a candidate to receive services via telehealth.]~~ A licensed health care professional may represent the practitioner at the initial ~~[in-person]~~ meeting. A practitioner who uses telehealth to deliver dietetics or nutrition services shall, at the initial ~~[in-person]~~ meeting with the client:

(1) Make 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 licensee other than electronically such as by the use of a telephone number or mailing address;

(4) Provide contact methods of alternative communication the practitioner 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 telepractice provided by the licensee; and

(6) Inform the client in writing and document acknowledgement of the risk and limitations of:

(a) The use of technology in the provision of telepractice;

(b) The potential breach of confidentiality of information, or inadvertent access of protected health information, due to technology in the provision of telepractice;

(c) The potential disruption of technology in the use of telepractice;

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

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

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

(g) How communications shall be directed to a specific licensee;

(h) How the practitioner stores electronic communications from the client; and

(i) That the practitioner may elect to discontinue the provision of services through telehealth.

Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records. A practitioner using telehealth to deliver services or who telepractices shall:

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

(2) Maintain current competency in telepractice 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, and include which services were provided by telepractice;

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

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

Section 4. Compliance with Federal, State, and Local Law. (1) A practitioner using telehealth to deliver dietetics or nutrition services shall comply with Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with a disability.

(2) A person providing dietetic or nutrition services for which an exception to licensure does not apply or who represents himself or herself as a dietitian, licensed dietitian, or certified nutritionist pursuant to KRS 310.070 shall be licensed by the board if:

(a) Services are offered via telehealth; and

(b) These services are provided or the representation is made to a person when he or she is physically located in Kentucky.

(3) A person providing dietetic or nutrition services for which an exception to licensure does not apply or who represents himself or herself as a dietitian, licensed dietitian, or certified nutritionist pursuant to KRS 310.070 shall be licensed by the board if:

(a) Services are offered via telehealth; and

(b) These services are provided or the representation is made from a physical location in Kentucky. This person may be subject to licensure requirements in other states where the services are received by the client.

(4) No provision of this administrative regulation shall restrict the ability of educators to present on topics related to dietetics and nutrition pursuant to KRS 310.070(2)(d).

Section 5. Representation of Services and Code of Conduct. A licensee using telehealth to deliver services or who telepractices shall not:

(1) Engage in false, misleading, or deceptive advertising of telepractice; or

(2) Split fees.

LORA ARNOLD PARKS, Chairperson

APPROVED BY AGENCY: December 13, 2017

FILED WITH LRC: December 13, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2018 at 10 a.m. Eastern Time at the Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2018. 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: Kelly J. Walls, Board Administrator, 911 Leawood Dr., Frankfort, Kentucky 40601, phone (502) 782-8814, fax (502) 696-5898, email kelly.walls@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelly J. Walls

(1) Provide a brief summary of:

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(a) What this administrative regulation does: The regulation establishes procedures for dietitians and nutritionists practicing telehealth.

(b) The necessity of this administrative regulation: This regulation is necessary to establish procedures for dietitians and nutritionists practicing telehealth, which is required by KRS 310.200.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to establish administrative regulations for the practice of dietitians and nutritionists in KRS 310.041, and specifically for telehealth in KRS 310.200.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes procedures for dietitians and nutritionists practicing telehealth.

(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 the in-person requirement for the commencement of the practitioner-patient relationship.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to remove the in-person requirement for the commencement of the practitioner-patient relationship.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 310.200 requires the Board to promulgate regulations governing telehealth.

(d) How the amendment will assist in the effective and administration of the statutes: The amendment will allow practitioner-patient relationships to commence without an in-person meeting.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 1,289 licensed dietitians and 45 dual license/certificate holders.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: Dietitians and nutritionists will have to abide by the procedures governing telehealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Dietitians and nutritionists will be able to provide services via telehealth.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the fees paid by licensees and apprentice diabetes educators.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation did not establish the fees. The application fee is set in a separate regulation.

(9) TIERING: Is tiering applied? Tiering was not applied because these requirements apply equally to all licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government

(including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensure and Certification for Dietitians and Nutritionists is housed for administrative purposes within the Department of Professional Licensing in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 310.041, 310.200

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for the first year? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

KENTUCKY LOTTERY CORPORATION (Amendment)

202 KAR 3:030. Retailers[Retailer—administrative regulation].

RELATES TO: KRS Chapter 154A, 275.015

STATUTORY AUTHORITY: KRS 154A.050(1)(d), 154A.400(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 154A.400(1) requires the Kentucky Lottery Corporation to develop and maintain a statewide network of lottery retailers that will serve the public convenience to promote the sale of lottery products[tickets], while insuring the integrity of the lottery. To govern the selection of lottery retailers, KRS 154A.400(1)(b) requires the Board of Directors of the Kentucky Lottery Corporation to develop a list of objective criteria upon which the selection of lottery retailers shall be based. This administrative regulation lists the objective criteria upon which the selection of lottery retailers shall be based.

Section 1. Definitions. (1) "Applicant" means the individual or entity applying for a license to sell lottery products.

(2) "Board" means the Board of Directors of the KLC as established by KRS 154A.030(1).

(3)[(2)] "Cashing agent" means a retailer who has signed[executed] a "Retailer License Agreement Addendum for Authorized Cashing Agents" and who is authorized and required to cash lottery products[Tickets] of a value authorized by the KLC, up to and including \$25,000, during KLC's business hours (8:00 a.m., ET to 5:00 p.m. ET)[\$5,000].

(4) "Draw-based product" means:

(a) Any KLC ticket or product in which the player may determine if player has won or lost after the drawing in which the prize was won; or

(b) Any other KLC ticket or product generated by the retailer terminal.

(5) "Draw-based retailer" means a retailer that sells one (1) or more draw-based products.

(6)[(3)] "Electronic display" means a light-emitting diode display, television monitor, sign, or other electronic display provided by the KLC to its retailers for the display of winning numbers and other

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information regarding lottery games, and for the identification of a retailer as a retailer.

(4) "Instant validation terminal" means a terminal with a functionally integrated barcode reader which has the ability to validate instant tickets and pull-tab tickets, but does not have the ability to sell on-line tickets.

(5) "Instant product" means any KLC ticket or product in which the player may determine instantly if he has won or lost [ticket] means a preprinted ticket containing play data under a coating or other covering, which when removed by the player reveals if the ticket is a winner.

(7) [(6)] "KLC" means the Kentucky Lottery Corporation.

(8) [(7)] "Licensing documents" means the:

(a) Application for Retailer License;

(b) Retailer License Agreement;

(c) Retailer License Agreement Addendum for Authorized Cashing Agents; and

(d) Retailer License Certificate ["Retailer License Application", the "Retailer Relicensing Application", the "Retailer License Agreement", the "Retailer License Agreement Addendum for Authorized Cashing Agent", and the "Retailer License", all of which are incorporated by reference].

(9) "Lottery equipment and supplies" means all lottery devices, and materials provided to retailers by the KLC or its vendors; terminals, monitors, ticket checkers, communication devices, advertising materials, play slips, play centers, vending machines, ticket stock, and ticket dispensers.

(10) "Lottery product" means any KLC draw-based product, instant product, or a coupon issued by the KLC for a draw-based or instant product sold or distributed at a retail outlet or directly by the KLC.

(11) [(8)] "Lottery coupon" means a printed document issued by the KLC or its vendors, by which value is transmitted from the KLC to a player in anticipation of a sale of KLC products.

(9) "Lottery equipment" means every instant validation terminal, on-line terminal, electronic display, vending machine, telecommunication device, wiring, instant or pull-tab ticket dispenser, play center, or equipment now or in the future provided by the KLC or its vendors.

(10) "Lottery ticket" means an on-line, instant, or pull-tab ticket, and a ticket evidencing a chance to win in a future game sold by the KLC, whether now or hereafter offered by the KLC.

(11) "On-line terminal" means a terminal operated by a retailer, the KLC, or a player, which has the capability of accepting a quick-pick, playslip, and manually-entered wager, and issuing an on-line ticket. A terminal may include a cash drawer or other KLC-supplied ancillary device or equipment.

(12) "On-line ticket" means a ticket for a lottery game generated by and sold through an on-line terminal. Instant tickets and pull-tab tickets are not included.

(13) "Owner" means:

(a) An individual or [A] sole proprietor [of a retailer or an applicant for a "Retailer License" which is a sole proprietorship];

(b) A [limited or general] partner [or joint venturer in a retailer or an applicant for a "Retailer License" which is a partnership or joint venture, including a registered limited partnership];

(c) A member of, manager as defined in KRS 275.015, or officer of a retailer or an applicant for a "Retailer License" which is a limited liability company;

(d) An officer; [;]

(e) A director; [;] or

(f) A shareholder of [in a retailer, or an applicant for a "Retailer License" which is] a corporation [or similar entity], except that, in the case of owners of equity securities [a person shall be deemed an owner] of a publicly-traded corporation, [retailer or an applicant for a "Retailer License" by reason of the person's stock ownership in the retailer or applicant for a "Retailer License" only the names and addresses of those known to the corporation to own beneficially [if the person owns at least] five (5) percent [of the equity interest in the retailer] or more of such securities.

(12) "Retailer" is defined by KRS 154A.010(7) and includes the following: [applicant for a "Retailer License"; or

(e) A trustee or beneficiary of a trust, an owner of an interest in an

unincorporated association, or a person who otherwise holds a legal or beneficial interest in a retailer or applicant for a retailer license.

(f) "Owner" shall be interpreted as broadly as necessary to protect the security and integrity of the KLC and to ensure the integrity, reputation, and creditworthiness of its retailers and applicants for retailer licenses.

(14) "Person" means:

(a) An individual or sole proprietorship;

(b) A limited or general partnership, including a registered limited partnership;

(c) [A joint venture;

(d)] A limited liability company;

(d) [(e)] An association;

(f)] A corporation;

(e) [(g)] A trust;

(f) [(h)] An unincorporated organization; or

(i)] Other entity, business, or enterprise; or
(g) The owner of a retailer.

(13) "Retailer handbook" means the handbook made available to retailers by the KLC, which describes KLC's billing, ticket validation and ordering procedures, payments to retailers, lottery products, and the operation and maintenance of lottery equipment and supplies.

(14) [(15)] "Pull-tab ticket" means a ticket from which the player lifts off a surface tab to reveal if the ticket is a winner.

(16) "Retailer" is defined at KRS 154A.010(7).

(17) "Retailer License" means the ability to sell lottery products to the public and is identified through the issuance of a Retailer License Certificate [issued by the KLC and displayed by each retailer at its retail location].

(15) [(18)] "Retailer License Agreement" means the agreement executed by the retailer and the KLC, setting forth the terms and conditions under which the ["Retailer License" is issued. [(19) "Retailer Manual" means the Retailer Manual distributed to retailers by the KLC, as may be amended, setting forth, among other things, detailed descriptions of the KLC's billing, ticket validation and ordering procedures, retailer commissions and bonuses, lottery games, the operation of lottery equipment, and a copy of the administrative regulations.

(20) "Vending machine" means a mechanical or electronic device which accepts cash, coin, or other method of payment and dispenses one (1) or more forms of lottery tickets, other than on-line tickets.]

Section 2. Conditions of Licensing. As a condition to be licensed to sell lottery products [tickets] and to act as a retailer, each applicant [person] shall be deemed to have agreed to the following [general] conditions:

(1) Compliance with law. To fully comply with applicable laws, rules and regulations of the United States, including but not limited to the Americans with Disabilities Act (ADA), the Commonwealth of Kentucky and its political subdivisions, including KRS Chapter 154A and [the administrative regulations in] 202 KAR Chapter 3, and with all policies, procedures, rules, directives, and instructions of the KLC, including applicable [the] licensing documents and the Retailer Handbook [Manual], all as may be amended.

(2) [Release and indemnification. To release, indemnify, hold harmless and forever defend the KLC, its officers, directors, employees and agents, and the Commonwealth of Kentucky, its elected officials, employees and agents, from and against all loss, claims, damages, expenses, costs (including court costs and costs and fees of attorneys of the indemnified party's choice) arising out of, resulting from or in any way connected to a retailer's sale of lottery tickets and related activities and all actions or omissions of the retailer, its owners, employees or agents, whether or not related to the sale of lottery tickets. In addition, without limiting the generality of the foregoing, to release those persons from any claims (including claims for lost revenue) that may arise out of an interruption, suspension, failure of or defects in the operation of the KLC's games, lottery equipment, or any other service or product supplied by the KLC, regardless of the reasons.

(3) Sale and cashing of lottery products [tickets].

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(a) To offer for sale in a manner convenient and accessible to the public, and to actively promote the sale of, in a manner consistent with the directives of the KLC (including the display of KLC point-of-sale materials, signs [and other signs] or other displays,) all lottery products[tickets] the retailer is authorized to sell, and to abide by all promotional guidelines promulgated by the KLC:[throughout the retailer's business hours (to the extent that the retailer's business hours coincide with the KLC's hours of operation with respect to the sale of on-line tickets) and at a minimum during normal business hours.]

(b) To only use ticket stock issued to the specific retail outlet, unless otherwise authorized by the KLC;

(c) To cash valid winning lottery products sold or issued by retailer or by another retailer up to the limit set for the retailer by Sections 3(3) and 7 of this administrative regulation, or in an amount as otherwise authorized by the KLC in a manner consistent with the directives of the KLC[cash all valid lottery tickets of the type and dollar value the retailer is authorized to cash, in a manner consistent with the directives of the KLC, and to accept all valid lottery coupons issued by the KLC and give the bearer lottery tickets or merchandise in accordance with the terms of the lottery coupons:] throughout the retailer's business hours, by making a cash payment, or by issuing a check or money order;

(d) To neither charge nor ask for a fee, tip, tax, or anything of value for cashing a lottery product or for cashing a check or money order issued by retailer's retail outlet for payment of a prize;

(e) Upon request by a lottery player and when the lottery product is validated, to provide a lottery player with a copy of the validation slip for the lottery product presented; and

(f) To accept all valid coupons issued by the KLC and give the bearer of the coupons lottery products or merchandise in accordance with the terms of the lottery coupons[(to the extent that the retailer's business hours coincide with the KLC's hours of operation with respect to the cashing of on-line tickets) and at a minimum during normal business hours. A retailer shall not charge a fee for cashing a lottery ticket and shall not refuse to cash a valid lottery ticket sold by another retailer].

(3)[(4)] Training of retailer personnel. To require its employees[sales and accounting personnel] to attend all training sessions and review training materials offered by the KLC or its vendors, as needed, to effectively perform its responsibilities as a KLC retailer[and to review training materials and terminal-provided tutorials provided by the KLC or its vendors, so that personnel are able to sell lottery tickets, operate and maintain on-line terminals, instant validation terminals, vending machines and electronic devices, and appropriately account for sales of lottery tickets].

(4)[(5)] Accounting records. To maintain for the prior and[at least one (1) year] current fiscal year (July 1 through June 30) current, [and] accurate, and detailed accounting records of every operation and transaction relating to the sale, cashing, or maintenance of lottery products in conformance with the[of lottery tickets. The records shall conform to the rules, instructions, and] directives of the KLC, and as otherwise required by law. The records shall be made available to KLC representatives or agents[of the KLC], the Commonwealth of Kentucky's Auditor of Public Accounts, and[,] to[the extent required by law,] any other person as otherwise required by law. [,upon request for inspection and audit. Notwithstanding the foregoing requirement of the retailer to maintain records, the records of the KLC shall be determinative with respect to a retailer's accounts and other financial dealings with the KLC, absent a showing of manifest error.

(6) Change in information. To promptly notify the KLC of a change in information previously given to the KLC, within the time frames established in a licensing document.

(7) Storage of unsold tickets. To store unsold lottery tickets and on-line ticket stock in a safe and secure place to minimize the risk of loss, theft, damage or destruction. The KLC may inspect, and require alteration or relocation of, the storage place.

(8) End dates. To adhere to the KLC's directives and policies on end dates and return dates for lottery tickets and games.

(9) Loss, destruction or theft of tickets. To promptly report to the Security Division of the KLC and to the appropriate local law enforcement agency a loss, destruction, or theft of lottery tickets,

and to cooperate, and cause its employees to cooperate, fully with the investigations of the KLC's Security Division and law enforcement officials. The retailer shall be liable to the KLC for payment in full for all Lottery Tickets allegedly lost, destroyed or stolen after activation of the relevant pack of tickets.]

Section 3. Licensing[Process]. (1) In general.

(a) An applicant[and an owner of an applicant] for a["]Retailer License["] shall complete, sign, and submit:

1. An application for Retailer License, including an acknowledgement that the KLC may conduct the criminal, financial, and other background investigations required by Section 5 of this administrative regulation at any time during any term of the Retailer License Agreement with or without notice to the retailer;

2. A Retailer License Agreement; and

3. If a cashing agent, a Retailer License Agreement Addendum for Cashing Agents[execute a "Retailer License Application" and other documents as may be required by the KLC. An applicant shall tender the licensing fees described in paragraph (b) of this subsection, which shall include a nonrefundable application fee in the amount of fifty (50) dollars].

(b) Upon submission of an application for a ["]Retailer License[Application"], an applicant shall tender a \$250 fee[the following licensing and related fees, as applicable], which shall be nonrefundable, except as provided in Section 5(5)(a)(2) and (b)(3) of this administrative regulation[after installation of the lottery equipment:

1. A \$100 licensing fee for a retailer selling instant or pull-tab tickets, but not on-line tickets;

2. A \$350 licensing fee for a retailer selling on-line tickets and instant or pull-tab tickets;

3. A \$250 licensing fee for an existing retailer selling instant or pull-tab tickets who will commence selling on-line tickets;

4. A fifty (50) dollars fee for a partial change in owners of an existing retailer; and

5. A \$100 licensing fee for a complete change in ownership of an existing retailer].

(c) There shall be a \$100 fee per new retail outlet for an existing chain retailer[Requirements for applicants for a "Retailer License" shall apply to an existing retailer who applies for a "Retailer License" for a new location, except the KLC may, in its sole discretion, temporarily license a retailer to sell lottery tickets at a new retail location for a period not to exceed sixty (60) days].

(d) Criminal, financial, and other background investigations shall[, financial investigations and inquiries to the Kentucky Revenue Cabinet will] be conducted in accordance with Section 5 of this administrative regulation for[respect to] the applicant and each owner of the applicant. If the KLC determines that the applicant or an owner of the applicant does not meet the criteria established in KRS Chapter 154A and[or] in this administrative regulation for the issuance of a Retailer License[202 KAR Chapter 3], the applicant shall be notified in writing, and the ["]Retailer License["] shall be denied.

(e) [If the applicant is an existing retailer undergoing relicensing or seeking to open a new retail location, or is a related entity to an existing retailer, or shares one (1) or more owners with an existing retailer, and facts are disclosed which would cause the KLC to deny an application for licensing or relicensing if tendered by the other retailer, the KLC may:

1. Immediately revoke or suspend all existing retailer licenses of the retailer; or

2. Notify all the retailers that their licenses will be revoked within thirty (30) days if the conditions justifying revocation are not corrected.

e.] Upon satisfactory completion of the criminal, financial, and other background investigations pursuant to paragraph (d) of this subsection[and financial investigation and inquiry from the Kentucky Revenue Cabinet], the KLC may[shall]:

1. Sign[Execute] a ["]Retailer License Agreement["] with the successful applicant; and

2. Issue a ["]Retailer License Certificate for the successful applicant.

(f) Unless earlier terminated by the terms of the Retailer

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License Agreement in accordance with KRS Chapter 154A or Section 9 of this administrative regulation, the Retailer License Agreement shall be in effect for an initial one (1) year term from the date it is signed by the KLC. At the end of the initial one (1) year term, the Retailer License Agreement shall automatically renew for additional successive one (1) year terms, not to exceed four (4) years from the date the Retailer License Agreement was signed by the KLC. At the expiration of the four (4) years, unless the Retailer License Agreement was earlier terminated, the retailer shall seek relicensing pursuant to subsection (4) of this section and one (1) or more unique retailer numbers for each location, with each separate On-line and instant validation terminal to have its own retailer number.

(2) Special rules relating to chain retailers. [The KLC may treat] More than one (1) retail outlet[location] with identical owners may be treated as one (1) chain retailer. Each retail outlet[location] shall be issued a separate retailer number[or numbers] and a [unique]Retailer License[.]. The KLC may issue one (1) billing statement for all retail outlets[locations] or separate billing statements for each retail outlet[location]. If the chain retailer wishes to add a new retail outlet[location], the chain retailer shall[will] not be required to undergo a new background investigation.

(3) Special rules relating to cashing agents.

(a) The KLC may designate one (1) or more retailers as cashing agents. A cashing agent shall sign a Retailer License Agreement Addendum for Authorized Cashing Agents for cashing lottery products of a value up to an amount authorized by the KLC, not to exceed \$25,000. If internet is available and if the KLC determines internet is necessary and in the best interest of the KLC to complete the claim process, the retailer may be required to maintain internet access during KLC's business hours.

(b) All cashing agents shall:

1. During the KLC's business hours, cash validated winning lottery products by making a cash payment, or by issuing a check or money order;

2. Follow all KLC practices and procedures; and

3. Take all reasonable steps necessary to protect a player's private information, including address, telephone number, social security number, and birth date from public disclosure or any disclosure beyond that which is necessary for awarding the prize to the player. If any private information is disclosed, the KLC shall be immediately notified.

(c) The KLC may terminate a retailer's status as a cashing agent with or without revocation of the retailer's Retailer License.

(4) Relicensing.

(a) At least ninety (90) days prior to the expiration of the Retailer License Agreement as established in subsection (1)(f) of this section, each retailer shall seek relicensing by completing the application process in subsection (1) of this section, except the retailer shall not be required to tender the fees required by subsection (1)(b) and (c) of this section. If the retailer is a cashing agent, the retailer shall also complete the process in subsection (3) of this section.

(b) If a retailer continues to sell lottery products beyond the term of the Retailer License Agreement, the retailer shall continue to be liable to the KLC for all products sold.

(5) Change in Information. A retailer shall promptly notify the KLC of a change in information previously given to the KLC. For a complete or partial change in ownership, the retailer shall comply with Section 4 of this administrative regulation.

Section 4. Rules for Change in Ownership. (1) Special rules relating to transfer of ownership of existing retailers.[transfer of retail locations,]

(a) A [Retailer License] shall not be sold, transferred, assigned, [hypothecated,] pledged, or otherwise conveyed.

(b) [Unless waived in writing by the KLC, a] retailer shall give thirty (30) days prior written notice to the KLC of its intent to vacate or convey its retail outlet[location] or business, change its location, or change the form of the business of the retailer. Retailer acknowledges that a complete change in ownership shall be accomplished by tendering to the KLC:

1. An application for Retailer License;

2. A Retailer License Agreement;

3. If a cashing agent, a Retailer License Agreement Addendum for Cashing Agents;

4. The fees required by Section 3(1)(b) and (c) of this administrative regulation; and

5. Proof of conveyance documentation acceptable to the KLC.

(c) The KLC may, [The acquiring person, if it desires to be licensed as a retailer, shall apply with the KLC] for a period not to exceed sixty (60) days, temporarily license an owner or applicant who has acquired the retail outlet or business of an existing retailer, so that the sale of lottery products will not be interrupted during the application process. The temporary licensing of an owner or applicant to sell lottery products shall not limit the KLC's right to exercise its discretion regarding issuance of a [Retailer License to the owner or applicant]. If the retail outlet[location] or business of a retailer is conveyed and the sale of lottery products[tickets] continues without issuance of a temporary or new [Retailer License] to the acquiring owner[person], the conveying retailer and the acquiring owner[person] shall be jointly and severally liable for all debts and other obligations incurred to the KLC prior to and after the conveyance, and shall remain liable for all debts and other obligations until paid[, performed, and a new "Retailer License" is issued for the acquiring person].

(d) In addition to other grounds for denial of a Retailer License or termination of a Retailer License Agreement, the [The] KLC may deny issuance of a Retailer License to an owner or applicant[, in its sole discretion, temporarily, for a period not to exceed sixty (60) days, license a person] acquiring or seeking to acquire the retail outlet[location or business of an existing retailer, so that the sale of lottery tickets will not be interrupted during the KLC's performance of background investigations. The temporary licensing of a person to sell lottery tickets shall not limit the KLC's right to exercise its discretion regarding issuance of a "Retailer License" to the person, and the KLC in its sole discretion may hold the conveying retailer and the acquiring person jointly and severally liable for all debts and other obligations incurred to the KLC prior to the issuance of the new "Retailer License".

(d) In addition to other grounds for denial of a "Retailer License", the KLC may, in its sole discretion, deny issuance of a "Retailer License" to a person acquiring or seeking to acquire the retail location] or business of a retailer, until all debts and other obligations of the conveying retailer [or the person or any owner of the person,] to the KLC are paid [and performed] in full.

(2) Special rules relating to a partial change in ownership of a retailer.

(a) To the extent possible, retailers shall provide the KLC with thirty (30) days prior written notice of any partial change in owners, and in any event, shall provide the KLC with written notice within fifteen (15) days after any partial change in owners. Failure to do so may result in termination of the retailer's Retailer License. Written notice of a partial change shall be accomplished by tendering to the KLC a new Retailer License Application and a fee in the amount of fifty (50) dollars.

(b) The KLC shall conduct background and financial investigations of and make inquiries of the Kentucky Revenue Cabinet regarding a new owner of retailers.[4] Special rules relating to partial changes in ownership.

(a) To the extent possible, retailers shall provide the KLC with thirty (30) days prior written notice of any partial change in owners, and in any event shall provide the KLC with written notice within fifteen (15) days after any partial change in owners. Failure to do so may, in the KLC's sole discretion, result in termination of the retailer's "Retailer License". Written notice of a change shall be effected by tendering to the KLC a new "Retailer License Application" and a fee in the amount of fifty (50) dollars.

(b) The KLC shall conduct background and financial investigations of and make inquiries of the Kentucky Revenue Cabinet regarding a new owner of retailers.

(c) If the KLC's background and credit investigations and inquiries with the Kentucky Revenue Cabinet are not satisfactory, the KLC may revoke or temporarily suspend the retailer's retail license, or permit the retailer a period of time, not to exceed thirty

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~~(30) days, to remove the person as owner or to correct the situation resulting in the an unsatisfactory background check.~~

~~(5) Special rules relating to licensing for the sale of specific lottery tickets.~~

~~(a) The KLC shall not grant a "Retailer License" permitting the applicant to sell on-line tickets if the applicant has been denied a license to sell instant or pull-tab tickets, unless the reasons for the denial have been corrected by the applicant to the satisfaction of the KLC.~~

~~(b) Unless specifically permitted in writing by the KLC, a retailer shall not sell on-line tickets unless it also sells instant tickets. Failure to actively sell instant tickets shall be grounds for termination of the retailer's retail license.~~

~~(6) Special rules relating to cashing agents. The KLC may designate one (1) or more retailers as cashing agents. A cashing agent shall execute a "Retailer License Agreement Addendum for Cashing Agent" and shall follow the procedures established by the KLC for cashing tickets of a value from \$601 to \$5,000, inclusive. The KLC may, in its sole discretion, terminate a retailer's status as a cashing agent with or without revocation of the retailer's "Retailer License".~~

~~(7) Renewal and relicensing.~~

~~(a) The KLC shall relicense all retailers with the new licensing forms established in conjunction with the adoption of this administrative regulation.~~

~~(b) Thereafter, the KLC shall provide continuous renewal of all retailer licenses, renewing one-eighth (1/8) of retailer licenses each calendar quarter, with the ultimate goal of renewing every retailer license not longer than once every two (2) years.~~

~~(c) To be relicensed and to receive a renewal of a "Retailer License," each retailer shall:~~

- ~~1. Complete, execute, and submit the "Retailer License Application" or the "Retailer Relicensing Application";~~
- ~~2. Complete, execute, and submit new licensing documents; and~~
- ~~3. Successfully pass new background and financial investigations and inquiries with the Kentucky Revenue Cabinet.]~~

Section 5.4. Requirements and selection criteria for applicants, retailers, and owners[Retailers or Owners]. (1) Criminal and other background investigations. The KLC may[shall, with the assistance of the Kentucky State Police and, in its sole discretion, with the assistance of any other available sources,] investigate, at any time and during any license term, the criminal and other background history of, and existence of any statutory or regulatory violations by, an applicant, an owner, a[prospective retailer, a] retailer seeking relicensing, a retailer seeking licensing due to a complete change in ownership, or a retailer reporting a partial change in ownership[or a regularly scheduled relicensing, or an owner].

(a) The KLC may, unless required by statute,[shall] deny the application of an applicant,[a prospective retailer] and suspend or revoke the license of an[a] existing retailer[if]:

1. For any reason established in KRS 154A.400 for denying the issuance of a Retailer License;
2. For any reason established in KRS 154A.410(1) for terminating an existing Retailer License Agreement;
3. If the applicant, owner, or retailer[(a) A person, or an owner thereof,] has been convicted of[in] any offense that[jurisdiction of a:
 1. Felony, if ten (10) years have not passed since the satisfactory completion by the person of the sentence imposed by the court for the offense;
 2. Gambling-related offense, if ten (10) years have not passed since the satisfactory completion by the person of the sentence imposed by the court for the offense;
 3. Offense under KRS Chapter 154A, any other statute governing the KLC, or any related administrative regulations; or
 4. Offense which, in the sole judgment of the KLC,] relates to or may adversely impact the security or integrity of, or public confidence in, the KLC or its retailers. The KLC[KLC's determination] shall consider[include consideration of]:
 - a. The physical and fiscal security of the KLC and its retailers and the integrity of the KLC's games;

b. Public perception of and public confidence in the KLC and its retailers; and

c. Other relevant factors.

4. If an applicant, owner[(b) Person], or retailer[an owner thereof,] has been found by[violated] the Chief Financial Officer or his designee[provisions of KRS Chapter 154A or any other statute governing the KLC or any related administrative regulations, if ten (10) years has not passed since the last date that the violation existed; or

(c) A person, or an owner thereof, or a retailer or applicant for a "Retailer License" with respect] to have[which any person or owner was an owner or related entity, has] made a statement of material fact to the KLC while the person was serving as a previous owner or related entity, and the person knew or should have known that the statement was false or untrue in any respect, unless at least ten (10) years have passed since the statement was made;

5. If an applicant, owner, or retailer has been found by the Chief Financial Officer or his designee to have provided false or misleading information, or failed to provide material information the failure of which to provide is false or misleading, to the KLC or to a law enforcement agency with respect to obtaining or retaining a Retailer License;

6. If an applicant, owner, or retailer provides products, services, or entertainment that may have an adverse effect upon the credibility, integrity, and reputation of the KLC;

7. If an applicant, owner, or retailer sells products, services, or entertainment that constitutes products or services deceptively similar to or in competition with the KLC's products or services; or

8. If an applicant, owner, or retailer does not demonstrate the ability to sell and continue to sell an acceptable level of lottery products.

(b) The KLC may permit the applicant or retailer a period of time, not to exceed thirty (30) days, to remove the person as owner or to correct the situation resulting in an unsatisfactory criminal, financial, or other background check.

(c) If an existing retailer is requesting a relicensing, seeking to open a new retail outlet, or is an entity related to an existing retailer, or who shares one (1) or more owners with an existing retailer, and facts are disclosed that would cause the KLC to deny an application for licensing or a relicensing if tendered by the existing retailer, the KLC may:

1. Immediately revoke or suspend all existing Retailer Licenses of the retailer in accordance with KRS Chapter 154A; or
2. Notify all the retailers that their licenses will be revoked within thirty (30) days if the conditions justifying revocation are not corrected.

(2) Financial investigations.

(a) The KLC shall conduct a financial investigation of each applicant[person and each owner] applying for a ["Retailer License"], and of each retailer under consideration for licensing[relicensing] due to a change of ownership[or a routinely scheduled relicensing]. In addition to information available from other sources, the KLC shall maintain, and shall review during each financial investigation, a database regarding existing, suspended, and canceled retailers and their owners. The KLC may consider in its determination regarding the financial responsibility of an applicant or retailer undergoing relicensing, the connection of the owner[person, whether as owner] or related entity[;] with any retailer whose ["Retailer License"] was suspended or canceled due to a default in its obligations to the KLC.

(b) If, as a result of financial investigation of the applicant or retailer[person] and its owners, the KLC determines that a prospective or existing retailer poses a financial risk, the KLC may:

1. Deny the application or revoke the Retailer License[license];
2. License a prospective Retailer to, or permit an existing retailer to, sell instant tickets or pull-tab tickets only upon the condition that payment is made for tickets upon the delivery thereof] in accordance with KRS 154A.410(2)[good funds (COD)]; or

2.[3.] License an applicant[a prospective retailer] or permit an existing retailer to retain its Retailer License[license] upon receipt of the letters of credit, bonds, personal guaranty agreements,

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[guarantees] or other security or assurances of payment as the KLC may[~~in its sole discretion~~] deem satisfactory, in an amount based upon actual or potential sales.

(3) Kentucky Department of Revenue inquiries [Cabinet inquires].

(a) Except as provided in Section 4(1)(c) of this administrative regulation, a [“]Retailer License[”] shall not be issued to an applicant[~~a person~~] which is not, or has an owner which is not, and a[~~no~~] retailer shall not be permitted to retain a [“]Retailer License[”] which is not, or has an owner which is not, current in the payment of taxes, interest and penalties owed to, and current in filing of applicable tax returns with, the Commonwealth of Kentucky[~~and all political subdivisions thereof, including, without limitation, any political subdivisions in which lottery tickets are being or are proposed to be sold, exclusive of items under formal appeal pursuant to applicable statutes~~].

(b) A [“]Retailer License[”] shall not be issued to an applicant[~~a person~~] which has not previously been issued a federal employment tax identification number, or if the applicant is an individual, a social security number, and, if applicable, a Kentucky sales tax license number. The KLC shall confirm with the Kentucky Department of Revenue[Cabinet] that an applicant for a [“]Retailer License[”], and an existing retailer seeking[~~in the event of a~~] relicensing, complies with[~~the provisions of~~] this paragraph. The KLC shall rely upon information received from the Kentucky Department of Revenue[Cabinet]. The KLC may[~~in its sole discretion~~] permit an existing retailer a period of time[~~]~~] not to exceed thirty (30) days[~~]~~] within which to meet or cause the owner in question to meet its obligations with the Kentucky Department of Revenue[Cabinet] prior to revocation of the retailer’s [“]Retailer License[”] or prior to final denial of issuance of[~~renewal of~~] a relicensing of the [“]Retailer License[”].

(4) Kentucky Secretary of State Inquiries. An applicant shall be registered and in good standing with the Kentucky Secretary of State if the applicant is a corporation or limited liability company.

(5) Selection criteria:

(a) In order to sell draw-based products, an applicant shall meet the following criteria:

1. Whether, based on historic traffic patterns in the geographic area of the proposed retail outlet, the applicant is likely to have sales equal to or in excess of \$100 per week in draw-based product.

2. If the KLC determines that the applicant is not likely to have the expected draw-based product sales, the KLC may deny the applicant’s application for a Retailer License and refund any license fee previously paid by the applicant.

(b) In order to sell instant products, an applicant shall meet the following criteria:

1. Whether, based on historic traffic patterns in the geographic area of the proposed retail outlet, the applicant is likely to have sales equal to or in excess of \$300 per week in draw-based and instant products;

2. Whether the applicant will agree to and has the physical space to carry a minimum of six (6) unique instant products at its retail outlet at all times; and

3. If the KLC determines that the applicant is not likely to have the expected draw-based and instant product sales, the KLC may deny the applicant’s application for a Retailer License and refund any license fee previously paid by the applicant.

(c) Retailers shall sell both draw-based products and instant products unless specifically authorized by the KLC to sell one (1) or more draw-based products only based on the retailer’s type of business.

(6) Storage of unsold products. A retailer shall store unsold lottery products and ticket stock in a safe and secure place to minimize the risk of loss, theft, damage, or destruction. The KLC may inspect, and require alteration or relocation of, the storage place.

(7) Reasonable access to lottery products, equipment, and supplies. A retailer shall provide the KLC with reasonable access to lottery products, equipment, and supplies upon reasonable notice.

(8) Game end dates. A retailer shall adhere to the KLC’s

directives and policies on game end dates and return dates for lottery products. A retailer shall adhere to the KLC’s directives on return of unsold lottery products upon the announcement of game end dates.

(9) Loss, destruction, or theft of lottery products, equipment, or supplies.

(a) A retailer shall promptly report to the Security Division of the KLC and to the appropriate local law enforcement agency, a loss, destruction, or theft of lottery products, equipment, or supplies and cooperate, and cause its employees to cooperate, fully with the investigations of the KLC’s Security Division and law enforcement officials;

(b) The retailer shall be liable to the KLC for payment in full for all lottery products allegedly lost, destroyed, or stolen after activation of the relevant pack of products; and

(c) Retailers shall receive reimbursement for activated products stolen during a robbery or burglary, if the Security Division and law enforcement each receive accurate game, pack, and ticket number ranges in a timely manner, followed-up by a copy of the police offense report submitted to the Security Division within ten (10) business days.

(10) Security Inspection and Investigations. The KLC Security Division may inspect the retail outlet to ensure that lottery products, equipment, and supplies are maintained in an environment that will minimize the risk of loss, theft, damage, or destruction. The KLC may require alteration of the environment or relocation of lottery products, equipment, or supplies if a security risk is evident. The retailer shall cooperate, and cause it employees to cooperate, fully with all investigations of the KLC’s Security Division and law enforcement officials.[Relationship with KLC vendors, officers or directors. A person shall not be licensed as a KLC retailer, and a retailer shall not be permitted to maintain its “Retailer License”, if the person or an owner of the person:

(a) Is a vendor, as defined at KRS 154A.010, of major lottery-specific procurement items to the KLC, or is an officer, director, employee or agent of a vendor; or

(b) Resides in the same household as an officer or director of the KLC.

(5) Miscellaneous requirements. A person shall not be licensed as a KLC retailer, and a retailer shall not be permitted to maintain its “Retailer License” if the person or an owner of the person:

(a) Has provided false or misleading information, or failed to provide information the failure to provide which is materially misleading, to the KLC or to a law enforcement agency with respect to obtaining or retaining a “Retailer License”;

(b) Provides products, services, or entertainment that, in the sole discretion of the KLC, may have an adverse effect upon the credibility, integrity, and reputation of the KLC;

(c) Sells products, services, or entertainment that, in the sole discretion of the KLC, constitutes lottery products or services deceptively similar to or in competition with the KLC’s products or services; or

(d) Does not demonstrate, in the sole discretion of the KLC, the ability to sell and continue to sell an acceptable level of lottery tickets.

(6) Additional requirements.

(a) The KLC may promulgate administrative regulations to:

1. Revise or add requirements for the licensing of new Retailers, the relicensing of existing retailers, and the ability of retailers to retain retailer licenses; and

2. Amend the licensing documents, the “Retailer License Agreement,” and the Retailer Manual.

(b) The KLC may, in a document not in 202 KAR Chapter 3, amend that document unilaterally.

(c) The KLC may deny retailer licenses to a prospective retailer, deny relicensing to an existing retailer, and revoke the retailer licenses of a retailer based upon the failure to meet additional or revised requirements established by KLC or by administrative regulation.]

Section 6. Lottery equipment and supplies[~~5. Terminals and Other Equipment~~].

(1) Criteria for allocation of lottery equipment and

supplies[Allocation].

(a) ~~One (1) or more instant validation terminals (for retailers licensed to sell only instant tickets or pull-tab tickets) or on-line terminals (for retailers licensed to sell on-line tickets) may be installed by the KLC at the retailer's retail location. At the request of the retailer, the KLC may install vending machines and other lottery equipment at a retail location. Installation and retention of lottery equipment and supplies at a retail outlet~~[location] shall be determined by ~~in the sole discretion of~~ the KLC, based upon the following criteria, as appropriate:

1. The probable future or actual historic sales at the retail outlet ~~[location]~~ relative to the:

a. ~~Initial and ongoing maintenance and~~ installation costs of any lottery equipment and supplies and ongoing ~~communications~~[telecommunications] charges associated with any lottery equipment and supplies;

2. The retailer's and the retailer's owners' and related entities' history with the KLC;

3. The number of games carried by the retailer; and

4. The retailer's retail outlet, including business, location, size, and hours ~~[and~~

b. ~~Probable sales generated by the Lottery Equipment at another retail location;~~

2. ~~The incremental costs associated with the installation of the Lottery Equipment under the KLC's agreements with its on-line ticket vendor, vendors of instant and pull-tab tickets, and other applicable vendors; and~~

3. ~~The geographic distribution of retailers and various types of lottery equipment].~~

(b) In calculating the probable future or actual historic sales, the KLC ~~shall~~[may] consider ~~information it deems appropriate, to include one (1) or more of the following sets of data~~:

1. Actual historic sales of the lottery products sought to be sold by similarly situated retailers; and

2. Total actual historic sales by the retailer in question ~~of instant or pull-tab tickets (in the case of a retailer seeking to become licensed to sell on-line tickets or seeking installation of lottery equipment, vending machines or additional instant validation terminals); and~~

3. Actual historic sales by the retailer in question ~~of on-line tickets (in the case of a retailer seeking installation of additional on-line terminals).~~

(c) ~~The KLC may also consider factors including:~~

1. The retailer's and the retailer's owners' and related entities' history with the KLC;

2. The retailer's participation in promotional activities including the display of point of sale promotional materials;

3. The number of games carried by the retailer; and

4. The retailer's store hours].

(c) ~~(d)~~ The KLC may establish initial fees and periodic charges with respect to installation or maintenance of lottery equipment and supplies.

(2) Title, placement and removal of lottery~~(te)~~ equipment and supplies.

(a) Lottery equipment and supplies provided to retailers are[is] and shall remain the property of the KLC or its vendors, and shall not be or become property of a retailer or person claiming an interest in lottery equipment and supplies through a retailer including, without limitation, the holder of any~~a consensual, judgment, landlord's, or mechanic's~~ lien.

(b) Before placement of lottery equipment and supplies within a retailer's retail outlet ~~[location]~~, the retailer shall obtain KLC approval of the proposed location for the lottery equipment and supplies. The retailer shall not move, modify, or alter the equipment or supplies.

(c) The KLC shall have the right to enter a then-present or former retail outlet ~~[location]~~, during normal business hours, or at any other time with the consent of the holder of any interest in the real property on which the retail outlet ~~[location]~~ is situated, to remove lottery products, ~~property belonging to the KLC, including, without limitation, lottery~~ equipment, and supplies~~[lottery tickets, on-line ticket stock, signs, and point of sale materials, with or without revocation of the "Retailer License" and termination of the~~

"Retailer License Agreement" applicable to the retail location].

Section 7.~~[6]~~ Prize Payments. (1) Prize payments up to and including \$600. During its business hours, a retailer shall ~~[upon presentation of a winning KLC ticket which properly validates,]~~ pay the nonminor holder of a validated winning lottery product~~[the ticket]~~ the amount of the prize to which the winner is entitled, up to and including the sum of \$600, by making a cash payment, or by issuing a check or money order.

(2) Prize payments up to \$25,000~~[\$5,000]~~. The KLC ~~may~~shall establish a network of cashing agents. During the KLC's business hours, authorized cashing agents shall~~[agent retailers which shall, upon presentation of a winning KLC ticket which properly validates,]~~ pay the nonminor holder of a validated winning lottery product~~[the ticket]~~ the amount of the prize to which the winner is entitled, up to and including any sum that the KLC has authorized the cashing agent to pay, not to exceed the sum of \$25,000, by making a cash payment, or by issuing a check or money order~~[\$5,000]~~.

Section 8. ~~Retailer Accounting~~[7. Ticket Purchases, Deposit of Funds and Payments]. (1) Lottery product~~[ticket]~~ purchases, billings, and payment. The KLC shall make available ~~[promulgate and distribute]~~ to all retailers detailed accounting procedures regarding purchases of and billings for lottery products~~[tickets]~~, which procedures shall be deemed to be a part of the ~~[the]~~ "Retailer License Agreement~~[the]~~". The KLC may ~~in its sole discretion,~~ establish payment terms with individual retailers to address situations unique to those retailers. All proceeds from the sale of lottery products~~[tickets]~~ shall be deposited not later than the close of the next banking day after the date of their collection by the retailer and shall be held in an account designated, in writing, by the retailer to the KLC in the ~~[the]~~ "Retailer License Application~~[the]~~" or "Retailer Relicensing Application". The account shall be in an institution insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation, or their successors. All proceeds of the sale of lottery products~~[tickets]~~, net of credits for compensation due to retailers and for prizes paid by retailers, are the property of the KLC and shall be held by retailers in trust and in a fiduciary capacity for the benefit of the KLC.

(2) Credits. Retailers' accounts with the KLC shall~~will~~ be credited by the KLC in accordance with its retailer compensation policies, as established by the KLC pursuant to KRS 154A.050(1)(d)8.

(3) Delinquent accounts. In addition to all other rights and remedies available to the KLC at law or in equity, including the rights and remedies provided in KRS Chapter 154A, the KLC shall have the following rights and remedies:

(a) The right to set off against and recoup from sums due by the KLC to a delinquent retailer or owner any sums due the KLC by the delinquent retailer or owner, or by any other retailer in which the delinquent retailer or ~~[an]~~ owner ~~[thereof]~~ is an owner;

(b) The right to request the Commonwealth of Kentucky to set off against and recoup from sums due any delinquent retailer, owner ~~[thereof]~~, or other retailer which is in part owned by an owner of the delinquent retailer by the Kentucky Department of Revenue~~[Cabinet]~~, any sums due to the KLC by the delinquent retailer;

(c) The right to require payment of all sums due the KLC ~~in the KLC's sole discretion,~~ by a retailer prior to issuance of a ~~[the]~~ "Retailer License~~[the]~~" to a new retailer at the same retail outlet ~~[location]~~; and

(d) The right to write off a retailer's obligations to the KLC, without releasing any retailer from its obligations for repayment of sums owed the KLC, and reimburse its operating accounts in the amount of the write-off from a segregated account that may~~shall~~ be established from all licensing fees received by the KLC, including any additional sums authorized for that purpose by the board. The board may increase or reduce the amount held in the segregated account.

Section 9.~~[8]~~ Termination or Suspension. (1) Termination for cause. Unless required by statute, the KLC may terminate or

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~~suspend a retailer's Retailer License and [In addition to any other bases for termination or suspension established in this administrative regulation, KRS Chapter 154A, and the "Retailer License Agreement"], the KLC may, in its sole discretion, terminate or suspend a retailer's "Retailer License" and "Retailer License Agreement"] at any time, for good cause, upon a finding that [by the Senior Vice President of Finance and Administration that the retailer or an owner of the retailer]:~~

~~(a) The retailer or an owner has committed any act or omission established in KRS 154A.410(1) for termination of a Retailer License Agreement;~~

~~(b) The retailer or an owner has committed any act or omission that would prevent the issuance of a Retailer License for any reason in this administrative regulation;~~

~~(c) The retailer or an owner has committed a material breach of any provision of its Retailer License Agreement with the KLC;~~

~~(d) The retailer or an owner has provided false or misleading information in obtaining or attempting to obtain a Retailer License and Retailer License Agreement;~~

~~(e) The retailer or an owner been convicted of, or has entered a plea of guilty or nolo contendere, regardless of adjudication, to an offense punishable as a felony, or to any gambling-related offense, unless the time established in KRS 154A.400(1)(b)(3) has expired;~~

~~(f) The retailer or an owner has outstanding tax delinquencies owed to the federal government or any taxing authority within the Commonwealth of Kentucky;~~

~~(g) The retailer or an owner has jeopardized the integrity, security or efficient operation of the KLC;~~

~~(h) The ownership or location of the business has changed without providing prior notice to the KLC as provided in this administrative regulation;~~

~~(i) The retailer has failed to accurately account for lottery tickets, revenues, or prizes as required by the KLC;~~

~~(j) The retailer has failed to remit or is delinquent in remitting money owed to the KLC;~~

~~(k) The retailer or owner has committed any fraud, deceit, or misrepresentation to the KLC or to any individual purchasing a lottery ticket or tickets from retailer;~~

~~(l) The retailer has sold a lottery ticket or paid a prize to any person under eighteen (18) years of age;~~

~~(m) The retailer has sold a lottery ticket at any place other than the place authorized in its Retailer License;~~

~~(n) If required by statute, the retailer has not prominently displayed its Retailer License Certificate at the approved sales location;~~

~~(o) The retailer has not prominently displayed and maintained ticket displays/dispensers and points-of sale materials provided by the Lottery;~~

~~(p) The retailer has not made point-of-sale information for lottery products accessible to the public;~~

~~(q) The retailer has sold tickets at a price other than established by the KLC;~~

~~(r) The retailer or an owner has committed a material violation of any rule or administrative regulation promulgated by the KLC;~~

~~(s) The retailer has violated any directive or instruction issued by the KLC;~~

~~(t) The retailer or an owner has committed a material violation of KRS Chapter 154A;~~

~~(u) The retailer's reputation is no longer consistent with the protection of the public interest;~~

~~(v) The retailer has materially changed any factor considered by the KLC in selecting the retailer;~~

~~(w) The retailer or an owner has engaged in conduct prejudicial to public confidence in the lottery;~~

~~(x) The retailer has charged a fee or tip to redeem a lottery ticket or has required a customer to purchase another item in order to purchase a lottery ticket;~~

~~(y) The retailer has paid a prize valued greater than the retailer is authorized to cash by the KLC, or the retailer has refused to cash a winning lottery prize, properly validated, up to the amount authorized by the KLC; or~~

~~(z) The retailer has insufficient sales of lottery products. [Is in~~

~~default or has violated any of the terms and conditions of its "Retailer License Agreement";~~

~~(b) Has violated or is in violation of any provision of 202 KAR Chapter 3 or KRS Chapter 154A;~~

~~(c) Failed or fails to meet the requirements and minimum standards for granting a "Retailer License" as established in 202 KAR Chapter 3, KRS Chapter 154A, or the licensing documents;~~

~~(d) Has provided false or misleading information, or has failed to provide information the failure of which to provide is false or misleading, to the KLC or to a law enforcement agency with respect to obtaining or retaining a "Retailer License";~~

~~(e) Provides or has provided a product, service, or entertainment that, in the sole opinion of the KLC, may have an adverse effect upon the credibility, integrity and reputation of the KLC;~~

~~(f) Sells, and continues to sell after written notice by the KLC to cease and desist the sale, a product, service, or entertainment that, in the sole opinion of the KLC, constitutes a product or service deceptively similar to or in competition with a KLC product or service;~~

~~(g) In the case of a retailer, sells its business, or, in the case of an owner, sells all or a sufficient part of its interest in the retailer, that the buyer meets the definition of an owner;~~

~~(h) Has not, in the sole judgment of the KLC, maintained an acceptable level of sales of lottery tickets; or~~

~~(i) Poses a situation that causes the President of the KLC to determine that the action is necessary in order to ensure the integrity, security, honesty, or fairness of the operation of the KLC or any of its games.]~~

~~(2) Termination without cause. The KLC may terminate a retailer's Retailer["Retail"] License["] and ["Retailer License Agreement["] without cause, upon thirty (30) days prior written notice.~~

~~(3) Termination by retailer. A retailer may terminate its Retailer["Retail"] License["] and ["Retailer License Agreement["] upon thirty (30) days prior written notice. The KLC may, at its option, elect to terminate the retailer's ["Retailer License["] and ["Retailer License Agreement["] prior to the end of the thirty (30) day period.~~

~~(4) Effect of termination or suspension. If a retailer possesses multiple retail outlets, suspension or termination of one (1) outlet is grounds for suspension or termination of the others. Every obligation of a retailer to the KLC shall survive termination or suspension of the ["Retailer License["] and ["Retailer License Agreement["]. Upon termination of a "Retailer License" and ["Retailer License Agreement["], the retailer]. Upon termination or suspension of a Retailer License and Retailer License Agreement, the retailer shall immediately pay to the KLC all sums owed to the KLC and shall surrender to the KLC the retailer's ["Retailer License["] and all lottery products, equipment and supplies[other property of the KLC or its vendors, including, without limitation, all lottery tickets, on-line ticket stock, point-of sale materials, signs, and other property provided to the retailer by or on behalf of the KLC].~~

~~(5) Other remedies. In addition to the remedies of termination or suspension, the KLC may avail itself of any other remedies available to it at law or in equity, including, without limitation, injunctive relief.~~

Section 10.9. Retailer Remedies. (1) Right to protest. An applicant for a ["Retailer License["] or a retailer aggrieved in connection with an action taken by the KLC pursuant to KRS Chapter 154A[154A.400] or this administrative regulation[202 KAR Chapter 3] may protest, in writing, to the president of the KLC. The protest shall be submitted within thirty (30) calendar days after the aggrieved applicant or retailer[person] knows or should have known of the facts giving rise to the protest. An applicant or retailer[A person] shall be deemed to have knowledge of the facts giving rise to the protest within thirty (30) days of the KLC's issuance of a written notification to the retailer or applicant for a ["Retailer License["] regarding the action or decision of the KLC.

(2) Effect of protest. If a timely protest is filed under this section and the action protested is the termination of a ["Retailer License["] the ["Retailer License["] shall be temporarily suspended

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rather than terminated until all administrative and judicial remedies have been exhausted. In all other circumstances, the KLC's action or decision shall stand unless and until reversed or revised as a result of the protest.

(3) Action by President and Right to Appeal. The decision of the president shall be promptly issued in writing and shall be immediately furnished to the protesting person by hand-delivery, telecopier (with a hard copy sent by certified mail, return receipt requested,) ~~or by certified mail,~~ (return receipt requested), or by appropriate electronic means. A notice shall be deemed received on the date hand-delivered or sent by telecopier, ~~or~~ three (3) business days after deposit of the notice in the United States Mail, postage prepaid, ~~if sent by certified mail, return receipt requested and upon receipt, if sent electronically.~~ The decision shall recite the grounds relied ~~upon~~ ~~on~~ by the president in reaching the decision and shall inform the protesting party of its further appellate rights under subsections (4) and (5) of this section. The president's decision shall be final and conclusive, unless within ten (10) calendar days from the date of receipt of the decision, the protesting party delivers a written appeal to the board, by hand, by telecopier (with a hard copy sent by certified mail, return receipt requested) or by certified mail, return receipt requested, all pursuant to KRS Chapter 154~~[154A.090]~~. The address is: Board of Directors, Kentucky Lottery Corporation, 1011 West Main Street, Louisville, Kentucky 40202, Telecopier No. (502) 560-1532.

(4) Board appeal.

(a) ~~After~~~~Upon~~ receipt of an appeal, the board shall ~~promptly~~ schedule a hearing for the protesting ~~party~~~~person~~ which shall be ~~scheduled~~~~held~~ as soon as practicable; and

1. The hearing shall be conducted in accordance with KRS Chapter 13B; or

2. The chairman of the board may determine that the hearing will be conducted by a hearing officer. The chairman shall determine whether the hearing officer will conduct the hearing in the presence of a quorum of the board, who renders a decision without the recommended order of the hearing officer, or whether the hearing officer will conduct the hearing outside of the presence of the board and will complete and submit to the board a written recommended order, which shall include findings of fact, conclusions of law, and recommended disposition, as provided in KRS 13B.110. The~~after receipt of the appeal. The board may hold the hearing at the next regularly scheduled board meeting. The protesting person and the president shall have the right to be represented by counsel before the board and, in addition, shall have the following rights relative to the hearing:~~

~~1. To submit written memoranda as to relevant facts or applicable law, if submitted at least ten (10) calendar days before the hearing;~~

~~2. To call and examine witnesses;~~

~~3. To cross-examine witnesses called by the opposing party; and~~

~~4. To introduce evidence.~~

~~(b) The parties shall exchange a list of witnesses they intend to call at the hearing, a summary description of the evidence to be presented by each, and the documents proposed to be presented at the hearing, at least five (5) business days prior to the dates set for hearing.~~

~~(c) The board may consider and grant motions by either party for extensions of time, for the right to file responsive memoranda, and to call additional witnesses after receiving the opposing party's list of witnesses.~~

~~(d) The protesting person shall have the burden of proving, by a preponderance of the evidence, that the president's decision was clearly erroneous, arbitrary and capricious, procured by fraud, or was a result of misconduct of the president or another employee of the KLC.~~

~~(e) An accurate transcript of the hearing shall be kept, and the protesting person shall have the right to obtain a copy of the transcript upon payment of reasonable charges associated with the preparation of the transcript.~~

~~(f) The chairman of the board shall act as the presiding officer at the hearing, unless the chairman appoints another board member or an independent hearing officer specifically for that~~

~~purpose. The presiding officer shall act to maintain decorum and shall determine the order of procedure during the hearing, making all rulings on matters of law, evidence, and procedure.~~

~~(g) Admissibility of evidence shall be determined by the presiding officer.~~

~~(h) A~~ decision of the board shall be made by a majority of the board members present at the meeting in which the appeal is decided.

~~(b) [The board shall issue its decision on the appeal within thirty (30) calendar days following the hearing and shall provide copies of the decision to the president, the protesting person and their respective counsel via certified mail, return receipt requested. Proof of receipt shall be made a part of the administrative record.~~

~~(i) The decision of the board shall be final unless the decision is appealed as provided by subsection (5) of this section and other applicable law.~~

(5) Access to state courts. A person aggrieved by a decision of the board under this section may appeal the decision, within thirty (30) calendar days of its date of issuance, to a court of competent jurisdiction, in accordance with KRS Chapter 154A~~[154A.090]~~.

~~Section 11~~~~[10.] Sales of Lottery Products~~~~[Tickets] by KLC. Nothing in 202 KAR Chapter 3, licensing documents~~~~[a-retailer licensing document], or any other document shall limit the right of the KLC to sell lottery products~~~~[tickets] directly to the public, in person, electronically, by mail, by subscription, or otherwise.~~

~~Section 12~~~~[14.] Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Application for Retailer License"~~~~[Application], 12/8/17~~~~[11/16/01*];~~

~~(b) ["Retailer Relicensing Application, 11/16/01*];~~

~~(c) ["Retailer License Agreement", 12/8/17~~~~[11/16/01*];~~

~~(c) [(d) "Retailer License Agreement Addendum for Authorized Cashing Agents"~~~~[Agent], 12/8/17~~~~[11/16/01*]; and~~

~~(d) [(e) "Retailer License Certificate", 12/8/17~~~~[11/16/01*].~~

~~(2) This material may be inspected, copied, or obtained, upon reasonable notice~~~~[subject to applicable copyright law], at the Kentucky Lottery Corporation, 1011 West Main Street, Louisville, Kentucky 40202-2623, Monday through Friday, 8:00 a.m. through 5:00 p.m. E.T.~~

TOM DELACENSERIE, President and CEO

APPROVED BY AGENCY: December 12, 2017

FILED WITH LRC: December 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2018, at 10:00 a.m., at the Kentucky Lottery Corporation, 1011 West Main Street, Louisville, Kentucky 40202-2623. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 January 31, 2018. 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: Mary Harville, Senior Vice President and General Counsel, Kentucky Lottery Corporation, 1011 West Main Street, Louisville, Kentucky 40202-2623, phone: (502) 560-1576; fax: (502) 560-1532, email mary.harville@kylottery.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mary Harville

(1) Provide a brief summary of:

(a) What this administrative regulation does: Pursuant to KRS

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154A.400(1), the Kentucky Lottery Corporation is required to develop and maintain a statewide network of lottery retailers that will serve the public convenience and promote the sale of lottery tickets, while insuring the integrity of the lottery. This administrative regulation contains the regulations by which lottery retailers are governed.

(b) The necessity of this administrative regulation: To govern the selection of lottery retailers, KRS 154A.400(1)(b) requires that the Board of Directors of the Kentucky Lottery Corporation shall, by administrative regulation, develop a list of objective criteria upon which the selection of lottery retailers shall be based.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation lists the objective criteria upon which the selection of lottery retailers is based as required by KRS 154A.400(1)(b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation lists the objective criteria upon which the selection of lottery retailers is based as required by KRS 154A.400(1)(b).

(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 amended regulation contains the following amendments:

Section 1 – Definitions

Updates the definition section to delete definitions that are antiquated and no longer used in the industry;

Adds a definition for a license applicant;

Increases the cashing agent limit authority to \$25,000 and requires cashing of lottery products during KLC business hours;

Removes the term "online" and adds a definition for instant product, draw-based product, lottery product and draw-based retailer to conform to updates in lottery products offered;

Amends the definition of "owner" to conform to current laws and practice concerning corporate entities

Section 2 – Conditions of Licensing

Requires retailers to be in compliance with the Americans with Disability Act;

Removes the indemnity provision as duplicative of the indemnity provision in the Retailer License Agreement;

Specifies the terms of using ticket stock;

Requires retailers to cash tickets during regular business hours by cash, check, or money order;

Prohibits retailers from charging a fee for cashing tickets;

Requires retailers to provide players with a validation slip upon request;

Clarifies that retailers must keep accounting records for the prior and current fiscal year.

Section 3 – Licensing

Requires all applicants for a retailer license to submit a retailer application authorizing a complete background check at any time,

Changes the one-time license and application fee to \$250.00 for each applicant, and an additional \$100 fee for each additional retail outlet for chain retailers,

Amends the license term to allow for one-year automatic renewal of licenses up to four years (unless earlier terminated), with relicensing every four years,

Amends the cashing agent requirement to allow cashing lottery products up to \$25000 as authorized by KLC,

Requires cashing agents to cash during KLC business hours by cash, check, or money order, and

Requires cashing agents to protect private player information

Section 4 – Rules for Change in Ownership

Clarifies that a complete change in ownership of a retailer will require a complete relicensing and new license fee

Section 5 – Requirements for applicants, retailers, and owners.

Clarifies that the KLC may conduct a background investigation of applicants and retailers at any time;

Allows retailers to provide a social security number in lieu of a Federal Employer Identification Number (FEIN) if a sole proprietorship and only require a sales tax number if the retailer sells taxable products (to accommodate fraternal organizations);

Requires corporate entities to be registered with the Kentucky Secretary of State;

Adds the "personal guaranty agreement" to the list of security or other assurances of payment which may be required by the KLC if applicant is determined to be a financial risk;

Adds additional selection criteria for applicants to sell draw-based and instant products based on likely or historic sales and physical space;

Requires retailers to sell both draw-based and instant products, unless otherwise authorized by the KLC;

Sets out the procedure for handling lost or stolen tickets, updates the security inspection policy

Section 6 – Lottery equipment and supplies

Revises the and criteria for allocation of lottery equipment and supplies;

Section 7 – Prize payments

Requires retailers to cash lottery products up to \$600 by paying cash or by issuing a check or money order;

Increases cashing agent authority up to \$25,000 from \$5000;

Requires cashing agents to cash lottery products during KLC business hours;

Section 8 – Retailer Accounting

No material changes

Section 9 – Termination or Suspension

Incorporates the provisions of KRS Ch. 154A that require termination or suspension of a retailer license agreement;

Clarifies that "material" violations may result in termination or suspension, and expands upon the reasons for which a retailer license agreement may be terminated or suspended,

Clarifies that for chain outlets, termination or suspension of one outlet may be the basis for terminating or suspending all outlets

Section 10 – Retailer remedies

Revises the procedures for retailers to appeal a decision of the KLC to be consistent with the provisions of KRS Ch. 13B;

Documents Incorporated by Reference

Includes revised forms necessary to update, streamline and facilitate the retailer licensing process, including the application for retailer license, the retailer license agreement, and the addendum for cashing agents.

(b) The necessity of the amendment to this administrative regulation: the amendments align the regulation with current operating procedures of the KLC and updates, simplifies, and streamlines the retailer licensing process and formats the regulation to comply with statutory requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation lists the objective criteria upon which the selection of lottery retailers is based as required by KRS 154A.400(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: The amended regulation would simplify and streamline the retailer licensing process and update the regulation to conform to current business and industry practices.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 3,241 currently active licensed lottery retailers, as well as prospective retailers.

(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 regulation, both existing and amended, require all retailers to take a number of actions in order to obtain and maintain a lottery retailer license, including: take the steps required to apply for a retailer license; comply with the conditions of licensing; pay the application fee; requirements for retailers that apply to be cashing agents; the criteria for installation of lottery equipment; follow the steps required to pay prizes and for the handling and storage of tickets; and follow requirements for addressing security matters, training personnel.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): the regulation establishes a flat \$250 application fee for all retailer applicants, and a \$100 fee for each additional chain outlet. It is unknown whether a retailer would incur other costs over and above that fee to comply with the regulation, such as adequate space to accommodate a lottery terminal or training of personnel.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): the licensed retailer may sell lottery products and be entitled to a selling and cashing commission and other incentives.

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

(a) Initially: This regulation will be implemented with existing agency resources and add no additional implementation costs. The application fees will cover the costs of the required background and financial investigations.

(b) On a continuing basis: This regulation will be implemented with existing agency resources and will add no additional implementation costs. The application fees will cover the costs of the required background and financial investigations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The administrative regulation will be implemented and enforced with agency funds. The application fees will cover the costs of the required background and financial investigations.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The existing regulation required a \$100 fee for retailers selling only instant tickets and a \$350 fee for retailers selling both instant and online lottery tickets. The amended regulation establishes a flat application fee of \$250 for all lottery retailer applicants and an additional \$100 for chain retailers for each additional outlet.

(9) TIERING: Is tiering applied? Generally, the administrative regulation will apply equally to all retailers and prospective retailers; therefore, no tiering is applied.

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? State and local government entities may be indirectly impacted by this administrative regulation to the extent that current retailers and new retailers within the state or a local government entity may be licensed and regulated in the sale of lottery products.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The state statute which authorizes the action taken by this administrative regulation is KRS 154A.400 (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 administrative regulation is an amended version of an administrative regulation that has been in effect since 2002, and the regulation does not have the effect of directly generating revenues for the state or local government. The regulation establishes an application and relicensing fee of \$250 for all retailer applicants and this fee is to cover the KLC's estimated costs for the required background and financial investigations. Other fees are established for a complete change in ownership of a retailer and for adding a new retailer outlet if the retailer is a chain. In addition, the retailers that are licensed and regulated under the regulation are responsible for selling lottery products. Lottery sales

for Fiscal Year 17 were \$1,000,501,000, with dividends to the Commonwealth of \$238 million (to the General Fund and then to the funds as provided in KRS 154A.130); and lottery sales for Fiscal Year 18 are projected to be \$1,033,100,000, with dividends to the Commonwealth of \$252.5 million (to the General Fund and then to the funds as provided in KRS 154A.130).

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See above response: the administrative regulation will not directly generate revenue for the state or local government.

How much will it cost to administer this program for the first year? The license fees established in the regulation will cover the cost of the required background and financial investigations.

(c) How much will it cost to administer this program for subsequent years? The license fees established in the regulation will cover the cost of the required background and financial investigations.

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:

**KENTUCKY COMMUNITY AND TECHNICAL
COLLEGE SYSTEM
Kentucky Board of Emergency Medical Services
(Amendment)**

202 KAR 7:501 Ambulance agency licensure[Ambulance providers and medical first response agencies].

RELATES TO: KRS 216B.020(2)(f), 311A.030, 311A.190
STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.060, 311A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.020 requires the board to exercise all administrative functions in the regulation of the EMS system and the licensing of ambulance services and medical first response agencies. KRS 311A.030 requires the board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies. This administrative regulation establishes minimum ambulance agency licensing requirements.

Section 1. Applying for Licensure. (1) An applicant shall submit:

- (a) A completed Ambulance Agency License Application;
- (b) An application fee as established in 202 KAR 7:030;
- (c) A current map of the agency's intended service area; and
- (d) A written description of the ambulance agency's geographic service area within the Commonwealth, which shall identify with specificity the complete boundary of the area served by the provider upon applying for initial licensure or if the service area has changed since the last map was provided to the KBEMS office. The map shall accurately reflect the service area as identified by the providers Certificate of Need, if appropriate.
- (2) The board shall conduct a physical inspection of an agency's premises prior to granting a license or license renewal.
- (3) A license to operate shall be issued only for the person, service area, and premises, including the number of ambulances, named in the application, and shall not be transferable.
- (4) An agency shall display its license in a prominent public area at the service base station and at any fixed satellite location.
- (5) The following information shall be included on the license issued by the office of the board:
 - (a) Operating name of the provider;
 - (b) Physical location of the base station;
 - (c) The number and physical location of satellite stations, if any, operated by the licensee;
 - (d) The license classification;
 - (e) The level of service provided;

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- (f) The number of vehicles operated by the provider; and
- (g) The specific geographic area to be served by the licensee.
- (6) A license shall expire on December 31 following the original date of issue and shall subsequently expire annually on December 31 of each year.

Section 2. License Renewal. To renew a license, the holder shall:

- (1) Submit a completed Ground Agency Renewal Application;
- (2) Pass inspection conducted by the board of the agency's premises, equipment, supplies, vehicles and records; and
- (3) Submit a fee in the amount established in 202 KAR 7:030.

Section 3. Agency Changes. (1) A new application shall be filed if a change of ownership occurs. A change of ownership for licenses shall be deemed to occur when more than fifty (50) percent of the assets, capital stock, or voting rights of a corporation or agency is purchased, transferred, leased, or acquired by comparable arrangement by one (1) person or entity from another.

(2) A new license application filed due to a change of ownership shall be filed, at minimum, ten (10) days prior to the change of ownership. The new license shall be issued for the remainder of the previous licensure period.

(3) There shall be full disclosure to the board of the changes, such as name and address, of:

- (a) Each person having direct or indirect ownership interest of ten (10) percent or more in the agency;
- (b) Officers and directors of the corporation, if an agency is organized as a corporation; or
- (c) Partners, if an agency is organized as a partnership.

Section 4. Inspections. (1) Compliance with licensing pursuant to this administrative regulation shall be validated through on-site inspections of the agency by representatives or employees of the KBEMS Office. The inspection shall include a:

- (a) Safety and maintenance check of all vehicles in operation;
- (b) Review of all equipment and supplies stocked on vehicles; and
- (c) Review of personnel records, policy manuals and other reports required to be maintained pursuant to 202 KAR Chapter 7.

(2) Each representative or employee of the KBEMS Office shall have access to the service during hours that the agency operates.

(3) A regulatory violation identified during an inspection shall be transmitted in writing to the agency by the KBEMS office.

(4) The agency shall submit a written plan for the elimination or correction of a regulatory violation to the KBEMS office within ten (10) business days of receipt of the statement of violation.

(5) The plan shall specify the date by which the violations shall be corrected.

(6) Within ten (10) working days following receipt of the plan, the KBEMS office shall notify the agency in writing whether or not the plan is accepted as providing for the elimination or correction of the violation.

(7) The KBEMS office may conduct a follow-up visit to verify compliance with the plan.

(8) If a portion or all of the plan is unacceptable:

(a) The KBEMS office shall specify why the plan cannot be accepted; and

(b) The provider shall modify or amend the plan and resubmit it to the KBEMS office within ten (10) working days after receipt of notice that the plan is unacceptable.

(9) Unannounced inspections may be conducted for a:

- (a) Complaint allegation;
- (b) Follow-up visit; or
- (c) Relicensing inspection.

Section 5. Unethical Conduct. (1) The following acts shall be considered unethical conduct in the practice of providing emergency medical services and may be subject to the sanctions established in KRS 311A.060:

- (a) Failure to submit, amend, or modify a plan of correction in order to eliminate or correct regulatory violations;
- (b) Failure to eliminate or correct regulatory violations;

- (c) Falsifying an application for licensing;
- (d) Changing a license issued by the board;
- (e) Attempting to obtain or obtains a license by:

- 1. Fraud;
- 2. Forgery;
- 3. Deception;
- 4. Misrepresentation; or
- 5. Subterfuge;

(f) Providing false or misleading advertising;

(g) Falsifying, or causing to be falsified reports regarding patient care or other reports provided to the KBEMS office;

(h) Providing an unauthorized level of service;

(i) Failing to provide the board or its representative with information upon request, or obstructing an investigation regarding alleged or confirmed violations of KRS Chapter 311A or 202 KAR Chapter 7;

(j) Issuing a payment on an invalid account or an account with insufficient funds to pay established fees, fines, or charges;

(k) Submitting fraudulent or misleading claims for reimbursement; or

(l) Failure to comply with local ordinances, federal statutes, KRS Chapter 311A, or 202 KAR Chapter 7.

(2) An agency whose license is currently under disciplinary review shall not be eligible to sell the license to another entity until all fines or fees owed to the board are satisfied and any associated legal action has been fully resolved.

(3) A licensed agency shall not be disciplined for responding to calls outside of its geographic service area if the agency is providing:

(a) Mutual aid at the request of and under an existing agreement with another licensed agency whose geographic service area includes the area in which the emergency or non-emergency call originates;

(b) Disaster assistance;

(c) Interfacility medical transfer from damaged or closed health facilities; or

(d) Interfacility medical transfer to residents of its service area, who are patients in facilities outside of its service area, for the purpose of returning the patients to their home service area or transporting them to another health facility.

Section 6. Exemptions from Administrative Regulations. (1) The following situations shall be exempt from the provisions of this administrative regulation:

(a) First aid or transportation provided in accordance with KRS 216B.020(2)(f);

(b) A vehicle serving as an ambulance during a disaster or major catastrophe; or

(c) A vehicle operated by the U.S. government on property owned by the U.S. government.

(2) The following out-of-state agencies shall be exempt from the provisions of this administrative regulation:

(a) A vehicle licensed by another state that is transporting a patient from out of state to a Kentucky medical facility or other location in Kentucky;

(b) A vehicle licensed by another state that is transporting a patient from out of state through Kentucky to another location out-of-state;

(c) A vehicle licensed in an adjoining state that responds to a mutual aid request from a Kentucky licensed provider for emergency assistance if the out of state service is the closest service appropriately capable of responding to the request or if Kentucky licensed providers:

- 1. Are unavailable;
- 2. Have already responded; or
- 3. Are physically unable to reach the incident; and

(d) A vehicle licensed by another state that is providing nonemergency transportation from a Kentucky health care facility for a patient who is not a Kentucky resident back to their state of residence.

Section 7. Public Notice of Negative Action. The board office shall cause to be published, on the KBEMS web site or similar

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publication of the board, or otherwise disseminate, the name of any licensed agency that is fined, placed on probationary status, placed on restricted status, suspended, or had a license revoked.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Ambulance Agency License Application", (12/2017);
- (b) "Ground Agency Renewal Application", (12/2017).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 118 James Court, Suite 50, Lexington, Kentucky 40505, Monday through Friday, 8 a.m. to 4:30 p.m. License Classifications. (1) The following classifications of licensure are established for ambulance providers:

- (a) Class I ground ambulance services shall operate at the ALS or BLS level to provide emergency and nonemergency transportation;
 - (b) Class II ground ambulance services shall operate at the BLS level only to provide nonemergency transportation;
 - (c) Class III ground ambulance services shall operate at the ALS level only to provide critical care, emergency or nonemergency transportation between health care facilities;
 - (d) Class IV ground ambulance services shall operate at the ALS or BLS level to provide emergency and nonemergency transportation for restricted locations such as industrial sites and other sites that do not provide services outside a designated site;
 - (e) Class VI services provide ALS medical first response without patient transport; and
 - (f) Class VII rotor wing air ambulance services may provide ALS emergency or nonemergency transportation. Fixed wing class VII services may provide ALS or BLS emergency or nonemergency transportation.
- (2) The KBEMS office shall determine the appropriate classification for licensing all providers.

Section 2. Provider Licensing Requirements. (1) A person or entity shall not provide, advertise, or profess to engage in the provision of ambulance service or ALS medical first response originating in Kentucky without having first obtained a license from the board pursuant to this administrative regulation and certificate of need if appropriate.

- (2) A provider shall comply with local ordinances, state and federal statutes and administrative regulations.
- (3) A provider shall display its license in a prominent public area at the service base station.
- (4) The following information shall be included on the license:
 - (a) Operating name of the provider;
 - (b) Physical location of the base station;
 - (c) The number and physical location of satellite stations, if any, operated by the licensee;
 - (d) The license classification;
 - (e) The level of service provided;
 - (f) The number of vehicles operated by the provider; and
 - (g) The specific geographic area to be served by the licensee.
- (5) Providers shall provide the KBEMS office with an accurate map and a written description of its geographic service area within the Commonwealth, which shall identify with specificity the complete boundary of the area served by the provider when applying for initial licensure or if the service area has changed since the last map was provided to the KBEMS office. The map shall accurately reflect the service area as identified by the providers certificate of need, if appropriate.
- (6) A licensed provider may respond to calls outside of its geographic service area only if the provider is providing:
 - (a) Mutual aid under an existing agreement with another licensed provider whose geographic service area includes the area in which the emergency call is made;
 - (b) Disaster assistance;
 - (c) Nonemergency transfers from damaged or closed health facilities; or
 - (d) Interfacility care to residents of its service area, who are patients in facilities outside of its service area, for the purpose of returning the patients to their home service area or transporting them to another health facility.

Section 3. Licensing, Inspection and Change of Ownership. (1) To obtain a license, an ambulance provider shall file an "Application for Ambulance Provider Licensing", Form EMS-1 (6/96), with the Office of the Kentucky Board of Emergency Medical Services, 2545 Lawrenceburg Road, Frankfort, Kentucky 40601.

- (2) An applicant for a license or a licensee shall, as a condition precedent to licensing or relicensing, be in compliance with all applicable sections of this administrative regulation as determined through means that include a physical inspection process.
- (3) A license shall expire on December 31 following the original date of issue and shall subsequently expire annually on December 31 of each year.
- (4) A license may be renewed upon:
 - (a) Recommendation of staff following the physical inspection of the provider; and
 - (b) Payment of the prescribed fee.
- (5) A license to operate shall be issued only for the person, service area, and premises, including the number of ambulances, named in the application, and shall not be transferable.
- (6) A new application shall be filed if a change of ownership occurs. A change of ownership for licenses shall be deemed to occur if more than fifty (50) percent of the assets, capital stock, or voting rights of a corporation or provider is purchased, transferred, leased, or acquired by comparable arrangement by one (1) person from another.
- (7) If a new application for a license is filed due to change of ownership, the new license shall be issued for the remainder of the current licensure period.
- (8) There shall be full disclosure to the board of the changes, such as name and address, of:
 - (a) Each person having direct or indirect ownership interest of ten (10) percent or more in the service;
 - (b) Officers and directors of the corporation, if a service is organized as a corporation; or
 - (c) Partners, if a provider is organized as a partnership.
- (9) Compliance with licensing under this administrative regulation may be ascertained through on-site inspections of the provider by representatives or employees of the KBEMS Office.
- (10) Representatives or employees of the KBEMS Office shall have access to the service during hours that the service operates.
- (11) A regulatory violation identified during an inspection shall be transmitted in writing to the provider by the KBEMS office.
- (12) The provider shall submit a written plan for the elimination or correction of a regulatory violation to the KBEMS office within ten (10) working days of receipt of the statement of violation.
- (13) The plan shall specify the date by which the violation shall be corrected.
- (14) Within ten (10) working days following a review of the plan, the KBEMS office shall notify the provider in writing whether or not the plan is accepted as providing for the elimination or correction of the violation.
- (15) The KBEMS office shall conduct a follow-up visit to verify compliance with the plan.
- (16) If a portion or all of the plan is unacceptable:
 - (a) The KBEMS office shall specify why the plan cannot be accepted; and
 - (b) The provider shall modify or amend the plan and resubmit it to the KBEMS office within ten (10) days after receipt of notice that the plan is unacceptable.
- (17) Unannounced inspections may be conducted for a:
 - (a) Complaint allegation;
 - (b) Follow-up visit; or
 - (c) Relicensing inspection.
- (18) Any licensed provider may be recommended for discipline based upon the following:
 - (a) Failure to submit, amend, or modify a plan of correction in order to eliminate or correct regulatory violations;
 - (b) Failure to eliminate or correct regulatory violations;
 - (c) Falsifying an application for licensing;
 - (d) Changing a license issued by the board;
 - (e) Attempting to obtain or obtains a license by:
 - 1. Fraud;
 - 2. Forgery;

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3. Deception;
4. Misrepresentation; or
5. Subterfuge;
- (f) Providing false or misleading advertising;
- (g) Falsifying, or causes to be falsified, a:
 1. Patient record;
 2. Service run report; or
3. Other reports provided to the KBEMS office;
- (h) Providing an unauthorized level of service;
- (i) Demonstrating a history of staff violations that have resulted in disciplinary action;
- (j) Failing to provide the board or its representative with information upon request, or obstructing an investigation regarding alleged or confirmed violations of statutes or administrative regulations;
- (k) Issuing a check for a license on an invalid account or an account with insufficient funds to pay specified fees; or
- (l) Submitting fraudulent or misleading claims for reimbursement to:
 1. An individual;
 2. A private insurance company; or
 3. A governmental agency.

Section 4. Utilization of Vehicles by Licensed Providers. (1) At the time of initial inspection, each provider shall inform the KBEMS office of the make, model, year, vehicle identification number or serial number, and license tag number for each vehicle it uses.

(2) Except as provided by this administrative regulation, a vehicle shall not be placed into operation until after the board has been notified and has verified, through a physical inspection, that the vehicle meets the requirements of this administrative regulation.

(3) Each provider shall notify the KBEMS office via U.S. mail, email, or fax, no later than the next board business day, of the permanent removal of any licensed vehicle from service by the license holder.

(4) A licensed provider may use a replacement vehicle on a temporary basis if an approved vehicle is out of service, and if the KBEMS office receives notice within twenty-four (24) hours or on the next business day by fax or email of the need for the provider to place a vehicle into service on a temporary basis. A temporary replacement vehicle shall not be used for more than thirty (30) days unless the KBEMS office has verified, through a physical inspection, that it meets the requirements of this administrative regulation.

(5) The KBEMS office shall be notified by email or fax within twenty-four (24) hours or on the next business day when a temporary vehicle is removed from service and the original licensed vehicle is returned to service.

(6) A provider that fails to meet the reporting requirements for use of a temporary vehicle may be required to immediately cease use of the replacement vehicle until the reporting requirements are met.

(7) A provider that fails to remove a temporary vehicle from service upon written order may be fined an amount not to exceed \$1,000 per day for each day or partial day the vehicle is in service and the reporting requirements are not met.

(8) This administrative regulation shall not prevent a provider from utilizing other means of transporting patients in:

- (a) Disasters;
- (b) Mass casualty incidents; or
- (c) Extraordinary scene conditions that would impair the safety of the patient or personnel operating at the scene.

Section 5. Provider Management Requirements. (1) All providers shall:

(a) Maintain an organizational chart that establishes lines of authority, including the designation of:

1. An administrator responsible for assuring compliance with this administrative regulation during the daily operation of the service; and
2. A designee who shall serve in the absence of the administrator;

(b) Maintain records and reports at the ambulance service base station including: An original, microfilm, electronic equivalent, or copy of all run reports whether reported on:

1. The EMS-8A and EMS-8B "Kentucky Emergency Medical Ambulance Run Report" (9/98), with all nonshaded portions of the

run report completed as appropriate for each patient and each run; or

2. A paper or electronic run form developed by the provider that contains all of the data components of the nonshaded areas of the EMS-8A and EMS-8B (9/98);

(c) Maintain a copy of all completed run report forms which shall be maintained to ensure confidentiality and safekeeping for a minimum of five (5) years from the date on which the service was rendered, or in the case of a minor, until five (5) years after the minor reaches eighteen (18) years of age. Copies of run reports shall be accessible so as to be immediately available to the board, KBEMS office or representatives upon request;

(d) Maintain personnel files for each employee or volunteer who staffs a vehicle. Personnel files shall be maintained for a minimum of five (5) years following separation from employment. As a minimum, personnel files shall contain:

1. Current certification or licensure with corresponding numbers and expiration dates for the position that the individual fulfills on the vehicle;

2. A preemployment criminal and Department of Transportation driver's records check for each individual added to the service; and

3. Health records, in a separate secure file, that include:

- a. A post offer of employment health assessment;

- b. Annual tuberculin skin testing or other method of evaluation;

- c. Hepatitis-B vaccinations and seroconversion testing unless exempted by the employees' physician, or an employee signed waiver; and

- d. A record of all work-related illnesses or injuries;

(e) Maintain a plan and records for the provision of continuing education for staff and volunteers including a written plan for the method of assessment of staff continuing education needs and a coordinated plan to meet those needs including:

1. Training or continuing education rosters that shall include the printed name, signature, and certification or license number of those in attendance;

2. A curriculum vitae for the instructor; and

3. A brief outline of the presentation including the educational objective for the offering and the method of presentation used for the presentation;

(f) Maintain an infection control plan in accordance with KyOSHA guidelines;

(g) Maintain a written plan for training or educating personnel for responding to hazardous materials, criminal, and potential terrorist incidents, including plans for the protection and decontamination of patients, ambulances, equipment, and staff;

(h) Maintain a written plan for the quality assessment of patient care and provider quality improvement including a periodic review of ambulance run report forms, and evaluation of staff performance related to patient care. This plan shall address as a minimum:

1. Employee health and safety;

2. Compliance with protocols and operating procedures;

3. Assessment of dispatch procedures;

4. Vehicle operations and vehicle safety;

5. Equipment selection processes;

6. Equipment preventive maintenance programs; and

7. A process for the resolution of customer complaints;

(i) Maintain a written plan for training personnel and responding to mass casualty incidents and disasters, which shall establish:

1. Casualty collection sites;

2. Casualty evacuation sites;

3. Training and education for personnel; and

4. The organizational structure that shall outline an internal incident command structure and how it integrates into a community response plan;

(j) Maintain an orientation program for all personnel related to:

1. Communication equipment at the base station and on each vehicle;

2. Vehicle fire extinguishers;

3. Response standards;

4. Map reading and geographic orientation;

5. Mutual aid agreements;

6. Cleaning of equipment including vehicles;

7. Stretcher operations and use;

- 8. Completion of run reports; and
 - 9. Other standard operating procedures that have been established by the provider;
 - (k) Maintain and provide proof of professional liability malpractice insurance;
 - (l) Maintain and provide proof of vehicular liability insurance; and
 - (m) Notify the board immediately upon transfer of coverage, cancellation, lapse, or other cessation or change in professional liability malpractice insurance or vehicular liability insurance.
- (2) Each provider shall in the county in which their base station or a substation is located:
- (a) Document evidence of participation in county emergency management disaster exercises, if conducted;
 - (b) Coordinate with the county emergency management director plans for the possible utilization of a provider's personnel for use in the emergency operations center in a disaster; and
 - (c) Maintain a copy of the county and state emergency management agency's emergency operations plan at the ambulance base station.
- (3) Diversion plans shall meet the following requirements:
- (a) A provider shall maintain a diversion plan if physicians, hospitals, and ambulance providers within a county or group of counties identify the need for a local diversion plan;
 - (b) If it is determined a plan is needed, a committee comprised of equal representation of physicians, hospitals, and ambulance providers shall be formed to:
 1. Develop and implement a diversion plan;
 2. Monitor implementation of the diversion plan;
 3. Meet at least quarterly to discuss operation of the plan and any concerns of providers covered by the plan;
 4. Collect and review data on diversion, evaluate the need for revisions, and update the plan as needed; and
 5. Communicate to the chief executive officer of any health care provider covered under the plan if there is a reported perceived breach of the plan;
 - (c) Diversion plans shall address:
 1. Patient and physician preference;
 2. The patient's medical needs; and
 3. Availability and capacity of hospital resources; and
 - (d) Ambulance providers licensed in any county where the diversion plan is established shall follow the plan.
- (4) Copies of all documents required by this regulation need not be stored at the ambulance service location but shall be accessible so as to be immediately available to the board, KBEMS office or representatives upon request.

Section 6. Operating Requirements. (1) All providers, except Class IV shall provide service twenty-four (24) hours, a day, seven (7) days a week. Class IV providers shall operate during the hours of operation for their licensed location. These provisions may be met through a call system or through mutual aid agreements.

- (2) A provider shall have a written plan to assure all requests for service are promptly answered.
- (3) Requests for emergency service shall be dispatched or notified within two (2) minutes of the call taker determining the correct address or location of the emergency incident site.
- (4) Any provider that determines it is unable to have a vehicle responding within ten (10) minutes from the initial time an emergency call is received from the dispatch center shall notify the next closest appropriate vehicle to respond. The next closest vehicle shall be considered to be the vehicle that potentially has the quickest response time to the address requesting service regardless of service ownership. The provider shall notify the dispatch center and the source of the emergency call immediately that it is unable respond to the call and inform the dispatch center and the source of whom the provider dispatched to the emergency scene.
- (5) A provider shall enter into mutual aid agreements with another Kentucky licensed provider or fire department, rescue squad, or other organizations operating within the same or contiguous counties, that provide response to medical emergencies. These agreements shall be in writing and address:
 - (a) The type of mutual aid assistance to be provided, including ALS

- or BLS medical care, ALS medical first response, or extrication;
 - (b) Response personnel, including levels of training or education and provisions for joint in-service training or education if appropriate;
 - (c) Response vehicles, including unit identifiers and the station or location from which the vehicles shall be operated;
 - (d) A plan of action for the mutual aid agreement, including dispatch and notification procedures;
 - (e) Radio and other communications procedures between the ambulance provider and other response agencies with which the provider has mutual aid agreements;
 - (f) On-scene coordination and scene control including medical direction if several agencies respond to the same incident;
 - (g) Exchange of patient information, records, and reports as allowed by law; and
 - (h) The effective dates and process for amendment or termination.
- (6) If a local or regional dispatch center or 911 arrangement exists for all or part of the service area of a ground provider, the ground provider shall have a signed affiliation agreement with the dispatch center for coordination of emergency calls. If a ground provider is unable to secure a written affiliation agreement with the dispatch center, the ground provider shall have on file proof of a good faith attempt to obtain an affiliation agreement.
- (7) A provider may accept a request to provide service outside of its service area if it requires documentation from the requesting facility or provider that a good faith effort was made to utilize a provider licensed for the area, except as provided for in Section 2(6) of this administrative regulation.
- (8) A provider shall not refuse a request for emergency service if a unit is available in the service area.
- (9) The provider shall establish written policies and procedures regarding the criteria used by the ambulance service or dispatch center for determining what constitutes a request for emergency service.
- (10) A provider licensed to provide emergency service shall not exhaust their resources by answering a nonemergency call.
- (11) A preventive maintenance program shall be maintained for each vehicle and its equipment to keep them in optimum working order to protect the health and safety of the patient and ambulance personnel.
- (12) Documentation shall be maintained by the provider to support evidence of periodic inspections or calibrations required for maintenance and operation of the vehicle and its equipment.
- (13) Each vehicle and its equipment shall be checked after each use to ensure that it is in a clean and sanitary condition, unless precluded by emergency conditions.
- (14) This administrative regulation shall not be construed to prevent a licensed provider from providing medical first response emergency prehospital care at or below the level for which they are licensed through the utilization of:
 - (a) Designated, provider-owned response vehicles;
 - (b) Provider or personally-owned supervisor vehicles; or
 - (c) Employee personally-owned vehicles.
- (15) The licensed provider shall determine in writing the minimum equipment required for tiered response vehicles operating under their license.
- (16) Vehicles used to provide medical first response services shall be insured by the employee or through the insurance policies of the provider.
- (17) A communications system shall be developed, coordinated, and maintained by each ambulance provider. The communication system shall meet the following requirements:
 - (a) Radio equipment used in emergency medical services vehicles shall be appropriately licensed through the FCC. Copies of the current FCC licenses shall be on file in the provider's office;
 - (b) Vehicles shall be equipped with two (2) way radio communication equipment capable, under normal conditions, of contacting dispatch centers and hospitals; and
 - (c) Each vehicle shall have a minimum of one (1) portable communication device capable of operating on the provider or hospital frequency, that shall be provided for personnel if away from the vehicle.

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~~Section 7. Ground Vehicle Specifications. (1) Vehicles used by ground providers shall:~~

~~(a) Have the name of the provider appearing on both sides of the exterior surface of the vehicle subject to the following:~~

~~1. The name shall be the incorporated name or the name under which the provider does business and as it appears on the provider's license;~~

~~2. The service may request approval from the board to display an abbreviated or shortened version of its name to serve as a unique identifier;~~

~~3. This requirement shall not preclude a provider from adding additional names from another entity on the vehicle due to a joint venture, if the name as licensed by the board is the larger, and visible and readable by the public; and~~

~~4. A vehicle operated by a provider shall not be marked with the words "advanced life support", "paramedic", or similar words which convey essentially the same meaning on its exterior surface visible to the public unless the provider is licensed to provide ALS services;~~

~~(b) Be maintained in good operating condition and in full repair without obvious apparent problems relating to tires, exhaust, body integrity, warning devices, or mechanical reliability, which would be recognized by the average lay person who is not an automotive mechanic;~~

~~(c) Be designed to provide for the medical care or transportation of patients; and~~

~~(d) Have tires that meet the manufacturer's standards for the gross vehicle weight of the vehicle. A tire shall not display exposed tire cord or have tread depth less than 2/32 on back tires and 4/32 on front tires if measured in any two (2) adjacent grooves at three (3) locations spaced equally around the tire. Retread tires shall not be used on ground vehicles.~~

~~(2) All ground ambulances shall meet or exceed the following minimum physical characteristics:~~

~~(a) A ground ambulance shall comply fully with the ambulance design criteria contained in "Federal Specifications for Ambulances", KKK-1822, in effect when the ambulance is manufactured, except for color and provider identification;~~

~~(b) The ambulance provider shall require that a certification decal or sticker be supplied by the manufacturer of newly-purchased ambulances, indicating that the ambulance met KKK-1822 specifications on the date it was manufactured. The certification decal shall be located on a permanent surface, such as in the ambulance oxygen tank compartment; and~~

~~(c) The ambulance provider shall require, for units that are later modified, the conversion company to supply a letter to verify the modification meets or exceeds the KKK-1822 specification requirements, except for color or provider identification, as incorporated in the KKK-1822 specifications on the ambulance's original date of manufacture.~~

~~(3) In addition to the KKK-1822 specifications, the following state licensing requirements shall be maintained:~~

~~(a) The heating system shall maintain a temperature of not less than sixty five (65) degrees Fahrenheit in the driver and patient compartments in winter weather conditions as determined by a standard automotive testing thermometer;~~

~~(b) The air-conditioning system shall maintain a temperature of not more than eighty-five (85) degrees Fahrenheit in the driver and patient compartments in summer weather conditions as determined by a standard automotive testing thermometer; and~~

~~(c) There shall be no more patients, personnel, and other persons than can be safely secured by means of seat safety belts or similar devices in the vehicle while the vehicle is in motion.~~

~~Section 8. Ground Vehicle Routine Staffing Requirements. (1) A Class I service operating a BLS ambulance shall assure that it is minimally staffed by:~~

~~(a) A driver certified as a first responder; and~~

~~(b) An attendant certified as an EMT.~~

~~(2) A Class I service operating an ALS ambulance that is providing an ALS level of care shall assure that it is minimally staffed by:~~

~~(a) A driver certified as first responder; and~~

~~(b) An attendant licensed as a paramedic.~~

~~(3) A Class I service operating an ALS ambulance that is providing a BLS level of care shall assure that it is minimally staffed by:~~

~~(a) A driver certified as a first responder; and~~

~~(b) An attendant certified as an EMT.~~

~~(4) A Class II service shall be minimally staffed by:~~

~~(a) A driver certified as a first responder; and~~

~~(b) An attendant certified as an EMT.~~

~~(5) A Class III service shall be minimally staffed by:~~

~~(a) A driver certified as an EMT; and~~

~~(b) An attendant licensed as a paramedic.~~

~~(6) A Class IV service operating a BLS ambulance shall assure that it is minimally staffed by:~~

~~(a) A driver certified as a first responder; and~~

~~(b) An attendant certified as an EMT.~~

~~(7) A Class IV service operating an ALS ambulance shall assure that it is minimally staffed by:~~

~~(a) A driver certified as an EMT; and~~

~~(b) An attendant licensed as a paramedic.~~

~~(8) A Class V service shall be minimally staffed by:~~

~~(a) A driver certified as an EMT; and~~

~~(b) An attendant licensed as a paramedic.~~

~~(9) Class I ALS, Class III, Class IV ALS, and Class V ALS services shall have a licensed paramedic on duty at all times.~~

~~(10) An attendant shall remain with the patient, in the patient compartment, at all times during transport.~~

~~(11) A provider that has documented an insufficient number of EMTs or first responders available to staff its vehicles may request a waiver of minimum requirements for drivers only. The waiver request shall be accompanied by an acceptable plan to address the shortage of certified or licensed staff in the area served by the provider. If a waiver is approved by the board, an individual with drivers training as defined by this administrative regulation, and current first aid and CPR certification and HIV/AIDS training as required by KRS 311A.110 may serve as the driver of a provider's vehicle. The driver shall be enrolled in an first responder or EMT course within three (3) months of the hire date and become certified within six (6) months of enrolling in the first responder or EMT course.~~

~~(12) This administrative regulation shall not prevent a provider from utilizing staff other than that required by this administrative regulation in:~~

~~(a) Disasters;~~

~~(b) Mass casualty incidents; or~~

~~(c) Extraordinary scene conditions that would impair the safety of the patient or personnel operating at the scene.~~

~~Section 9. Motor Vehicle Operator Requirements. (1) Staff members or volunteers who operate a vehicle, as a part of their job duties shall:~~

~~(a) Be at least eighteen (18) years of age;~~

~~(b) Hold a valid Kentucky driver's license; and~~

~~(c) Complete an initial drivers training and education program that is a minimum of eight (8) hours long, developed by the provider or provided for the provider in conjunction with another agency or organization.~~

~~(2) Documentation shall be available to support that the driving training program consisted of:~~

~~(a) Review of driving a vehicle under emergency conditions;~~

~~(b) Review of Kentucky Revised Statutes regarding operation of emergency vehicles;~~

~~(c) Performing forward and back-up driving maneuvers in a controlled situation, such as in an obstacle course designed specifically for this purpose; and~~

~~(d) Review of defensive driving techniques and procedures with hands-on experience or exposure by visual aids, such as videotapes, slides, or planned demonstrations.~~

~~(3) All personnel, certified or licensed by the board, who operate a provider's motor vehicle shall repeat a refresher driver's training and education program at least once every two (2) years, which is a minimum of four (4) hours in duration. The course shall consist of:~~

~~(a) A review of driving a vehicle under emergency conditions;~~

~~(b) A review of Kentucky Revised Statutes regarding operation of~~

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emergency vehicles;

(c) A review of forward and back-up driving maneuvers in a controlled situation, such as in an obstacle course designed specifically for this purpose; and,

(d) A review of defensive driving techniques and procedures by with hands-on experience or exposure by visual aids, such as videotapes, slides, or planned demonstrations.

(4) Provider personnel who may serve as an attendant or a driver shall meet the qualifications for both roles. Documentation shall be required in personnel files for personnel who:

(a) Serve as drivers only in a three (3) person crew and do not render any type of first aid or medical treatment; or

(b) Serve as patient care providers only.

Section 10. Basic Life Support Equipment and Supplies. (1) All providers shall carry and maintain, in full operational order, the following minimum basic life support equipment and supplies:

(a) Suction, ventilation, and blood pressure equipment, which shall include:

1. Two (2) sources of suction apparatus, one (1) of which shall be mechanically operated;

2. Rigid catheters;

3. Flexible catheters in adult, pediatric and infant sizes;

4. Bulb syringe or meconium aspiration device for infant and neonate suction;

5. Disposable adult, pediatric and infant bag-valve-mask ventilation units with oxygen reservoir, oxygen tubing and masks;

6. Nasopharyngeal and oropharyngeal airway kits in sizes for adult and children with water soluble lubricant; and

7. Adult, obese adult, child, and infant sphygmomanometer cuffs with stethoscope. A permanently mounted sphygmomanometer shall not satisfy this requirement;

(b) Oxygen equipment, including:

1. A fixed oxygen system for each ambulance;

2. Portable oxygen tanks that are minimum size D, with a filled secured spare portable tank, minimum size D;

3. Pressure gauge and flow rate regulator for fixed and portable units with a range of zero to fifteen (15) liters per minute;

4. Disposable oxygen humidifier and attachment for use on the fixed oxygen tank;

5. Oxygen supply tubing;

6. Transparent nonbreather oxygen masks for adults and children; and

7. Nasal cannulas for adults and children;

(c) Bandages, bandaging supplies and tape, including:

1. Two (2) sterile universal dressings at least ten (10) inches by thirty (30) inches, compactly folded and packaged;

2. Fifty (50) sterile four-by-four (4x4) gauze pads;

3. Ten (10) soft roller self-adhering bandages, various sizes;

4. Four (4) rolls of adhesive tape, minimum of two (2) sizes;

5. Ten (10) triangular bandages with large safety pins;

6. Two (2) sterile burn sheets;

7. Two (2) eye protector pads and shields or an approved substitute;

8. Two (2) occlusive dressings; and

9. Shears for bandages;

(d) Miscellaneous supplies, including:

1. Hand held flashlight, at a minimum two (2) "C" cell or greater, capable of providing adequate lighting to assess a scene or a patient away from the vehicle;

2. One (1) penlight;

3. Two (2) sterile obstetrical kits;

4. One (1) bottle of activated charcoal;

5. Sterile irrigation fluids;

6. Instant glucose;

7. Cold packs;

8. Bite stick; and

9. An AED with a minimum of two (2) complete sets of pads for all non-ALS vehicles;

(e) Splints, including:

1. Lower extremity mechanical traction splint in adult and pediatric sizes; and

2. Splints for arm, full leg, and foot including padded boards, ladder

splints, air splints, or vacuum splints;

(f) Immobilization devices, including:

1. Short spine board with straps or other acceptable extrication device;

2. Adult, and pediatric long spine boards or other full body immobilization device with straps and cervical immobilization accessories;

3. Five (5) rigid, stiff cervical collars in four (4) different sizes including pediatric sizes;

4. Towel rolls or other bulk dressings to be used for cervical immobilization for infants; and

5. An orthopedic "scoop" stretcher or an additional full body immobilization device shall be maintained by all ground providers; and

(g) Two (2) five (5) pound size or larger, ABC multipurpose fire extinguishers, approved by Underwriters Laboratory, Coast Guard, or Factory Mutual. One (1) shall be accessible to the driver and the other to the attendant or attendants in the patient compartment in the ambulance or in the rear of the ALS medical first response vehicle.

(2) All ground ambulances shall have a multi-position stretcher with wheels and a minimum of three (3) straps that shall include shoulder straps for securing the patient to the stretcher, and a mechanism to secure the stretcher while in transit.

(3) Personal protective equipment shall be available to each staff member responding on the vehicle, including:

(a) One (1) pocket mask with an isolation valve;

(b) One (1) clean scrub gown (or substitute, such as disposable coveralls);

(c) Simple disposable face mask;

(d) Clear protective goggles or safety glasses;

(e) Disposable gloves;

(f) One (1) particulate filter mask rated at N95 or better without an exhaust port for patient use;

(g) One (1) particulate filter mask rated at N95 or better with or without an exhaust port for protection of crew members; and

(h) A means of cleansing the hands, such as disposable towelettes or other solutions.

(4) Cleaning materials shall be available including:

(a) Disinfectants;

(b) Glass or multisurface cleaner;

(c) Trash bags for disposal of nonbiohazard waste materials;

(d) Biohazard bags for the disposal of biohazard waste; and

(e) Puncture resistant containers for disposal of sharp objects.

(5) Patient comfort items including:

(a) Two (2) clean blankets, sheets, pillows, and pillowcases;

(b) Tissues;

(c) A disposable urinal;

(d) A disposable bed pan; and

(e) An emesis container or similar substitute.

(6) Current expiration dates are required for any item that carries an expiration date.

Section 11. Advanced Life Support Equipment and Supplies. (1) All ALS providers shall maintain evidence in the form of a letter that medical protocols have been reviewed and approved by the board.

(2) In addition to the BLS equipment required in Section 10 of this administrative regulation, an ALS provider shall carry on each vehicle and maintain in fully operational order, supplies and equipment required by the providers protocols, including as a minimum of:

(a) Endotracheal intubation equipment consisting of:

1. Laryngoscope handle;

2. Various laryngoscope blades in adult, pediatric, and infant sizes;

3. Extra batteries and bulbs for handles or blades;

4. A minimum of seven (7) different sizes of endotracheal tubes for oral and nasal placement in adult, pediatric, and infant sizes;

5. Equipment necessary to perform emergency cricothyrotomy;

6. An end tidal carbon dioxide detection device;

7. Stylettes in adult and pediatric sizes;

8. Magill forceps in adult and pediatric sizes;

9. One half (1/2) inch wide twill tape or equivalent for securing endotracheal tubes; and

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10. Water-soluble lubricant for lubrication of endotracheal and nasotracheal tubes;

(b) A portable monitor defibrillator that:

1. Is capable of displaying a visual display of cardiac electrical activity;

2. Is capable of providing a hard copy of cardiac electrical activity measure;

3. Is capable of delivering direct current energy over a variable range, which is suitable for pediatric and adult usage;

4. Is capable of providing external cardiac pacing;

5. Has adult and pediatric external paddle electrodes or pads, capable of utilization for immediate monitoring of heart activity and delivery of counter shock in both the adult and pediatric patient;

6. Is capable of being operated from internal rechargeable batteries;

7. Has synchronized counter shock capability for cardioversion; and

8. Has a patient monitoring cable with:

a. Electrode paste or gel or equivalent;

b. Electrode pads or equivalent for use with the patient monitoring cable; and

c. One (1) additional roll of paper for hard copy printout;

(c) Sterile, disposable needles, in types and sizes sufficient for personnel to administer medications and perform procedures allowed by the providers' patient treatment protocols;

(d) Disposable syringes in types and sizes sufficient for personnel to administer medications and perform procedures allowed by the providers' patient treatment protocols;

(e) Restriction band appropriate for use with venipuncture procedure;

(f) Dextrostix or equivalent for the measure of blood glucose levels;

(g) Disposable, individually-packaged antiseptic wipes;

(h) Intravenous fluids as required by the provider's protocol, with macrodrip and microdrip fluid sets, extension sets and accessory items including over the needle catheter devices in sizes fourteen (14) to twenty-four (24) gauge;

(i) Intraosseous needles; and

(j) Pediatric drug dosage tape or equivalent that provides easy reference for pediatric and infant treatment and drug dosages.

(3) An ALS provider shall stock and maintain drugs and medications as required by the master drug list contained in protocols established in accordance with this section.

(4) Controlled drugs shall be stored in a locked storage box in a locked compartment on the vehicle. A provider that stores and utilizes controlled substances shall have protocols approved by the Cabinet for Health Services' Drug Control Branch.

(5) This administrative regulation shall not prevent a provider from maintaining other supplies or equipment that are required to carry out its protocols as approved by the board.

(6) Current expiration dates shall be required for any item that carries an expiration date.

~~Section 12. Extrication and Other Rescue Equipment. (1) All ground providers licensed to respond to emergency calls shall provide and maintain in full operational order the following minimum light access and extrication equipment on the ambulance:~~

~~(a) Two (2) pairs of eye protection goggles or safety glasses;~~

~~(b) Two (2) pairs of heavy work gloves;~~

~~(c) Two (2) hard hats; and~~

~~(d) Three (3) reflective triangles or strobes, or equivalent warning devices.~~

~~(2) For response to trauma scenes requiring extrication, ground providers licensed to respond to emergency calls shall provide one (1) vehicle, which need not be an ambulance, equipped with the following fully-operational, more extensive access and extrication equipment:~~

~~(a) Two (2) fifty (50) foot long 7/16 or one-half (1/2) inch static or dynamic nylon ropes;~~

~~(b) One (1) pair of pliers or vise grips;~~

~~(c) One (1) wrench, with adjustable, stable open end;~~

~~(d) One (1) set of screwdrivers, four (4) sizes, regular blade;~~

~~(e) One (1) set of screwdrivers, four (4) sizes, Phillips type;~~

~~(f) One (1) double action tin snip;~~

~~(g) One (1) crowbar with pinch point;~~

~~(h) One (1) hacksaw with twelve (12) blades;~~

~~(i) One (1) hammer, three (3) pound size;~~

~~(j) One (1) fire axe;~~

~~(k) One (1) wrecking bar;~~

~~(l) One (1) bolt cutter, with one and one-fourth (1 1/4) inch jaw opening;~~

~~(m) One (1) four (4) ton porta-power jack and spreader tool;~~

~~(n) One (1) shovel, short handle, with pointed blade;~~

~~(o) One (1) shovel, long handle, with pointed blade;~~

~~(p) One (1) come-along tool or other acceptable winching device; and~~

~~(q) Two (2) fire-proof blankets.~~

~~(3) A ground ambulance provider may meet the provision of subsection (2) of this section through the execution of a mutual aid agreement with ALS medical first response providers, fire departments or rescue squads that provide service to the ambulance service's licensed response area. The ambulance service shall have mutual aid agreements that cover all of their licensed response area in order to be exempt from maintaining the more extensive access and extrication equipment.~~

~~Section 13. Medical Directors. All providers shall have a medical director. Medical directors shall meet the requirements as set forth in 202 KAR 7:801.~~

~~Section 14. Request for Waiver. (1) A provider licensed or contemplating licensure under this administrative regulation may make a written request to the board for certain provisions of this administrative regulation to be waived.~~

~~(2) A request shall justify that a proposed waiver, if approved, shall not jeopardize the quality of patient care or public safety.~~

~~(3) The board may approve a request based on at least one (1) of the following:~~

~~(a) Circumstances where public health and safety is a factor;~~

~~(b) Extenuating or mitigating circumstances that warrant consideration to assure the delivery of adequate emergency medical services;~~

~~(c) Substitution of equipment authorized by this administrative regulation; or~~

~~(d) Testing of new procedures, techniques, or equipment in a pilot study authorized by the board.~~

~~(4) The board shall establish time limits and conditions on all waivers.~~

~~Section 15. Exemptions from Administrative Regulations. (1) The following situations shall be exempt from the provisions of this administrative regulation:~~

~~(a) First aid or transportation provided in accordance with KRS 216B.020(2)(f);~~

~~(b) A vehicle serving as an ambulance during a disaster or major catastrophe; or~~

~~(c) A vehicle operated by the United States government on property owned by the United States government.~~

~~(2) In addition, the following out-of-state providers shall be exempt from the provisions of this administrative regulation:~~

~~(a) A vehicle licensed by another state that is transporting a patient from out of state to a Kentucky medical facility or other location in Kentucky;~~

~~(b) A vehicle licensed by another state that is transporting a patient from out of state through Kentucky to another location out-of-state;~~

~~(c) A vehicle owned and operated by a city government which provides services in coterminous cities outside the ambulance service's designated service area pursuant to KRS 216B.020(7);~~

~~(d) A vehicle licensed in an adjoining state that responds to a mutual aid request from a Kentucky licensed provider for emergency assistance if the out of state service is the closest service appropriately capable of responding to the request or when Kentucky licensed providers:~~

~~1. Are unavailable;~~

~~2. Have already responded; or~~

~~3. Are physically unable to reach the incident; and~~

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~~(e) A vehicle licensed by another state that is providing nonemergency transportation from a Kentucky health care facility for a patient who is not a Kentucky resident back to their state of residence.~~

~~Section 16. Public Notice of Negative Action. The board office shall cause to be published, in the KBEMS News or similar publication of the board, or otherwise disseminate, the name of an ambulance provider or medical first response agency that is fined, placed on probationary status, placed on restricted status, suspended, or had a license revoked.~~

~~Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) Form EMS-8A, "Kentucky Emergency Medical Services Ambulance Run Report", (9/98);~~

~~(b) Form EMS-8B, "Kentucky Emergency Medical Services Ambulance Run Report", (9/98);~~

~~(c) "Federal Specifications for Ambulances", KKK-A-1822-D, (11/94), General Services Administration, Federal Supply Service, Washington, D.C. 20406; and~~

~~(d) "Application for Ambulance Provider Licensing", (June 2003).~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 2545 Lawrenceburg Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

JIM DUKE, Chairperson

APPROVED BY AGENCY: December 7, 2017

FILED WITH LRC: December 13, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2018 at 10:00 a.m. Eastern Standard Time at 118 James Court, Suite 50, Lexington, Kentucky 40505. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Angela Evans; Legal Counsel, Kentucky Fire Commission; McBrayer, McGinnis, Leslie & Kirkland, PLLC, 201 East Main Street Suite 900, Lexington, Kentucky 40507, phone (859) 231-8780, fax (859) 231-1175, email aevans@mmlk.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for licensing ambulance and medical first response agencies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish and clarify the process for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with the board's statute as it establishes to licensing process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation clarifies the licensure process and sets forth the ethical conduct required of licensees.

(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 reduce the subject matters covered in the regulation and clarify the licensure process for applicants.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary because it will narrow the topics addressed in the regulation for easier reading and reference by agencies and staff. It will also set forth the ethical conduct required of licensees.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute allows the board to establish a licensure and inspection process as well as reporting requirements and appropriate conduct for licensed agencies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment better explains the application requirements which will reduce inefficiencies in the application process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 213 licensed ambulance and medical first response agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require any additional action by existing entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to renew a license is \$1,500 for ground ambulance agencies and \$2,500 for air ambulance agencies. These fees were previously established and have not been changed as a part of the amendments to the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will be able to reference and locate the requirements for licensure and licensure renewal more easily.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(a) Initially: None

(b) On a continuing basis: None

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Ambulance providers and first response agencies.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 311A.020, 311A.025, 311A.030, 311A.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? This regulation will not generate revenue for state or local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate revenue for state or local governments in subsequent years.

(c) How much will it cost to administer this program for the first year? It will cost approximately \$2,500 to \$5,000 per application to administer this program.

(d) How much will it cost to administer this program for subsequent years? It will cost approximately \$2,500 to \$5,000 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 (+/-): None
Expenditures (+/-): None
Other Explanation: None

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

301 KAR 2:195. Falconry, raptor take, and raptor propagation.

RELATES TO: KRS 150.010, 150.180, 150.183, 150.290, 150.305, 150.320, 150.330, 150.360

STATUTORY AUTHORITY: KRS 150.025(1), 150.280(1), 50 C.F.R. Parts 13, 17, 21, 22

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations establishing open seasons for the taking of wildlife, bag limits, and methods of taking wildlife, and to make these requirements apply to a limited area. KRS 150.280(1) requires the department to promulgate administrative regulations establishing procedures for propagating and holding of protected wildlife. 50 C.F.R. Parts 13, 17, 21, and 22 establish requirements for permitting, taking, possessing, and selling of raptors and endangered and threatened species. This administrative regulation establishes permitting, taking, possessing, and reporting requirements for people engaged in falconry and raptor propagation.

Section 1. Definitions. (1) "Adult raptor" means a raptor that is at least one (1) year old.

(2) "Captive-bred raptor" means a raptor, or the eggs thereof, hatched in captivity from parents in captivity.

(3) "Eyas" means a young raptor that is still in the nest and not capable of flight.

(4) "Falconry" means caring for and training wild or captive-bred raptors for the pursuit of wild game.

(5) "Hack" means the temporary release of a raptor held for falconry to the wild so that it can survive on its own.

(6)~~(5)~~ "Hybrid raptor" means an offspring produced by two (2) distinct raptor species.

(7)~~(6)~~ "Imprinted" means a raptor that has been hand-raised by a human in isolation from the sight of other raptors from two (2) weeks of age through fledging.

(8)~~(7)~~ "Native raptor" means a raptor species which has historically existed or currently exists in the wild in Kentucky without introduction by humans.

(9)~~(8)~~ "Passage bird" means a raptor less than one (1) year of age that is capable of sustained flight and is no longer dependent on parental care.

(10)~~(9)~~ "Wild raptor" means a raptor that was originally taken from the wild.

Section 2. Federal requirements. Except as established in Sections 3 through 11 of this administrative regulation, a person shall be in compliance with the federal requirements established in 50 C.F.R. Parts:

- (1) 13;
- (2) 17;
- (3) 21; and
- (4) 22.

Section 3. Permits and Licenses. (1) A person shall be required to obtain and possess a valid falconry permit to take or possess a raptor for use in falconry.

(2) A raptor obtained with a valid falconry permit shall not be used or kept for purposes other than falconry.

(3) A person with a valid state or federal falconry permit:

(a) May take wildlife pursuant to applicable statewide requirements if the falconer:

1. Has a valid Kentucky hunting license; or
2. Is hunting license exempt pursuant to KRS 150.170; and

(b) Shall not be required to obtain a wildlife transportation permit pursuant to 301 KAR 2:081 and 2:082 if the person:

1. Is importing or transporting a legally held falconry raptor into Kentucky; or
2. Is transporting a legally held falconry raptor into and through Kentucky to a destination outside of Kentucky.

Section 4. Falconry Permit Requirements, Classes of Permits, and Apprentice Sponsors. (1) To obtain a falconry permit of any class, a person shall:

(a) Complete a Kentucky Falconry Permit Application form provided by the Department; and

(b) Submit to the department:

1. The completed application;
2. The appropriate fee as established in 301 KAR 3:022; and
3. A completed Raptor Facilities and Equipment Inspection Report form signed by a state conservation officer.

(2) An apprentice falconry permit applicant shall:

- (a) Be at least twelve (12) years old;
- (b) Obtain a sponsor who holds a valid Kentucky general or master falconry permit pursuant to subsection (12)~~(14)~~ of this section;

(c) If under eighteen (18) years old, have a parent or legal guardian co-sign the application;

(d) Contact the department to schedule a time to take a written exam~~[examination]~~ administered by the department; ~~[and]~~

(e) Provide photo identification prior to taking the exam;

(f) Complete the written exam within ninety (90) minutes;

(g) Only take the written exam one (1) time in a given day; and
(h) Pass the written examination by scoring a minimum of eighty (80) percent.

(3) An applicant shall not take more than three (3) exams in any twelve (12) month period.

(4) A person shall submit an application within twelve (12) months of passing the falconry exam, or the application shall be invalid.

(5) An apprentice class falconry permit holder shall:

(a) Only possess one (1) of the following wild or captive-bred raptors at any given time:

1. American kestrel (*Falco sparverius*);
2. Red-tailed hawk (*Buteo jamaicensis*);
3. Red-shouldered hawk (*Buteo lineatus*); or
4. Harris' hawk (*Parabuteo unicinctus*); ~~[and]~~

(b) Not possess a raptor:

1. Taken from the wild as a nestling; or
2. That is imprinted on humans; and

(c) Only take a wild raptor under the direct supervision of the permit holder's sponsor.

(6)~~(4)~~ A general class falconry permit applicant shall:

- (a) Be at least sixteen (16) years old;
- (b) If under eighteen (18) years old, have a parent or legal guardian co-sign the application;
- (c) Have practiced falconry at the apprentice level for at least two (2) years; and

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(d) Have complied with all previous year reporting requirements, if applicable, pursuant to Section 7 of this administrative regulation.

~~(7)(5)~~ A first time general class permit applicant shall:

~~(a)~~ Submit to the department a completed Kentucky Apprentice Falconer Activity Report;

~~(b) Practice~~:

~~(a) Signed document from a general or master class falconry permit holder stating that the permit applicant has:~~

~~1. Practiced~~ falconry with a wild raptor at the apprentice level for at least two (2) years; and

~~(c) Maintain, train, and hunt~~~~[2. Maintained, trained, and hunted]~~ with a raptor for an average of six (6) months per year with at least four (4) months in each year;

~~(b) Summary of the species held as an apprentice; and~~

~~(c) The length of time the apprentice held each bird.~~

~~(8)(6)~~ A general class falconry permit holder shall:

(a) Be allowed to possess the following:

1. A raptor obtained from the wild;
2. A hybrid raptor; or
3. A captive-bred raptor; and

(b) Not possess more than three (3) of the following raptors at any given time:

1. Great horned owl (*Bubo virginianus*); or
2. Any member of the Order Falconiformes, except for the following species which shall not be possessed:

- a. Golden eagle (*Aquila chrysaetos*);
- b. Bald eagle (*Haliaeetus leucocephalus*);
- c. White-tailed eagle (*Haliaeetus albicilla*); or
- d. Stellar's sea eagle (*Haliaeetus pelagicus*).

~~(9)(7)~~ A master class falconry permit applicant shall:

(a) Have held a valid general class falconry permit for at least five (5) years; and

(b) Have complied with all previous year reporting requirements, pursuant to Section 7 of this administrative regulation.

~~(10)(8)~~ A first time master class permit applicant shall submit to the department a completed Kentucky General Falconer Upgrade Report, signed by the applicant and one (1) reference who is a permitted master or general class falconer, ~~signed letter~~ attesting that the applicant has practiced falconry;

~~(a)~~ At the general class permit level for at least five (5) years; and

~~(b) For an average of four (4) months a year, in at least four (4) out of the last five (5) years.~~

~~(11)(9)~~ A master class falconry permit holder:

(a) Shall not possess more than five (5) of the following wild raptors at any given time:

1. Great horned owl; and
2. Any member of the Order Falconiformes except a bald eagle;

(b) Shall obtain prior approval from the department pursuant to the requirements of 50 C.F.R. 21 and 22 to possess any of the following raptors:

1. Golden eagle;
2. White-tailed eagle; or
3. Stellar's sea eagle; and

(c) May possess any number of captive-bred raptors of the species allowed in paragraph (a) and (b) of this subsection.

~~(12)(10)~~ An apprentice sponsor shall:

(a) Not have more than three (3) apprentices at any given time;

(b) Be at least eighteen (18) years old;

(c) Possess a valid Kentucky general or master class falconry permit;

(d) Have held a general class falconry permit for a minimum of two (2) years; and

(e) Submit a signed letter to the department:

1. Attesting that the sponsor will assist the apprentice in:

a. Learning about the husbandry and training of raptors held for falconry;

b. Learning relevant wildlife laws and regulations; and

c. Deciding which species of raptor is most appropriate for the apprentice to possess;

d. Providing direct supervision to the apprentice while trapping wild raptors; and

e. Evaluating the apprentice's facility and bird a minimum of one (1) time every twelve (12) months; and

2. Containing the sponsor's:

- a. Name;
- b. Falconry permit number;
- c. Address; and
- d. Telephone number.

~~(13)(14)~~ A sponsor who is withdrawing sponsorship of an apprentice shall:

(a) Notify the department in writing within five (5) days of withdrawing the sponsorship; and

(b) Provide the apprentice with a signed and dated document stating the length of time that the apprentice practiced falconry under the sponsor's guidance.

~~(14)(12)~~ An apprentice who loses sponsorship shall obtain a new sponsor within thirty (30) days from the sponsor's notification of withdrawal.

~~(15)(13)~~ A new sponsor shall be in compliance with the requirements established in subsection (7) of this section.

~~(16)(14)~~ If an apprentice fails to obtain a new sponsor within thirty (30) days, the department shall:

(a) Revoke the apprentice's falconry permit; and

(b) Confiscate any raptor in the apprentice's possession if the apprentice does not transfer ownership of the raptor to another licensed falconer.

~~(17)(15)~~ A non-resident falconer who moves to Kentucky to establish residency shall apply for the appropriate Kentucky falconry permit within thirty (30) days after moving.

~~(18)(16)~~ A resident falconry applicant who is a new resident of the United States shall obtain the appropriate Kentucky falconry permit by:

(a) Meeting the application requirements established in subsection (1) of this section;

(b) Contacting the department to schedule a time to take a written examination administered by the department;

(c) Passing the written examination by scoring a minimum of eighty (80) percent; and

(d) Providing to the department written documentation of previous falconry experience including:

1. The number of years the applicant has practiced falconry;
2. The raptor species used in falconry; and
3. The game species taken with falconry.

~~(19)(17)~~ A person who held a valid Kentucky falconry permit within the last five (5) years, but has allowed the permit to lapse, may apply for reinstatement at the class level previously held by:

(a) Complying with the application requirements established in subsection (1) of this section; and

(b) Providing the department with proof of previous certification at that class level.

~~(20) An apprentice or general falconer~~~~(18) A person~~ whose Kentucky falconry permit has lapsed for a period greater than five (5) years may apply for reinstatement at the class level previously held by:

(a) Complying with the application requirements established in subsection (1) of this section;

(b) Complying with the examination requirements established in subsection (2) of this section; and

(c) Providing the department with proof of previous certification at that class level.

(21) A master class permittee whose Kentucky falconry permit has lapsed for a period greater than five (5) years will be reinstated at the general class level, provided he satisfies the application requirements in subsection (1) of this section.

(a) A person formerly permitted at the master class level, and reinstated at the general class level shall actively practice falconry for an average of four (4) months a year, in at least two (2) out of the last three (3) years prior to upgrading to a master class permit.

(b) A person applying for master class reinstatement shall:

1. Submit to the department a Kentucky General Falconer Upgrade Report;

2. Have complied with all previous years' reporting

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requirements, as established in Section 7; and

3. Provide the department with proof of previous certification at the master class level.

~~(22)~~~~(19)~~ A falconry permit holder shall not be required to pay the permit fee established in 301 KAR 3:022 if the permit holder's current permit has not yet expired and the permit holder is applying for:

- (a) An upgrade to the next falconry class; or
- (b) A facility relocation.

Section 5. Facility, Equipment, and Care Requirements. (1) A falconry permit holder shall comply with all federal requirements established in 50 C.F.R. Part 21 for the permit holder's:

- (a) Facility;
- (b) Equipment; and
- (c) Treatment and care for possessed raptors.

(2) A permittee shall keep all:

(a) Raptors in humane and healthy condition; and
(b) Facilities and equipment in serviceable, safe, and sanitary condition, as established in 50 C.F.R. Part 21.

~~(3)~~ A falconry permit holder who is relocating a raptor facility shall:

(a) Notify the department within five (5) business days of relocation; and

(b) Have a relocated raptor facility inspected and approved by a department conservation officer within thirty (30) days of relocation.

~~(4)~~~~(3)~~ A department conservation officer shall only inspect a raptor facility:

- (a) In the presence of the permit holder;
- (b) On a weekday; and
- (c) Between 8 a.m. and ~~8~~~~[4:30]~~ p.m. ~~local~~~~[Eastern]~~ time.

Section 6. Banding, Tagging, and Telemetry Requirements. (1) A falconry permit holder shall comply with federal banding, tagging, and telemetry requirements established in 50 C.F.R. Part 21.

(2) A falconry permit holder who is required by federal regulations to band a raptor shall:

(a) Contact the department to request leg bands at least fifteen (15) days prior to obtaining a raptor; and

(b) Only use U.S. Fish and Wildlife Service leg bands that are issued by the department.

(3) A falconry permit holder shall attach at least two (2) radio transmitters to a hybrid raptor if the permit holder is flying it untethered in the wild.

Section 7. Raptor Take and Release, Recordkeeping, and Reporting Requirements. (1) Unless exempted by KRS 150.170, a Kentucky falconry permit holder shall have in possession a valid Kentucky hunting license when taking a raptor from the wild.

(2) When taking a raptor from the wild, a nonresident shall have in possession:

- (a) A valid Kentucky nonresident hunting license;
- (b) A valid falconry permit or equivalent from the nonresident's home state; and
- (c) An approved Kentucky Nonresident Raptor Take Form.

(3) To obtain a Kentucky Nonresident Raptor Take Form, a person shall:

(a) Print a copy of the form from the department's Web site at fw.ky.gov; or

(b) Contact the department at 800-858-1549 and request a mailed copy.

(4) A person shall submit to the department a completed and signed Kentucky Nonresident Raptor Take Form at least fifteen (15) working days prior to the requested take date.

(5) A falconry permit holder shall be responsible for complying with all applicable federal requirements if taking raptors on federal land.

(6) A falconry permit holder who is a nonresident shall only take one (1) legal raptor in Kentucky per calendar year.

(7) An approved Kentucky Nonresident Raptor Take Form shall only be issued to a person whose state of residence allows a Kentucky resident to legally take a raptor from that state.

(8) A nonresident falconer who takes a raptor in Kentucky shall submit to the department a completed and signed Falconry Take Location Report within five (5) days of taking a bird.

(9) A licensed falconer shall comply with all raptor take requirements established in 50 C.F.R. 21 in addition to the requirements established in this section.

(10) A resident falconry permit holder shall not take more than two (2) raptors from the wild in any calendar year.

(11) An eyas shall only be taken:

(a) By a general or master class falconry permit holder; and

(b) From January 1 through July 31.

(12) A person shall not take more than one (1) sharp-shinned hawk (*Accipiter striatus*) eyas per calendar year.

(13) There shall be an annual maximum quota for sharp-shinned hawk eyases of:

(a) Ten (10) for Kentucky residents; and

(b) Five (5) for nonresidents.

(14) Prior to taking a sharp-shinned hawk eyas, a person shall be responsible for calling the department at 800-858-1549 to check if the sharp-shinned hawk eyas annual quota has been reached.

(15) A person shall not take a sharp-shinned hawk eyas from a nest unless there are at least three (3) eyases in the nest.

(16) Each person who takes a sharp-shinned hawk eyas shall submit to the department the Falconry Take Location Report within five (5) days of possession.

(17) Any permit class falconer may take a passage bird if it is a species the falconer is allowed to possess as established in Section 4 of this administrative regulation.

(18) The allowable period of take for:

(a) A passage bird, other than a great horned owl, shall be September 1 through January 31;

(b) An adult or passage bird great horned owl shall be September 1 through October 31; and

(c) An adult American kestrel shall only be taken from September 1 through January 31.

(19) An adult American kestrel or adult great horned owl shall only be taken by a:

(a) General class permit holder; or

(b) Master class permit holder.

(20) A person shall not take a peregrine falcon (*Falco peregrinus*) from the wild in Kentucky.

(21) A person shall not release the following raptors into the wild:

(a) A non-native raptor;

(b) A hybrid raptor; or

(c) A captive-bred, native raptor.

(22) Prior to releasing a raptor into the wild, a person shall remove all leg bands from the bird.

(23) A falconry permit holder shall complete and submit to the department a federal form 3-186A or enter the required information in the federal database at <http://permits.fws.gov/186A> within five (5) days if a raptor is:

(a) Acquired;

(b) Transferred;

(c) Released;

(d) Lost;

(e) Rebanded;

(f) Microchipped;

(g) Stolen; or

(h) Dead.

(24) A falconer shall retain copies of each submitted 3-186A form or the electronically submitted data for a minimum of five (5) years following a raptor's:

(a) Transfer;

(b) Release;

(c) Loss; or

(d) Death.

Section 8. Transfer of Ownership and Propagation. (1) A falconry permit holder may transfer ownership of a wild-caught raptor pursuant to 50 C.F.R. Part 21, but shall not engage in the following activities with wild-caught raptors:

(a) Selling;

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- (b) Purchasing;
- (c) Trading; or
- (d) Bartering.

(2) A falconry permit holder may transfer a wild-caught raptor to a person who possesses a valid federal raptor propagation permit if:

- (a) 1. The raptor has been used in falconry for at least one (1) year for the following species:
 - a. Sharp-shinned hawk;
 - b. Cooper's hawk (*Accipiter cooperii*);
 - c. Merlin (*Falco columbarius*); or
 - d. American kestrel; or
- 2. The raptor has been used in falconry for at least two (2) years for all other legal species of raptor; and

(b) The person receiving the transferred bird possesses a valid state captive wildlife permit.

(3) A person who legally possesses a captive-bred raptor may engage in the activities listed in subsection (1)(a) through (d) of this section if:

- (a) 1. The transferred bird is marked with a metal leg band; or
- 2. The transferred bird is implanted with a microchip pursuant to 50 C.F.R. Part 21; and

- (b) The person in receipt of the bird possesses:
 - 1. The appropriate class falconry permit; or
 - 2. A valid federal raptor propagation permit.

(4) A person shall not breed or propagate a native raptor without first obtaining:

- (a) A federal raptor propagation permit, pursuant to 50 C.F.R. Part 21; and
- (b) The appropriate Kentucky captive wildlife permit, pursuant to 301 KAR 2:081.

(5) A person who is propagating a native raptor shall submit to the department copies of all the following materials required by 50 C.F.R. Part 21:

- (a) The raptor propagation application;
- (b) Propagation records; and
- (c) Propagation reports.

(6) The materials required in subsection (5) of this section shall be submitted to the department by the same dates required in 50 C.F.R. Part 21.

Section 9. Other Activities. (1) A falconry permit holder may use a raptor for conservation education programs, pursuant to 50 C.F.R. Part 21.

(2) A falconry permit holder who is in compliance with the permit requirements for Special Purpose Abatement, pursuant to 50 C.F.R. Part 21, may receive payment for nuisance wildlife control work if the permit holder also possesses a valid Kentucky Commercial Nuisance Wildlife Control permit, pursuant to 301 KAR 3:120.

(3) A person may assist a permitted wildlife rehabilitator, as established in 301 KAR 2:075, in conditioning raptors for subsequent release into the wild if the person is:

- (a) A general or master class falconry permit holder; and
- (b) Working with a species the falconry permit holder is allowed to possess.

(4) A general or master class permit holder may hack a raptor, previously used for falconry, if the permit holder is in compliance with 50 C.F.R. 21 and contacts the department to provide ~~and provides~~ the ~~following~~ information established in paragraph (a) through (d) of this subsection.

- (a) The hack site location;
- (b) The species of raptor;
- (c) The origin of the raptor; and
- (d) The planned hacking dates.

Section 10. Revocation of Permits and Appeal Procedure. (1) The department shall revoke the permit, deny the issuance of a new permit, or deny a renewal of an existing or lapsed permit for a period of one (1) year ~~the falconry permit~~ of a person who:

- (a) Violates any provision of KRS Chapter 150;
- (b) Violates any department regulation;
- (c) Violates any federal statute or regulation related to hunting,

fishing, or wildlife; or

(d) Falsifies a falconry permit application. ~~[Convicted of a violation of this administrative regulation for a period of one (1) year];~~

(2) A person whose permit is denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B ~~if the person's falconry permit is:~~

- ~~(a) Denied; or~~
- ~~(b) Revoked].~~

(3) A request for a hearing shall be in writing and postmarked or delivered in person to the department no later than ten (10) days after notification of the denial or revocation.

(4) Upon receipt of the request for a hearing, the department shall proceed according to the provisions of KRS Chapter 13B.

(5) The hearing officer's recommended order shall be considered by the commissioner and the commissioner shall issue a final order pursuant to KRS Chapter 13B.

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

- (a) "Kentucky Falconry Permit Application", 2018 ~~January 2013~~ edition;
- (b) "Raptor Facilities and Equipment Inspection Report", ~~[January] 2013~~ edition;
- (c) "Falconry Take Location Report", ~~[January] 2013~~ edition; ~~[and]~~
- (d) "Kentucky Nonresident Raptor Take Form", ~~[January] 2013~~ edition;
- (e) "Kentucky Apprentice Falconer Activity Report", 2018 edition; and
- (f) "Kentucky General Falconer Upgrade Report", 2018 edition.

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

GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: December 15, 2017

FILED WITH LRC: December 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2018 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 January 31, 2018. 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 permitting, taking, possessing, and reporting requirements for people engaged in falconry and raptor propagation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to manage and conserve raptors and to provide reasonable opportunities for sport and

recreation. This regulation is also necessary to comply with federal regulation requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations establishing open seasons for the taking of wildlife, bag limits, and methods of taking wildlife, and to make these requirements apply to a limited area. KRS 150.280(1) requires the department to promulgate administrative regulations establishing procedures for propagating and holding of protected wildlife. 50 C.F.R. Parts 13, 17, 21, and 22 establish requirements for permitting, taking, possessing, and selling of raptors and endangered and threatened species.

(d) How will this administrative regulation assist in the effective administration of the statutes: By establishing guidelines on raptor propagation and falconry, this administrative regulation facilitates the conservation and management of birds of prey in compliance with the above statutes and 50 C.F.R. Parts 13, 17, 21, 22.

(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: Falconry was defined in order to better clarify the intended purpose of the permit. The requirements for the falconry exam were standardized and tightened with relation to time allowed, the number of times a person can take the exam, and the deadline for submitting an application after a person passes the exam. The permit upgrade requirements were standardized for the general and master class falconers. Two new forms reporting forms were also created to take the place of required summaries and letters in the current regulation. Reinstatement requirements were tightened for master class falconers whose permits have lapsed. The requirements for sponsors of apprentice falconers were clarified and improved in order to provide better oversight over apprentices. Language was added to ensure that facilities and housing conditions are such that birds are kept in a healthy and humane condition. The allowable time for a conservation officer to inspect raptor facilities was expanded to take place between 8 AM and 8 PM local time. The criteria for permit revocation or denial was also expanded and clarified.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to allow for better efficiency and standardization in program administration. The amendments also clarify and update previous language to facilitate proper enforcement of the program.

(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: Currently, there are 73 falconry permit holders who may be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Those seeking a new falconry permit or permit renewal will follow the same procedures as before, except as follows:

First time general class applicants will need to complete the Kentucky Apprentice Falconer Activity Report instead of submitting a letter and summary of species held.

Apprentice sponsors will need to meet with their apprentices in person, and also sign the above report.

First time master class applicants will need to provide one reference and complete the General Falconer Upgrade report.

Master class falconers who have allowed their permit to lapse for a period greater than 5 years are now required to be reinstated at the general class level. Reinstated falconers will be required to practice as a general falconer for an average of 4 months a year, for 2 out of the last 3 years, prior to upgrading.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3): A Kentucky falconer permit remains the same at \$75.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendments will better streamline and simplify the permit approval process resulting in less confusion to the regulated entities and faster turnaround time following application submittal.

(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 implement this administrative regulation 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. There is no increase in fees or funding 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 any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation applies equally to all falconers and raptor propagators.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 150.025(1), 150.280(1), and 50 C.F.R. Parts 13, 17, 21, and 22.

(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, however, the falconry permit program generates approximately \$5,000 dollars annually through the sale of falconry permits.

(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, however, the falconry permit program generates approximately \$5,000 annually through the sale of falconry permits.

(c) How much will it cost to administer this program for the first year? The cost to administer this program for the first year is minimal and offset by permit fees.

(d) How much will it cost to administer this program for subsequent years? The cost to administer this program in subsequent years is minimal and is offset by permit fees.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation:

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
(Amendment)

601 KAR 2:030. Ignition interlock[devices;— the surrendering of license plates].

RELATES TO: KRS 45A, 186.010, 186.440, 186.442, 186.480, 186.531, 186.560, 186.570, 189A.005, 189A.010, 189A.040, 189A.070, 189A.085, 189A.090, 189A.103, 189A.105, 189A.107, 189A.200, 189A.240, 189A.250, 189A.340, 189A.345, 189A.400, 189A.410, 189A.420, 189A.440, 189A.500, 205.712, 18 U.S.C. 2721[57 C.F.R. 11772-11787]

STATUTORY AUTHORITY: KRS 189A.500[189A.085(1)(b), 189A.340(4)(f)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189A.500 requires the Transportation Cabinet to promulgate administrative regulations to carry out provisions regarding the implementation of the commonwealth's ignition interlock program for motor vehicle drivers who violate KRS 189A.010. This administrative regulation establishes the duties and responsibilities of ignition interlock device providers wishing to enter into an agreement with the Commonwealth of Kentucky and the Transportation Cabinet for the administration and implementation of the ignition interlock device program and requirements for certifying ignition interlock devices under this program. This administrative regulation also establishes the requirements for a defendant charged with a violation of KRS 189.010 to obtain an ignition interlock device and license[KRS 189A.085 states that, after a license plate suspension by a judge pursuant to that provision, the circuit court clerk shall transmit surrendered plates to the Transportation Cabinet in the manner set forth by the Transportation Cabinet in administrative regulation. KRS 189A.340(4)(f) states that the Transportation Cabinet shall promulgate administrative regulations to carry out the provisions of that subsection regarding interlock devices. This administrative regulation outlines the procedure for surrendering plates to the Transportation Cabinet pursuant to court order, providing registration information on a convicted violator to the court, approving interlock device manufacturers, installers, and servicing entities and making an approved list available to the public].

Section 1. Definitions. (1) "Calibration" means the process that ensures an accurate alcohol concentration reading is being obtained on the ignition interlock device.

(2) "Certification" means the approval process required by the Commonwealth of Kentucky for ignition interlock devices and device providers prior to operating within the state.

(3) "Defendant" means an individual who is determined to be eligible and who is ordered by the court to drive only motor vehicles that have certified ignition interlock devices installed.

(4) "Department" means the Department of Vehicle Regulation in the Kentucky Transportation Cabinet.

(5) "Device" means a breath alcohol ignition interlock device.

(6) "Fail-point" means the level at which the breath alcohol concentration is at or above .02 percent.

(7) "Ignition interlock certification of installation" is defined by KRS 189A.005(3).

(8) "Ignition interlock device" is defined by KRS 189A.005(2).

(9) "Ignition interlock device provider" or "device provider" is defined by KRS 189A.005(4).

(10) "Ignition interlock license" is defined by KRS 189A.005(5).

(11) "Ignition interlock service provider" or "service provider" means a certified supplier, installer, service provider, and, if applicable, manufacturer of the certified ignition interlock devices.

(12) "Lockout" means the ability of the ignition interlock device to prevent a motor vehicle's engine from starting.

(13) "Manufacturer" means the actual maker of the ignition interlock device that assembles the product and distributes it to device providers.

(14) "Medical accommodation" means non-standard calibration of a device that has been adjusted to detect the breath alcohol

level of defendants who have a medically documented condition of diminished lung capacity requiring a reduced air sample.

(15) "Motor vehicle" is defined by KRS 186.010(4).

(16) "NHTSA" means the National Highway Traffic Safety Administration.

(17) "Provider representative" means a device provider employee who provides oversight of the provider's ignition interlock operations within the Commonwealth of Kentucky.

(18) "Retest" means an additional opportunity to provide a breath sample.

(19) "RFQ" means a request for qualifications pursuant to KRS Chapter 45A.

(20) "Rolling retest" means a test of the defendant's breath alcohol concentration required at random intervals during operation of the motor vehicle.

(21) "Service call" means an onsite remote service of an ignition interlock device, outside of a fixed facility, including for example:

(a) Diagnostic trouble shooting;

(b) Repair or replacement of a malfunctioning device; or

(c) Removal of a device from an inoperable vehicle.

(22) "Service facility" means the physical location where the service provider's technicians install, calibrate, or remove ignition interlock devices.

(23) "Service facility inspection" means the process of determining that a service provider and its technicians are qualified and approved to provide ignition interlock services within the Commonwealth of Kentucky.

(24) "Tampering" means an unlawful act or attempt to disable or circumvent the legal operation of the ignition interlock device.

(25) "Technician" means a service provider employee or contractor who installs, calibrates, and removes ignition interlock devices within the Commonwealth of Kentucky.

(26) "Violation" means:

(a) A breath test indicating an alcohol concentration at the fail-point or above upon initial startup and retest during operation of the motor vehicle;

(b) Altering, concealing, hiding, or attempting to hide one's identity from the ignition interlock system's camera while providing a breath sample;

(c) Failure to provide a minimum of fifty (50) breath samples within a thirty (30) day period;

(d) Tampering that breaches the guidelines for use of the ignition device; or

(e) Failure to pay provider fees as established in Section 2(17) of this administrative regulation.

Section 2. Ignition Interlock Device Applications. (1) The requirements established in this administrative regulation shall not be applied retroactively to ignition interlock devices in use prior to the effective date of this administrative regulation.

(2)(a) Upon arraignment of an offense under KRS 189A.010 resulting in pretrial license suspension, a defendant seeking authorization to apply for and, if eligible, operate under an ignition interlock license shall file with the court a completed Pretrial Application to Court for Authorization to Apply for an Ignition Interlock License and Device, AOC-495.4, pursuant to KRS 189A.200.

(b) Upon conviction of an offense under KRS 189A.010 resulting in license revocation, a defendant seeking authorization to apply for and, if eligible, operate under an ignition interlock license shall file with the court a completed Application to Court Upon Conviction for Authorization to Apply for an Ignition Interlock License and Device, AOC-495.12, pursuant to KRS 189A.070.

(c) Upon judicial finding of a refusal under KRS 189A.107(2) and an acquittal of charges brought under KRS 186.010, the court may authorize the defendant to submit a completed Post-Acquittal Application for Authorization to Apply for an Ignition Interlock License and Device, AOC 495.10.

(d) An eligible defendant in compliance with KRS Chapters 186 and 205 shall receive an Order Upon Acquittal Authorizing Ignition Interlock License and Device, AOC-495.11.

(e) The cabinet shall issue an ignition interlock license for the

period of suspension ordered by the court.

(3) A defendant requesting indigency status review shall file concurrently with the application a completed Financial Statement, Affidavit of Indigency, Request for Reduced Ignition Interlock Device Costs, AOC-495.8.

(4) Upon review of the appropriate application, the court may issue the defendant a Pretrial Order Authorizing Application for Ignition Interlock License and Device, AOC-495.5, or an Order Upon Conviction Authorizing Application for Ignition Interlock License and Device, AOC-495.13.

(5) Defendant eligibility guidelines, applications, and medical accommodation forms shall be made available electronically on the cabinet's Web site at <http://drive.ky.gov> and in printed form through the Department of Vehicle Regulation regional field offices. Regional office locations and contact information are available at <http://drive.ky.gov>.

(6)(a) Prior to application, a defendant shall be required to remit to the cabinet a non-refundable application fee in the amount of \$105 pursuant to KRS 189A.420(6). Payment shall be made by cashier's check, certified check, or money order at one (1) of the cabinet's regional field offices or the central office in Frankfort.

(b) A defendant's payment of the application fee shall not be subject to a court's determination of indigency.

(7) A defendant and his or her counsel are advised that a pre-existing out-of-state or in-state suspension for the offenses listed in KRS 186.560, 186.570, or 205.712 shall result in the defendant's ineligibility to obtain an ignition interlock device. Eligibility guidelines are available at <http://drive.ky.gov>.

(8) A defendant shall submit to the cabinet a completed Ignition Interlock Application, TC 94-175, with a court order authorizing application and proof of insurance and valid vehicle registration.

(9) A defendant seeking a medical accommodation due to diminished lung capacity shall submit with the application a completed Breath Alcohol Ignition Interlock Physician Statement, TC 94-176.

(10) The cabinet shall issue the defendant a letter providing notice of his or her eligibility or ineligibility to install an ignition interlock device based on whether his or her current driving history record conforms to the eligibility guidelines established in KRS Chapters 186 and 205.

(11) A defendant eligible for device installation shall select and contact a certified device provider of his or her choice from the list maintained on the cabinet's Web site at <http://drive.ky.gov>.

(12) A technician designated by the device provider shall install a certified ignition interlock device on the defendant's vehicle upon receipt of the court order and letter of eligibility issued by the cabinet.

(13) A defendant shall be required to install an ignition interlock device on one (1) primary motor vehicle registered and titled in his or her name or another's motor vehicle with express notarized, written consent of the owner authorizing installation of the device.

(14) Nothing in this administrative regulation shall prohibit a person from installing devices on multiple motor vehicles pursuant to subsection (13) of this section.

(15) Upon a defendant's payment of the appropriate fees, the service provider's technician shall install the device and issue to the defendant a Certificate of Installation for Ignition Interlock Device, TC 94-177.

(16) At the time of issuance of an ignition interlock license, a defendant shall:

(a) Present the Certificate of Installation to the circuit clerk in the defendant's county of residence; and

(b) Pay a licensing fee pursuant to KRS 186.531 in addition to the fees specified in subsection (20)(c) of this section. The license shall display an ignition interlock device restriction.

(17) After ten (10) days' written notice to the defendant, the provider shall notify the appropriate county attorney and the cabinet for nonpayment of fees on an account that is in arrears for thirty (30) days or more.

(18) A defendant may voluntarily have the device removed and reinstalled onto a different motor vehicle pursuant to subsection (13) of this section, and upon payment of the appropriate fees to the provider.

(19) A defendant shall have the device removed by an approved service provider and technician designated by the device provider upon completion of the ignition interlock period specified by the court.

(20)(a) Upon removal of the device, the service provider shall retain for their records and provide to the defendant a Certificate of Removal for Ignition Interlock Device, TC 94-178, documenting the successful removal of the interlock device and defendant's payment of all fees.

(b) Upon notice that the device has been removed, the cabinet shall update the defendant's driver history record authorizing the circuit clerk's office to issue the defendant a new license without the ignition interlock restriction.

(c) A defendant shall pay the appropriate fee for a duplicate or renewal license pursuant to KRS 186.531.

(21) A defendant with a license suspension or revocation period exceeding twelve (12) months shall be subject to retesting requirements prior to the issuance of a new license pursuant to KRS 186.480.

Section 3. General Requirements for Ignition Interlock Device Providers. (1) The cabinet shall certify ignition interlock device providers utilizing the provisions of KRS Chapter 45A and the terms of the RFQ. Initial certification shall be valid for a period of eighteen (18) months. Extensions shall be for a period of two (2) years with two (2) subsequent renewals.

(2) Ignition interlock device providers certified under this administrative regulation shall obtain recertification in compliance with this administrative regulation prior to providing devices and services.

(3) An ignition interlock device provider seeking certification to provide devices and services within the commonwealth shall comply in all respects with the requirements of solicitation issued by the cabinet. Non-compliance shall result in a denial of certification.

(4) An ignition interlock device provider may subcontract with a person, firm, LLC, or corporation to provide a device and services if that device is specifically included in its original certification request and is specifically certified by the cabinet pursuant to KRS 189A.500.

(5) An ignition interlock device or service provider shall provide information and training for the operation and maintenance of the device to the defendant and other individuals operating a vehicle with an installed device.

(6)(a) A device and service provider shall be prohibited from removing a device owned by a different provider unless an agreement is in place or for the purpose of replacing a defendant's provider due to that provider's insolvency or business interruption.

(b) The original device provider shall bear the costs associated with the removal of the existing device and installation of the new device.

(7) A device provider shall notify the cabinet within fifteen (15) days of a pending suspension, revocation, or disciplinary action taken against it by a jurisdiction outside the commonwealth. Notice shall include a copy of the official correspondence or pleading establishing the reason for the pending action and shall be provided to the cabinet regardless of the existence of an appeal.

(8) The records required by Section 4(2)(e) of this administrative regulation shall be retained by an ignition interlock device provider for five (5) years from the date the device is removed from the defendant's vehicle. The records shall be disposed of in a manner compliant with relevant privacy laws and the provisions contained in this administrative regulation.

Section 4. Certification of Ignition Interlock Devices and Device Providers. (1) An ignition interlock device provider requesting certification of an ignition interlock device shall:

(a) Submit an affidavit that the ignition interlock device sought to be used complies with the applicable specifications and certification requirements contained in the RFQ; and

(b) Submit documentation for each model from either a certified, independent testing laboratory or the NHTSA testing laboratory that the ignition interlock device meets or exceeds the

current NHTSA model specifications at [nhtsa.gov/staticfiles/nti/pdf/811859.pdf](https://www.nhtsa.gov/staticfiles/nti/pdf/811859.pdf).

(2) An ignition interlock device provider requesting certification shall:

(a) Submit evidence demonstrating successful experience in the development and maintenance of an ignition interlock service program, including a list of jurisdictions served by the device provider;

(b) Provide a description of the training required including its frequency, for persons employed by, contracted with, or permitted by the provider to install, calibrate, remove, and provide continuing support for the devices;

(c) Provide a plan that includes a location map describing the areas and locations of the provider's proposed fixed installation and service facilities. The plan shall include at least one (1) fixed facility in each of the twelve (12) highway districts;

(d) Agree to initial service facility inspections, continuing random inspections, and annual inspections of each service facility by the cabinet or its designee. The provider shall also agree to provide sufficient notice to the cabinet or its designee of the opening of new service facilities to permit the inspection of the facility within thirty (30) days of opening;

(e) Provide a plan for the receipt, maintenance, and destruction or appropriate return of defendant records consistent with court rules and the confidential maintenance of defendant records as required by the Driver's Privacy Protection Act, 18 U.S.C. 2721 and other applicable statutes;

(f) Provide proof of insurance covering the liability related to the manufacture, operation, installation, service, calibration, and removal of the devices with policy limits as established in the RFQ. The provider's liability insurance shall be expressly considered primary in the policy;

(g) Designate a provider representative authorized to speak on behalf of and bind the device provider, and designated to work with the cabinet, the courts, and other agencies in the administration of the ignition interlock program;

(h) Maintain a toll-free twenty-four (24) hour emergency phone service that shall be used by defendants to request assistance in the event of operational problems related to the device and shall include technical assistance and aid in obtaining a roadside service call if needed; and

(i) Demonstrate the ability to maintain sufficient, secure computer hardware and software compatible with the cabinet and court requirements to record, compile, and transmit data and information requested by the cabinet and the Administrative Office of the Courts.

(3) Device providers shall notify the appropriate county attorney within twenty-four (24) hours electronically, or no later than seventy-two (72) hours by mail, fax, or other method approved by the recipient of the following occurrences:

(a) Device tampering or circumvention violations; or

(b) A defendant's failure to comply with a court order pursuant to Section 6(6) of this administrative regulation.

(4) A provider shall indemnify and hold harmless the commonwealth and its employees and agents from all claims, demands, or actions as a result of damages or injury to persons or property, including death, that arise directly or indirectly out of the installation, omission, failure of installation, servicing, calibrating, or removal of an ignition interlock device. If the device provider's report of ignition interlock activities contains a verified error, the cabinet, department, or cabinet or department employees or agents shall be indemnified relevant to the error.

Section 5. Ignition Interlock Device Installation. (1) A provider may charge a defendant for the commodities and services listed in the RFQ, including the following:

(a) Standard ignition interlock device installation, or installation on alternative fuel motor vehicles or a motor vehicle with a push button starter;

(b) Device rental on a monthly basis;

(c) Scheduled device calibrations and monitoring as specified in the RFQ;

(d) Required insurance in case of theft, loss, or damage to the

device and its components:

(e) Resets necessary due to the fault of the defendant;

(f) Missed appointments without notice;

(g) Service calls and mileage up to 100 miles at the current rate established by the Kentucky Finance and Administration Cabinet; and

(h) Device removal.

(2)(a) The court shall determine whether a defendant is indigent. A defendant declared indigent shall pay a proportionate amount of the fees agreed to in the RFQ based upon the guidelines established by the Kentucky Supreme Court in Amendment to Administrative Procedures of the Court of Justice, Part XVI, Ignition interlock, Amended Order 2015-13.

(b) A device and service provider shall accept the court ordered amounts paid by an indigent defendant as payment in full.

(3) The defendant shall remit the fees directly to the device or service provider as directed by the device provider. A device provider shall not prohibit the pre-payment of fees for the device and services.

(4) The device provider shall pursue collection of amounts in arrears and recovery of the devices, where applicable, through separate legal action.

(5) An ignition interlock device shall be installed by or under the direction and supervision of a cabinet-certified ignition interlock device provider in conformance with approved, prescribed procedures of the device manufacturer.

(6) A service provider and technician shall use the calibration units approved by NHTSA and appearing on its list of Conforming Products List of Calibrating Units for Breath Alcohol Testers at <http://www.transportation.gov/odapc/conforming-product-list-calibrating-units-breath-alcohol-testers>.

(7) An ignition interlock device provider shall ensure that technicians installing the device:

(a) Inspect, calibrate, or replace devices with a newly calibrated device at each inspection as required;

(b) Retrieve data from ignition interlock device data logs for the previous period and send the information to the appropriate authority within twenty-four (24) hours electronically, or no later than seventy-two (72) hours by mail, fax, or other method approved by the recipient pursuant to KRS 189A.500;

(c) Record the odometer reading at installation and at service appointments;

(d) Inspect devices and wiring for signs of tampering or circumvention, record suspected violations, and transmit violation reports pursuant to Section 4(3) of this administrative regulation; and

(e) Conform to other calibration requirements established by the device manufacturer.

(8) The cabinet shall:

(a) Maintain a periodically updated, rotating list of certified ignition interlock device providers and approved facilities available at <http://drive.ky.gov>;

(b) Make available an Ignition Interlock Application, TC 94-175, available at <http://drive.ky.gov> and in regional field offices and the central office in Frankfort;

(c) Make available a uniform Certificate of Installation for Ignition Interlock Device, TC 94-177 to be printed and distributed by device providers to their approved service providers and technicians documenting successful ignition interlock device installation; and

(d) Issue an ignition interlock license to eligible defendants upon receipt of a court order and in compliance with the requirements of this administrative regulation. The license shall have in-force status and indicate it is an ignition interlock license by displaying a restriction code for an ignition interlock device.

Section 6. Installation, Operation, Calibration, and Removal of Devices. (1) Prior to installing the device, the provider shall obtain and retain copies of the following from the defendant:

(a) Photo identification;

(b) A copy of the vehicle registration or title containing the VIN of the vehicle designated as primary by the defendant and the names of the operators of the motor vehicle; and

(c) Consent of the defendant or registered owner to install the device.

(2)(a) The device shall be inspected or calibrated by technicians designated by the device provider within thirty (30) days of installation and every sixty (60) days thereafter, as established in KRS 189A.420(4)(b).

(b) A defendant shall have the option to service the device at thirty (30) day intervals following the initial calibration.

(3) If a defendant fails to have the device inspected or recalibrated as required, the ignition interlock device shall be programmed to enter into a lockout condition, at which time the vehicle shall be required to be returned to the service provider.

(4) The defendant shall be responsible for costs related to roadside service unless it is determined that the interlock device failed through no fault of the defendant, in which case the device provider shall be responsible for the applicable costs.

(5) In the event of a violation resulting in an order from the court, the device provider shall remove the device and the cabinet shall suspend the defendant's ignition interlock license.

(6) A device provider shall, within ninety-six (96) hours of receipt of the court's order directing removal of the device, notify the defendant that he or she shall return the vehicle with the installed device for removal.

(7) If an ignition interlock device is removed for any reason, components of the motor vehicle altered by the installation of the device shall be restored to pre-installed conditions.

Section 7. Provider Suspension, Revocation, Voluntary Facility Closure, or Financial Insolvency. (1) The department shall indefinitely suspend or revoke certification of an ignition interlock device provider for the following:

(a) A device in use by that provider and previously certified by the cabinet is discontinued by the manufacturer or device provider;

(b) The device provider's liability insurance is terminated or cancelled;

(c) The device provider makes materially false or inaccurate information relating to a device's performance standards;

(d) There are defects in design, materials, or workmanship causing repeated failures of a device;

(e) A device provider fails to fully correct an identified service facility deficiency within thirty (30) days after having been notified by the cabinet or its designee to do so;

(f) A service provider impedes, interrupts, disrupts, or negatively impacts an investigation or inspection conducted by the cabinet or its designee involving customer service issues, vehicle damage, or a complaint brought by a third party;

(g) A public safety or client confidentiality issue with an ignition interlock device provider, service facility, or technician is identified;

(h) A provider becomes insolvent or files for bankruptcy; or

(i) The device provider requests a voluntary suspension.

(2)(a) The device provider shall be given thirty (30) days written notice of the existence of one (1) or more of the conditions specified in subsection (1) of this section by letter from the Commissioner of the Department of Vehicle Regulation, served by certified mail, and an opportunity to respond to the allegations or correct the deficiencies within that period.

(b) The commissioner shall consider the provider's response or lack of response if deciding to suspend for a period of time or completely revoke the certification of the provider.

(c) The provider may appeal the commissioner's decisions pursuant to the provisions of KRS Chapter 13B.

(3) A device provider subject to revocation shall be responsible for, and bear the costs associated with:

(a) Providing notice to defendants; and

(b) The removal of currently installed devices or the installation of a new approved device by a device provider in good standing.

(4) A provider subject to revocation shall continue to provide services for currently installed devices for a time to be determined by the cabinet, but no longer than ninety (90) days.

(5) A provider subject to suspension shall continue to provide services for currently installed devices. A new ignition interlock installation shall not be permitted during the period of suspension.

(6)(a) A provider who terminates certification or goes out of

business shall comply with the requirements established in subsection (3) of this section, and shall continue to provide services for currently installed devices for ninety (90) days from the date of the provider's notification to the cabinet that they will be terminating ignition interlock services.

(b) A provider who terminates certification or goes out of business shall submit plans for transferring existing defendants to other providers to ensure continuity of service.

(c) A transfer plan shall be submitted to the cabinet for the commissioner's review within thirty (30) days of the initial notification of intent to cease operations in the commonwealth.

A transfer plan shall be submitted to the cabinet for approval by the commissioner within thirty (30) days of the initial notification of intent to cease operations in the commonwealth.

(d) The provider shall be solely responsible for notifying defendants with currently installed devices serviced by the provider, and shall be solely responsible for charges related to installation of a device by a new provider.

Section 8. Surrender of Motor Vehicle Registration Plates. (1) A defendant who does not qualify for an ignition interlock license shall surrender his or her license plates pursuant to KRS 189A.085.

(2) Upon receipt of a request for a vehicle registration inventory from a court, the Transportation Cabinet shall:

(a) Conduct a search of the automated vehicle information system;

(b) Identify motor vehicles owned or jointly owned by the person named on the request; and

(c) Return the results of the search to the court by 12 noon Eastern time, the next working day after the request is received, if the request is received by 12 noon Eastern time. Requests received after 12 noon Eastern time shall be returned to the court by the close of business the second working day after they are received.

(3) Upon receipt of a court order suspending a licensee's plates, pursuant to KRS 189A.085, the Transportation Cabinet shall suspend the licensee's registration. The cabinet shall not suspend the registration of any person pursuant to KRS 189A.085 unless a court order has been received.

(4) The court shall return confiscated license plates to the Transportation Cabinet. The cabinet shall bear the responsibility for reasonable postage or shipping costs for the return of confiscated license plates.

(5) After the motor vehicle registration suspension period has expired, the county clerk shall reissue a motor vehicle registration plate and registration receipt upon the request of the vehicle owner as follows:

(a) If the registration period of the suspended license plate has not expired, the new registration shall be issued pursuant to KRS 186.180(2); or

(b) If the suspended license plate has expired, the registration shall be issued as a renewal registration pursuant to KRS 186.050.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Breath Alcohol Ignition Interlock Physician Statement", TC 94-176, August 2015;

(b) "Certificate of Installation for Ignition Interlock Device", TC 94-177, August 2015;

(c) "Certificate of Removal for Ignition Interlock Device", TC 94-178, August, 2015; and

(d) "Ignition Interlock Application", TC 94-175, August 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. through 4:30 p.m. This material is also available on the cabinet's Web site at <http://drive.ky.gov>. [Surrender of Motor Vehicle Registration Plates.

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VOLUME 44, NUMBER 7 – JANUARY 1, 2018

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(b) If the suspended license plate has expired, the registration shall be issued as a renewal registration pursuant to KRS 186.050.

Section 2. Breath Alcohol Ignition Interlock Device. (1) An ignition interlock device, installed pursuant to court order shall meet the following criteria:

(a) The ignition interlock device shall be designed and constructed to measure a person's breath alcohol concentration, as defined in KRS 189A.005(1), by utilizing a sample of the person's breath delivered directly into the device;

(b) The ignition interlock device shall be designed and constructed so that the ignition system of the vehicle in which it is installed will not be activated if the alcohol concentration of the operator's breath exceeds .02 alcohol concentration as defined in KRS 189A.005(1);

(c) The ignition interlock device shall meet or exceed performance standards contained in the Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDS), as published in 57 FR 11772-11787 (April 7, 1992);

(d) The ignition interlock device shall prevent engine ignition if the device has not been calibrated within a period of ninety-seven (97) days subsequent to the last calibration;

(e) The ignition interlock device shall:

- 1. Record each time the vehicle is started;
- 2. Record results of the alcohol concentration test;
- 3. Record how long the vehicle is operated; and
- 4. Detect any indications of bypassing or tampering with the device;

(f) The ignition interlock device shall permit a sample free restart for a period of two (2) minutes or less after a stall;

(g) The ignition interlock device shall require:

1. That the operator of the vehicle submit to a retest within ten (10) minutes of starting the vehicle;

2. That retests continue at intervals not to exceed sixty (60) minutes after the first retest;

3. That retests occur during operation of the vehicle; and

4. That the device enter a lockout condition in five (5) days if a retest is not performed or the results of the test exceeds the maximum allowable alcohol concentration;

(h) The ignition interlock device shall be equipped with a method of immediately notifying peace officers:

- 1. If the retest is not performed; or
- 2. If the results exceed the maximum allowable alcohol concentration; and

(i) The ignition interlock device shall include instructions recommending a fifteen (15) minute waiting period between the last drink of an alcoholic beverage and the time of breath sample delivery into the device.

(2) An ignition interlock device shall be:

(a) Installed by the manufacturer or by private sector installers in conformance with the prescribed procedures of the

manufacturer; and

(b) Be used in accordance with the manufacturer's instructions.

(3)(a) An ignition interlock device shall be calibrated at least once every ninety (90) days to maintain the device in proper working order.

(b) The manufacturer or installer shall calibrate the device or exchange the installed device for another calibrated device in lieu of calibration.

(c) The record of installation and calibration shall be kept in the vehicle at all times for inspection by a peace officer and shall include the following information:

1. Name of the person performing the installation and calibration;

2. Dates of activity;

3. Value and type of standard used;

4. Unit type and identification number of the ignition interlock device checked; and

5. Description of the vehicle in which the ignition interlock device is installed, including the registration plate number and state, make, model, vehicle identification number, year and color.

4) An ignition interlock device in a lockout condition shall be returned to the site of installation for service.

Section 3. Division of Driver Licensing Requirements. (1) The Division of Driver Licensing shall maintain a list of all manufacturers of ignition interlock devices meeting the requirements of this administrative regulation who have provided documentation to the division confirming that they offer appropriate ignition interlock devices and related services within the Commonwealth.

(2) The list of manufacturers who provide appropriate devices, approved installers, and servicing and monitoring entities shall be published and periodically updated by the Division of Driver Licensing on the Transportation Cabinet Web site.

(3) The Division of Driver Licensing shall provide a notation on the face of the operator's license stating that:

(a) The licensee is required by order of the court to be using a vehicle with an ignition interlock device; and

(b) The license has been granted an exception for employment purposes pursuant to KRS 189A.340, if granted by the court.

(4) Manufacturers, installers, and servicing and monitoring entities shall apply to the Division of Driver Licensing for approval and placement on the list maintained by the cabinet.

Section 4. Incorporation by Reference. (1) Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDS), 57 FR 11772-11787 (April 7, 1992), 40 pages, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet, Division of Driver Licensing, 2nd Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.]

GREG THOMAS, Secretary
JOHN MARK HACK, Commissioner

D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: November 12, 2017

FILED WITH LRC: November 15, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on January 25, 2018 at 10:00 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to

be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: D. Ann Dangelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, 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 requirements for the administration and implementation of the ignition interlock program.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 189A.500.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes forms, creates a uniform certificate of installation for ignition interlock devices, certifies the devices approved for use in the Commonwealth, and creates an ignition interlock license to be issued upon court approval.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the regulatory requirements of KRS 189A.500. (2) If this is an amendment to an existing administrative regulation, provide a brief summary:

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the Commissioner's role in the submission of transfer plans by providers in Section 7.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to amend Section 7 (6)(d) that currently requires the Commissioner to approve, rather than to simply review a transfer plan.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 189A.500 that requires the cabinet to implement the ignition interlock program. (d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify provisions in the current 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: companies desiring to provide ignition interlock devices and services within Kentucky; motor vehicle drivers who violate KRS 189A.010 (defendants); the cabinet's Division of Drivers Licensing within the Division of Vehicle Regulation; circuit clerks, and the Administrative Office of the Courts.

(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: Companies desiring to provide ignition interlock devices and services will apply to the cabinet for device certification and authorization; defendants will apply for both the ignition interlock device and authorization to operate with an ignition interlock license pursuant to court order; divisions within the department will approve and process the application forms; and circuit clerks will issue the ignition interlock licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Defendants will pay device and servicing fees pursuant to KRS 189A.500, and an application fee in the amount of \$105 pursuant to KRS 189A.420(6).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If eligible pursuant to KRS chapter 186, defendants will be approved to drive with an Ignition Interlock license; businesses desiring to provide Ignition Interlock

devices and services will be granted certification for devices and authority to provide services.

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

(a) Initially: Inspections, mailing of documents and staff time necessary to begin processing applications is estimated at \$525,000.

(b) On a continuing basis: \$105 per defendant and up to approximately \$525,000 annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Initially FHWA – Hazard Elimination Fund. There is presently no appropriation in place to administer or enforce this program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An appropriation will be needed to maintain this program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative fees created herein are pursuant to statute to offset any costs KYTC.

(9) TIERING: Is tiering applied? No tiering is required for device providers. All device providers meeting or exceeding the qualifications will be treated the same. Tiering for defendants in this program is pursuant to statute and judicially determined indigency status.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? KYTC Department of Vehicle Regulation, Division of Driver Licensing, the Circuit Clerks, Administrative Office of the Courts, County Attorneys.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 189A.500(1)(f).

(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. For local government, costs should be minimal as the process is judicially driven and the regulatory actions will be performed within the context of DUI prosecutions.

(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? Up to approximately \$525,000.

(d) How much will it cost to administer this program for subsequent years? Unknown.

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

Revenues (+/-): No revenues will be generated by this program.

Expenditures (+/-): Additional programming to the driver licensing system will need to be implemented. The cost is unknown.

Other Explanation: The cabinet is unsure precisely how many defendants will move for eligibility under this program and whether efficiencies can be achieved if they do.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Kentucky Department of Education
(Amendment)

704 KAR 3:540. Uniform academic course codes.

RELATES TO: KRS 156.070, 156.160

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(1) gives the Kentucky Board of Education the management and control of the common schools. KRS 156.160(1) requires the Kentucky Board of Education to promulgate administrative regulations for the courses of study that are administered in the common schools. This administrative regulation establishes a uniform system of coding academic courses in schools and districts through the student information system. A uniform course code is required to create accurate data regarding courses offered that is utilized by schools, districts, the Department of Education, the Education[~~Educational~~] Professional Standards Board and the Office of Education Accountability.

Section 1. Maintenance of Uniform Academic Course Codes. The Kentucky Department of Education shall maintain a system for uniform academic course codes and all course codes, course titles, and course descriptions shall be identified. The Kentucky Department of Education shall annually review uniform academic course codes to identify courses for revision, addition, and deletion. The Commissioner of Education shall annually approve any changes to uniform academic course codes and shall publish and distribute updated course information to all districts no later than January 31 of each year.

Section 2. Uniform Academic Course Code Requirements. (1) Local districts and schools shall use the uniform academic course codes, distributed by the Commissioner of Education annually [listed and described in the Academic Course Code List,] to classify all courses offered in each school when reporting to the Kentucky Department of Education.

(2) Reporting to the Kentucky Department of Education shall include the listing and linking of uniform academic courses [if the listing of academic courses is required].

Section 3[2]. District and School Course Descriptions. The linking of local district and school codes to the uniform academic course codes shall be performed annually by district and school staff using the student information system.

Section 4[3]. Annual District and School Audits. The Kentucky Department of Education shall annually audit and report the use or misuse of uniform academic course codes by districts and schools. [Section 4. Incorporation by Reference. (1) "Academic Course Code List", April 2010, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Teaching and Learning, 18th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m.]

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

STEPHEN L. PRUITT, Ph.D.

MARY GWEN WHEELER, Chairperson

APPROVED BY AGENCY: December 14, 2017

FILED WITH LRC: December 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on January 22, 2018, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in

writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: Amends administrative regulation 704 KAR 3:540 to improve alignment between academic experiences, quality of courses and uniform academic course codes. KRS 156.160(1) requires that the Kentucky Board of Education promulgate administrative regulations for the courses of study that are administered in the common schools. The administrative regulation establishes a uniform system of coding academic courses in schools and districts through the student information system.

(b) The necessity of this administrative regulation: Amendment of 704 KAR 3:540 accomplishes the following: (1) assists districts in compliance with KRS 161.1221 and 16 KAR 1:050, which require the Education Professional Standards Board (EPSB) to classify and certify teachers; (2) allows districts to have a better understanding of the kinds of courses students have previously encountered when transferring from other districts; (3) assists the Kentucky Department of Education (KDE) in providing accurate data to the Kentucky General Assembly for future funding decisions and the KBE as they make policy decisions; and (4) assists with reporting at the federal and state levels.

(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation conforms to the authority given to the Kentucky Board of Education in KRS 156.160 and 156.070.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation supports alignment of Kentucky's Academic Standards with a uniform system of coding academic courses offered in school districts.

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

(a) How the amendment will change this existing administrative regulation: The amendment is part of the KDE and KBE efforts to align uniform course codes with courses and academic standards throughout Kentucky's 173 public school districts. The amendment removes documents incorporated by reference and adds a process to allow the Commissioner of Education to regularly update the Uniform Academic Course Codes to reflect the listing and linking of courses by local school districts.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary as part of the KDE and KBE efforts to update and align uniform course codes with courses and academic standards throughout Kentucky's 173 public school districts. By removing documents incorporated by reference and establishing a process for the Commissioner of Education to regularly update and publish approved course codes, courses throughout the Commonwealth will be more uniform and linked to academic standards.

(c) How the amendment conforms to the content of the authorizing statute: KRS 156.160 requires the KBE to promulgate administrative regulations for the "Courses of study for the different

grades and kinds of common schools identifying the common curriculum content directly tied to the goals, outcomes, and assessment strategies..." The amendment of this regulation conforms to the content of the authorizing statute as it prescribes the method by which the Commission of Education will develop and publish uniform academic course codes that are linked to academic standards for courses offered in Kentucky public schools. That is, the regulation establishes the courses of study for different grades and directly links those courses to required academic standards.

(d) How the amendment will assist in the effective administration of the statutes: This regulation supports alignment of Kentucky's Academic Standards with a uniform system of coding academic courses offered in school districts.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by this amendment are: the KDE, all public school districts and public schools.

(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: This amendment requires the KDE to annually review and update uniform codes in order to expedite services and support to districts and schools.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Districts and schools will need to annually align course offerings to the Uniform Academic Course Codes.

(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 to comply with amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Amendment of this regulation supports alignment of course codes to specific academic standards where appropriate, revision of the process for requesting and approving course codes, and updating both the KDE and EPSB systems of course codes.

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

(a) Initially: No additional costs to comply with amendment.

(b) On a continuing basis: No additional costs to comply with amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation impacts the KDE, local school districts and schools.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.160 and 156.070.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect is anticipated based on this amendment.

(a) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is anticipated based on 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? No revenue is anticipated based on this amendment.

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

(d) How much will it cost to administer this program for subsequent years? There will be no cost associated with the amendment.

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

Revenues (+/-): N/A

Expenditures (+/-):N/A

Other Explanation: N/A

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amendment)**

704 KAR 7:090. Homeless Children and Youth Education Program.

RELATES TO: KRS 156.035, 156.029, 42 U.S.C. 11432

STATUTORY AUTHORITY: KRS 156.160[~~156.035~~], 156.070

NECESSITY, FUNCTION, AND CONFORMITY: In accordance with the McKinney-Vento[~~Stewart B. McKinney~~] Homeless Assistance Act as amended under the Every Student Succeeds Act of 2015 [~~Amendments of 1990~~], the Kentucky Department of Education, when applying to the U.S. Department of Education for participation in programs for homeless children and unaccompanied youth under the Act, shall submit an approvable plan and satisfactory assurances that all requirements of the law set forth in 42 U.S.C. Section 11432 shall be met. This administrative regulation implements the Kentucky Board of State Board for Elementary and Secondary Education's duties pursuant to KRS 156.029 and 156.035 [~~duties~~] to develop education policy, to implement acts of Congress appropriating and apportioning funds to the state and to provide for the proper implementation of federal law in accordance with the state's current plan. This administrative regulation sets forth criteria regarding residency policies, the provision of a free, appropriate public education to homeless children and unaccompanied youth, provides informal procedures for resolution of disputes regarding educational placement of homeless children and unaccompanied youth, provides grants to local educational agencies for the enrollment, retention and educational success of homeless children and unaccompanied [~~homeless~~] youth, and provides for an annual count of homeless children and unaccompanied[~~homeless~~] youth.

Section 1. Definitions. (1) "Homeless child", "homeless children", [~~"homeless youth";~~] and "homeless student" means a child or children who are between the ages of birth[~~five~~-(~~5~~)] and twenty-one (21) years inclusive and who lack a fixed, regular, and adequate nighttime residence. The term includes children and youth who are:

(a) Sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason[~~Living with their families in hotels, motels, public or private shelters or other temporary living arrangements due to the lack of a fixed, regular and adequate residence~~];

(b) Are living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations[~~Residing in special care homes such as runaway shelters or spouse abuse centers due to the lack of a fixed, regular and adequate residence~~];

(c) Are living in emergency or transitional shelters[~~Placed by parents under the care of relatives or nonrelatives due to the~~

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homeless situation of the family or due to their impoverished condition which may cause the family members to live separately from one another];

(d) Are abandoned in hospitals[Sleeping in a public or private place not ordinarily used as a regular sleeping accommodation for human beings];

(e) Have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings[Sick or abandoned children staying in hospitals, who would otherwise be released if they have a place to go];

(f) Are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and[Living in campgrounds or similar temporary sites because they lack living accommodations that are fixed, regular and adequate. Those living in campgrounds on a long-term basis in adequate accommodations shall not be considered homeless; or]

(g) Migratory children who qualify as homeless because they are living in circumstances described above[Runaway or throwaway youth who have been "thrown out" of their home environment and who are living in a shelter, on the street, or who move from one friend's house to another in a cycle of transiency].

(2) "Free, appropriate public education" means the educational programs and services that are provided the children of a resident of a state, and that are consistent with state school attendance laws. It includes educational services for which the child meets the eligibility criteria, such as magnet schools, charter schools, compensatory education programs for the disadvantaged, and educational programs for the handicapped and for students with limited English proficiency; programs in vocational education; programs for the gifted and talented; school meals programs; extended school programs; preschool programs; and programs developed by the family resource and youth services centers.

(3) "School of origin" shall mean the school that the child or youth attended when permanently housed, or the school in which the child or youth was last enrolled. Consistent with McKinney-Vento as reauthorized by ESSA, this shall include preschool and designated receiving schools at the grade level for all feeder schools when a student completes the final grade level served by the school of origin.

(4) "Unaccompanied youth" shall mean a youth that meets the definitions of unaccompanied youth and homeless included in the McKinney-Vento Homeless Assistance Act.

Section 2. Criteria for Program Implementation. Homeless children or unaccompanied[~~homeless~~] youth who reside within the boundaries of a local school district shall be provided a free, appropriate public education. Programs for homeless children and unaccompanied youth shall be provided in a timely fashion and shall be ensured by the following actions:

(1) Each local district shall designate a person in the district to be a homeless child education liaison[~~coordinator~~ and] shall submit the name of the person to the Kentucky Department of Education, and shall allocate sufficient time to the homeless child education liaison to perform the required responsibilities. The homeless liaison's[~~coordinator's~~] responsibilities shall be to:

(a) Obtain all necessary records, including birth certificates and immunization records, of each homeless student and unaccompanied youth identified as living within the boundaries of the school district and immediately[~~as expeditiously as legally possible,~~] place the student in appropriate programs. In cases where records are not readily available, the liaison[~~coordinator~~] shall contact the school district(s) of last attendance for verbal confirmation of essential information. The liaison[~~coordinator~~] shall assist the homeless student or unaccompanied youth to obtain essential records which are not in existence[~~in order that enrollment shall not be delayed or denied~~];

(b) Receive and resolve any requests for resolution of disputes related to the educational placement of homeless students or unaccompanied youth within the district. The liaison[~~coordinator~~] shall provide the necessary information to the Department of Education for final resolution whenever such a request is received

and is not resolved;

(c) Assist the homeless student or unaccompanied youth to obtain the appropriate program and services, including transportation and referrals to medical, dental, mental and other appropriate services;

(d) Develop procedures to ensure that homeless student or unaccompanied youth records are readily available upon request by a new receiving school district;[and]

(e) Develop a relationship[~~liaison~~] with known homeless service providers and state agencies in the community to identify and enroll homeless students or unaccompanied youth living there [-];

(f) Review local data indicating the prevalence of homelessness in the community and assess needs of local homeless children and unaccompanied youth with LEA administrators based on the review of data;

(g) Ensure school personnel providing McKinney-Vento services receive professional development and other support related to addressing the challenges of homelessness and supporting homeless children and unaccompanied youth;

(h) Ensure unaccompanied youth are enrolled and receive support to accrue credits and access higher education; and

(i) Receive annual department approved training, to cover at least the following topic areas:

1. The rights and services provided for homeless children and unaccompanied youth;

2. Identification of homeless children and unaccompanied youth;

3. The state dispute resolution process, data utilization, monitoring and reporting requirements under this regulation; and

4. Best practices to serve homeless children and unaccompanied youth.

(2) Each local district shall designate a person in the district to be a foster care liaison, shall submit the name of the person to the Kentucky Department of Education, and shall allocate sufficient time to the foster care liaison to perform required responsibilities. The foster care liaison may also be the homeless education liaison. The foster care liaison's responsibilities shall be to ensure that:

(a) A child in foster care remains in his or her school of origin, unless it is determined that remaining in the school of origin is not in that child's best interest;

(b) If it is not in the child's best interest to stay in his or her school of origin, the child is immediately enrolled in the new school even if the child is unable to produce records normally required for enrollment; and

(c) That the new (enrolling) school immediately contacts the school of origin to obtain relevant academic and other records.

Section 3. Residency. The school district of residence shall be the district in which the homeless student or unaccompanied youth physically resides with his or her parent or legal custodian, unless by reason of marriage, emancipation, or basic physical necessity the child resides elsewhere. The school district of residence shall ensure that:

(1) The homeless student or unaccompanied youth is enrolled in the school attendance area in which he or she is physically located or that the homeless student's or unaccompanied youth's education is continued in the school of origin for the remainder of the academic year, or in any case in which the family becomes homeless between academic years, for the following academic year; or enroll the child or youth in any school that nonhomeless students who live in the attendance area in which the child or youth is actually living are eligible to attend, whichever is in the best interest of the homeless student or unaccompanied youth.

(2) In determining the best interests of the child or youth for purposes of making a school assignment under Section 3(1) of this administrative regulation, consideration shall be given to a request made by the parent or unaccompanied youth regarding school selection.

(3) A homeless student or unaccompanied youth shall not be denied enrollment in the school district of residence due to the absence of a parent or a court-appointed guardian or custodian. Such a homeless student or unaccompanied youth shall be

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enrolled and provided educational services until such time that the school district can substantiate that the enrollment is contrary to Section 1(2) of this administrative regulation.

(4) In the absence of a parent, and a court-appointed custodian or guardian, any medical, dental and other health services may be rendered to a homeless student or unaccompanied youth who is a minor of any age when, in the judgment of the school principal or other professional that the risk to the minor's health is of such a nature that treatment should be given without delay and the requirements of consent would result in delay or denial of treatment as stated in KRS 214.185(3)(4).

(5) Homeless children or unaccompanied youth shall not include any individual imprisoned or otherwise detained by act of Congress or a state law. Nor shall a child be classified as "homeless" to circumvent state law and administrative regulations which:

(a) Prohibit the attempted enrollment of nonresident students for the express purposes of obtaining school accommodations and services without the payment of tuition to the nonresident school district or for the purpose of obtaining specific programs not available in the school of residence; or

(b) Regulate interschool athletic recruiting by the Kentucky High School Athletic Association.

(6) School district policy shall not delay or deny the immediate [timely] provision of educational placement and appropriate services to the homeless student or unaccompanied youth, including policies related to guardianship issues.

Section 4. Resolution of Disputes. Disputes arising between or among the school district of residency; another school district; and the parent, ~~homeless~~ youth, or person in parental relationship to the homeless student or unaccompanied youth regarding the school district in which the child shall attend school or the educational placement of the homeless student or unaccompanied youth shall be resolved through the following procedures:

(1) The local district homeless child education liaison shall ensure immediate enrollment and the provision of services to the homeless child or unaccompanied youth throughout the dispute resolution process.

(2) All concerns regarding the education of a homeless child or unaccompanied youth shall be referred to the local district liaison. If a complaint arises regarding services or placement of a homeless child or unaccompanied youth the school district's homeless child education liaison shall inform the homeless student or unaccompanied youth of his or her rights under the McKinney-Vento Act and this administrative regulation.

(3) The local district liaison shall make a determination within a reasonable number of days as to the complaint. The liaison will document this and all subsequent communications, determinations, and evidences. A copy of that determination shall be presented to the complainant. If the complaint is not resolved, the complainant will be advised by the local district liaison of the opportunity to present a written request for mediation. The local district liaison shall assist the representative to complete a written request for mediation, including an indication of the specific point at issue.

(4) The mediation shall be scheduled within a reasonable number of days of the written request and shall be convenient to the needs of the homeless student or unaccompanied youth. The district liaison, the district(s) representative(s), and the child's representative shall be present. The local district homeless liaison shall facilitate the mediation.

(5) During the hearing, the school district(s) shall discuss considerations that led to the placement decision and the specific point in issue determined previously. The mediation may also include discussion of the ability of the school district to provide continuity in educational programs, the need of the homeless student or unaccompanied youth for special instructional programs, the amount of time and arrangements required to transport the student to the original school district, the age of the homeless student or unaccompanied youth and the school placement of siblings, and the time remaining until the end of the semester or the end of the school year. Documentation regarding those

proceedings must be provided with any appeal to the state homeless coordinator.

(6) Where an agreement cannot be reached among by the parties, either party may request review by the state homeless coordinator. Upon written request, the state coordinator shall make a determination and communicate with the involved parties to discuss available alternatives and seek to resolve the dispute. Any party requesting review by the state coordinator must provide reasoning for the review including specific questions of law and or fact.

(7) Where such a request for the assistance of the state coordinator is made, the school district of residence shall provide sufficient information as required, including:

(a) A description of the situation that prompted the complaint;

(b) The name(s) and age(s) of the child or children involved;

(c) The name(s) of the involved school district personnel and the school district or districts involved; and

(d) Copies of any documentation used up to that point including reasoning for district decisions, appropriate evidence to substantiate reasoning, and other evidence the district sees relevant.

(e) All information is subject to the provisions of the Family Educational Rights and Privacy Act, 20 U.S.C. 1232(g).

(8) The state coordinator shall collect appropriate evidence, review such evidence, and provide an initial decision. Parties may request that the state coordinator's decision be reviewed by a three (3) member panel convened by the state coordinator within the Department of Education. The three (3) member panel shall review the state coordinator's decision and either adopt the decision or reject it. If rejected, the panel shall provide an alternative finding with appropriate reasoning. The panel's decision is a final decision and not appealable. A final decision will be rendered within a reasonable number of days after receiving a complaint.

(9) Students must be immediately enrolled in the school in which enrollment is being sought in the case of a dispute, including unaccompanied youth. Enrollment must continue until the final resolution of the dispute, including all available appeals.

(10) Unaccompanied youth have the right to receive such written notice, as well as parents or guardians accompanying their children. Written explanation is required of decisions made by the school, LEA, or SEA and must be in an understandable form. [The school district's homeless child education coordinator shall inform the representative of the homeless student of the right to an informal hearing with the school district(s) when a dispute arises about the placement of the homeless student. The coordinator shall assist the representative to complete a written request for the hearing which shall be based on a placement that was initiated, or declined to be initiated, by the school district not more than two (2) school weeks prior to the request.

(2) ~~The informal hearing shall be scheduled within two (2) days of the written request and shall be convenient to the needs of the representative of the homeless student.~~

(3) ~~During the hearing, the school district(s) shall discuss any considerations that led to the placement decision which may include the ability of the school district to provide continuity in educational programs, the need of the homeless student for special instructional programs, the amount of time and arrangements required to transport the student to the original school district, the age of the homeless student and the school placement of siblings, and the time remaining until the end of the semester or the end of the school year.~~

(4) ~~In cases where an agreement cannot be reached among all involved parties, either party may request the assistance of the state homeless children education coordinator. Upon written request, the coordinator shall meet with the involved parties to discuss available alternatives and seek to resolve the dispute.~~

(5) ~~In cases of such a request for the assistance of the state coordinator, the school district of residence shall inform the Kentucky Department of Education and shall provide sufficient information as required.~~

(6) ~~The placement and services for the homeless student shall be continued pending the resolution of the dispute by the Department of Education.]~~

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Section 5. Annual Count. The Department of Education shall annually conduct a count of all homeless children and unaccompanied youth in the state as follows:

(1) Local school districts shall utilize the state student information system for the collection of data regarding homeless children and unaccompanied youth~~[Survey instruments shall be distributed to local school districts, related social agencies, and appropriate service providers no later than October 1 of each year].~~

(2) Local school districts~~[social agencies, and service providers]~~ shall report~~[take]~~ an unduplicated count by school of homeless children and unaccompanied youth via the state student information system ~~[and shall return the completed forms]~~ to the Department of Education according to the time lines provided.

(3) The Department of Education shall develop procedures as required to ensure that the homeless child count is accurate and verifiable.

Section 6. Local Education Agency Grants for the Education of Homeless Children and Unaccompanied Youth. The Kentucky Department of Education shall make grants to local education agencies (LEA) when such funds become available through a competitive application process. Grants ~~shall~~~~[will]~~ be awarded to LEAs based upon the review and rating of their applications. (1) Not less than fifty (50) percent of amounts provided under a grant to local districts shall be used to provide primary services of tutoring, remedial education services, or other education services to homeless children or unaccompanied youth~~[homeless youths]~~.

(2) Not less than thirty-five (35) nor more than fifty (50) percent of amounts provided to local districts shall be used for related activities including expedited evaluations, professional development for school personnel, referrals for medical, dental, mental and other health services, transportation, before- and after-school care, and school supplies.

(3) A local district that desires to receive a grant shall submit an application to the Kentucky Department of Education. Each application shall include:

(a) The number of homeless children and unaccompanied youth enrolled in preschool, elementary and secondary school, the needs of such children and the ability of the district to meet these needs;

(b) A description of the services and programs for which assistance is sought and the problems sought to be addressed through the provision of such services and programs (i.e., enrollment, retention and educational success);

(c) An assurance that assistance under the grant shall supplement and not supplant funds used before the award of the grant for purposes of providing services to homeless children and unaccompanied youth~~[homeless]~~;

(d) A description of policies and procedures that the district shall implement to ensure that activities carried out by the district shall not isolate or stigmatize homeless children and unaccompanied youth~~[homeless youths]~~;

(e) A description of coordination with other local and state agencies that serve homeless children and unaccompanied youth~~[homeless youths]~~; and

(f) Other criteria the Kentucky Department of Education deems appropriate. ~~[Section 7. The "Special Amendment to School Data Form for Homeless Children/Youth" dated July 1992, and the "Homeless Children and Youth Education Program Educational and Related Services for Homeless Students Grant Application", dated May, 1993, are hereby adopted and incorporated by reference. These documents may be inspected, copied, and obtained from the Department of Education, 1715 Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

STEPHEN L. PRUITT, Ph.D., Commissioner
MARY GWEN WHEELER, Chairperson

APPROVED BY AGENCY: December 14, 2017

FILED WITH LRC: December 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2018 at 10 am., in the State Board Room, Fifth Floor, Sower Building, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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 January 31, 2018. 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: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 300 Sower Boulevard, Fifth Floor, Sower Building, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: The amendments to this regulation are to bring the regulation in alignment with the changes made in the reauthorization of the McKinney-Vento Act by the Every Student Succeeds Act. This regulation is not all encompassing of the entire Homeless Education Program, but provides the required framework for essential functions and requirements under McKinney-Vento.

(b) The necessity of this administrative regulation: The amendments to this regulation are required for alignment to the State Plan, as submitted to the United States Department of Education. This regulation reflects the essential functions and requirements under McKinney-Vento, as reauthorized under the Every Student Succeeds Act.

(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation conforms to the authority given to the Kentucky Board of Education in KRS 156.060 and 156.070 as it establishes the homeless education program requirements for schools, districts, and KDE as mandated under the McKinney-Vento Act, 42 U.S.C. 11432, which is essential to the Board's vision and mission in its management and control over schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 156.160 requires the Kentucky Board of Education to promulgate regulations establishing standards which school districts shall meet in student, program, service and operational performance. While, this regulation does not fully encompass the Homeless Children and Youth Education Program, as described in the State Plan submitted to the United States Department of Education, it does outline the essential functions and requirements established for schools, districts, and the KDE under the McKinney-Vento Act, as reauthorized under the Every Student Succeeds Act.

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

(a) How the amendment will change this existing administrative regulation: The amendments will modify definitions, processes, and procedures so as to bring the regulation into alignment with the McKinney-Vento Homeless Education Act.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to ensure alignment between the regulation and the McKinney-Vento Act, as reauthorized by the Every Student Succeeds Act and the State Plan, as submitted to the United States Department of Education.

(c) How the amendment conforms to the content of the authorizing statute: KRS 156.160 and 156.070 provides broad authority to the Kentucky Board of Education to develop education policy, to implement acts of Congress appropriating and apportioning funds to the state and to provide for the proper implementation of federal law in accordance with the state's current plan. The McKinney-Vento Homeless Education Act provides a series of requirements that the state education agency must meet for participation in the program. This regulation fulfills the requirements of McKinney-Vento and aligns to the State Plan, as submitted to the United States Department of Education.

(d) How the amendment will assist in the effective administration of the statutes: This regulation does not fully encompass the Homeless Children Education Program, as described in the State Plan submitted to the United States Department of Education, but it does outline the essential functions and requirements established for state education agencies under the McKinney-Vento Act, as reauthorized under the Every Student Succeeds Act.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by the amendments made in this regulation include: all local school districts, although their processes will not be impacted as these changes in regulation have already been implemented to maintain compliance with McKinney-Vento; the KDE as it is tasked with providing guidance, technical assistance, and dispute resolution assistance per McKinney-Vento.

(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: Districts will be responsible for identifying a homeless and foster care liaison that will work with schools to support students as described in the regulation. Additionally, the district will have to ensure that the liaisons are provided the opportunity to complete required training and the time and resources required to fulfill the expectations of the position. KDE will be required to identify a state homeless coordinator and a separate foster care liaison. The coordinator and liaison must be provided sufficient time and resources to fulfill the expectations of the position. School districts and the KDE are already implementing these requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Districts are required to appoint homeless and foster care liaisons. Districts were aware of this federal requirement prior to the December 2016 deadline and these individuals were already identified and have been reported to KDE. The homeless liaison was already required under No Child Left Behind, and has been continued under ESSA. Districts may appoint one person that is already employed by the district as the foster care liaison. Required training for liaisons has already been developed by KDE. As a result, there are no anticipated costs associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Amendments made in this regulation, especially in the area of dispute resolution, bring authority back to the local education agency, promoting an effort to resolve disputes at the local level rather than quickly rising to the state level. This will remove vague requirements that have resulted in immediate jumps to state level review. The amendments will also result in clearer requirements for the Homeless Children Education Program as the amendments will be brought into alignment with the McKinney-Vento Homeless Education Act.

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

(a) Initially: The KDE is required by McKinney-Vento to appoint a Homeless Education Coordinator at the State level. This requirement existed prior to the ESSA reauthorization. As a result, there is no additional cost as a result of this amendment.

(b) On a continuing basis: The KDE is required by McKinney-

Vento to appoint a Homeless Education Coordinator at the State level. This requirement existed prior to the ESSA reauthorization. As a result, there is no additional cost as a result of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funding under Title I and McKinney-Vento is used on an ongoing basis for the implementation of this regulation. However, as indicated above, the KDE and districts have been required by McKinney-Vento to fulfill these requirements already since they existed prior to the ESSA reauthorization. As a result, there is no additional cost as a result of this amendment.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local education agencies and KDE will be impacted, although these requirements are already being complied with because they mirror requirements under the McKinney-Vento Act which is already being enforced.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.029, 156.035, 156.070, 156.160, and 42 U.S.C. 11432

(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. KDE does not anticipate any effect on revenue or expenditures as a result of this amendment.

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

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

(c) How much will it cost to administer this program for the first year? Districts are required to appoint homeless and foster care liaisons. Districts were aware of this federal requirement prior to the December 2016 deadline and these individuals were already identified and have been reported to KDE. The appointment of a homeless liaison was already required under No Child Left Behind, and has been continued under ESSA. Districts may appoint one person that is already employed by the district as the foster care liaison. The KDE is required by McKinney-Vento to appoint a Homeless Education Coordinator at the State level. This requirement existed prior to the ESSA reauthorization. As a result, there is no additional cost for the first year as a result of this amendment.

(d) How much will it cost to administer this program for subsequent years? As described above, districts are required to appoint homeless and foster care liaisons. The KDE is required by McKinney-Vento to appoint a Homeless Education Coordinator at the State level. These requirement existed prior to the ESSA reauthorization. As a result, there is no additional cost following the first year of implementation.

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

Revenues (+/-): N/A
Expenditures (+/-): NA
Other Explanation: N/A

VOLUME 44, NUMBER 7 – JANUARY 1, 2018

DEPARTMENT OF WORKPLACE STANDARDS
Division of Occupational Health and Safety Compliance
Division of Occupation Safety and Health
Education and Training
(Amendment)

803 KAR 2:505 Cranes and derricks in construction.

RELATES TO: KRS 338.015, 29 C.F.R. Part 1926.1400-1926.1441

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health rules and administrative regulations and standards. This administrative regulation contains the standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "Established federal standard" is defined by KRS 338.015(10).

(7) "National consensus standard" is defined by KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions established in Section 1 and the requirements in Section 3 of this administrative regulation, the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.1400-1926.1441, effective July 1, 2017[July 4, 2014]; and

(2) The amendments to 29 C.F.R. 1926.1427 published in the November 9, 2017 Federal Register, Volume 82, Number 216.[(2) ~~The amendments to 29 C.F.R. 1926.1427 published in the September 26, 2014 Federal Register, Volume 79, Number 187.~~]

Section 3. (1) 29 C.F.R. 1926.1423(e)(1)(iii) is amended to read as follows: "On horizontal lattice booms where the fall distance is ten (10) feet or more."

(2) 29 C.F.R. 1926.1423(f) is amended to read as follows: "For assembly – disassembly work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking – working surface with an unprotected side or edge more than ten (10) feet above a lower level, except when the employee is at or near draw-works (when the equipment is running), in the cab, or on the deck."

(3) 29 C.F.R. 1926.1423(h)(2) is amended to read as follows: "For erecting, climbing, and dismantling work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking – working surface with an unprotected side or edge more than ten (10) feet above a lower level."

DERRICK RAMSEY, Chairman

APPROVED BY AGENCY: December 4, 2017

FILED WITH LRC: December 4, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on January 29, 2018 at 1:30 p.m. (EDT) at the Labor Cabinet, 1047 U.S. Hwy 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mike Pettit, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-4069, fax (502) 564-1682, email Mike.Pettit@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mike Pettit

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926.1427. Section 2 also updates the C.F.R. to July 2017 and establishes the amendments to 29 C.F.R. 1926.1427 published in the November 9, 2017 Federal Register, Volume 82, Number 216. The amendment to 1926.1427(k)(l) extends the construction crane operator certification requirement by one year until November 10, 2018. It also continues the duty in 29 C.F.R. 1926.1427(k)(2)(iii) to ensure construction crane operators are competent and have the ability and knowledge to operate a crane safely.

(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of new federal standards, or a more stringent amendment, within six (6) months of the promulgation date of the final rule. This administrative regulation incorporates occupational safety and health standards set forth in 29 C.F.R. Part 1926, thereby ensuring that the state program is at least as effective as OSHA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote employee health and safety throughout Kentucky and keep the state program as effective as the federal program. Without an extension of the employer duty, the standard would have no requirement to ensure that construction crane operators know how to operate the crane safely.

(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. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926.1400-1926.1441. Section 2 also updates the C.F.R. to July 2017 and requires employers to comply with the amendments to 29 C.F.R. 1926.1427 as published in the November 9, 2017 Federal Register, Volume 82, Number 216. This extends construction crane operator certification requirement by one year and ensures operators are competent and have the ability and knowledge to operate a crane safely.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to remain consistent with federal standards, to avoid disrupting the construction industry and to ensure the safe

operation of cranes while OSHA completes rulemaking that will address concerns with the Cranes and Derricks in Construction Standard, which was originally promulgated in 2010. This amendment was adopted by the Kentucky OSH Standards Board at its December 4, 2017 meeting.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are required from the revisions to 29 C.F.R. 1926.1427 set forth in the November 9, 2017 Federal Register. This amendment will extend by one year the deadline for crane operator certification and the employer duty to ensure crane operators are competent. The amendments in the November 9, 2017 Federal Register do not establish new burdens on the regulated community.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because the amendment requires no new occupational safety and health requirements, no new costs are associated with this amendment.

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

Improved employee protection will result from the promulgation of this amendment, due to the consistency with the federal requirement, providing all a clear understanding of the requirements. This rule will avoid disrupting the construction industry and ensure the safe operation of cranes while OSHA completes rulemaking that will address concerns with the Cranes and Derricks in Construction Standard, which was originally promulgated in 2010.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the Program 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 state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. This administrative regulation incorporates occupational safety and health standards set forth in 29 C.F.R. Part 1926, thereby ensuring that the state program is at least as effective as OSHA. This amendment only extends by one year the deadline for construction crane operator certification and the employer duty to ensure that crane operators are competent. The amendment is not required by the final federal rule but is necessary in order to remain consistent with federal standards, to avoid disruption to the construction industry, and to ensure the safe operation of cranes while OSHA completes rulemaking that will address concerns with the Cranes and Derricks in Construction Standard. This amendment was adopted by the Kentucky OSH Standards Board at its December 4, 2017 meeting.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. This administrative regulation incorporates occupational safety and health standards set forth in 29 C.F.R. Part 1926, thereby ensuring that the state program is at least as effective as OSHA. This amendment only extends by one year the deadline for construction crane operator certification and the employer duty to ensure that crane operators are competent.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not change the ten (10) foot fall protection requirement. This amendment only extends by one year the deadline for construction crane operator certification and the employer duty to ensure that crane operators are competent which does not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter 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? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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 amendment will not impose any cost to the employer.

(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 (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This final rule does not impose any additional requirements or expenditures to the employer.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

PUBLIC PROTECTION CABINET
Department of Insurance
Commissioner's Office
(Amendment)

806 KAR 14:006. Property and casualty insurance form filings.

RELATES TO: KRS 304.1-050, 304.4-010, 304.14-120, 304.14-190, 304.21-010, 304.13-051, 304.22-020, 304.23-010

STATUTORY AUTHORITY: KRS 304.2-110, 304.14-120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the ~~commissioner~~[~~executive director~~] to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.14-120 authorizes the Commissioner to approve, disapprove, or exempt insurance documents and forms prior to their issuance for delivery in Kentucky. This administrative regulation provides form filing procedures for property, casualty, surety, title, and mortgage guaranty insurance.

Section 1. Definitions. (1) "~~Commissioner~~"["~~Executive director~~"] is defined in KRS 304.1-050(1).

(2) "~~Department~~"["~~Office~~"] is defined in KRS 304.1-050(2).

Section 2. Electronic Filing. (1) Every insurer, other than life or health insurers, required by law or licensed advisory organization or form provider permitted by law to file policy forms or endorsements, advertising and sales materials, or other documents subject to form filing requirements[~~other than those pertaining to rates~~] shall file the forms with the department electronically[~~with these documents a completed and signed Form PC TD-1, "Property & Casualty Transmittal Document" using the appropriate guidance incorporated by reference in 806 KAR 13:150, Section 12(1)(f) through (h).~~]

(2) If the filing[~~filling~~] is being made by a third party, a signed letter of authorization from the insurer shall be submitted. [Section 3. (1) All paper filings shall include two (2) full sets of documents on 8 1/2 in x 11 in white paper, with three (3) copies of Form PC TD-1, "Property & Casualty Transmittal Document" and a self-addressed stamped envelope.

(2)(a) ~~A property and casualty insurance company, advisory organization, or form provider may file a form in an electronic format established by the National Association of Insurance Commissioners.~~

(b) ~~An electronic filing shall be in lieu of a paper filing.~~

Section 4. (1) ~~A filing may include any number of documents, filed together on a particular date, pertaining to a single type of insurance from the "Uniform Property & Casualty Product Coding Matrix".]~~

(3)[(2)] Forms shall be filed separately from rates and rules.

(4) A property and casualty form filing may include forms for a particular insurance company or group of insurance companies. [Section 5. All form filings shall be accompanied by a Form PC FFS 1, "Form Filing Schedule".]

Section 3. [6.] (1) A policy or form shall not be used in Kentucky until it has been approved unless a policy or form has been exempted by an order of the commissioner pursuant to KRS 304.14-120(4). Any policy or form exempt from prior approval requirements under an order issued by the commissioner pursuant to KRS 304.14-120(4) may be subsequently disapproved for continued use on a prospective basis by the commissioner or designee upon a finding that the policy or form:

(a) Does not meet the requirements of Kentucky law;

(b) Contains any provisions that are unfair, deceptive, ambiguous, misleading, or unfairly discriminatory; or

(c) Is solicited by means of advertising, communication, or dissemination of information which is deceptive or misleading.

(2) If the rates pertaining to a form are required by law to be filed or approved, the form shall not be used until the appropriate

rates have been filed or approved as required in accordance with KRS 304.14-120 and 304.13-051. [Section 7. (1) A property and casualty form filing may include forms for a particular insurance company or group of insurance companies.

(2) If the filing is made for a group of insurance companies, Form PC TD-1, "Property & Casualty Transmittal Document" shall identify all companies included in the filing.]

Section 4. [8.] (1) Filing fees shall be paid on a per-company basis.

(2) The period of time in which the ~~commissioner~~[~~executive director~~] may approve or disapprove the filing shall not begin to run until both the complete filing and appropriate fee, in accordance with KRS 304.4-010 and 806 KAR 4:010, are received by the ~~department~~[~~office~~].

Section 5. [9.] (1) Insurers that are members, subscribers, or service purchasers of an advisory organization or form provider permitted by law to file policy forms or endorsements, advertising and sales materials, or other documents other than those pertaining to rates may choose to adopt all or some of the forms of that advisory organization or form provider.

(2) If an insurer chooses to adopt only a specific filing of an advisory organization or form provider, it shall do so in accordance with the procedures set forth in this administrative regulation, and shall clearly identify which filing of the advisory organization or form provider it is adopting.

(3)(a) ~~If~~[~~if~~] an insurer chooses to adopt all of the policy forms or endorsements, advertising and sales materials, or other documents other than those pertaining to rates of an advisory organization or form provider, it shall:

1. Provide written authorization to the advisory organization or form provider to file those materials on the insurer's behalf; or

2. File written notice with the ~~commissioner~~[~~executive director~~] that it is adopting by reference all the current and future policy forms or endorsements, advertising and sales materials, or other documents other than those pertaining to rates that the advisory organization or form provider files.

(b)1. The advisory organization or form provider shall file the written notice of authorization referred to in paragraph (a)1 of this subsection with the ~~commissioner~~[~~executive director~~] and shall pay the appropriate fee, in accordance with KRS 304.4-010 and 806 KAR 4:010.

2. The fee shall be paid for each company sending the written authorization and on the basis of each line of insurance.

(c)1. If an insurer that previously authorized an advisory organization or forms provider to file on its behalf as referred to in paragraph (a)1 of this subsection, or an insurer that filed written notice with the executive director to adopt by reference as referred to in paragraph (a)2 of this subsection chooses not to adopt certain policy forms or endorsements, advertising and sales materials, or other documents other than those pertaining to rates as filed by the advisory organization or form provider, the insurer shall file a notice of the ~~non-adoption~~[~~nonadoption~~] with the ~~commissioner~~[~~executive director~~] and shall pay the appropriate filing fee, in accordance with KRS 304.4-010 and 806 KAR 4:010.

2.a. If an insurer chooses to delay the effective date of its adoption of an advisory organization or forms provider filing, it shall submit a letter to the department [office] requesting the revised date upon which it shall adopt the filing.

b. The delayed adoption date shall be within six (6) months of the original effective date.

c. If additional time is needed, a second letter shall be submitted to the department, requesting a revised delayed adoption date.

d. All revised delayed adoption dates shall be within one (1) year of the original effective date as filed by the advisory organization or forms provider.

3. If an insurer does not adopt the advisory organization or forms provider filing within one (1) year of the original effective date as filed by the advisory organization or forms provider, the insurer shall submit a ~~non-adoption~~[~~nonadoption~~] filing.

(4) The requirements of this subsection shall apply to any filing

made pursuant to an exemption order issued by the commissioner under KRS 304.14-120(4), unless the commissioner specifically exempts the advisory organization or form provider from these requirements in the order.

Section ~~6~~[40.] If a filing includes a form which amends, replaces, or supplements a form which has been previously filed and not disapproved, it shall be accompanied by a letter of explanation from the filer setting forth the following:

- (1) All changes contained in the newly filed form;
- (2) The effect, if any, the changes have upon the hazards purported to be assumed by the policy; and
- (3) An explanation as to the effect on the applicable rates.

Section ~~7~~[44.] (1) Facsimile signatures of company officers, attorneys-in-fact, employees, and representatives shall not be required and shall not be submitted with any filing.

(2) A change of signature of the executing officer on a policy form shall not, because of this change alone, require a new filing. ~~[Section 12- Incorporation by Reference. (1) The following material is incorporated by reference:~~

- ~~(a) "Uniform Property & Casualty Product Coding Matrix", (March 1, 2007);~~
- ~~(b) Form PC-TD-1, "Property & Casualty Transmittal Document", (March 1, 2007); and~~
- ~~(c) Form PC-FFS-1, "Form Filing Schedule", (March 1, 2007).~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's internet Web site at www.doi.state.ky.us or the Web site of the National Association of Insurance Commissioners at www.naic.org.]~~

NANCY G. ATKINS, Commissioner
DAVID A. DICKERSON, Secretary

APPROVED: December 15, 2017

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2018 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 January 18, 2018, 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 p.m. on January 31, 2018. 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 administrative regulation amends 806 KAR 14:006 to establish the property and casualty form filing process as an electronic only process. Regulated entities will now be required to file electronically using the System for Electronic Rate & Form Filing (SERFF) or by electronic mail to create a more efficient and uniform manner in which property and casualty form filings are

submitted to the Department. The amendment also deletes the use of documents previously incorporated by reference no longer used or necessary. In addition, the amendment clarifies the "file and use" process allowed under certain circumstances of an order of exemption being issued at the commissioner's discretion according to KRS 304.14-120(4). The clarification is necessary to permit the commissioner to use statutory authority to create a more efficient filing system for designated lines of property and casualty business.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to update the property and casualty form filing process to electronic filing only, eliminate documents incorporated by reference that are unnecessary to the filing procedure, and clarify the use of filed forms under an order of exemption from prior approval issued by the commissioner.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.14-120(4) dictates the property and casualty form filing requirements, and this administrative regulation simplifies the manner in which those requirements are satisfied.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 304.14-120(4) provides for the commissioner to allow for an exemption by order at his or her discretion from certain requirements in regards to the filing and approval of forms. Currently, regulation states that no form or policy shall be used in Kentucky until approved; however, this is in conflict of the statutory order of exemption. This amendment clarifies that should an order be issued, the identified forms could be used upon filing with the Department for information only without the approval requirement.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation to an all-electronic submission of filing forms through email or the National Association of Insurance Commissioners' SERFF platform. It will also remove material incorporated by reference that is no longer used. Finally, it provides language to bring the regulation in conformity to KRS 304.14-120(4) in the event an order of exemption is issued by the commissioner.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to bring the regulation into conformity to KRS 304.14-120(4). The administrative regulation currently states a policy or form shall not be used in Kentucky until it has been approved; however, according to statute, the commissioner may waive these requirements. The waiver authority and process are not reflected in the current language of the administrative regulation. In addition, it will be more efficient to make the form filing process entirely electronic, eliminating the use of paper filings altogether. There are also forms incorporated by reference that are no longer used and can be eliminated.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment will conform the administrative regulation to the provisions comprised within KRS 304.14-120(4) allowing companies or advisory organizations to file and use a form before its approval should an order of exemption be issued by the commissioner.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide the language necessary to reflect the filing and approval process of property and casualty forms under the circumstances of an order of exemption issued by the commissioner pursuant to KRS 304.14-120(4). The electronic filing of forms is mandated to make the entire process more efficient. Material incorporated by reference no longer needed is removed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All companies and advisory organizations filing property and casualty forms will be subject to the requirements of this administrative regulation. Kentucky

currently has 889 licensed property and casualty companies, and 15 licensed advisory organizations.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Any company or advisory organization filing property and casualty forms with the Department that does not currently utilize the National Association of Insurance Commissioner's electronic filing system SERFF will be required to use this system to comply with an electronic filing only process. Paper filings will not be accepted. This will streamline the process. Currently, the Department rarely receives paper filings as most companies utilize SERFF's national service.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because most regulated entities currently use the SERFF service or communicate electronically, we do not anticipate the entities identified in question (3) will face any cost of compliance with the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities can take advantage of a streamlined filing process. Also, those companies offering policies and forms subject to an order of exemption from the commissioner will now be able to file those forms with the Department for information only, and begin using them immediately. The simplification will allow companies to quickly adapt to changing markets without sacrificing consumer protection.

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

(a) Initially: There will be no cost associated with implementing this administrative regulation.

(b) On a continuing basis: There will be no cost associated with implementing this administrative regulation.

(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: No fees or funding will be necessary for the implementation of this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation did not 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, advisory organizations, 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? 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 304.2-110 and KRS 304.14-120.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any 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 amendment 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 amendment 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 amendment 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 (+/-): No impact
Expenditures (+/-): No impact
Other Explanation: None

PUBLIC PROTECTION CABINET
Department of Insurance
(Amendment)

806 KAR 20:010. Declination, cancellation, and nonrenewal of property and casualty insurance.

RELATES TO: KRS 304.12-020, 304.14-120, 304.14-210, 304.20-160, 304.20-300-304.20-350, 304.30-110, 304.20-040

STATUTORY AUTHORITY: KRS Chapter 13A, 304.2-110, 304.30-070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of the Department of Insurance~~[Executive Director of Insurance]~~ may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.30-070 provides that the Commissioner of the Department of Insurance~~[Executive Director of Insurance]~~ may make reasonable administrative regulations necessary for the effectuation of any provision of KRS Chapter 304.30. This administrative regulation provides certain guidelines for the declination, cancellation, and nonrenewal of property and casualty insurance pursuant to KRS 304.20-300 to 304.20-350, and automobile liability insurance policies under KRS 304.20-040.

~~Section 1. [Application of KRS 304.20-300 to 304.20-350 to Property and Casualty Insurance Policies. KRS 304.20-300 to 304.20-350 apply to declinations, cancellations, nonrenewals, and twenty-five (25) percent premium increases of property and casualty insurance policies described in KRS 304.20-300 delivered, issued for delivery, or renewed after July 15, 1986.~~

~~Section 2.] Notice of Reason for Declination, Cancellation, or Nonrenewal. (1) All notices requiring reasons for declination, cancellation, or non-renewal under KRS 304.20-320 [in every instance where KRS 304.20-300 to 304.20-350 require a reason for declination, cancellation, or nonrenewal to be given to an applicant or an insured, the reason given shall be a statement reasonably calculated to inform the applicant or insured of the reason for the declination, cancellation, or nonrenewal. The insurer] shall provide specific grounds [for nonrenewal], and shall not rely on general underwriting reasons [in general].~~

~~(2) All notices of declination, cancellation, and nonrenewal of automobile liability insurance policies under KRS 304.20-040 shall be in writing and inform the applicant or insured of the specific reason for declination, cancellation, or nonrenewal.~~

~~(3) [(2)] Subsection (1) of this section shall not apply for a declination, cancellation, or nonrenewal [where a risk is declined or a policy terminated] where [there is] specific information available for review by the commissioner of the Department of Insurance [indicates] [Executive Director of Insurance that] the insured has contributed to the [a] loss by arson or fraud. [A more general reason may be given to the insured in this situation.]~~

~~(4) [(3)] The fact that the reason or reasons for declination, cancellation, or nonrenewal have been obtained through an investigative consumer report subject to the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq., shall not relieve the insurer from the~~

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requirement of notifying the insured of the declination, cancellation, or nonrenewal pursuant to KRS 304.20-300 to 304.20-350. However, any insured wishing to learn the substance of an investigative consumer report shall be directed to contact the consumer reporting agency and follow the procedures contained in the Fair Credit Reporting Act. ~~[(4) A reason for cancellation or nonrenewal which does not appear in the notice of cancellation or nonrenewal shall not be a basis for cancellation or nonrenewal.]~~

Section 2.~~[3.]~~ Cancellation for Nonpayment of Premium Under Insurance Premium Finance Company Contracts Controlled by KRS Chapter 304.30. (1) If an insurance premium finance company exercises its power of attorney to cancel a policy pursuant to KRS 304.30-110, that cancellation is considered to be a cancellation at the request of the insured and shall not be subject to KRS 304.20-300 to 304.20-350.

(2) The phrases "premium finance plan" and "extension of credit" in KRS 304.20-310(2) refer to extensions of credit to pay for insurance which are made by insurers or other entities not subject to KRS Chapter 304.30.

NANCY G. ATKINS, Commissioner
DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: December 15, 2017

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2018 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 January 18, 2018, 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 January 31, 2018. 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: 806 KAR 20:010 sets forth notice requirements for property and casualty insurance declinations, cancellations, and nonrenewals. This amendment clarifies the application of the notification requirements to rely on the specific statutory authority of KRS 304.20-300. The amendments also clarify language used to make the requirements easier to understand for individual insureds and regulated entities. The regulation preserves notification requirements related to arson and credit reporting agencies due to the ongoing issues the Department receives in these particular areas. Lastly, the amendment merges the requirements of 806 KAR 20:020 for automobile liability policies into this regulation as they are virtually identical.

(b) The necessity of this administrative regulation: The amendment is necessary to clarify the application of the notice requirements and the language utilized.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The amendment clarifies the application pursuant to the statutory authority.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This amendment clarifies the application of the notification requirements to those policies identified in KRS 304.20-300, and simplifies the language used so individual insureds can understand their right to a specific notification.

(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 application of the regulatory requirements to those policies subject to KRS 304.-20-300 and 304.20-320, and simplifies the language used for ease of understanding.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify the application of the notice requirements and the language utilized.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment clarifies the application of notification requirements pursuant to the statutory authority.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies the application of the notification requirements to those policies identified in KRS 304.20-300, and simplifies the language used so individual insureds can understand their right to a specific notification. It also provides regulatory efficiency by incorporating the interrelated requirements of 806 KAR 20:020.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Insurers across the Commonwealth will be affected by this administrative regulation. However, these regulated entities are statutorily required to provide specific notification to insureds and applicants for declinations, cancellations, and non-renewals. Thus, the administrative regulation will not impose any additional duty, but does clarify the application of notice requirements under the 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 regulated entities will continue to provide the statutorily required reasons within the notifications pursuant to KRS 304.20-320 and 304.20-040.

(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 the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals and impacted regulated entities will be able to clearly determine the proper application of these requirements, and continue to use the administrative regulation as authority for notice requirements in the event of an arson or credit reporting issue.

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

(a) Initially: The amendment will not impose an initial cost.

(b) On a continuing basis: The amendment will not impose a continuing 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 amendment.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as the regulation is applied equally to regulated entities subject to KRS 304.20-300.

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 304.2-110 provides the commissioner with authority to promulgate administrative regulations necessary for the administration of statutory requirements.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any 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 amendment 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 amendment 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 amendment 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 (+/-): No impact
 Expenditures (+/-): No impact
 Other Explanation: None

**ENERGY AND ENVIRONMENT CABINET
 Public Service Commission
 (Amendment)**

807 KAR 5:022. Gas[safety and] service.

RELATES TO: KRS 278.485[-, 278.502]

STATUTORY AUTHORITY: KRS 278.040(3), 278.280(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) provides that the commission may adopt reasonable administrative regulations to implement the provisions of KRS Chapter 278 and to investigate methods and practices of utilities subject to commission jurisdiction. KRS 278.280(2) provides that the commission shall prescribe rules for the performance of any service or the furnishing of any commodity by any utility. This administrative regulation establishes general rules which apply to gas utilities.

Section 1. General. (1) Definitions. As used in this administrative regulation:

(a) "British thermal unit (BTU)" means quantity of heat that must be added to one (1) pound of pure water to raise its temperature from fifty-eight and one-half (58.5) degrees Fahrenheit to fifty-nine and one-half (59.5) degrees Fahrenheit at the absolute pressure of a column of pure mercury thirty (30) inches high at thirty-two (32) degrees Fahrenheit under standard gravity (32.174 ft. per sec-sec).

(b) "Commission" means the Public Service Commission.

(c) "Cubic foot of gas" means the following:

1. If gas is supplied and metered to customers at standard distribution pressure, a cubic foot of gas shall be defined as that volume of gas which, at the temperature and pressure existing in the meter, occupies one (1) cubic foot.

2. If gas is supplied to customers through turbine, orifice or

positive displacement meters at other than standard distribution pressure, a cubic foot of gas shall be defined as that volume of gas which, at sixty (60) degrees Fahrenheit and at absolute pressure of 14.73 pounds per square inch, (thirty (30) inches of mercury), occupies one (1) cubic foot; except that in cases where different bases that are considered by the commission to be fair and reasonable are provided for in gas sales contracts or in rules or practices of a utility, such different bases shall be effective.

3. The standard cubic foot of gas for testing the gas itself for heating value shall be that volume of gas which, when saturated with water vapor and at temperature of sixty (60) degrees Fahrenheit, and under pressure equivalent to that of thirty (30) inches of mercury (mercury at thirty-two (32) degrees Fahrenheit and under standard gravity) occupies one (1) cubic foot. ~~(d) "Customer piping" means all approved equipment and material required for natural gas service downstream from the property line except for the service tap including saddle (tapping tee) and first service valve and meter (service regulator where required).~~

~~(e) "Distribution line" means a pipeline other than a gathering or transmission line.~~

~~(f) "Gathering line" means a pipeline that transports gas from a current production facility to a transmission line or main.~~

~~(g) "High pressure distribution system" means a distribution system in which gas pressure in the main is higher than pressure provided to the customer.~~

~~(h) "Listed specification" means a specification listed in Section 4 of Appendix B of this administrative regulation.~~

~~(i) "Low pressure distribution system" means a distribution system in which gas pressure in the main is substantially the same as pressure provided to the customer.~~

~~(j) "Main" means a distribution line that serves as a common source of supply for more than one (1) service line.~~

~~(k) "Maximum actual operating pressure" means the maximum pressure that occurs during normal operations over a period of one (1) year.~~

~~(l) "Maximum allowable operating pressure (MAOP)" means the maximum pressure at which a pipeline or segment of a pipeline may be operated under this administrative regulation.~~

~~(d)[(m)] "Meter" means any device used to measure the quantity of gas delivered by utility to a customer. [(n) "Operator" means a utility as defined in KRS 278.010.~~

~~(o) "Pipe" means any pipe or tubing used in transportation of gas, including pipe type holders.~~

~~(p) "Pipeline" means all parts of those physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenances attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.~~

~~(q) "Pipeline facility" means new and existing pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation.~~

~~(r) "Pressure, absolute" means total gas pressure, which is the sum of barometric pressure plus line gas pressure (gauge), abbreviated as psia.~~

~~(s) "Pressure, gauge" means pounds per square inch above atmospheric pressure, abbreviated as psig.~~

~~(t) "Secretary" means the Secretary of the U.S. Department of Transportation or any person to whom he has delegated authority.~~

~~(e)[(u)] "Service line" means a distribution line that transports gas from a common source of supply to an individual customer, to two (2) adjacent or adjoining residential or small commercial customers served through a meter header or manifold. A service line ends at the outlet of the customer meter or at the ~~customer meter or] connection to a customer's piping, whichever is farther downstream. [;] or at the connection to a customer's piping if there is no customer meter. [(v) "SMYS" means specified minimum yield strength and is defined as:~~~~

~~1. For steel pipe manufactured in accordance with a listed specification, the yield strength specified as a minimum in that specification; or~~

~~2. For steel pipe manufactured in accordance with an unknown~~

~~or unlisted specification, the yield strength determined in accordance with Section 3(4)(b) of this administrative regulation.]~~

~~(f)(w) "State" means Commonwealth of Kentucky.~~

~~(g)(x) "Therm" means the unit of heating value equivalent to 100,000 British thermal units.]~~

~~(g)(y) "Transmission line" means a pipeline, other than a gathering line that:~~

1. Transports gas from a gathering line or storage facility to a distribution center or storage facility;
2. Operates at a hoop stress of twenty (20) percent or more of SMYS; or
3. Transports gas within a storage field.

~~(2) Scope. This administrative regulation prescribes minimum [safety and] service standards for natural gas utilities operating under the jurisdiction of the commission. [(a)] Utilities serving customers under KRS 278.485 or other retail customers, under the jurisdiction of the commission, directly from transmission or gathering lines are exempt from the following sections of this administrative regulation insofar as they apply to these customers:~~

- ~~1. Section 3[9, subsections (2)(b) through (f), (16) and (17);~~
- ~~2. Section 13, subsections (14), (15), and (16);~~
- ~~3. Section 14, subsection (22);]~~

~~(b)[4.] Section 4[15]; and~~

~~(c)[5.] Section 5[16].~~

~~(3) Outage. [(b)]~~

~~(a) Each utility shall make all reasonable efforts to prevent interruptions of service and if interruptions occur, shall endeavor to reestablish service with the shortest possible delay consistent with the safety of its consumers and the general public. Planned interruptions shall always be preceded by adequate notice to all affected customers.~~

~~(b) At the earliest practicable moment following discovery, each utility shall give notice to the commission of an outage that results in the loss of service to forty (40) or more customers for four (4) or more hours. Each notice shall be made by electronic mail to Pipeline.Safety@ky.gov and shall include:~~

~~1. Name of utility, person making the report, and contact telephone number;~~

~~2. Location of outage;~~

~~3. Time of outage; and~~

~~4. All other significant facts known by the utility that are relevant to the cause of the outage or extent of damage.~~

~~(c) Each notice made in accordance with this subsection shall be supplemented by a written report within thirty (30) days giving full details such as cause of the outage; number of customers affected by the outage; time when all service was restored; and steps, if any, taken to prevent reoccurrence. [(3) Class locations.~~

~~(a) Class location is determined by applying criteria set forth in this section: class location unit is an area that extends 220 yards on either side of the centerline of any continuous one (1) mile length of pipeline. Except as provided in paragraphs (d) and (f) of this section, class location is determined by buildings in the class location unit. For the purpose of this section, each separate dwelling unit in a multiple dwelling unit building is counted as a separate building intended for human occupancy.~~

~~(b) A Class 1 location is any class location unit that has ten (10) or less buildings intended for human occupancy.~~

~~(c) A Class 2 location is any class location unit that has more than ten (10) but less than forty-six (46) buildings intended for human occupancy.~~

~~(d) A Class 3 location is any class location unit that has forty-six (46) or more buildings intended for human occupancy; or an area where the pipeline lies within 100 yards of either a building or a small, well-defined outside area (such as playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by twenty (20) or more persons on at least five (5) days a week for ten (10) weeks in any twelve (12) month period. (The days and weeks need not be consecutive.)~~

~~(e) A Class 4 location is any class location unit where buildings with four (4) or more stories above ground are prevalent.~~

~~(f) Boundaries of class locations determined in accordance with paragraphs (a) through (e) of this section may be adjusted as follows:~~

~~1. Class 4 location ends 220 yards from the nearest building with four (4) or more stories above ground.~~

~~2. When a cluster of buildings intended for human occupancy requires a Class 3 location, Class 3 location ends 220 yards from the nearest building in the cluster.~~

~~3. When a cluster of buildings intended for human occupancy requires a Class 2 location, Class 2 location ends 220 yards from the nearest building in the cluster.~~

~~(4) Incorporation by reference.~~

~~(a) Any documents or parts thereof incorporated by reference in this section are a part of this administrative regulation as though set out in full.~~

~~(b) All incorporated documents are available for inspection in the offices of the Public Service Commission, Frankfort, Kentucky. These materials have been approved for incorporation by reference by the Legislative Research Commission. These documents are also available at the addresses provided in Appendix A to this administrative regulation.~~

~~(c) Full titles for publications incorporated by reference in this section are provided in Appendix A to this administrative regulation. Numbers in parenthesis indicate applicable editions.~~

~~(5) Gathering lines. Each gathering line must comply with requirements of this administrative regulation applicable to transmission lines except as exempted in Section 1(1)(a) of this administrative regulation.~~

~~(6) Petroleum gas systems.~~

~~(a) No utility shall transport petroleum gas in a system that serves ten (10) or more customers, or in a system, any portion of which is located in a public place (such as a highway), unless that system meets the requirements of this administrative regulation and of NFPA Standards No. 58 and 59. In the event of a conflict, the requirements of this administrative regulation prevail.~~

~~(b) Each petroleum gas system covered by paragraph (a) of this subsection shall comply with the following:~~

~~1. Aboveground structures shall have open vents near floor level.~~

~~2. Below-ground structures shall have forced ventilation that will prevent any accumulation of gas.~~

~~3. Relief valve discharge vents shall be located to prevent any accumulation of gas at or below ground level.~~

~~4. Special precautions shall be taken to provide adequate ventilation when excavations are made to repair an underground system.~~

~~(c) For the purpose of this subsection, petroleum gas means propane, butane, or mixtures of these gases, other than a gas mixture used to supplement supplies in a natural gas distribution system.~~

~~(7) General.~~

~~(a) No person may operate a pipeline segment readied for service after March 12, 1971, unless:~~

~~1. The pipeline has been designed, installed, constructed, initially inspected, and initially tested in accordance with this administrative regulation; and~~

~~2. The pipeline qualifies for use under this administrative regulation in accordance with Section 1(8) of this administrative regulation.~~

~~(b) No person may operate a pipeline segment replaced, relocated, or otherwise changed after November 12, 1970, unless that replacement, relocation, or change has been made in accordance with this administrative regulation.~~

~~(c) Each utility shall establish and then maintain plans, procedures and programs as required under this administrative regulation.~~

~~(8) Conversion to service subject to this administrative regulation. Steel pipeline previously used in service not subject to this administrative regulation qualifies for use under this administrative regulation if the utility prepares and follows a written procedure to carry out the following requirements:~~

~~1. The design, construction, operation, and maintenance history of the pipeline shall be reviewed and, where sufficient historical records are not available, appropriate tests shall be performed to determine if the pipeline is in a satisfactory condition for safe operation.~~

2. The pipeline right-of-way, all aboveground segments of pipeline, and appropriately selected underground segments must be visually inspected for physical defects and operating conditions which reasonably could be expected to impair the strength or tightness of the pipeline.

3. All known unsafe defects and conditions shall be corrected in accordance with this administrative regulation.

4. The pipeline must be tested in accordance with Section 11 of this administrative regulation to substantiate maximum allowable operating pressure permitted by Section 13 of this administrative regulation.

5. Each utility must keep for the life of the pipeline a record of investigations, tests, repairs, replacements, and alterations made under the requirements of paragraph (a) of this subsection.

Section 2. Materials. (1) Scope. This section prescribes minimum requirements for selection and qualification of pipe and components for use in pipelines.

(2) General. Materials for pipe and components shall be:

(a) Able to maintain the structural integrity of the pipeline under temperature and other anticipated environmental conditions;

(b) Chemically compatible with any gas that they transport and with any other material in the pipeline with which they are in contact; and

(c) Qualified in accordance with applicable requirements of this section.

(3) Steel pipe.

(a) New steel pipe is qualified for use under this administrative regulation if:

1. It was manufactured in accordance with a listed specification;

2. It meets the requirements of:

a. Section II of Appendix B to this administrative regulation; or

b. If it was manufactured before November 12, 1970, either Section II or III of Appendix B to this administrative regulation; or

3. It is used in accordance with paragraph (c) or (d) of this subsection.

(b) Used steel pipe is qualified for use under this administrative regulation if:

1. It was manufactured in accordance with a listed specification and it meets the requirements of Section II-C of Appendix B to this administrative regulation;

2. It meets the requirements of:

a. Section II of Appendix B to this administrative regulation;

b. If it was manufactured before November 12, 1970, either Section II or III of Appendix B to this administrative regulation;

3. It has been used in an existing line of same or higher pressure and meets the requirements of Section II-C of Appendix B to this administrative regulation; or

4. It is used in accordance with paragraph (c) of this subsection.

(c) New or used pipe may be used at a pressure resulting in a hoop stress of less than 6,000 psi where no close coiling of close bending is to be done, if visual examination indicates that the pipe is in good condition and is free of split seams and other defects that would cause leakage. If it is to be welded, steel pipe not manufactured to a listed specification shall also pass the weldability tests prescribed in Section II-B of Appendix B to this administrative regulation.

(d) Unused steel pipe manufactured before November 12, 1970, may be used as replacement pipe if it meets the same specifications as the pipe used in constructing that segment of pipeline.

(e) New steel pipe that has been cold expanded shall comply with the mandatory provisions of API Standard 5L.

(f) New or used pipe of unknown specifications and all used pipe, the strength of which is impaired by corrosion or other deterioration, shall be retested hydrostatically either length by length in a mill type test or in the field after installation before placed in service, and the test pressure used shall establish maximum allowable operating pressure.

(4) Plastic pipe.

(a) New plastic pipe is qualified for use under this

administrative regulation if:

1. It is manufactured in accordance with a listed specification; and

2. It is resistant to chemicals with which contact may be anticipated.

(b) Used plastic pipe is qualified for use under this administrative regulation if:

1. It is manufactured in accordance with a listed specification;

2. It is resistant to chemicals with which contact may be anticipated;

3. It has been used only in natural gas service;

4. Its dimensions are still within the tolerance of the specification to which it was manufactured; and

5. It is free of visible defects.

(c) For the purpose of paragraphs (a)1 and (b)1 of this subsection, where pipe of a diameter included in a listed specification is impractical to use, pipe of a diameter between the sizes included in a listed specification may be used if it:

1. Meets strength and design criteria required of pipe included in that listed specification; and

2. Is manufactured from plastic compounds which meet criteria for material required of pipe included in that listed specification.

(5) Marking of materials.

(a) Except as provided in paragraph (d) of this subsection, each valve, fitting, length of pipe, and other components shall be marked as prescribed in:

1. The specification or standard to which it was manufactured;

or

2. To indicate size, material, manufacturer, pressure rating, temperature rating and, as appropriate, type, grade and model.

(b) Surfaces of pipe and components that are subject to stress from internal pressure shall not be field die stamped.

(c) If any item is marked by die stamping, the die shall have blunt or rounded edges that will minimize stress concentrations.

(d) Paragraph (a) of this subsection does not apply to items manufactured before November 12, 1970, that meet all of the following:

1. Item is identifiable as to type, manufacturer, and model.

2. Specifications or standards giving pressure, temperature, and other appropriate criteria for use of items are readily available.

(6) Transportation of pipe. In a pipeline to be operated at a hoop stress of twenty (20) percent or more of SMYS, operator shall not use pipe having outer diameter to wall thickness ratio of seventy to one (70 to 1), or more, which is transported by railroad unless:

(a) Transportation is performed in accordance with the most recent edition of API RP5L1, except that before February 25, 1975, transportation may have been performed in accordance with the 1967 edition of API RP5L1.

(b) In the case of pipe transported before November 12, 1970, the pipe is tested in accordance with Section 11 of this administrative regulation to at least one and one-fourth (1.25) times maximum allowable operating pressure if it is to be installed in a Class 1 location, and to at least one and one-half (1.5) times maximum allowable operating pressure if it is to be installed in a Class 2, 3, or 4 location. Notwithstanding any shorter time period permitted under Section 11 of this administrative regulation, test pressure must be maintained for at least eight (8) hours.

Section 3. Pipe Design. (1) Scope. This section prescribes minimum requirements for design of pipe.

(2) General. Pipe shall be designed with sufficient wall thickness, or shall be installed with adequate protection, to withstand anticipated external pressures and loads that will be imposed on pipe after installation.

(3) Design formula for steel pipe.

(a) Design pressure for steel pipe is determined in accordance with the following formula:

$$P = (2St/D) \times F \times E \times T$$

P = Design pressure in pounds per square inch gauge.

S = Yield strength in pounds per square inch determined in accordance with subsection (4) of this section.

D = Nominal outside diameter of pipe in inches.

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t = Nominal wall thickness of pipe in inches. If this is unknown, it is determined in accordance with subsection (5) of this section. Additional wall thickness required for concurrent external loads in accordance with subsection (2) of this section shall not be included in computing design pressure.

F = Design factor determined in accordance with subsection (6) of this section.

E = Longitudinal joint factor determined in accordance with subsection (7) of this section.

T = Temperature derating factor determined in accordance with subsection (8) of this section.

(b) If steel pipe that has been subjected to cold expansion to meet the SMYS is subsequently heated, other than by welding or stress relieving as part of welding design pressure is limited to seventy-five (75) percent of the pressure determined under paragraph (a) of this subsection if temperature of pipe exceeds 900°F (482°C) at any time or is held above 600°F (316°C) for more than one (1) hour.

(4) Yield strength (s) for steel pipe.

(a) For pipe manufactured in accordance with a specification listed in Section I of Appendix B of this administrative regulation, yield strength to be used in the design formula in subsection (3) of this section is the SMYS stated in the listed specification, if that value is known.

(b) For pipe manufactured in accordance with a specification not listed in Section I of Appendix B to this administrative regulation or whose specification or tensile properties are unknown, yield strength to be used in the design formula in subsection (3) of this section is one of the following:

1. If pipe is tensile tested in accordance with Section II-D of Appendix B to this administrative regulation, the lower of the following:

a. Eighty (80) percent of average yield strength determined by tensile tests; or

b. The lowest yield strength determined by tensile tests, but no more than 52,000 psig.

2. If pipe is not tensile tested as provided in paragraph (b)1 of this subsection, 24,000 psig.

(5) Nominal wall thickness (t) for steel pipe.

(a) If nominal wall thickness for steel pipe is not known, it is determined by measuring the thickness of each piece of pipe at quarter points on one (1) end.

(b) However, if pipe is of uniform grade, size and thickness and there are more than ten (10) lengths, only ten (10) percent of the individual lengths, but not less than ten (10) lengths, need be measured. Thickness of lengths not measured shall be verified by applying a gauge set to the minimum thickness found by measurement. Nominal wall thickness to be used in the design formula in subsection (3) of this section is the next wall thickness found in commercial specifications that is below the average of all measurements taken. However, nominal wall thickness used shall not be more than 1.14 times the smallest measurement taken on pipe less than twenty (20) inches in outside diameter, nor more than 1.11 times the smallest measurement taken on pipe twenty (20) inches or more in outside diameter.

(6) Design factor (F) for steel pipe.

(a) Except as otherwise provided in paragraphs (b), (c), and (d) of this subsection, the design factor to be used in the design formula in subsection (3) of this section is determined in accordance with the following table:

Class Location	Design Factor (F)
1	0.72
2	0.60
3	0.50
4	0.40

(b) A design factor of six-tenths (0.60) or less shall be used in the design formula in subsection (3) of this section, for steel pipe in Class 1 locations that:

1. Cross the right-of-way of an unimproved public road, without a casing;

2. Cross without a casing, or makes a parallel encroachment on, the right-of-way of either a hard surfaced road, highway, public street, or railroad;

3. Are supported by a vehicular, pedestrian, railroad, or pipeline bridge; or

4. Are used in a fabricated assembly (including separators, mainline valve assemblies, cross-connections, and river crossing headers) or are used within five (5) pipe diameters in any direction from the last fitting of a fabricated assembly, other than a transition piece of an elbow used in place of a pipe bend not associated with a fabricated assembly.

(c) For Class 2 locations, a design factor of five-tenths (0.50) or less shall be used in the design formula in subsection (3) of this section for uncased steel pipe that crosses the right-of-way of a hard surfaced road, highway, public street, or railroad.

(d) For Class 1 and Class 2 locations, a design factor of five-tenths (0.50) or less shall be used in the design formula in subsection (3) of this section for:

1. Steel pipe in a compressor station, regulating station, or measuring station; and

2. Steel pipe, including a pipe riser, on a platform located offshore or in inland navigable waters.

(7) Longitudinal joint factor (E) for steel pipe. Longitudinal joint factor to be used in the design formula in subsection (3) of this section is determined in accordance with the following table:

Specification	Pipe Class	Longitudinal Joint Factor (E)
ASTM A 53	Seamless	1.00
	Electric resistance welded	1.00
	Furnace butt welded	.60
ASTM A 106	Seamless	1.00
	Seamless	1.00
ASTM A 333	Seamless	1.00
	Electric resistance welded	1.00
ASTM A 384	Double submerged arc welded	1.00
ASTM A 671	Electric fusion welded	1.00
ASTM A 672	Electric fusion welded	1.00
ASTM A 691	Electric fusion welded	1.00
API 5L	Seamless	1.00
	Electric resistance welded	1.00
	Electric flash welded	1.00
	Submerged arc welded	1.00
Other	Pipe over 4 inches	.80
Other	Pipe 4 inches or less	.60

If the type of longitudinal joint cannot be determined, the joint factor to be used shall not exceed that designated for "Other."

(8) Temperature derating factor (T) for steel pipe. Temperature derating factor to be used in the design formula in subsection (3) of this section is determined as follows:

Gas temperature in degrees Fahrenheit	Temperature derating factor (T)
250 or less	1.000
300	0.967
350	0.933
400	0.900
450	0.867

For intermediate gas temperatures, derating factor is determined by interpolation.

(9) Design of plastic pipe. Design pressure for plastic pipe is determined in accordance with the following formula, subject to the limitations of subsection (10) of this section:

$$P = 2S \frac{t}{(D-t)} \times 0.32$$

P = Design pressure, gauge, kPa (psi).

S = For thermoplastic pipe the long-term hydrostatic strength determined in accordance with the listed specification at a temperature equal to twenty-three (23) degrees Centigrade (seventy three (73) degrees Fahrenheit), thirty eight (38) degrees Centigrade (100 degrees Fahrenheit), forty nine (49) degrees Centigrade (120 degrees Fahrenheit), or sixty (60) degrees Centigrade (140 degrees Fahrenheit); for reinforced thermosetting plastic pipe, 75,800 kPa (11,000 psig).

t = Specified wall thickness, mm (in.).

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D = Specified outside diameter, mm (in.).

(10) Design limitations for plastic pipe.

(a) Design pressure shall not exceed gauge pressure of 689 kPa (100 psig) for plastic pipe used in:

1. Distribution systems; or
2. Classes 3 and 4 locations.

(b) Plastic pipe shall not be used where operating temperature of pipe will be:

1. Below minus twenty-nine (29) degrees Centigrade (minus twenty (20) degrees Fahrenheit); or

2. In the case of thermoplastic pipe, above the temperature at which the long-term hydrostatic strength used in the design formula under subsection (9) of this section is determined, except that pipe manufactured before May 18, 1978, may be used at temperatures up to thirty-eight (38) degrees Centigrade (100°F); or in the case of reinforced thermosetting plastic pipe, above sixty-six (66) degrees Centigrade (150°F).

(c) Wall thickness for thermoplastic pipe shall not be less than 1.57 millimeters (0.062 in.).

(d) Wall thickness for reinforced thermosetting plastic pipe shall not be less than that listed in the following table:

Nominal size in inches:	Minimum wall thickness millimeters (inches)
2	1.52 (0.060)
3	1.52 (0.060)
4	1.78 (0.070)
5	2.54 (0.100)

(11) Design of copper pipe.

(a) Copper pipe used in mains shall have a minimum wall thickness of 0.065 inches and shall be hard drawn.

(b) Copper pipe used in service lines shall have a wall thickness not less than that indicated in the following table:

Standard size (inch)	Nominal O.D. (inch)	Wall thickness (inch)	
		Nominal	Tolerance
1/2	.625	.040	.0035
5/8	.750	.042	.0035
3/4	.875	.045	.004
1	1.125	.050	.004
1 1/4	1.375	.055	.0045
1 1/2	1.625	.060	.0045

(c) Copper pipe used in mains and service lines shall not be used at pressures in excess of 100 psig.

(d) Copper pipe that does not have an internal corrosion resistant lining shall not be used to carry gas that has an average hydrogen sulfide content of more than three-tenths (0.3) grains per 100 standard cubic feet of gas.

Section 4. Design of Pipeline Components. (1) Scope. This section prescribes minimum requirements for design and installation of pipeline components and facilities, and it prescribes requirements relating to protection against accidental overpressuring.

(2) General requirements. Each component of a pipeline shall withstand operating pressures and other anticipated loadings without impairment of serviceability with unit stresses equivalent to those allowed for comparable material in pipe in the same location and kind of service. However, if design based upon unit stress is impractical for a particular component, design may be based upon a pressure rating established by the manufacturer by pressure testing that component or a prototype of the component.

(3) Qualifying metallic components. Notwithstanding any requirement of this section which incorporates by reference an edition of a document listed in Appendix A of this administrative regulation, a metallic component manufactured in accordance with any other edition of that document is qualified for use under this administrative regulation if:

(a) It can be shown through visual inspection of the cleaned component that no defect exists which might impair the strength or tightness of the component; and

(b) The edition of the document under which the component was manufactured has equal or more stringent requirements for

the following as an edition of that document currently or previously listed in Appendix A:

1. Pressure testing;
 2. Materials; and
 3. Pressure and temperature ratings.
- (4) Valves.

(a) Except for cast iron and plastic valves, each valve shall meet the minimum requirements, or equivalent, of API 6D. A valve shall not be used under operating conditions that exceed the applicable pressure-temperature ratings contained in those requirements.

(b) Each cast iron and plastic valve shall comply with the following:

1. The valve shall have a maximum service pressure rating for temperatures that equal or exceed maximum service temperature.

2. The valve shall be tested as part of the manufacturing, as follows:

a. With the valve fully open, the shell shall be tested with no leakage to a pressure at least one and one-half (1.5) times the maximum service rating.

b. After the shell test, the seat shall be tested to a pressure not less than one and one-half (1.5) times the maximum service pressure rating. Except for swing check valves, test pressure during the seat test shall be applied successively on each side of the closed valve with the opposite side open. No visible leakage is permitted.

c. After the last pressure test is completed, the valve shall be operated through its full travel to demonstrate freedom from interference.

(c) Each valve shall be able to meet anticipated operating conditions.

(d) No valve having shell components made of ductile iron may be used at pressures exceeding eighty (80) percent of pressure ratings for comparable steel valves at their listed temperatures. However, a valve having shell components made of ductile iron may be used at pressures up to eighty (80) percent of pressure ratings for comparable steel valves at their listed temperatures, if:

1. Temperature-adjusted service pressure does not exceed 1,000 psig; and

2. Welding is not used on any ductile iron component in the fabrication of the valve shells or their assembly.

(e) No valve having pressure-containing parts made of ductile iron may be used in gas pipe components of compressor stations.

(5) Flanges and flange accessories.

(a) Each flange or flange accessory (other than cast iron) shall meet the minimum requirements of ANSI B16.5, MSS SP-44, or equivalent.

(b) Each flange assembly shall withstand the maximum pressure at which the pipeline is to be operated and maintain its physical and chemical properties at any anticipated temperature.

(c) Each flange on a flanged joint in cast iron pipe must conform in dimensions, drilling, face and gasket design to ANSI B16.1 and be cast integrally with the pipe, valve or fitting.

(6) Standard fittings.

(a) Minimum metal thickness of threaded fittings shall not be less than specified for pressures and temperatures in applicable standards referenced in this administrative regulation, or their equivalent.

(b) Each steel butt-welding fitting shall have pressure and temperature ratings based on stresses for pipe of same or equivalent material. Actual bursting strength of the fitting must at least equal the computed bursting strength of pipe of the designated material and wall thickness, as determined by a prototype tested to at least the pressure required for the pipeline to which it is being added.

(7) Tapping.

(a) Each mechanical fitting used to make a hot tap shall be designed for at least operating pressure of the pipeline.

(b) Where ductile iron pipe is tapped, the extent of full-threaded engagement and need for use of outside-sealing service connections, tapping saddles, or other fixtures shall be determined by service conditions.

(c) Where a threaded tap is made in cast iron or ductile iron

pipe, diameter of the tapped hole shall not be more than twenty-five (25) percent of the nominal diameter of the pipe unless the pipe is reinforced, except that:

1. Existing taps may be used for replacement service, if they are free of cracks and have good threads; and

2. A one and one-fourth (1 1/4) inch tap may be made in a four (4) inch cast iron or ductile iron pipe, without reinforcement.

However, in areas where climate, soil, and service conditions may create unusual external stresses on cast iron pipe, unreinforced taps may be used only on six (6) inch or larger pipes.

(8) Components fabricated by welding.

(a) Except for branch connections and assemblies of standard pipe and fittings joined by circumferential welds, design pressure of each component fabricated by welding, whose strength cannot be determined, shall be established in accordance with paragraph UG-101 of Section VIII of the ASME Boiler and Pressure Vessel Code.

(b) Each prefabricated unit that uses plate and longitudinal seams shall be designed, constructed, and tested in accordance with ASME Boiler and Pressure Vessel Code, except for the following:

1. Regularly manufactured butt-welding fittings.

2. Pipe produced and tested under a specification listed in Appendix B to this administrative regulation.

3. Partial assemblies such as split rings or collars.

4. Prefabricated units that the manufacturer certifies have been tested to at least twice the anticipated maximum pressure under operating conditions.

(c) Orange peel bull plugs and orange peel swages shall not be used on pipelines that are to operate at hoop stress of twenty (20) percent or more of SMYS of the pipe.

(d) Except for flat closures designed in accordance with section VIII of the ASME Boiler and Pressure Vessel Code, flat closures and fish-tails shall not be used on pipe that either operates at 100 psig, or more, or is more than three (3) inches nominal diameter.

(9) Welded branch connections. Each welded branch connection made to pipe in the form of a single connection, or in a header or manifold as a series of connections, shall be designed to ensure that strength of the pipeline system is not reduced, taking into account stresses in the remaining pipe wall due to the opening in the pipe or header, shear stresses produced by pressure acting on the area of the branch opening, and any external loadings due to thermal movement, weight, and vibration.

(10) Extruded outlets. Each extruded outlet shall be suitable for anticipated service conditions and shall be at least equal to design strength of the pipe and other fittings in the pipeline to which it is attached.

(11) Flexibility. Each pipeline shall be designed with enough flexibility to prevent thermal expansion or contraction from causing excessive stresses in pipe or components, excessive bending or unusual loads at joints, or undesirable forces or moments at points of connection to equipment, or at anchorage or guide points.

(12) Supports and anchors.

(a) Each pipeline and its associated equipment shall have enough anchors or supports to:

1. Prevent undue strain on connected equipment;

2. Resist longitudinal forces caused by a bend or offset in the pipe; and

3. Prevent or damp out excessive vibration.

(b) Each exposed pipeline shall have enough supports or anchors to protect the exposed pipe joints from maximum end force caused by internal pressure and any additional forces caused by temperature expansion or contraction or by weight of the pipe and its contents.

(c) Each support or anchor on an exposed pipeline shall be made of durable, noncombustible material and shall be designed and installed as follows:

1. Free expansion and contraction of the pipeline between supports or anchors shall not be restricted.

2. Provision shall be made for service conditions involved.

3. Movement of the pipeline shall not cause disengagement of support equipment.

(d) Each support on an exposed pipeline operated at a stress

level of fifty (50) percent of more of SMYS shall comply with the following:

1. A structural support shall not be welded directly to the pipe.

2. The support shall be provided by a member that completely encircles the pipe.

3. If an encircling member is welded to a pipe, the weld shall be continuous and cover the entire circumference.

(e) Each underground pipeline connected to a relatively unyielding line or other fixed object shall have enough flexibility to provide for possible movement, or it shall have an anchor that will limit movement of the pipeline.

(f) Except for offshore pipelines each underground pipeline being connected to new branches shall have firm foundation for both the header and branch to prevent detrimental lateral and vertical movement.

(13) Compressor stations: design and construction.

(a) Location of compressor building. Except for a compressor building on a platform in inland navigable waters, each main compressor building of a compressor station shall be located on property under the operator's control. It shall be far enough away from adjacent property, not under control of the operator, to minimize the possibility of fire being transferred to the compressor building from structures on adjacent property. There shall be enough open space around the main compressor building to allow free movement of firefighting equipment.

(b) Building construction. Each building on a compressor station site shall be made of noncombustible materials if it contains either:

1. Pipe that is more than two (2) inches in diameter and carrying gas under pressure; and

2. Gas handling equipment other than gas utilization equipment used for domestic purposes.

(c) Exits. Each operating floor of a main compressor building shall have at least two (2) separated and unobstructed exits located to provide a convenient possibility of escape and unobstructed passage to safety. Each exit door latch shall be of a type which can be readily opened from inside without a key. Each swinging door located in an exterior wall shall be mounted to swing outward.

(d) Fenced areas. Each fence around a compressor station shall have at least two (2) gates located to provide convenient opportunity for escape to safety, or have other facilities affording a similarly convenient exit from the area. Each gate located within 200 feet of any compressor plant building shall open outward and, when occupied, shall be of a type that can be readily opened from inside without a key.

(e) Electrical areas. Electrical equipment and wiring installed in compressor stations shall conform to the National Electrical Code, NFPA-70(ANSI), so far as that code is applicable.

(f) Air piping system.

1. All air piping within gas compressing stations shall be constructed in accordance with Section 2 of the USAS-B31.1 Code for Pressure Piping.

2. Starting air pressure, storage volume and size of connection piping shall be adequate to rotate the engine at cranking speed and for the number of revolutions necessary to purge fuel gas from the power cylinder and muffler. Recommendations of the engine manufacturer may be used as a guide in determining these factors. Consideration should be given to the number of engines installed and to the possibility of starting several of these engines within a short period of time.

3. A check valve shall be installed in the starting air line near each engine to prevent backflow from the engine into the piping system. A check valve shall also be placed in the main air line on the immediate outlet side of the air tank or tanks. It is recommended that equipment for cooling air and removing moisture and entrained oil be installed between the starting air compressor and air storage tanks.

4. Suitable provision shall be made to prevent starting air from entering power cylinders of an engine and activating moving parts while work is in progress on the engine or on equipment driven by the engines. Acceptable means of accomplishing this are installation of a blind flange, removal of a portion of the air supply

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~~pipng or locking closed a stop valve and locking open a vent downstream from it.~~

~~(g) Air receivers. Air receivers or air storage bottles, for use in compressor stations, shall be constructed and equipped in accordance with Section VII, Unfired Pressure Vessels, of the ASME Boiler and Pressure Vessel Code.~~

~~(h) Lubricating oil piping. All lubricating oil piping with gas compressing stations shall be constructed in accordance with USA Standard Code for Pressure Piping, Petroleum Refinery Piping, USAS B 31.3.~~

~~(i) Water and steam piping. All water and steam piping within gas compressing stations shall be constructed in accordance with USA Standard Code for Pressure Piping, Power Piping, USAS B31.0.0.~~

~~(j) Hydraulic piping. All hydraulic power piping within gas compressing stations shall be constructed in accordance with USA Standard Code for Pressure Piping, Petroleum Refinery Piping, USAS B31.3.~~

~~(14) Compressor stations; liquid removal.~~

~~(a) Where entrained vapors in gas may liquefy under anticipated pressure and temperature conditions, the compressor shall be protected against introduction of those liquids in damaging quantities.~~

~~(b) Each liquid separator used to remove entrained liquids at a compressor station shall:~~

~~1. Have a manually operable means of removing these liquids.~~

~~2. Where slugs of liquid could be carried into the compressors, have either automatic liquid removal facilities, automatic compressor shutdown device, or high liquid level alarm; and~~

~~3. Be manufactured in accordance with Section VIII of the ASME Boiler and Pressure Vessel Code, except that liquid separators constructed of pipe and fittings without internal welding shall be fabricated with a design factor of four-tenths (0.4) or less.~~

~~(15) Compressor stations; emergency shutdowns.~~

~~(a) Except for unattended field compressor stations of 1,000 horsepower or less, each compressor station shall have an emergency shutdown system that can do the following:~~

~~1. Block gas out of the station and blow down the station piping.~~

~~2. Discharge gas from the blowdown piping at a location where gas will not create a hazard.~~

~~3. Provide means for shutdown of gas compressing equipment, gas fires, and electrical facilities in the vicinity of gas headers and in the compressor building, except, that:~~

~~a. Electric circuits that supply emergency lighting required to assist station personnel in evacuating the compressor building and the area in the vicinity of the gas headers shall remain energized; and~~

~~b. Electrical circuits needed to protect equipment from damage may remain energized.~~

~~4. It shall be operable from at least two (2) locations, each of which is:~~

~~a. Outside the gas area of the station;~~

~~b. Near the exit gates, if station is fenced; or near emergency exits, if not fenced; and~~

~~c. Not more than 500 feet from the limits of the stations.~~

~~(b) If a compressor station supplies gas directly to a distribution system with no other adequate source of gas available, the emergency shutdown system shall be designed to prevent function at the wrong time and unintended outage on the distribution system.~~

~~(c) On a platform located in inland navigable waters, the emergency shutdown system shall be designed and installed to actuate automatically by each of the following events:~~

~~1. In the case of an unattended compressor station:~~

~~a. When gas pressure equals maximum allowable operating pressure plus fifteen (15) percent; or~~

~~b. When uncontrolled fire occurs on the platform; and~~

~~2. In the case of a compressor station in a building:~~

~~a. When uncontrolled fire occurs in the building; or~~

~~b. When the concentration of gas in air reaches fifty (50) percent or more of the lower explosive limit in a building which has a source of ignition.~~

~~For the purpose of paragraph (c)2 of this subsection, an electrical facility which conforms to Class 1, Group D of the National Electrical Code is not a source of ignition.~~

~~3. All emergency valves and controls shall be identified by signs. All important gas pressure piping shall be identified by signs or color codes as to their function.~~

~~(16) Compressor stations; pressure limiting devices.~~

~~(a) Each compressor station shall have pressure relief or other suitable protective devices of sufficient capacity and sensitivity to ensure that maximum allowable operating pressure of station piping and equipment is not exceeded by more than ten (10) percent.~~

~~(b) Each vent line that exhausts gas from the pressure relief valve of a compressor station shall extend to a location where gas may be discharged without hazard.~~

~~(17) Compressor stations; additional safety equipment.~~

~~(a) Each compressor station shall have adequate fire protection facilities. If fire pumps are a part of these facilities, their operation shall not be affected by the emergency shutdown system.~~

~~(b) Each compressor station prime mover, other than an electrical induction or synchronous motor, shall have an automatic device to shut down the unit before the speed of either the prime mover or driven unit exceeds maximum safe speed.~~

~~(c) Each compressor unit in a compressor station shall have a shutdown or alarm device that operates in the event of inadequate cooling or lubrication of the unit.~~

~~(d) Each compressor station gas engine that operates with pressure gas injection shall be equipped so that stoppage of the engine automatically shuts off fuel and vents the engine distribution manifold.~~

~~(e) Each muffler for a gas engine in a compressor station shall have vent slots or holes in the baffles of each compartment to prevent gas from being trapped in the muffler.~~

~~(f) Fuel gas lines within a compressor station, serving various buildings and residential areas, shall be provided with master shutoff valves located outside of any building or residential area.~~

~~(18) Compressor stations; ventilation. Each compressor station building shall be ventilated to ensure that employees are not endangered by accumulation of gas in rooms, sumps, attics, pits, or other enclosed places.~~

~~(19) Pipe type and bottle type holders.~~

~~(a) Each pipe type and bottle type holder shall be designed to prevent accumulation of liquids in the holder, connecting pipe, or auxiliary equipment, that might cause corrosion or interfere with safe operation of the holder.~~

~~(b) Each pipe type or bottle type holder shall have minimum clearance from other holders in accordance with the following formula:~~

$$C = (D \times P \times F / 1,000)$$

~~in which:~~

~~C = Minimum clearance between pipe containers or bottles in inches.~~

~~D = Outside diameter of pipe containers or bottles in inches.~~

~~P = Maximum allowable operating pressure, psig.~~

~~F = Design factor as set forth in Section 3(6) of this administrative regulation.~~

~~(20) Additional provisions for bottle type holders.~~

~~(a) Each bottle type holder shall be:~~

~~1. Located on a site entirely surrounded by fencing that prevents access by unauthorized persons and with minimum clearance from fences as follows:~~

~~Maximum allowable Minimum clearance (feet)
operating pressure~~

~~Less than 1,000 psig 25~~

~~1,000 psig or more 100~~

~~2. Designed using the design factors set forth in Section 3(6) of this administrative regulation; and~~

~~3. Buried with minimum cover in accordance with Section 7(13) of this administrative regulation.~~

~~(b) Each bottle type holder manufactured from steel not weldable under field conditions shall comply with the following:~~

~~1. A bottle type holder made from alloy steel shall meet the~~

chemical and tensile requirements for various grades of steel in ASTM A 372.

2. Actual yield-tensile ratio of steel shall not exceed 0.85.

3. Welding shall not be performed on the holder after it has been heat treated or stress relieved, except that copper wires may be attached to the small diameter portion of the bottle end closure for cathodic protection if a localized thermal welding process is used.

4. The holder shall be given a mill hydrostatic test at pressure that produces hoop stress at least equal to eighty-five (85) percent of SMYS.

5. The holder, connection pipe, and components shall be leak tested after installation as required by Section 11 of this administrative regulation.

(21) Transmission line valves.

(a) Each transmission line shall have sectionalizing block valves spaced as follows:

1. Each point on the pipeline in a Class 4 location shall be within two and one-half (2 1/2) miles of a valve.

2. Each point on the pipeline in a Class 3 location shall be within four (4) miles of a valve.

3. Each point on the pipeline in a Class 2 location shall be within seven and one-half (7 1/2) miles of a valve.

4. Each point on the pipeline in Class 1 location shall be within ten (10) miles of a valve.

(b) Each sectionalizing block valve on a transmission line shall comply with the following:

1. The valve and operating device to open or close the valve shall be readily accessible and protected from tampering and damage.

2. The valve shall be supported to prevent settling of valve or movement of the pipe to which it is attached.

(c) Each section of transmission line between main line valves shall have a blowdown valve with enough capacity to allow the transmission line to be blown down as rapidly as practicable. Each blowdown discharge must be located so gas can be blown to the atmosphere without hazard and, if the transmission line is adjacent to an overhead electric line, so that gas is directed away from the electrical conductors.

(22) Distribution line valves.

(a) Each high-pressure distribution system shall have valves spaced to reduce the time to shut down a section of main in an emergency. Valve spacing is determined by operating pressure, size of mains, and local physical conditions.

(b) Each valve on a main installed for operating or emergency purposes shall be placed in a readily accessible location to facilitate its operation in an emergency, and its operating stem or mechanism shall be readily accessible. If the valve is installed in a buried box or enclosure, the box or enclosure shall be installed to avoid transmitting external loads to the main.

(23) Valves at regulator stations.

(a) Each regulator station controlling flow or pressure of gas in a distribution system shall have a valve installed on the inlet piping at a distance from the regulator station sufficient to permit operation of the valve during an emergency that might preclude access to the station.

(b) Exterior shutoff valves shall be installed on all lines entering and leaving regulator stations for use in an emergency to stop gas flow. Such valves shall be installed at an accessible location where they can be operated in an emergency.

1. Exterior shutoff valves shall be located a minimum of forty (40) feet from the regulator station if inlet pressure to the station is 100 psig or less. Valves shall be located a minimum of 100 feet from the regulator station if inlet pressure is more than 100 psig.

2. A check valve may be used in lieu of an exterior shutoff valve on downstream piping if located a minimum of forty (40) feet from the regulator station.

3. The exterior shutoff valve may be a sectionalizing valve.

4. All exterior shutoff valves shall be inspected and partially operated at least once each calendar year at intervals not to exceed fifteen (15) months.

(24) Vaults: structural design requirements.

(a) Each underground vault or pit for valves, pressure relieving,

pressure limiting, or pressure regulating stations shall meet the loads which may be imposed upon it, and to protect installed equipment.

(b) There shall be enough working space so that all equipment required in the vault or pit can be properly installed, operated, and maintained.

(c) Each pipe entering, or within, a regulator vault or pit shall be steel for sizes ten (10) inches, and less, except that control and gauge piping may be copper. Where pipe extends through the vault or pit structure, provision shall be made to prevent passage of gases or liquids through the opening and to avert strains in the pipe.

(d) Vault or pit openings shall be located to minimize hazards of tools or other objects falling upon the regulator, piping or other equipment. The control piping and operating parts of equipment installed shall not be located under a vault or pit opening where workmen can step on them when entering or leaving the vault or pit, unless such parts are suitably protected.

(e) Whenever a vault or pit opening is to be located above equipment which could be damaged by a falling cover, a circular cover shall be installed or other suitable precautions taken.

(25) Vaults: accessibility. Each vault shall be located in an accessible location, so far as practical, away from:

(a) Street intersections or points where traffic is heavy or dense;

(b) Points of minimum elevation, catch basins, or places where the access cover will be in the course of surface waters; and

(c) Water, electric, steam, or other facilities.

(26) Vaults: sealing, venting, and ventilation. Each underground vault or closed top pit containing either a pressure regulating or reducing station, or a pressure limiting or relieving station, shall be sealed, vented or ventilated, as follows:

(a) When internal volume exceeds 200 cubic feet:

1. The vault or pit shall be ventilated with two (2) ducts, each having at least the ventilating effect of a pipe four (4) inches in diameter;

2. Ventilation shall be enough to minimize formation of combustible atmosphere in the vault or pit; and

3. Ducts shall be high enough above grade to disperse any gas-air mixtures that might be discharged.

(b) When internal volume is more than seventy-five (75) cubic feet but less than 200 cubic feet:

1. If the vault or pit is sealed, each opening shall have a tight fitting cover without open holes through which an explosive mixture might be ignited, and there shall be a means for testing internal atmosphere before removing the cover.

2. If the vault or pit is vented, there shall be a means of preventing external sources of ignition from reaching the vault atmosphere; or

3. If the vault or pit is ventilated, paragraph (a) or (c) of this subsection applies.

(c) If a vault or pit covered by paragraph (b) of this subsection is ventilated by openings in covers or gratings, and the ratio of internal volume, in cubic feet, to effective ventilating area of the cover or grating, in square feet, is less than twenty (20) to one (1), no additional ventilation is required.

(27) Vaults: drainage and waterproofing.

(a) Each vault shall be designed to minimize entrance of water.

(b) A vault containing gas piping shall not be connected by means of a drain connection to any other underground structure.

(c) All electrical equipment in vaults shall conform to applicable requirements of Class 1, Group D, of the National Electrical Code, ANSI Standard C-1.

(28) Design pressure of plastic fittings.

(a) Thermosetting fittings for plastic pipe shall conform to ASTM D 2517.

(b) Thermoplastic fittings for plastic pipe shall conform to ASTM D 2513.

(29) Valve installation in plastic pipe. Each valve installation in plastic pipe shall be designed to protect plastic material against excessive torsional or shearing loads when the valve or shutoff is operated, and from any other secondary stresses that might be exerted through the valve or its enclosures.

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(30) Protection against accidental overpressuring:

(a) General requirements. Except as provided in subsection (31) of this section, each pipeline connected to a gas source so that maximum allowable operating pressure could be exceeded as the result of pressure control failure or of some other type of failure, shall have pressure relieving or pressure limiting devices that meet the requirements of subsections (32) and (33) of this section.

(b) Additional requirements for distribution systems. Each distribution system supplied from a source of gas at higher pressure than maximum allowable operating pressure for the system shall:

1. Have pressure regulation devices capable of meeting pressure, load, and other service conditions that will be experienced in normal operations of the system, and that could be activated in the event of failure of some portion of the system; and
2. Be designed to prevent accidental overpressuring.

(31) Control of pressure of gas delivered from high-pressure distribution systems.

(a) If maximum actual operating pressure of the distribution system is under 60 psig and a service regulator having all of the following characteristics is used, no other pressure limiting device is required:

1. A regulator capable of reducing distribution line pressure to pressures recommended for household appliances.
2. A single port valve with proper orifice for maximum gas pressure at the regulator inlet.
3. A valve seat made of resilient material designed to withstand abrasion of gas, impurities in gas, cutting by the valve, and permanent deformation when it is pressed against the valve port.
4. Pipe connections to the regulator not exceeding two (2) inches in diameter.
5. A regulator that, under normal operating conditions, is able to regulate downstream pressure within necessary limits of accuracy and to limit buildup of pressure under no-flow conditions to prevent a pressure that would cause unsafe operation of any connected and properly adjusted gas utilization equipment.
6. A self-contained service regulator with no external static or control lines.

(b) If maximum actual operating pressure of the distribution system is sixty (60) psig, or less, and a service regulator that does not have all of the characteristics listed in paragraph (a) of this subsection is used, or if the gas contains materials that seriously interfere with the operation of service regulators, there shall be suitable protective devices to prevent unsafe overpressuring of the customer's appliances if the service regulator fails.

(c) If maximum actual operating pressure of the distribution system exceeds sixty (60) psig, one (1) of the following methods shall be used to regulate and limit, to maximum safe value, the pressure of gas delivered to the customer:

1. A service regulator having the characteristics listed in paragraph (a) of this subsection, and another regulator located upstream from the service regulator. The upstream regulator shall not be set to maintain a pressure higher than sixty (60) psig. A device shall be installed between the upstream regulator and the service regulator to limit pressure on the inlet of the service regulator to sixty (60) psig or less in case the upstream regulator fails to function properly. This device may be either a relief valve or an automatic shutoff that shuts, if pressure on the inlet of the service regulator exceeds the set pressure (sixty (60) psig or less), and remains closed until manually reset.
2. A service regulator and a monitoring regulator set to limit, to a maximum safe value, pressure of gas delivered to the customer.
3. A service regulator with a relief valve vented to the outside atmosphere, with the relief valve set to open so that the pressure of gas going to the customer does not exceed a maximum safe value. The relief valve may either be built into the service regulator or it may either be built into the service regulator or it may be a separate unit installed downstream from the service regulator. This combination may be used alone only in those cases where inlet pressure on the service regulator does not exceed the manufacturer's safe working pressure rating of the service regulator, and shall not be used where inlet pressure on the

service regulator exceeds 125 psig. For higher inlet pressure, the methods in paragraph (c)1 or 2 of this subsection shall be used.

4. A service regulator and an automatic shutoff device that closes upon a rise in pressure downstream from the regulator and remains closed until manually reset.

(32) Requirements for design of pressure relief and limiting devices. Except for rupture discs, each pressure relief or pressure limiting device shall:

(a) Be constructed of materials to prevent operation impairment by corrosion;

(b) Have valves and valve seats designed not to stick in a position that will make the device inoperative;

(c) Be designed and installed so that it can be readily operated to determine if the valve is free, can be tested to determine operational pressure and can be tested for leakage when closed;

(d) Have support made of noncombustible material;

(e) Have discharge stacks, vents, or outlet ports designed to prevent accumulation of water, ice, or snow, located where gas can be discharged into the atmosphere without undue hazard;

(f) Be designed and installed so that the size of openings, pipe, and fittings located between the system to be protected and the pressure relieving device, and the size of the vent line, are adequate to prevent hammering of the valve and to prevent impairment of relief capacity;

(g) Where installed at a district regulator station to protect a pipeline system from overpressuring, be designed and installed to prevent any single incident such as an explosion in a vault or damage by a vehicle from affecting operation of both the overpressure protective device and district regulator; and

(h) Except for a valve that will isolate the system under protection from its source of pressure, be designed to prevent unauthorized operation of any stop valve that will make the pressure relief or pressure limiting device inoperative.

(33) Required capacity of pressure relieving and limiting stations:

(a) Each pressure relief station or pressure limiting station or group of those stations installed to protect pipeline shall have enough capacity, and shall be set to operate, to insure the following:

1. In a low pressure distribution system, pressure shall not cause unsafe operation of any connected and properly adjusted gas utilization equipment.

2. In pipelines other than a low pressure distribution system:

a. If maximum allowable operating pressure is sixty (60) psig or more, pressure shall not exceed maximum allowable operating pressure plus ten (10) percent, or the pressure that produces hoop stress of seventy-five (75) percent of SMYS, whichever is lower.

b. If maximum allowable operating pressure is twelve (12) psig or more, but less than sixty (60) psig, pressure shall not exceed maximum allowable operating pressure plus six (6) psig; or

c. If maximum allowable pressure is less than twelve (12) psig, pressure shall not exceed maximum allowable operating pressure plus fifty (50) percent.

(b) When more than one (1) pressure regulating or compressor station feeds into a pipeline, relief valves or other protective devices shall be installed at each station to ensure that complete failure of the largest capacity regulator or compressor, or any single run of lesser capacity regulators or compressors in that station, will not impose pressure on any part of the pipeline or distribution system in excess of those for which it was designed, or against which it was protected, whichever is lower.

(c) Relief valves or other pressure limiting devices shall be installed at or near each regulator station in a low pressure distribution system, with a capacity to limit maximum pressure in the main to a pressure that will not exceed safe operating pressure for any connected and properly adjusted gas utilization equipment.

(34) Instrument, control and sampling pipe and components.

(a) Applicability. This subsection applies to design of instrument, control, sampling pipe and components. It does not apply to permanently closed systems, such as fluid-filled temperature-responsive devices.

(b) Materials and design. All material employed for pipe and components shall be designed to meet particular conditions of

service and the following:

1. Each takeoff connection and attaching boss, fitting, or adapter shall be made of suitable material, be able to withstand maximum service pressure and temperature of pipe or equipment to which it is attached, and be designed to satisfactorily withstand all stresses without failure by fatigue.
2. A shutoff valve shall be installed in each takeoff line as near as practicable to point of takeoff. Blowdown valves shall be installed where necessary.
3. Brass or copper material shall not be used for metal temperatures greater than 400 degrees Fahrenheit.
4. Pipe or components that may contain liquids shall be protected by heating or other means from damage due to freezing.
5. Pipe or components in which liquids may accumulate shall have drains or drips.
6. Pipe or components subject to clogging from solids or deposits shall have suitable connections for cleaning.
7. Arrangement of pipe, components, and supports shall provide safety under anticipated operating stresses.
8. Each joint between sections of pipe, and between pipe and valves or fittings, shall be made in a manner suitable for anticipated pressure and temperature condition. Slip type expansion joints shall not be used. Expansion shall be allowed by providing flexibility within the system itself.
9. Each control line shall be protected from anticipated causes of damage and shall be designed and installed to prevent damage to any one (1) control line from making both the regulator and overpressure protective device inoperative.

Section 5. Welding of Steel in Pipelines. (1) Scope.

(a) This subsection prescribes minimum requirements for welding steel materials in pipelines.

(b) This subsection does not apply to welding that occurs during the manufacture of steel pipe or steel pipeline components.

(2) Qualification of welding procedures.

(a) Welding shall be performed by a qualified welder in accordance with established, written, and tested welding procedures; and quality of test welds determined by destructive testing to meet acceptability standards of this section.

(b) Each welding procedure shall be recorded in detail, including results of qualifying tests. This record shall be retained and followed whenever the procedure is used.

(3) Qualification of welders.

(a) Except as provided in paragraph (b) of this subsection, each welder shall be qualified in accordance with Section 3 of the API Standard 1104 or Section IX of the ASME Boiler and Pressure Vessel Code. However, a welder qualified under an earlier edition than listed in Section II of Appendix A may weld but shall not requalify under that earlier edition.

(b) A welder may qualify to perform welding on pipe to be operated at pressure that produces hoop stress of less than twenty (20) percent of SMYS by performing an acceptable test weld for the process to be used, under the test set forth in Section 1 of Appendix C to this administrative regulation. A welder who makes welded service line connections to mains shall also perform an acceptable test weld under Section II of Appendix C to this administrative regulation as a part of his qualifying test. After initial qualification, a welder shall not perform welding unless:

1. Within the preceding fifteen (15) calendar months, the welder has requalified, except that the welder shall requalify at least once each calendar year; or

2. Within the preceding seven and one-half (7 1/2) calendar months, but at least twice each calendar year, the welder has had:

a. A production weld cut out, tested and found acceptable in accordance with the qualifying test; or

b. For welders who work only on service lines two (2) inches or smaller in diameter, two (2) sample welds tested and found acceptable in accordance with the test in Section III of Appendix C to this administrative regulation.

(4) Limitations on welders.

(a) No welder whose qualification is based on nondestructive testing shall weld compressor station pipe and components.

(b) No welder shall weld with a particular welding process

unless, within the preceding six (6) calendar months, he has engaged in welding with that process.

(c) A welder qualified under subsection (3)(a) of this section shall not weld unless, within the preceding six (6) calendar months, the welder has had one (1) weld tested and found acceptable under Section 3 or 6 of API Standard 1104, except that a welder qualified under an earlier edition previously listed in Appendix A may weld but shall not requalify under that earlier edition.

(5) Protection from weather. The welding operation shall be protected from weather conditions that would impair the quality of the completed weld.

(6) Miter joints.

(a) A miter joint on steel pipe to be operated at pressure that produces hoop stress of thirty (30) percent or more of SMYS shall not deflect the pipe more than three (3) degrees.

(b) A miter joint on steel pipe to be operated at pressure that produces hoop stress of less than thirty (30) percent but more than ten (10) percent of SMYS shall not deflect the pipe more than twelve and one-half (12 1/2) degrees and shall be a distance to one (1) pipe diameter or more away from any other miter joint, as measured from the crotch of each joint.

(c) A miter joint on steel pipe to be operated at pressure that produces hoop stress of ten (10) percent or less of SMYS shall not deflect the pipe more than ninety (90) degrees.

(7) Preparation for welding. Before beginning any welding, welding surfaces shall be clean and free of any material that may be detrimental to the weld, and the pipe or component shall be aligned to provide the most favorable condition for depositing the root bead. This alignment shall be preserved while the root bead is being deposited.

(8) Inspection and test of welds.

(a) Visual inspection of welding shall be conducted to insure that:

1. Welding is performed in accordance with welding procedure; and

2. Weld is acceptable under paragraph (c) of this subsection.

(b) Welds on a pipeline to be operated at pressure that produces hoop stress of twenty (20) percent or more of SMYS shall be nondestructively tested in accordance with subsection (9) of this section, except that welds that are visually inspected and approved by a qualified welding inspector need not be nondestructively tested if:

1. The pipe has a nominal diameter of less than six (6) inches; or

2. The pipeline is to be operated at pressure that produces hoop stress of less than forty (40) percent of SMYS, and welds are so limited in number that nondestructive testing is impractical.

(c) Acceptability of a weld that is nondestructively tested or visually inspected is determined according to the standards in Section 6 of API Standard 1104.

(9) Nondestructive testing.

(a) Nondestructive testing of welds shall be performed by any process, other than trepanning, that will clearly indicate defects that may affect the integrity of the weld.

(b) Nondestructive testing of welds shall be performed:

1. In accordance with written procedures; and

2. By persons trained and qualified in established procedures and with equipment employed in testing.

(c) Procedures shall be established for proper interpretation of each nondestructive test of a weld to ensure acceptability of the weld under subsection (8)(c) of this section.

(d) When nondestructive testing is required under subsection (8)(b) of this section, the following percentages of each day's field butt welds, selected at random by the operator, shall be nondestructively tested over their entire circumference:

1. In Class 1 locations, at least ten (10) percent.

2. In Class 2 locations, at least fifteen (15) percent.

3. In Class 3 and Class 4 locations, at crossings of major or navigable rivers, and offshore, and within railroad or public highway rights-of-way, including tunnels, bridges, and overhead road crossings, 100 percent unless impracticable, then at least ninety (90) percent. Nondestructive testing shall be impracticable for each girth weld not tested.

4. At pipeline tie-ins 100 percent.

(e) Except for a welder whose work is isolated from the principal welding activity, a sample of each welder's work for each day shall be nondestructively tested, when nondestructive testing is required under subsection (8)(b) of this section.

(f) When nondestructive testing is required under subsection (8)(b) of this section, each operator shall retain, for the life of the pipeline, a record showing by milepost, engineering station, or by geographic feature, the number of girth welds made, number nondestructively tested, number rejected, and disposition of rejects.

(10) Repair or removal of defects:

(a) Each weld that is unacceptable under subsection (8)(c) of this section shall be removed or repaired. A weld shall be removed if it has a crack that is more than eight (8) percent of the weld length.

(b) Each weld that is repaired shall have the defect removed down to sound metal, and the segment to be repaired shall be preheated if conditions exist which would adversely affect quality of the weld repair. After repair, the segment of the weld that was repaired shall be inspected to ensure its acceptability.

(c) Repair of a crack or any defect in a previously repaired area shall be in accordance with written weld repair procedures qualified under subsection (2) of this section. Repair procedures shall provide that the minimum mechanical properties specified for the welding procedure used to make the original weld are met upon completion of the final weld repair.

Section 6. Joining of Materials other than by Welding. (1) Scope.

(a) This section prescribes minimum requirements for joining materials in pipelines, other than by welding.

(b) This section does not apply to joining during the manufacture of pipe or pipeline components.

(2) General.

(a) The pipeline shall be designed and installed so that each joint will sustain longitudinal pullout or thrust forces caused by contraction or expansion of piping or by anticipated external or internal loading.

(b) Each joint shall be made in accordance with written procedures proven by test or experience to produce strong gastight joints.

(c) Each joint shall be inspected to insure compliance with this subsection.

(3) Cast iron pipe.

(a) Each caulked bell and spigot joint in cast iron pipe shall be sealed with mechanical leak clamps.

(b) Each mechanical joint in cast iron pipe shall have a gasket made of resilient material as the sealing medium. Each gasket shall be suitably confined and retained under compression by a separate gland or follower ring.

(c) Cast iron pipe shall not be joined by threaded joints or by brazing.

(4) Ductile iron pipe. Ductile iron pipe shall not be joined by threaded joints or by brazing.

(5) Copper pipe. Copper pipe shall not be threaded, except that copper pipe used for joining screw fittings or valves may be threaded if wall thickness is equivalent to the comparable size of Schedule 40 or heavier wall pipe listed in Table C1 of ANSI B16.5.

(6) Plastic pipe.

(a) General. A plastic pipe joint joined by solvent cement, adhesive, or heat fusion shall not be disturbed until it has properly set. Plastic pipe shall not be joined by a threaded joint or miter joint.

(b) Solvent cement joints. Each solvent cement joint on plastic pipe shall comply with the following:

1. Mating surfaces of the joint shall be clean, dry, and free of material which might be detrimental to the joint.

2. Solvent cement shall conform with ASTM Specification D 2513.

3. Joint shall not be heated to accelerate setting of the cement.

(c) Heat fusion joints. Each heat fusion joint on plastic pipe shall comply with the following:

1. A butt heat fusion joint shall be joined by a device that holds the heater element square to the ends of the piping, compresses the heated ends together, and holds the pipe in proper alignment while the plastic hardens.

2. A socket heat fusion joint shall be joined by a device that heats mating surfaces of the joint uniformly and simultaneously to essentially the same temperature.

3. Heat shall not be applied with a torch or other open flame.

(d) Adhesive joints. Each adhesive joint on plastic pipe shall comply with the following:

1. Adhesive shall conform to ASTM Specification D-2517.

2. Materials and adhesive shall be compatible with each other.

(e) Mechanical joints. Each compression type mechanical joint on plastic pipe shall comply with the following:

1. Gasket material in the coupling shall be compatible with the plastic.

2. A rigid internal tubular stiffener, other than a split tubular stiffener, shall be used in conjunction with the coupling.

(7) Plastic pipe; qualifying joining procedures.

(a) Heat fusion, solvent cement, and adhesive joints. Before any written procedure established under subsection (2)(b) of this section is used for making plastic pipe joints by a heat fusion, solvent cement, or adhesive method, that procedure shall be qualified by subjecting specimen joints made according to the procedure to the following tests:

1. Burst test requirements of:

a. If thermoplastic pipe, Paragraph 8.6 (Sustained Pressure Test) or Paragraph 8.7 (Minimum Hydrostatic Burst Pressure) of ASTM D 2513; or

b. If thermosetting plastic pipe, Paragraph 8.5 (Minimum Hydrostatic Burst Pressure) or Paragraph 8.9 (Sustained Static Pressure Test) of ASTM D 2517;

2. For procedures intended for lateral pipe connections, subject a specimen joint made from pipe sections joined at right angles according to the procedure to a force on the lateral pipe until failure occurs in the specimen. If failure initiates outside the joint area, the procedure qualifies for use; and

3. For procedures intended for nonlateral pipe connections, follow the tensile test requirements of ASTM D 638, except that the test may be conducted at ambient temperature and humidity. If the specimen elongates no less than twenty-five (25) percent, or failure initiates outside the joint area, the procedure qualifies for use.

(b) Mechanical joints. Before any written procedure established under subsection (2)(b) of this section is used for making mechanical plastic pipe joints designed to withstand tensile forces, the procedure shall be qualified by subjecting five (5) specimen joints made according to the procedure to the following tensile test:

1. Use an apparatus for the test as specified in ASTM D 638-77a (except for conditioning).

2. Specimen shall be of such length that distance between the grips of the apparatus and the end of the stiffener does not affect joint strength.

3. Speed of testing is five (5) millimeters (two-tenths (.20) inches) per minute, plus or minus twenty-five (25) percent.

4. Pipe specimens less than 102 millimeters (four (4) inches) in diameter are qualified if pipe yields to an elongation of no less than twenty-five (25) percent or failure initiates outside the joint area.

5. Pipe specimens 102 millimeters (four (4) inches) and larger in diameter shall be pulled until the pipe is subjected to tensile stress equal to or greater than maximum thermal stress that would be produced by a temperature change of fifty-five (55) degrees Centigrade (100°F) or until the pipe is pulled from the fitting. If the pipe pulls from the fitting, the lowest value of the five (5) test results or the manufacturer's rating, whichever is lower, shall be used in design calculations for stress.

6. Each specimen that fails at the grips shall be retested using new pipe.

7. Results obtained pertain only to the specific outside diameter, and material of pipe tested, except that testing of heavier wall pipe may be used to qualify pipe of the same material but with lesser wall thickness.

(c) A copy of each written procedure being used for joining plastic pipe shall be available to persons making and inspecting

joints.

(d) Pipe or fittings manufactured before July 1, 1980, may be used in accordance with procedures that the manufacturer certifies will produce a joint as strong as the pipe.

(8) Plastic pipe; qualifying persons to make joints.

(a) No person shall make a plastic pipe joint unless that person has been qualified under the applicable joining procedure by:

1. Appropriate training or experience in use of the procedure; and

2. Making a specimen joint from pipe sections joined according to the procedure that passes the inspection and testing set forth in paragraph (b) of this subsection.

(b) Specimen joint shall be:

1. Visually examined during and after assembly or joining and found to have the same appearance as a joint or photograph of a joint that is acceptable under the procedure; and

2. If a heat fusion, solvent cement, or adhesive joint:

a. Tested under any one (1) of the test methods listed in subsection (7)(a) of this section applicable to the type of joint and material being tested;

b. Examined by ultrasonic inspection and found not to contain flaws that would cause failure; or

c. Cut into at least three (3) longitudinal straps, each of which is:

(i) Visually examined and found not to contain voids or discontinuities on cut surface of the joint area; and

(ii) Deformed by bending, torque, or impact, and if failure occurs, it shall not initiate in the joint area.

(iii) A person shall be requalified under an applicable procedure, if during any twelve (12) month period that person:

A. Does not make any joints under that procedure; or

B. Has made three (3) joints or three (3) percent of the joints, whichever is greater, under that procedure, that are found unacceptable by testing under Section 11(7) of this administrative regulation.

(d) Each operator shall establish a method to determine that each person making joints in plastic pipelines in his system is qualified in accordance with this section.

(9) Plastic pipe; inspection of joints. No person shall carry out the inspection of joints in plastic pipes required by subsections (2)(c) and (8)(b) of this section unless that person has been qualified by appropriate training or experience in evaluating the acceptability of plastic pipe joints made under the applicable joining procedure.

Section 7. General Construction Requirements for Transmission Lines and Mains. (1) Scope. This section prescribes minimum requirements for constructing transmission lines and mains.

(2) Compliance with specifications or standards. Each transmission line or main shall be constructed in accordance with comprehensive written specifications or standards consistent with this section.

(3) Reports and records of proposed construction:

(a) At least thirty (30) days prior to construction or major reconstruction of any gas pipeline intended to be subjected to pressure in excess of 100 psig, or twenty (20) percent of minimum yield strength, whichever is lower, and after receipt from the commission of a certificate of public convenience and necessity for such construction if required, the utility shall file a report with the commission setting forth the specifications for such pipeline and the maximum allowable operating pressure.

(b) Before any gas pipeline or main is placed in operation intended to be subjected to pressures in excess of 100 psig, or twenty (20) percent of specified minimum yield strength, whichever is lower, a report shall be filed with the commission certifying the maximum pressure to which the line is intended to be subject and also certifying that the pipeline has been constructed and testing in accordance with the requirements of this administrative regulation. A further report shall be filed within sixty (60) days thereafter including the results of all tests made pursuant to this section. No gas pipeline or main shall be operated at pressures in excess of the pressure for which it was certified to the commission.

(d) Responsibility for maintenance of necessary records to establish that compliance with rules and administrative regulations has been accomplished rests with the utility. Such records shall be available for inspection at all times by commission staff.

(4) Inspection: general. Each transmission line or main shall be inspected to ensure that it is constructed in accordance with this section. The inspector shall have authority to order removal and replacement of any section of pipe and fittings that fail to meet the standards of this administrative regulation.

(5) Inspection of materials. Each length of pipe and each other component shall be visually inspected at site of installation to ensure that it has not sustained any visually determinable damage that could impair its serviceability. Plastic pipe and tubing shall be adequately supported during storage. Thermoplastic pipe, tubing and fittings shall be protected from exposure to direct sun rays if the pipe is to remain exposed for twelve (12) months or longer unless written warranty of the manufacturer states that such protection is not necessary. However, if the manufacturer specifies that the pipe has been manufactured with a minimum of two (2) percent or more carbon black content to prevent ultraviolet degradation, the pipe may be exposed to sun rays for up to thirty-six (36) months.

(6) Repair of steel pipe.

(a) Each imperfection or damage that impairs the serviceability of a length of steel pipe shall be repaired or removed. If repair is made by grinding, remaining wall thickness shall at least be equal to either:

1. Minimum thickness required by the tolerance in the specification to which the pipe was manufactured; or

2. Nominal wall thickness required for the design pressure of the pipeline.

(b) Each of the following dents shall be removed from steel pipe to be operated at pressure that produces hoop stress of twenty (20) percent, or more, of SMYS:

1. A dent that contains a stress concentrator such as a scratch, gouge, groove, or arc burn.

2. A dent that affects the longitudinal weld or a circumferential weld.

3. In pipe to be operated at pressure that produces hoop stress of forty (40) percent or more of SYMS, a dent that has a depth of:

a. More than one-quarter (1/4) inch in pipe twelve and three-fourths (12 3/4) inches or less in outer diameter; or

b. More than two (2) percent of the nominal pipe diameter in pipe over twelve and three-fourths (12 3/4) inches in outer diameter.

For purposes of this subsection a "dent" is a depression that produces gross disturbance in curvature of the pipe wall without reducing pipe wall thickness. Depth of a dent is measured as the gap between the lowest point of the dent and a promulgation of the pipe's original contour.

(c) Each arc burn on steel pipe to be operated at pressure that produces hoop stress of forty (40) percent, or more, of SMYS shall be repaired or removed. If repair is made by grinding, the arc burn shall be completely removed, and remaining wall thickness shall be at least equal to either:

1. Minimum wall thickness required by the tolerances in the specification to which the pipe was manufactured; or

2. Nominal wall thickness required for the design pressure of the pipeline.

(d) A gouge, groove, arc burn, or dent shall not be repaired by insert patching or by pounding out.

(e) Each gouge, groove, arc burn, or dent removed from a length of pipe shall be removed by cutting out the damaged portion as a cylinder.

(7) Repair of plastic pipe. Each imperfection or damage that would impair serviceability of plastic pipe shall be repaired by a patching saddle or removed.

(8) Bends and elbows.

(a) Each field bend in steel pipe, other than a wrinkle bend made in accordance with subsection (9) of this section shall comply with the following:

1. A bend shall not impair serviceability of the pipe.

2. Each bend shall have a smooth contour and be free from

buckling, cracks, or any other mechanical damage.

3. On pipe containing a longitudinal weld, the longitudinal weld shall be as near as practicable to the neutral axis of the bend unless:

a. The bend is made with an internal bending mandrel; or

b. The pipe is twelve (12) inches or less in outside diameter or has a diameter to wall thickness ratio less than seventy (70):

(b) Each circumferential weld of steel pipe located where stress during bending caused permanent deformation in the pipe shall be nondestructively tested either before or after the bending process.

(c) Wrought steel welding elbows and transverse segments of these elbows shall not be used for changes in direction on steel pipe two (2) inches or more in diameter unless the arc length, as measured along the crotch, is at least one (1) inch.

(9) Wrinkle bends in steel pipe.

(a) A wrinkle bend shall not be made on steel pipe to be operated at pressure that produces hoop stress of thirty (30) percent, or more, of SYMS.

(b) Each wrinkle bend on steel pipe shall comply with the following:

1. The bend shall not have any sharp kinks.

2. When measured along the crotch of the bend, wrinkles shall be a distance of at least one (1) pipe diameter.

3. On pipe sixteen (16) inches or larger in diameter, the bend shall not have a deflection of more than one and one-half (1 1/2) degrees for each wrinkle.

4. On pipe containing a longitudinal weld, the longitudinal seam shall be as near as practicable to the neutral axis of the bend.

(10) Protection from hazards.

(a) Each transmission line or main shall be protected from washouts, floods, unstable soil, landslides, or other hazards that may cause the pipeline to move or to sustain abnormal loads.

(b) Each aboveground transmission line or main, not in inland navigable water areas, shall be protected from accidental damage by vehicular traffic or other similar causes, either by being placed at a safe distance from traffic or by installing barricades.

(c) Pipelines, including pipe risers, on each platform located in inland navigable waters shall be protected from accidental damage by vessels.

(11) Installation of pipe in a ditch.

(a) When installed in a ditch, each transmission line to be operated at pressure producing hoop stress of twenty (20) percent or more of SYMS shall be installed so that the pipe adequately fits the ditch to minimize stresses and protect pipe coating from damage.

(b) When a ditch for a transmission line or main is backfilled, it shall be backfilled in a manner that:

1. Provides firm support under the pipe; and

2. Prevents damage to pipe and pipe coating from equipment or backfill material.

(12) Installation of plastic main.

(a) Plastic pipe shall be installed below ground level and shall conform to applicable provisions of subsection (15) of this section except that plastic mains shall be installed with minimum cover of twenty-four (24) inches at all stress levels unless encased or otherwise protected.

(b) Plastic pipe installed in a vault or any other below grade enclosure shall be completely encased in gastight metal pipe and fittings adequately protected from corrosion.

(c) Plastic pipe shall be installed to minimize shear or tensile stresses.

(d) Thermoplastic pipe not encased shall have minimum wall thickness of 0.090 inches, except that pipe with an outside diameter of 0.875 inches or less may have minimum wall thickness of 0.062 inches.

(e) Plastic pipe not encased shall have an electrically conductive wire or other means of located the pipe while it is underground.

(f) Plastic pipe being encased shall be inserted into casing pipe in a manner that will protect the plastic. The leading end of the plastic shall be closed before insertion.

(13) Casing. Each casing used on a transmission line or main

under a railroad or highway shall comply with the following:

(a) Casing shall be designed to withstand superimposed loads.

(b) If there is a possibility of water entering the casing, ends shall be sealed.

(c) If ends of an unvented casing are sealed, and the sealing is strong enough to retain maximum allowable operating pressure of the pipe, the casing shall be designed to hold this pressure at a stress level of not more than seventy-two (72) percent of SMYS.

(d) If vents are installed on a casing, vents shall be protected from weather to prevent water from entering the casing.

(14) Underground clearance.

(a) Each transmission line shall be installed with at least twelve (12) inches of clearance from any other underground structure not associated with the transmission line. If this clearance cannot be attained, The transmission line shall be protected from damage that might result from proximity to other structures.

(b) Each main shall be installed with enough clearance from any other underground structure to allow proper maintenance and to protect against damage that might result from proximity to other structures.

(c) In addition to meeting the requirements of paragraph (a) or (b) of this subsection, each plastic transmission line or main shall be installed with sufficient clearance, or shall be insulated, from any source of heat to prevent heat from impairing serviceability of the pipe.

(d) Each pipe type or bottle type holder shall be installed with minimum clearance from any other holder as prescribed in Section 4(19)(b) of this administrative regulation.

(15) Cover.

(a) Except as provided in paragraphs (c) and (d) of this subsection, each buried transmission line shall be installed with minimum cover as follows:

Location (inches) Rock (inches)	Normal Soil	Consolidated
Class 1 locations	30	18
Class 2, 3 and 4 locations	36	24
Drainage ditches of public roads And railroad crossings	36	24

(b) Except as provided in paragraphs (c) and (d) of this subsection, each buried main shall be installed with at least twenty-four (24) inches of cover.

(c) Where an underground structure prevents installation of a transmission line or main with minimum cover, the transmission line or main may be installed with less cover if it is provided with additional protection to withstand anticipated external loads.

(d) All pipe installed in a navigable river or stream shall have minimum cover of forty-eight (48) inches in soil or twenty-four (24) inches in consolidated rock. However, less than minimum cover is permitted in accordance with paragraph (c) of this subsection.]

Section 2[8]. Gas Measurement. (1) Scope. This section prescribes minimum requirements for measurement of gas, accuracy of measuring instruments (meters), meter testing facilities and periodic testing of meters.

(2) Method of measuring service.

(a) All gas sold by a utility and all gas consumed by a utility in the State of Kentucky shall be metered through approved type meters except in cases of emergency or when otherwise authorized by the commission. Each meter shall bear an identifying number. When gas is sold at high pressures or large volumes, the contract or rate schedule shall specify standards used to calculate gas volume. Prepayment meters shall not be used unless there is no other satisfactory method of collecting payment for services rendered.

(b) All gas delivered as compensation for leases, rights-of-way, or for other reasons, not charged at the utility's regular schedule of charges, shall be metered and a record kept of each transaction. All meters and regulators installed to measure gas and to regulate pressure of gas shall be under the control of the utility and subject to the rules of the utility and of the commission.

(c) The utility shall make no charge for furnishing and installing any meter or appurtenance necessary to measure gas furnished, except by mutual agreement as approved by the commission in

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special cases or except where duplicate or check meters are requested by the customer.

(d) Each gas utility shall adopt a standard method of meter and service line installation insofar as practicable. These methods shall be set out with a written description and with drawings as necessary for clear understanding of the requirements, all of which shall be filed with the commission. Copies of these standard methods shall be made available to prospective customers, contractors or others engaged in installing pipe for gas utilization. All meters shall be set in place by the utility.

(e) Each customer shall be metered separately except in cases of multioccupants under the same roof sharing a common entrance or an enclosure where it is unreasonable or uneconomical to measure each unit separately.

(f) The utility may render temporary service to a customer and may require the customer to bear all costs of installing and removing service in excess of any salvage realized. In this respect, temporary service shall be considered to be service that is not required or used for more than one (1) year.

(3) Accuracy requirements for meters. All tests to determine accuracy of registration of any gas meters shall be made by a qualified meter tester and with suitable facilities.

(a) Diaphragm displacement meters:

1. Before being installed for use by any customer, every diaphragm displacement gas meter, whether new, repaired or removed from service for any cause shall be in good working condition and shall be adjusted to within one-half (1/2) of one (1) percent, plus or minus when passing gas at approximately twenty (20) percent and 100 percent of the rated capacity of the meter as specified by the manufacturer based on five-tenths (0.5) inch water column differential. A pilot test or quartering test to determine that the meter will register at one-half (1/2) of one (1) percent of the rated capacity shall be made before placing meters in service.

2. Meters removed from service for periodic testing shall be tested for accuracy as soon as practical after removal. An "as found" test shall be made at a flow-rate of approximately twenty (20) percent and 100 percent of the rated capacity of the meter based on five-tenths (0.5) inch water column differential and results of these tests algebraically averaged to determine accuracy. If error is less than two (2) percent this shall be reported as the "as found" test. If error is more than two (2) percent, two (2) additional tests shall be made at twenty (20) percent and 100 percent, and the average of these three (3) tests shall be reported as the "as found" test. The three (3) test procedures shall apply to any customer request test, complaint test, or bill adjustment made on the basis of the meter.

3. Meters of good working condition that are removed from service for reasons other than periodic, customer or commission request tests shall be tested as soon as practicable after removal if elapsed time since the last test exceeds fifty (50) percent of the periodic test period for those meters.

(b) Other than diaphragm displacement meters.

1. All meters other than diaphragm displacement meters shall be tested at approved intervals by the utility meter tester using flow provers or other approved methods either in the shop or at the location of use at the utility's option and with the commission's approval of facilities and methods used. Accuracy of these meters shall be maintained as near 100 percent as possible. Test ranges and procedures shall be as prescribed in adopted standards or approved by the commission.

2. All meter installations shall be inspected for proper design and construction and all instruments, regulators and valves used in conjunction with installation shall be tested for desired operation and accuracy before being placed in service. This inspection shall be made by a qualified person. Test data as to conditions found, corrected if in error, and conditions as left shall be made available for inspection by commission staff. Subsequent test results shall be a portion of regular meter test reports submitted to the commission by the utility.

(4) Meter testing facilities and equipment.

(a) Meter shop.

1. Each utility, unless specifically excepted by the commission,

shall maintain a meter shop to inspect, test and repair meters. The shop shall be open for inspection by commission staff at all reasonable times. Facilities and equipment, as well as methods of measurement and testing employed, shall be subject to approval of the commission.

2. The meter shop shall consist of a repair room or shop proper and a proving room. The proving room shall be designed so that meters and meter testing apparatus are protected from excessive changes in temperature and other disturbing factors. The proving room or the entire meter shop shall be air conditioned if necessary to achieve satisfactory temperature control.

3. The proving room shall be well lighted and preferably not on an outside wall of the building. Temperatures within the proving room shall not vary more than two (2) degrees Fahrenheit per hour nor more than five (5) degrees Fahrenheit over a twenty-four (24) hour period.

(b) Working standards.

1. Each utility, unless specifically excepted by the commission, shall own and make proper provision to operate at least one (1) approved belltype meter prover, preferably of ten (10) cubic feet capacity, but in no case of less than five (5) cubic feet capacity. The prover shall be equipped with suitable thermometers and other necessary accessories. This equipment shall be maintained in proper condition and adjustment so that it shall be capable of determining the accuracy of any service meter, practical to test by it, to within one-half (1/2) of one (1) percent plus or minus.

2. The prover shall be accurate to within three-tenths (0.3) of one (1) percent at each point used in testing meters.

3. The prover shall not be located near any radiator, heater, steam pipe, or hot or cold air duct. Direct sunlight shall not be allowed to fall on the prover or the meters under test.

4. During conditions of satisfactory operation air temperature in the prover shall be within one (1) degree Fahrenheit of the ambient temperature, and oil temperature in the prover shall not differ from the temperature of ambient air by more than one (1) degree Fahrenheit.

5. Meters to be tested shall be stored in such manner that temperature of the meters is substantially the same as temperature of the prover. To achieve this, meters shall be placed in the environment of the prover for a minimum of five (5) hours.

(c) All testing instruments and other equipment certified by the commission shall be accompanied at all times by a certificate showing the date when it was last tested and adjusted. The certificate must be signed by a proper authority designated by the commission. A tag referring to such certificate may be attached to the instruments when practicable. These certificates, when superseded, shall be kept on file by the utility.

(d) Sixty (60) days after the effective date of a commission order granting convenience and necessity for a new utility, that utility shall advise the commission in writing as to kind and amount of testing equipment available.

(5) Periodic tests.

(a) Periodic tests of all meters shall be made according to the following schedule based on rated capacities. Rated meter capacity is defined as the capacity of the meter at five-tenths (0.5) of one (1) inch water column differential for diaphragm meters and as specified by the manufacturer for all other meters.

1. Positive-displacement meters, with rated capacity up to and including 500 cubic feet per hour, shall be tested at least once every ten (10) years.

2. Positive-displacement meters, with rated capacity above 500 cubic feet per hour, up to and including 1,500 cubic feet per hour, shall be tested at least once every five (5) years.

3. Positive-displacement meters above 1,500 cubic feet per hour shall be tested at least once every year.

4. Orifice meters shall have their recording gauges tested at least once every six (6) months. Orifice size and condition shall be checked at the required meter test interval.

5. Auxiliary measurement devices such as pressure, temperature, volume, load demand and remote reading devices shall be tested at the required meter test interval.

(b) Whenever the number of meters of any type which register in error beyond the limits specified in these rules is deemed

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excessive, this type shall be tested with such additional frequency as the commission may direct.

(c) A utility desiring to adopt a scientific sample meter test plan for positive displacement meters in accordance with parameters established by the commission shall submit its application to the commission for approval. Upon approval, the sample testing plan may be followed in lieu of tests prescribed in subsections (3) and (5) of this section and 807 KAR 5:006, Section 17(1).

(6) Measuring production and shipment into and out of the state.

(a) The utility shall measure and record the quantity of all gas produced and purchased by it in Kentucky.

(b) The utility shall measure and record the quantity of all gas piped out of or brought into the state of Kentucky.

Section 3[9]. Customer[~~Meters, Service Regulators, and~~ Service Line Extensions and Connections][~~Lines~~]. (1)[~~Scope. This section prescribes minimum requirements for installing customer meters, service regulators, service lines, service line valves, and service line connections to mains.~~

~~(2) Customer meters and regulators: location.~~

~~(a) Each meter and service regulator, whether inside or outside of a building, shall be installed in a readily accessible location and protected from corrosion and other damage.~~

~~(b) Meters shall be easily accessible for reading, testing and making necessary adjustments and repairs, and where indoor type meters are necessary they shall be installed in a clean, dry, safe, convenient place. Unless absolutely unavoidable, meters shall not be installed in any location where visits of the meter reader or tester will cause annoyance to the customer or severe inconvenience to the utility. Existing meters located in places not permitted by rule shall be relocated by the customer or owner to an approved position.~~

~~(c) Proper provision shall be made by the customer for installation of the utility's meter. At least six (6) inches clear space shall be available, if possible, on all sides of the meter and not less than thirty (30) inches in front of it. When installed within a building, a meter shall be located in a ventilated place and not less than three (3) feet from any source of ignition or any source of heat which might damage the meter.~~

~~(d) When a number of meters are placed in the same location, each meter shall be tagged or marked to indicate the customer served by it and such identification shall be preserved and maintained by the owner of the premises served.~~

~~(e) When the distance between the utility's main and nearest point of consumption is more than 150 feet, the meter shall be located as near to the utility's main as may be practicable. This provision shall apply when any part of the service line has been constructed by either the customer or utility.~~

~~(f) When a customer is served from a pipeline operating in excess of sixty (60) psig the meters, regulators and safety devices shall be located as near to the utility's pipeline as practicable.~~

~~(g) Each service regulator installed within a building shall be located as near as practical to point of service line entrance.~~

~~(h) Where feasible, the upstream regulator in a series shall be located outside the building unless it is located in a separate metering or regulating building.~~

~~(3) Customer meters and regulators: protection from damage.~~

~~(a) Protection from vacuum or back pressure. If the customer's equipment might create either a vacuum or a back pressure, a device shall be installed to protect the system.~~

~~(b) Service regulator vents and relief vents. Service regulator vents and relief vents shall terminate outdoors, and the outdoor terminal shall be:~~

~~1. Rain and insect resistant;~~

~~2. Located at a place where gas from the vent can escape freely into the atmosphere and away from any opening into the building; and~~

~~3. Protected from damage caused by submergence in areas where flooding may occur.~~

~~(c) Pits and vaults. Each pit or vault that houses a customer meter or regulator at a place where vehicular traffic is anticipated shall be able to support that traffic.~~

~~(4) Customer meter and regulators: installation.~~

~~(a) Each meter and each regulator shall be installed to minimize anticipated stresses upon the connecting piping and the meter.~~

~~(b) Use of all thread (close) nipples is prohibited.~~

~~(c) Connections made of lead or other easily damaged material shall not be used in installation of meters or regulators.~~

~~(d) Each regulator that might release gas in its operation shall be vented to the outside atmosphere and shall have a vent pipe sized no smaller than the manufacturer's vent connection built into the regulator.~~

~~(5) Customer meter installation: operation pressure.~~

~~(a) A meter shall not be used at pressure more than sixty-seven (67) percent of the manufacturer's shell test pressure.~~

~~(b) Each newly installed meter manufactured after November 12, 1970, shall have been tested to a minimum of ten (10) psig.~~

~~(c) A rebuilt or repaired tinned steel case meter shall not be used at pressure more than fifty (50) percent of the pressure used to test the meter after rebuilding or repairing.~~

~~(6) Service lines: installation.~~

~~(a) Depth. Each buried service line shall be installed with at least twelve (12) inches of cover in private property and at least eighteen (18) inches of cover in streets and roads. However, where an underground structure prevents installation at those depths, the service line shall be able to withstand any anticipated external load.~~

~~(b) Support and backfill. Each service line shall be properly supported on undisturbed or well-compacted soil, and material used for backfill shall be free of materials that could damage the pipe or its coating.~~

~~(c) Grading for drainage. Where condensation in the gas might cause interruption in gas supply to the customer, the service line shall be graded to drain into the main or into drips at low points in the service line.~~

~~(d) Protection against piping strain and external loading. Each service line shall be installed to minimize anticipated piping strain and external loading.~~

~~(e) Installation of service lines into buildings. Each underground service line installed below grade through the outer foundation wall of a building shall:~~

~~1. If a metal service line, be protected against corrosion;~~

~~2. If a plastic service line, be protected from shearing action and backfill settlement; and~~

~~3. Be sealed at the foundation wall to prevent leakage into the building.~~

~~(f) Installation of service lines under buildings. Where an underground service line is installed under a building:~~

~~1. It shall be encased in a gastight conduit;~~

~~2. The conduit and the service line shall, if the service line supplies the building it underlies, extend into a normally usable and accessible part of the building; and~~

~~3. The space between the conduit and service line shall be sealed to prevent gas leakage into the building. If the conduit is sealed at both ends, a vent line from the annular space shall extend to a point where gas would not be a hazard and extend above grade, terminating in a rain and insect resistant fitting.~~

~~(g) Joining of service lines. All underground steel service lines shall be joined by threaded and coupled joints, compression type fittings, or by qualified welding procedures and operators.~~

~~(h) When coated steel pipe is to be installed as a service line in a bore, care shall be exercised to prevent damage to the coating during installation. For all installations to be made by boring, driving or similar methods or in a rocky type soil, the following practices or their equivalents are recommended:~~

~~1. Coated pipe should not be used as the bore pipe or drive pipe and left in the ground as part of the service line. It is preferable to make such installations by first making an average bore, removing the pipe used for boring and then inserting the coated pipe.~~

~~2. Coated steel pipe preferably should not be inserted through a bore in exceptionally rocky soil when there is a likelihood of damage to the coating resulting from insertion.~~

~~3. Recommendations in subparagraphs 1 and 2 of this~~

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~~subsection do not apply where coated pipe is installed under conditions where the coating is not likely to be damaged, such as in sandy soil.~~

~~(7) Service line: valve requirements.~~

~~(a) Each service line shall have a service line valve that meets applicable requirements of Sections 2 and 4 of this administrative regulation. A valve incorporated in a meter bar, that allows the meter to be bypassed, shall not be used as a service line valve.~~

~~(b) A soft seal service line valve shall not be used if its ability to control flow of gas could be adversely affected by exposure to anticipated heat.~~

~~(c) Each service line valve on a high-pressure service line, installed above ground or in an area where blowing gas would be hazardous, shall be designed and constructed to minimize the possibility of removal of the valve core with other than specialized tools.~~

~~(8) Service lines: location of valves.~~

~~(a) Relation to regulator or meter. Each service line valve shall be installed upstream of the regulator or, if there is not regulator, upstream of the meter.~~

~~(b) Outside valves. Each service line shall have a shutoff valve in a readily accessible location that, if feasible, is outside of the building.~~

~~(c) Underground valves. Each underground service line valve shall be located in a covered, durable curb box or standpipe that allows ready operation of the valve. The curb box shall be supported independently of the service lines.~~

~~(9) Service lines general requirements for connections to main piping:~~

~~(a) Location. Each service line connection to a main shall be located at the top of the main, or, if not practical, at the side of the main, unless a suitable protective device is installed to minimize possibility of dust and moisture being carried from the main into the service line.~~

~~(b) Compression type connection to main. Each compression-type service line to main connection shall:~~

~~1. Be designed and installed to effectively sustain longitudinal pullout or thrust forces caused by contraction or expansion of piping, or by anticipated external or internal loading; and~~

~~2. If gaskets are used in connecting the service line to the main connection fitting, gaskets shall be compatible with the kind of gas in the system.~~

~~(10) Service lines: connection to cast iron or ductile iron mains.~~

~~(a) Each service line connected to a cast iron or ductile iron main shall be connected by a mechanical clamp, by drilling and tapping the main, or by another method meeting requirements of Section 6(2) of this administrative regulation.~~

~~(b) If a threaded tap is being inserted, the requirements of Section 4(6)(b) and (c) of this administrative regulation shall also be met.~~

~~(11) Service lines: steel. Each steel service line to be operated at less than 100 psig shall be constructed of pipe designed for a minimum of 100 psig.~~

~~(12) Service lines: cast iron and ductile iron. Cast or ductile iron pipe shall not be installed for service lines.~~

~~(13) Service lines: plastic.~~

~~(a) Each plastic service line outside a building shall be installed below ground level, except that it may terminate above ground and outside the building, if:~~

~~1. The above ground part of the plastic service line is protected against deterioration and external damage; and~~

~~2. The plastic service line is not used to support external loads.~~

~~(b) Each plastic service line inside a building shall be protected against external damage.~~

~~(14) Service lines: copper. Each copper service line installed within a building shall be protected against external damage.~~

~~(15) New service lines not in use. Each service line not placed in service upon completion of installation shall comply with one (1) of the following until the customer is supplied with gas:~~

~~(a) The valve that is closed to prevent flow of gas to the customer shall be provided with a locking device or other means designed to prevent opening of the valve by persons other than those authorized by the operator.~~

~~(b) A mechanical device or fitting that will prevent flow of gas shall be installed in the service line or in the meter assembly.~~

~~(c) The customer's piping shall be physically disconnected from the gas supply, and the open pipe ends sealed.~~

~~(16) Extension of services.~~

~~(a) Normal extension. An extension of 100 feet or less shall be made by a utility to an existing distribution main without charge for a prospective customer who shall apply for and contract to use service for one (1) year or more and provides guarantee for such service.~~

~~(b) Other extensions.~~

~~1. When an extension of the utility's main to serve an applicant or group of applicants amounts to more than 100 feet per customer, the utility shall, if not inconsistent with its filed tariff, require the total cost of the excessive footage over 100 feet per customer to be deposited with the utility by the applicant(s), based on average estimated cost per foot of the total extension.~~

~~2. Each customer receiving service under such extension will be reimbursed under the following plan: each year for a refund period of not less than ten (10) years, the utility shall refund to the customer(s) who paid for the excessive footage, the cost of 100 feet of extension in place for each additional customer connected during the year whose service line is directly connected to the extension installed, and not to extensions or laterals therefrom. Total amount refunded shall not exceed the amount paid to the utility. After the end of the refund period, no refund shall be required.~~

~~(c) An applicant desiring an extension to a proposed real estate subdivision may be required to pay all costs of the extension. Each year for a refund period of not less than ten (10) years, the utility shall refund to the applicant who paid for the extension a sum equivalent to the cost of 100 feet of extension installed for each additional customer connected during the year. Total amount refunded shall not exceed the amount paid to the utility. After the end of the refund period from the completion of the extension, no refund shall be required.~~

~~(d) Nothing contained herein shall be construed to prohibit the utility from making extensions under different arrangements provided such arrangements have been approved by the commission.~~

~~(e) Nothing contained herein shall be construed to prohibit a utility from making, at its expense, greater extensions than herein prescribed, provided the same free extensions are made to other customers under similar conditions.~~

~~(f) Upon complaint to and investigation by the commission, a utility may be required to construct extensions greater than 100 feet upon a finding by the commission that such extension is reasonable.~~

~~(2) [(17)] Service connections.~~

~~(a) Ownership of service lines.~~

~~1. Utility's responsibility. When a utility establishes new service to a customer or an existing service line is repaired or replaced, or as otherwise authorized by the commission, [In urban areas with well-defined streets,] the utility shall furnish and install at its own expense, for the purpose of connecting its distribution system to customer premises, [that portion of] the service line [pipe] from its main to the [property line or to and] meter, including the curb stop and curb box if used. [The curb stop may be installed at a convenient place between property line and curb.] If meters are located outdoors, the curb box and curb stop may be omitted if meter installation is provided with a stopcock and connection to the distribution main is made with a service tee that incorporates a positive shutoff device that can be operated with ordinary, readily available tools and the service tee is not located under pavement.~~

~~2. Customer's responsibility. The customer [or the company at its option and with commission approval,] shall furnish and install [lay] necessary pipe to make the connection from the meter [curb stop] to place of consumption and shall keep the [service] line in good repair and in accordance with reasonable requirements of the utility's rules and the commission's administrative regulations. [3. Inspection. In the installation of a service line, [the customer shall not install any tees or branch connections and shall leave the trench open and pipe uncovered until it is examined by~~

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an inspector of the utility and shown to be free from any irregularity or defect. The utility shall test all piping downstream from the meter for gas leaks, each time gas is turned on by the utility, by observing that no gas passes through the meter when all appliances are turned off. The utility shall refuse to serve until all gas leaks so disclosed have been properly repaired.

4. Location of service. The customer's service line shall extend to that point on the curb line easiest of access to the utility from its distribution system. When a reasonable doubt exists as to the proper location of the service line, the utility shall be consulted and its approval of the location secured.]

(b) All services shall be equipped with a stopcock near the meter. If the service is not equipped with an outside shutoff, the inside shutoff shall be of a type which can be sealed in the off position. [Section 10. Requirements for Corrosion Control. (1) Scope. This subsection prescribes minimum requirements for protection of metallic pipelines from external, internal, and atmospheric corrosion.

(2) Applicability to converted pipelines. Notwithstanding the date the pipeline was installed or any earlier deadlines for compliance, each pipeline which qualifies for use under this administrative regulation in accordance with Section 1(7) of this administrative regulation shall meet the requirements of this subsection specifically applicable to pipelines installed before August 1, 1971, and all other applicable requirements within one (1) year after the pipeline is readied for service. However, the requirements of this section specifically applicable to pipelines installed after July 31, 1971, apply if the pipeline substantially meets those requirements before it is readied for service or it is a segment which is replaced, relocated, or substantially altered.

(3) General. Each operator shall establish procedures to implement the requirements of this section. These procedures, including those for design, installation, operation and maintenance of cathodic protection systems, shall be carried out by, or under the direction of a person qualified by experience and training in pipeline corrosion control methods.

(4) External corrosion control: buried or submerged pipelines installed after July 31, 1971.

(a) Except as provided in paragraphs (b), (c), and (f) of this subsection, each buried or submerged pipeline installed after July 31, 1971, shall be protected against external corrosion, including the following:

1. It shall have an external protective coating meeting the requirements of subsection (7) of this section.

2. It shall have a cathodic protection system designed to protect the pipeline in its entirety in accordance with this subsection, installed and placed in operation within one (1) year after completion of construction.

(b) An operator need not comply with paragraph (a) of this subsection if the operator can demonstrate by tests, investigation, or experience in the area of application, including, as a minimum, soil resistivity measurements and tests for corrosion accelerating bacteria, that a corrosive environment does not exist. However, within six (6) months after an installation made pursuant to the preceding sentence, the operator shall conduct tests, including pipe-to-soil potential measurements with respect to either a continuous reference electrode or an electrode using close spacing, not to exceed twenty (20) feet, and soil resistivity measurements at potential profile peak locations, to adequately evaluate the potential profile along the entire pipeline. If the tests indicate that a corrosive condition exists, the pipeline shall be cathodically protected in accordance with paragraph (a)2 of this subsection.

(c) An operator need not comply with paragraph (a) of this subsection, if the operator can demonstrate by tests, investigation, or experience that:

1. For a copper pipeline, a corrosive environment does not exist; or

2. For a temporary pipeline with an operating period of service not to exceed five (5) years beyond installation, corrosion during the five (5) year period of service of the pipeline will not be detrimental to public safety.

(d) Notwithstanding the provisions of paragraphs (b) or (c) of

this subsection, if a pipeline is externally coated, it shall be cathodically protected in accordance with paragraph (a)2 of this subsection.

(e) Aluminum shall not be installed in buried or submerged pipeline if that aluminum is exposed to an environment with a natural pH in excess of eight (8), unless tests or experience indicate its suitability in the particular environment involved.

(f) This subsection does not apply to electrically isolated, metal alloy fittings in plastic pipelines if:

1. For the size fitting used, an operator can show by tests, investigation, or experience in the area of application that adequate corrosion control is provided by alloyage; and

2. The fitting is designed to prevent leakage caused by localized corrosion pitting.

(5) External corrosion control: buried or submerged pipelines installed before August 1, 1971.

(a) Except for buried piping at compressor, regulator, and measuring stations, each buried or submerged transmission line installed before August 1, 1971, that has an effective external coating shall be cathodically protected along the entire area that is effectively coated, in accordance with this section. For the purposes of this section, pipeline does not have effective external coating if its cathodic protection current requirements are substantially the same as if it were bare. The operator shall make tests to determine cathodic protection current requirements.

(b) Except for cast iron or ductile iron, each of the following buried or submerged pipelines installed before August 1, 1971, shall be cathodically protected in accordance with this section in areas in which active corrosion is found:

1. Bare or ineffectively coated transmission lines.

2. Bare or coated pipes at compressor, regulator, and measuring stations.

3. Bare or coated distribution lines. The operator shall determine areas of active corrosion by electrical survey, or where electrical survey is impractical, by study of corrosion and leak history records, leak detection survey, or other means.

(c) For the purpose of this section, active corrosion means continuing corrosion which, unless controlled, could result in a condition that is detrimental to public safety.

(6) External corrosion control: examination of buried pipeline when exposed. Whenever an operator has knowledge that any portion of a buried pipeline is exposed, the exposed portion shall be examined for evidence of external corrosion if the pipe is bare, or if the coating is deteriorated. If external corrosion is found, remedial action shall be taken to the extent required by subsection (18) of this section and applicable paragraphs of subsections (19), (20) or (21) of this section.

(7) External corrosion control: protective coating.

(a) Each external protective coating, whether conductive or insulating, applied for external corrosion control shall:

1. Be applied on a properly prepared surface;

2. Have sufficient adhesion to the metal surface to effectively resist underfilm migration of moisture;

3. Be sufficiently ductile to resist cracking;

4. Have sufficient strength to resist damage due to handling and soil stress; and

5. Have properties compatible with any supplemental cathodic protection.

(b) Each external protective coating which is an electrically insulating type shall also have low moisture absorption and high electrical resistance.

(c) Each external protective coating shall be inspected just prior to lowering the pipe into the ditch and backfilling, and any damage to effective corrosion control shall be repaired.

(d) Each external protective coating shall be protected from damage resulting from adverse ditch conditions or supporting blocks.

(e) If coated pipe is installed by boring, driving, or other similar method, precautions shall be taken to minimize damage to the coating during installation.

(8) External corrosion control: cathodic protection.

(a) Each cathodic protection system required by this subsection shall provide a level of cathodic protection that

complies with one (1) or more of the applicable criteria contained in Appendix D of this administrative regulation. If none of these criteria is applicable, the cathodic protection system shall provide a level of cathodic protection at least equal to that provided by compliance with one (1) or more of these criteria.

(b) If amphoteric metals are included in a buried or submerged pipeline containing a metal of different anodic potential:

1. Amphoteric metals shall be electrically isolated from the remaining pipeline and cathodically protected; or

2. The entire buried or submerged pipeline shall be cathodically protected at a cathodic potential that meets the requirements of Appendix D of this administrative regulation for amphoteric metals.

(c) The amount of cathodic protection shall be controlled to prevent damage to protective coating or pipe.

(9) External corrosion control: monitoring.

(a) Each pipeline that is under cathodic protection shall be tested at least once each calendar year but with intervals not exceeding fifteen (15) months to determine whether the cathodic protection meets the requirements of subsection (8) of this section. However, if tests at those intervals are impractical for separately protected short sections of mains or transmission lines, not in excess of 100 feet, or separately protected service lines, these pipelines may be surveyed on a sampling basis. At least ten (10) percent of these protected structures, distributed over the entire system shall be surveyed each calendar year, with a different ten (10) percent checked each subsequent year, so that the entire system is tested in each ten (10) year period.

(b) Each cathodic protection rectifier or other impressed current power source shall be inspected six (6) times each calendar year, but with intervals not exceeding two and one-half (2 1/2) months, to insure that it is operating.

(c) Each reverse current switch, diode, and interference bond whose failure would jeopardize structure protection shall be electrically checked for proper performance six (6) times each calendar year, but with intervals not exceeding two and one-half (2 1/2) months. Each other interference bond shall be checked at least once each calendar year, but with intervals not exceeding fifteen (15) months.

(d) Each operator shall take prompt remedial action to correct any deficiencies indicated by the monitoring.

(e) After the initial evaluation required by subsection (4)(b) and (c) and subsection (5)(b) of this section, each operator shall, at intervals not exceeding three (3) years, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subsection in areas in which active corrosion is found. The operator shall determine areas of active corrosion by electrical survey, or where electrical survey is impractical, by study of corrosion and leak history records, leak detection survey, or other means.

(10) External corrosion control: electrical isolation.

(a) Each buried or submerged pipeline shall be electrically isolated from other underground metallic structures, unless the pipeline and other structures are electrically interconnected and cathodically protected as a single unit.

(b) One (1) or more insulating devices shall be installed where electrical isolation of a portion of a pipeline is necessary to facilitate application of corrosion control.

(c) Except for unprotected copper inserted in ferrous pipe, each pipeline shall be electrically isolated from metallic casings that are part of the underground system. However, if isolation is not achieved because it is impractical, other measures shall be taken to minimize corrosion of the pipeline inside the casing.

(d) Inspection and electrical tests shall be made to assure that electrical isolation is adequate.

(e) An insulating device shall not be installed in an area where a combustible atmosphere is anticipated unless precautions are taken to prevent arcing.

(f) Where a pipeline is located close to electrical transmission tower footings, ground cables or counterpoise, or in other areas where fault currents or unusual risk of lightning may be anticipated, it shall be protected against damage due to fault currents or lightning, and protective measures shall be taken at insulating

devices. A study shall be made in collaboration with the electric company on common problems of corrosion and electrolysis and taking the following factors into consideration:

1. Possibility of the pipeline carrying either unbalanced line currents or fault currents.

2. Possibility of lightning or fault currents inducing voltages sufficient to puncture pipe coatings or pipe.

3. Cathodic protection of the pipeline, including location of ground beds, especially if the electric line is carried on steel towers.

4. Bonding connections between the pipeline and either the steel tower footings or buried ground facilities or groundwire of the overhead electric system.

(11) External corrosion control: test stations. Each pipeline under cathodic protection required by this subsection shall have sufficient test stations or other contact points for electrical measurement to determine the adequacy of cathodic protection.

(12) External corrosion control: test leads.

(a) Each test lead wire shall be connected to the pipeline to remain mechanically secure and electrically conductive.

(b) Each test lead wire shall be attached to the pipeline to minimize stress concentration on the pipe.

(c) Each bared test lead wire and bared metallic area at point of connection to the pipeline shall be coated with electrical insulating material compatible with the pipe coating and insulation on the wire.

(13) External corrosion control: interference currents.

(a) Each operator whose pipeline system is subjected to stray currents shall have in effect a continuing program to minimize detrimental effects of such currents.

(b) Each impressed current type cathodic protection system or galvanic anode system shall be designed and installed to minimize any adverse effects on existing adjacent underground metallic structures.

(14) Internal corrosion control: general.

(a) Corrosive gas shall not be transported by pipeline, unless the corrosive effect of the gas on the pipeline has been investigated and steps have been taken to minimize internal corrosion.

(b) Whenever any pipe is removed from a pipeline for any reason, the internal surface shall be inspected for evidence of corrosion. If internal corrosion is found:

1. Adjacent pipe shall be investigated to determine the extent of internal corrosion;

2. Replacement shall be made to the extent required by applicable paragraphs of subsections (19), (20) and (21) of this section; and

3. Steps shall be taken to minimize the internal corrosion.

(c) Gas containing more than one-tenth (0.1) grain of hydrogen sulfide per 100 standard cubic feet shall not be stored in pipe-type or bottle-type holders.

(15) Internal corrosion control: monitoring. If corrosive gas is being transported, coupons or other suitable means shall be used to determine effectiveness of steps taken to minimize internal corrosion. Each coupon or other means of monitoring internal corrosion shall be checked two (2) times each calendar year, but with intervals not exceeding seven and one-half (7 1/2) months.

(16) Atmospheric corrosion control: general.

(a) Pipelines installed after July 31, 1971. Each aboveground pipeline or portion of pipeline installed after July 31, 1971, exposed to the atmosphere shall be cleaned and either coated or jacketed with material suitable for prevention of atmospheric corrosion. An operator need not comply with this paragraph, if the operator can demonstrate by test, investigation, or experience in the area of application, that a corrosive atmosphere does not exist.

(b) Pipelines installed before August 1, 1971. Each operator having an aboveground pipeline or portion of pipeline installed before August 1, 1971, exposed to the atmosphere, shall:

1. Determine areas of atmospheric corrosion on the pipeline;

2. If atmospheric corrosion is found, take remedial measures to the extent required by applicable paragraphs of subsections (19), (20), or (21) of this section; and

3. Clean and either coat or jacket areas of atmospheric

corrosion on the pipeline with material suitable for prevention of atmospheric corrosion.

(17) Atmospheric corrosion control: monitoring. After meeting the requirements of subsection (16)(a) and (b) of this section, each operator shall, at intervals not exceeding three (3) years, reevaluate each pipeline exposed to the atmosphere and take protective action whenever necessary against atmospheric corrosion.

(18) Remedial measures: general.

(a) Each segment of metallic pipe that replaces pipe removed from a buried or submerged pipeline because of external corrosion shall have a properly prepared surface and shall be provided with an external protective coating that meets the requirements of subsection (7) of this section.

(b) Each segment of metallic pipe that replaces pipe removed from a buried or submerged pipeline because of external corrosion shall be cathodically protected in accordance with this section.

(c) Except for cast iron or ductile iron pipe, each segment of buried or submerged pipe required to be repaired because of external corrosion shall be cathodically protected in accordance with this section.

(19) Remedial measures: transmission lines.

(a) General corrosion. Each segment of transmission line with general corrosion and with a remaining wall thickness less than that required for maximum allowable operating pressure of the pipeline shall be replaced or operating pressure reduced commensurate with the strength of the pipe based on actual remaining wall thickness. However, if the area of general corrosion is small, the corroded pipe may be repaired. Corrosion pitting so closely grouped as to affect overall strength of the pipe is considered general corrosion for the purpose of this paragraph.

(b) Localized corrosion pitting. Each segment of transmission line pipe with localized corrosion pitting to a degree where leakage might result shall be replaced or repaired, or operating pressure shall be reduced commensurate with the strength of the pipe, based on actual remaining wall thickness in the pits.

(20) Remedial measures: distribution lines other than cast iron or ductile iron lines.

(a) General corrosion. Except for cast iron or ductile iron pipe, each segment of generally corroded distribution line pipe with remaining wall thickness less than that required for maximum allowable operating pressure of the pipeline, or remaining wall thickness less than thirty (30) percent of the nominal wall thickness, shall be replaced. However, if the area of general corrosion is small, the corroded pipe may be repaired. Corrosion pitting so closely grouped so as to affect overall strength of the pipe is considered general corrosion for the purpose of this paragraph.

(b) Localized corrosion pitting. Except for cast iron or ductile iron pipe, each segment of distribution line pipe with localized corrosion pitting to a degree where leakage might result shall be replaced or repaired.

(21) Remedial measures: cast iron and ductile iron pipelines.

(a) General graphitization. Each segment of cast iron or ductile iron pipe on which general graphitization is found to a degree where fracture or leakage might result shall be replaced.

(b) Localized graphitization. Each segment of cast iron or ductile iron pipe on which localized graphitization is found to a degree where leakage might result, shall be replaced or repaired, or sealed by internal sealing methods adequate to prevent or arrest leakage.

(22) Corrosion control records.

(a) Each operator shall maintain records or maps to show the location of cathodically protected piping, cathodic protection facilities, other than unrecorded galvanic anodes installed before August 1, 1971, and neighboring structures bonded to the cathodic protection system.

(b) Each of the following records shall be retained for as long as the pipeline remains in service:

1. Each record or map required by paragraph (a) of this subsection.
2. Records of each test, survey, or inspection required by this subsection, in sufficient detail to demonstrate the adequacy of

corrosion control measures or that a corrosive condition does not exist.

Section 11. Test Requirements. (1) Scope. This section prescribes minimum leak test and strength test requirements for pipelines.

(2) General requirements.

(a) No person shall operate a new segment of pipeline, or return to service a segment of pipeline that has been relocated or replaced, until:

1. It has been tested in accordance with this section and Section 13(11) of this administrative regulation to substantiate maximum allowable operating pressure; and

2. Each potentially hazardous leak has been located and eliminated.

(b) The test medium shall be liquid, air, natural gas or inert gas that is:

1. Compatible with the material of which the pipeline is constructed;

2. Relatively free of sedimentary materials; and

3. Except for natural gas, nonflammable.

(c) Except as provided in subsection (3)(a) of this section, if air, natural gas or inert gas is used as the test medium, the following maximum hoop stress limitations apply:

Maximum Hoop Stress Permissible During Test				
	% of Specified Minimum Yield			
Class Location	1	2	3	4
Test Medium Air or Inert Gas	80	75	50	40
Natural Gas	80	30	30	30

(d) Each joint used to tie-in a test segment of pipeline is excepted from specific test requirements of this section, but it must be leak tested at not less than its operating pressure.

(3) Strength test requirements for steel pipeline to operate at hoop stress of thirty (30) percent or more of SMYS:

(a) Except for service lines, each segment of steel pipeline that is to operate at hoop stress of thirty (30) percent or more of SMYS shall be strength tested in accordance with this section to substantiate the proposed maximum allowable operating pressure. In addition, in a Class 1 or Class 2 location, if there is a building intended for human occupancy within 300 feet of a pipeline, a hydrostatic test shall be conducted to a test pressure of at least 125 percent of maximum operating pressure on that segment of pipeline within 300 feet of that building, but in no event may the test section be less than 600 feet unless the length of the newly installed or relocated pipe is less than 600 feet. However, if the buildings are evacuated while hoop stress exceeds fifty (50) percent of SMYS, air or inert gas may be used as the test medium.

(b) In a Class 1 or Class 2 location, each compressor station, regulator station and measuring station shall be tested to Class 3 location test requirements.

(c) Except as provided in paragraph (e) of this subsection, strength test shall be conducted by maintaining pressure at or above the test pressure for at least eight (8) hours.

(d) If a component other than pipe is the only item being replaced or added to pipeline, a strength test after installation is not required, if the manufacturer of the component certifies that:

1. The component was tested to at least the pressure required for the pipeline to which it is being added; or

2. The component was manufactured under a quality control system that ensures that each item manufactured is at least equal in strength to a prototype and that the prototype was tested to at least the pressure required for the pipeline to which it is being added.

(e) For fabricated units and short sections of pipe, for which a postinstallation test is impractical, a preinstallation strength test shall be conducted by maintaining pressure at or above test pressure for at least four (4) hours.

(4) Test requirements for pipelines to operate at hoop stress less than thirty (30) percent of SMYS and at or above 100 psig. Except for service lines and plastic pipelines, each segment of pipeline to be operated at hoop stress less than thirty (30) percent of SMYS and at or above 100 psig shall be tested in accordance

with the following:

(a) The pipeline operator shall use a test procedure that will insure discovery of all potentially hazardous leaks in the segment being tested.

(b) If, during the test, the segment is to be stressed to twenty (20) percent or more of SMYS, and natural gas, air or inert gas is the test medium:

1. A leak test shall be made at pressure between 100 psig and the pressure required to produce hoop stress of twenty (20) percent of SMYS; or

2. The line shall be walked to check for leaks while hoop stress is held at approximately twenty (20) percent of SMYS.

(c) Pressure shall be maintained at or above test pressure for at least one (1) hour.

(5) Test requirements for pipelines to operate below 100 psig. Except for service lines and plastic pipelines, each segment of pipeline to be operated below 100 psig shall be leak tested in accordance with the following:

(a) The test procedure used shall ensure discovery of all potentially hazardous leaks in the segment being tested.

(b) Each main to be operated at less than one (1) psig shall be tested to at least ten (10) psig and each main to be operated at or above one (1) psig shall be tested to at least ninety (90) psig.

(6) Test requirements for service lines.

(a) Each segment of service line (other than plastic) shall be leak tested in accordance with this section before being placed in service. If feasible, the service line connection to the main shall be included in the test; if not feasible, it shall be given a leakage test at the operating pressure when placed in service.

(b) Each segment of service line (other than plastic) intended to be operated at a pressure of at least one (1) psig but not more than forty (40) psig shall be given a leak test at pressure of not less than fifty (50) psig.

(c) Each segment of service line (other than plastic) to be operated at pressures of more than forty (40) psig shall be tested to the maximum operating pressure or ninety (90) psig, whichever is greater, except that each segment of steel service line stressed to twenty (20) percent or more of SMYS shall be tested in accordance with subsection (4) of this section.

(7) Test requirements for plastic pipelines.

(a) Each segment of plastic pipeline shall be tested in accordance with this subsection.

(b) The test procedure shall insure discovery of all potentially hazardous leaks in the segment being tested.

(c) The test pressure shall be at least 150 percent of maximum operating pressure or fifty (50) psig, whichever is greater. However, maximum test pressure shall not be more than three (3) times the design pressure of the pipe.

(d) Temperature of thermoplastic material shall be no more than 100 degrees Fahrenheit during the test.

(8) Environmental protection and safety requirements.

(a) In conducting tests under this subsection, each operator shall insure that every reasonable precaution is taken to protect its employees and the general public during testing. Whenever hoop stress of the segment of pipeline being tested will exceed fifty (50) percent of SMYS, the operator shall take all practicable steps to keep persons not working on the testing operation outside the testing area until pressure is reduced to or below the proposed maximum allowable operating pressure.

(b) The operator shall insure that the test medium is disposed of in a manner that will minimize damage to the environment.

(9) Records. Each operator shall make, and retain for the useful life of the pipeline, a record of each test performed under subsections (3) and (4) of this section. The record shall contain at least the following information:

(a) Operator's name, name of operator's employee responsible for making the test, and name of any test company used.

(b) Test medium used.

(c) Test pressure.

(d) Test duration.

(e) Pressure recording charts, or other record of pressure readings.

(f) Elevation variations, whenever significant for the particular

test.

(g) Leaks and failures noted and their disposition.

Section 12. Uprating. (1) Scope. This subsection prescribes minimum requirements for increasing maximum allowable operating pressures (uprating) for pipelines.

(2) General requirements.

(a) Pressure increases. Whenever provisions of this subsection require that an increase in operating pressure be made in increments, pressure shall be increased gradually, at a rate that can be controlled, and in accordance with the following:

1. At the end of each incremental increase, pressure shall be held constant while the entire segment of pipeline affected is checked for leaks.

2. Each leak detected shall be repaired before a further pressure increase is made, except that a leak deemed nonhazardous need not be repaired, if it is monitored during pressure increase and it does not become hazardous.

(b) Records. Each operator who uprates a segment of pipeline shall retain for the life of the segment a record of each investigation required by this subsection, all work performed, and each pressure test conducted, in connection with the uprating.

(c) Written plan. Each operator who uprates a segment of pipeline shall establish a written procedure that will ensure compliance with each applicable requirement of this subsection.

(d) Limitation on increase in maximum allowable operating pressure. Except as provided in subsection (3) of this section, a new maximum allowable operating pressure established under this subsection shall not exceed the maximum that would be allowed under this part for a new segment of pipeline constructed of the same materials in the same location.

(3) Uprating to a pressure that will produce hoop stress of thirty (30) percent or more of SMYS in steel pipeline.

(a) Unless the requirements of this section have been met, no person shall subject any segment of steel pipeline to operating pressure that will produce hoop stress of thirty (30) percent or more of SMYS and that is above the established maximum allowable operating pressure.

(b) Before increasing operating pressure above previously established maximum allowable operating pressure the operator shall:

1. Review the design, operation, and maintenance history, and previous testing of the segment of pipeline to determine if the proposed increase is safe and consistent with the requirements of this part; and

2. Make any repairs, replacements, or alterations in the segment of pipeline that are necessary for safe operation at the increased pressure.

(c) After complying with paragraph (b) of this subsection, an operator may increase maximum allowable operating pressure of a segment of pipeline constructed before September 12, 1970, to the highest pressure that is permitted under Section 13(11) of this administrative regulation, using as test pressure the highest pressure subjected (either in a strength test or in actual operation).

(d) After complying with paragraph (b) of this subsection, an operator that does not qualify under paragraph (c) of this subsection may increase the previously established maximum allowable operating pressure if at least one (1) of the following requirements is met:

1. The segment of pipeline is successfully tested in accordance with the requirements of this part for a new line of the same material in the same location.

2. An increased maximum allowable operating pressure may be established for a segment of pipeline in a Class 1 location if the line has not previously been tested; and if:

a. It is impractical to test it in accordance with the requirements of this part;

b. The new maximum operating pressure does not exceed eighty (80) percent of that allowed for a new line of the same design in the same location; and

c. The operator determines that the new maximum allowable operating pressure is consistent with the condition of the segment of pipeline and the design requirements of this administrative

regulation.

(e) Where a segment of pipeline is uprated in accordance with paragraph (c) or (d) of this subsection, the increase in pressure shall be made in increments that are equal to:

1. Ten (10) percent of the pressure before the uprating; or
2. Twenty-five (25) percent of total pressure increase, whichever produces the fewer number of increments.

(4) Uprating: Steel pipelines to a pressure that will produce hoop stress less than thirty (30) percent of SMYS; plastic, cast iron, and ductile iron pipelines.

(a) Unless requirements of this subsection have been met, no person shall subject:

1. A segment of steel pipeline to operating pressure that will produce hoop stress less than thirty (30) percent of SMYS and is above the previously established maximum allowable operating pressure; or

2. A plastic, cast iron, or ductile iron pipeline segment to an operating pressure above the previously established maximum allowable operating pressure.

(b) Before increasing operation pressure above the previously established maximum allowable operating pressure, the operator shall:

1. Review the design, operation, and maintenance history of the segment of pipeline;

2. Make a leakage survey (if it has been more than one (1) year since the last survey) and repair any leaks that are found, except that a leak deemed nonhazardous need not be repaired, if it is monitored during the pressure increase and it does not become hazardous;

3. Make any repairs, replacements, or alterations in the segment of pipeline that are necessary for safe operation at the increased pressure;

4. Reinforce or anchor offsets, bends and dead ends in pipe joined by compression couplings or bell and spigot joints to prevent failure of the pipe joint, if the offset, bend or dead end is exposed in an excavation;

5. Isolate the segment of pipeline in which pressure is to be increased from any adjacent segment that will continue to be operated at lower pressure; and

6. If the pressure in mains or service lines, or both, is to be higher than the pressure delivered to the customer, install a service regulator on each service line and test each regulator to determine that it is functioning. Pressure may be increased as necessary to test each regulator, after a regulator has been installed on each pipeline subject to the increased pressure.

(c) After complying with paragraph (b) of this subsection, the increase in maximum allowable operating pressure shall be made in increments equal to ten (10) psig or twenty-five (25) percent of total pressure increase, whichever produces the fewer number of increments. Whenever the requirements of paragraph (b) of this subsection apply, there shall be at least two (2) approximately equal incremental increases.

(d) If records for cast iron or ductile iron pipeline facilities are not complete enough to determine stresses produced by internal pressure, trench loading, rolling loads, beam stresses, and other bending loads, in evaluating the level of safety of the pipeline when operating at the proposed increased pressure, the following procedures shall be followed:

1. In estimating the stresses, if original laying conditions cannot be ascertained, the operator shall assume that cast iron pipe was supported on blocks with tamped backfill and that ductile iron pipe was laid without blocks with tamped backfill.

2. Unless actual maximum cover depth is known, the operator shall measure the actual cover in at least three (3) places where the cover is most likely to be greatest and shall use the greatest cover measured.

3. Unless actual nominal wall thickness is known, the operator shall determine the wall thickness by cutting and measuring coupons from at least three (3) separate pipe lengths. The coupons shall be cut from pipe lengths in areas where the cover depth is most likely to be greatest. The average of all measurements taken must be increased by the allowance indicated in the following table:

Pipe size (inches)	Allowance (inches)		
	Cast iron pipe		
	Pit cast pipe	Centrifugally cast pipe	Ductile iron pipe
3-8	0.075	0.065	0.065
10-12	0.08	0.07	0.07
14-24	0.08	0.08	0.075
30-42	0.09	0.09	0.075
48	0.09	0.09	0.08
54-60	0.09	-	-

4. For cast iron pipe, unless the pipe manufacturing process is known, the operator shall assume that the pipe is pit cast pipe with bursting tensile strength of 11,000 psig and modulus of rupture of 31,000 psig.

Section 13. Operations. (1) Scope. This section prescribes minimum requirements for operation of pipeline facilities.

(2) General provisions.

(a) No person shall operate a segment of pipeline unless it is operated in accordance with this section.

(b) Each operator shall establish a written operating and maintenance plan meeting the requirements of this administrative regulation and keep records necessary to administer the plan.

(3) Essentials of operating and maintenance plan. Each operator shall include the following in its operating and maintenance plan:

(a) Instructions for employees covering operating and maintenance procedures during normal operations and repairs.

(b) Items required to be included by the provisions of Section 14 of this administrative regulation.

(c) Specific programs relating to facilities presenting the greatest hazard to public safety either in an emergency or because of extraordinary construction or maintenance requirements.

(d) A program for conversion procedures, if conversion of a low-pressure distribution system to higher pressure is contemplated.

(e) Provision for periodic inspections to ensure that operating pressures are appropriate for class location.

(f) Instructions enabling personnel who perform operation and maintenance activities to recognize conditions that are potentially safety-related conditions subject to reporting requirements of 807 KAR 5:027, Section 12.

(4) Initial determination of class location and confirmation or establishment of maximum allowable operating pressure.

(a) Before April 15, 1971, each operator shall complete a study to determine for each segment of pipeline with maximum allowable operating pressure that will produce hoop stress that is more than forty (40) percent of SMYS:

1. The present class location of all such pipelines in its system; and

2. Whether hoop stress corresponding to maximum allowable operating pressure for each segment of pipeline is commensurate with the present class location.

(b) Each segment of pipeline that has been determined under paragraph (a) of this subsection to have an established maximum allowable operating pressure producing hoop stress not commensurate with the class location of the segment of pipeline and that is found in satisfactory condition, shall have the maximum allowable operating pressure confirmed or revised in accordance with subsection (6) of this section. Confirmation or revision shall be completed not later than December 31, 1974.

(c) Each operator required to confirm or revise an established maximum allowable operating pressure under paragraph (b) of this subsection shall, not later than December 31, 1971, prepare a comprehensive plan, including a schedule, for carrying out the confirmations or revisions. The comprehensive plan must also provide for confirmations or revisions determined to be necessary under subsection (5) of this section, to the extent that they are caused by changes in class locations taking place before July 1, 1973.

(5) Change in class location: required study. Whenever increase in population density indicates a change in class location

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for a segment of existing steel pipeline operating at hoop stress that is more than forty (40) percent of SMYS, or indicates that hoop stress corresponding to the established maximum allowable operating pressure for a segment of existing pipeline is not commensurate with the present class location, the operator shall immediately make a study to determine:

(a) Present class location for the segment involved;

(b) Design, construction, and testing procedures followed in original construction, and a comparison of these procedures with those required for the present class location by applicable provisions of this part;

(c) Physical condition of the segment to the extent it can be ascertained from available records;

(d) Operating and maintenance history of the segment;

(e) Maximum actual operating pressure and the corresponding operating hoop stress, taking pressure gradient into account, for the segment of pipeline involved; and

(f) Actual area affected by the population density increase, and physical barriers or other factors which may limit further expansion of the more densely populated area.

(6) Change in class location: confirmation or revision of maximum allowable operating pressure. If hoop stress corresponding to the established maximum allowable operating pressure of a segment of pipeline is not commensurate with present class location, and the segment is in satisfactory physical condition, the maximum allowable operating pressure of that segment of pipeline shall be confirmed or revised according to one (1) of the following requirements:

(a) If the segment involved has been previously tested in place for a period of not less than eight (8) hours, the maximum allowable operating pressure is eight-tenths (0.8) times the test pressure in Class 2 locations, 0.667 times the test pressure in Class 3 locations, or 0.555 times the test pressure in Class 4 locations. The corresponding hoop stress will not exceed seventy-two (72) percent of SMYS of the pipe in Class 2 locations, sixty (60) percent of SMYS in Class 3 locations, or fifty (50) percent of SMYS in Class 4 locations.

(b) The maximum allowable operating pressure shall be reduced so that corresponding hoop stress is not more than that allowed by this part for new segments of pipelines in the existing class location.

(c) The segment involved shall be tested in accordance with applicable requirements of Section 11 of this administrative regulation, and its maximum allowable operating pressure shall then be established according to the following criteria:

1. Maximum allowable operating pressure after the requalification test is eight-tenths (0.8) times the test pressure for Class 2 locations, 0.667 times the test pressure for Class 3 locations, and 0.555 times the test pressure for Class 4 locations.

2. Maximum allowable operating pressure confirmed or revised in accordance with this subsection, shall not exceed maximum allowable operating pressure established before confirmation or revision.

3. Corresponding hoop stress shall not exceed seventy-two (72) percent of SMYS of the pipe in Class 2 locations, sixty (60) percent of SMYS in Class 3 locations, or fifty (50) percent of the SMYS in Class 4 locations.

(d) Confirmation or revision of the maximum allowable operating pressure of a segment of pipeline in accordance with this section does not preclude the application of Section 12(2) and (3) of this administrative regulation.

(e) Confirmation or revision of maximum allowable operating pressure that is required as a result of subsection (5) of this section shall be completed within eighteen (18) months of the change in class location. Pressure reduction under paragraphs (a) and (b) of this subsection within the eighteen (18) month period does not preclude establishing a maximum allowable operating pressure under paragraph (c) of this subsection at a later date.

(7) Continuing surveillance.

(a) Each operator shall have a procedure to monitor its facilities to determine and take appropriate action concerning changes in class location, failures, leakage history, corrosion, substantial changes in cathodic protection requirements, and other

unusual operating and maintenance conditions.

(b) If a segment of pipeline is determined to be in unsatisfactory condition but no immediate hazard exists, the operator shall initiate a program to recondition or phase out the segment involved, or, if the segment cannot be reconditioned or phased out, reduce the maximum allowable operating pressure in accordance with subsection (11)(a) and (b) of this section.

(8) Damage prevention program.

(a) Except for pipelines listed in paragraph (c) of this subsection, each operator of a buried pipeline shall carry out in accordance with this subsection a written program to prevent damage to that pipeline by excavation activities. For the purpose of this subsection, "excavating activities" include excavation, blasting, boring, tunneling, backfilling, removal of aboveground structures by either explosive or mechanical means, and other earth moving operations. An operator may perform any duties required by paragraph (b) of this subsection through participation in a public service program, such as a "one-call" system, but such participation does not relieve the operator of responsibility for compliance with this subsection.

(b) The damage prevention program required by paragraph (a) of this subsection shall, at a minimum:

1. Include the identity, on a current basis, of persons who normally engage in excavation activities in the vicinity of the pipeline.

2. Provide for notification to the public in the vicinity of the pipeline and actual notification to persons identified in paragraph (b)1 of this subsection as often as needed to make them aware of the existence and purpose of the damage prevention program and how to learn the location of underground pipelines prior to excavation activities.

3. Provide a means of receiving and recording notification of planned excavation activities.

4. If the operator has buried pipelines in the area of excavation activity, provide for actual notification to persons who give notice of their intent to excavate of temporary marking to be provided and how to identify the markings.

5. Provide for temporary marking of buried pipelines near excavation activity before, as far as practical, activity begins.

6. Provide for frequent inspection of pipeline an operator has reason to believe could be damaged by excavation activities to verify the integrity of the pipeline; and in the case of blasting, any inspection shall include leakage surveys.

(c) A damage prevention program under this subsection is not required for the following pipelines:

1. Pipelines in a Class 1 or 2 location.

2. Pipelines in a Class 3 location defined by Section 1(3)(d)2 of this administrative regulation that are marked in accordance with Section 14(5) of this administrative regulation.

3. Pipelines to which access is physically controlled by the operator.

4. Pipelines that are part of a petroleum gas system subject to Section 1(6) of this administrative regulation or part of a distribution system operated by a person in connection with that person's leasing of real property or by a condominium or cooperative association.

(9) Emergency plans.

(a) Each operator shall establish written procedures to minimize hazard resulting from a gas pipeline emergency. At a minimum, procedures shall provide for the following:

1. Receiving, identifying, and classifying notices of events which require immediate response by the operator.

2. Establishing and maintaining adequate means of communication with appropriate fire, police, and other public officials.

3. Prompt and effective response to a notice of each type of emergency, including gas, fire, explosion or natural disaster near or involving a building with gas pipeline or pipeline facility.

4. Availability of personnel, equipment, tools, and materials, as needed at the scene of emergency.

5. Actions directed toward protecting people first and then property.

6. Emergency shutdown and pressure reduction in any section

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of the operator's pipeline system necessary to minimize hazards to life or property.

7. Making safe any actual or potential hazard to life or property.

8. Notifying appropriate fire, police and other public officials of gas pipeline emergencies and coordinating with them, both planned responses and actual responses during an emergency.

9. Safely restoring any service outage.

10. Beginning action under subsection (10) of this section, if applicable, as soon after the end of the emergency as possible.

(b) Each operator shall:

1. Furnish its supervisors who are responsible for emergency action a copy of that portion of the latest edition of emergency procedures established under paragraph (a) of this subsection as necessary for compliance with those procedures.

2. Train appropriate operating personnel in emergency procedures and verify that training is effective.

3. Review employee activities to determine whether procedures were effectively followed in each emergency.

(c) Each operator shall establish and maintain liaison with appropriate fire, police, and other public officials to:

1. Learn the responsibility and resources of each government organization that may respond to a gas pipeline emergency;

2. Acquaint officials with the operator's ability to respond to a gas pipeline emergency;

3. Identify types of gas pipeline emergencies of which the operator notifies officials; and

4. Plan how the operator and officials can engage in mutual assistance to minimize hazards to life or property.

(d) Each operator shall establish a continuing educational program to enable customers, the public, appropriate governmental organizations, and person engaged in excavation-related activities to recognize a gas pipeline emergency for the purpose of reporting it to the operator or appropriate public officials. The program and media used shall be as comprehensive as necessary to reach all areas in which the operator transports gas. The program shall be conducted in English and in other languages commonly understood by a significant number and concentration of the non-English speaking population in the operator's area.

(10) Investigation of failures. Each operator shall establish procedures for analyzing accidents and failure, including selection of samples of the failed facility or equipment for laboratory examination, where appropriate, to determine the causes of the failure and to minimize the possibility of recurrence.

(11) Maximum allowable operating pressure: steel or plastic pipelines:

(a) Except as provided in paragraph (c) of this subsection, no person shall operate a segment of steel or plastic pipeline at a pressure that exceeds the lowest of the following:

1. Design pressure of the weakest element in the segment, determined in accordance with Sections 3 and 4 of this administrative regulation.

2. Pressure obtained by dividing the pressure to which the segment was tested after construction as follows:

a. For plastic pipe in all locations, test pressure is divided by a factor of one and five-tenths (1.5).

b. For steel pipe operated at 100 psig or more, test pressure is divided by a factor determined in accordance with the following table:

Class Location	Segment Installed Before 11/12/70	Segment Installed After 11/11/70	Converted under Section 4(8)
1	1.10	1.10	1.25
2	1.25	1.25	1.25
3	1.40	1.50	1.50
4	1.40	1.50	1.50

3. Highest actual operating pressure to which the segment was subjected during the five (5) years preceding July 1, 1970, unless the segment was tested in accordance with paragraph (a)2 of this subsection after July 1, 1965, or the segment was updated in accordance with Section 12 of this administrative regulation.

4. For furnace butt welded steel pipe, pressure equal to sixty

(60) percent of the mill test pressure to which the pipe was subjected.

5. For steel pipe other than furnace butt welded pipe, pressure equal to eighty-five (85) percent of the highest test pressure to which the pipe has been subjected, whether by mill test or by post installation test.

6. Pressure determined by the operator to be the maximum safe pressure after considering the history of the segment, particularly known corrosion and actual operating pressure.

(b) No person shall operate a segment to which paragraph (a)6 of this subsection is applicable, unless overpressure protective devices are installed on the segment to prevent maximum allowable operating pressure from being exceeded, in accordance with Section 4(30) of this administrative regulation.

(c) Notwithstanding other requirements of this subsection, an operator may operate a segment of pipeline found to be in satisfactory condition, considering its operating and maintenance history, at the highest actual operating pressure to which the segment was subjected during the five (5) years preceding July 1, 1970.

(12) Maximum allowable operating pressure: high-pressure distribution systems:

(a) No person shall operate a segment of high-pressure distribution system at a pressure that exceeds the lowest of the following pressures, as applicable:

1. Design pressure of the weakest element in the segment, determined in accordance with Sections 3 and 4 of this administrative regulation.

2. Sixty (60) psig, for a segment of a distribution system otherwise designed to operate at over sixty (60) psig, unless service lines in the segment are equipped with service regulators or other pressure limited devices in series that meet the requirements of Section 4(31)(c) of this administrative regulation.

3. Twenty-five (25) psig, in segments of cast iron pipe in which there are unreinforced bell and spigot joints.

4. Pressure limits to which a joint could be subjected without parting.

5. Pressure determined by the operator to be maximum safe pressure after considering the history of the segment, particularly known corrosion and actual operating pressures.

(b) No person shall operate a segment of pipeline to which paragraph (a)5 of this subsection applies, unless overpressure protective devices are installed on the segment to prevent the maximum allowable operating pressure from being exceeded, in accordance with Section 4(30) of this administrative regulation.

(13) Maximum and minimum allowable operating pressure: low-pressure distribution systems:

(a) No person shall operate a low-pressure distribution system at a pressure high enough to make unsafe the operation of any connected and properly adjusted low-pressure gas burning equipment.

(b) No person shall operate a low-pressure distribution system at a pressure lower than the minimum pressure at which the safe and continuing operation of any connected and properly adjusted low-pressure gas burning equipment can be assured.

(14) Standard pressure:

(a) All utilities supplying gas for light, heat, power or other purposes shall, subject to approval of the commission, adopt and maintain a standard pressure as measured at the customer's meter outlet. In adopting such standard pressure the utility may divide its distribution system into districts and establish a separate standard pressure for each district, or the utility may establish a single standard pressure for its distribution system as a whole.

(b) The standard pressure to be adopted as provided in this section shall be a part of the utility's schedule of rates and general rules and administrative regulations.

(c) No change shall be made by a utility in standard pressure or pressure adopted except in case of emergency.

(15) Allowable variations of standard service pressure:

(a) Variations of standard pressure as established under the preceding rule shall not exceed the adopted pressure by more than fifty (50) percent plus or minus.

(b) A utility supplying gas shall not be deemed to have violated

paragraph (a) of this subsection, if it can be shown that variations from said pressure are due to:

1. Use of gas by the customer in violation of contract under the rules of the utility.

2. Infrequent fluctuations of short duration due to unavoidable conditions of operation.

(c) Allowable variations in standard pressure other than those covered by paragraph (a) of this subsection shall be established by the commission when application is made and good cause shown for allowance.

(d) The gas pressures required above shall be maintained at the outlet of the meter to provide safe and efficient utilization of gas in properly adjusted appliances supplied through adequately sized customer's facilities.

(16) Continuity of service.

(a) The utility shall keep a complete record of all interruptions on its entire system or on major divisions of its system. The record shall show the cause of interruption, date, time, duration, remedy and steps taken to prevent recurrence. The commission shall be notified of major interruptions as soon as they come to the attention of the utility and a complete report made after restoration of service.

(b) Interruption of service, as used here, shall also mean the interval of time during which pressure drops below fifty (50) percent of such adopted standard pressure on the entire system, or on one (1) or more entire major division or divisions for which an average standard pressure has been adopted.

(17) Odorization of gas.

(a) Combustible gas in a distribution line shall contain a natural odorant or be odorized so that at a concentration in air of one-fifth (1/5) of the lower explosive limit (approximately one (1) percent by volume), gas is readily detectable by a person with a normal sense of smell.

(b) Combustible gas in a transmission line in a Class 3 or Class 4 location shall comply with the requirements of paragraph (a) of this subsection unless:

1. At least fifty (50) percent of the length of the line downstream from that location is in a Class 1 or Class 2 location;

2. The line transports gas to any of the following facilities which received gas without an odorant from that line before May 5, 1975:

- a. Underground storage field;
- b. Gas processing plant;
- c. Gas dehydration plant; or
- d. Industrial plant using gas in a process where presence of an odorant makes the end product unfit for the purpose for which it is intended; reduces the activity of a catalyst; or reduces the percentage completion of a chemical reaction.

3. When lateral line transports gas to a distribution center, at least fifty (50) percent of the length of that line is in a Class 1 or Class 2 location.

(c) Odorant shall not be harmful to persons, materials, or pipe.

(d) Products of combustion from the odorant shall not be toxic when breathed nor shall they be corrosive or harmful to those materials to which the products of combustion will be exposed.

(e) Odorant shall not be soluble in water to an extent greater than two and one-half (2.5) parts to 100 parts by weight.

(f) Equipment for odorization shall introduce odorant without wide variations in the level of odorant.

(g) Each utility shall conduct sampling of combustible gases to assure proper concentration of odorant in accordance with this section unless otherwise approved by the commission.

1. The utility shall sample gases in each separately odorized system at approximate furthest point from injection of odorant.

2. Sampling shall be conducted with equipment designed to detect and verify proper level of odorant.

3. Separately odorized systems with ten (10) or fewer customers shall be sampled for proper odorant level at least once each ninety-five (95) days.

4. Separately odorized systems with more than ten (10) customers shall be sampled for proper odorant level at least once each week.

(18) Tapping pipelines under pressure. Each tap made on a pipeline under pressure shall be performed by a crew qualified to

make hot taps.

(19) Purging of pipelines.

(a) When pipeline is being purged of air by use of gas, the gas shall be released into one (1) end of the line in a moderately rapid and continuous flow. If gas cannot be supplied in sufficient quantity to prevent the formation of a hazardous mixture of gas and air, a slug of inert gas shall be released into the line before the gas.

(b) When pipeline is being purged of gas by use of air, the air shall be released into one (1) end of the line in a moderately rapid and continuous flow. If air cannot be supplied in sufficient quantity to prevent the formation of a hazardous mixture of gas and air, a slug of inert gas shall be released into the line before the air.

Section 14. Maintenance. (1) Scope. This section prescribes minimum requirements for maintenance of pipeline facilities.

(2) General.

(a) No person shall operate a segment of pipeline, unless it is maintained in accordance with this section.

(b) Each segment of pipeline that becomes unsafe shall be replaced, repaired, or removed from service.

(c) Hazardous leaks must be repaired promptly.

(3) Transmission lines: patrolling.

(a) Each operator shall have a patrol program to observe surface conditions on and adjacent to the transmission line right-of-way for indications of leaks, construction activity, and other factors affecting safety and operation.

(b) Frequency of patrols is determined by size of line, operating pressures, class location, terrain, weather, and other relevant factors, but intervals between patrols shall not be longer than prescribed in the following table:

Class Location of Line	Maximum Interval Between Periods	
	At Highway and Railroad Crossings	At All Other Places
1 & 2	7 1/2 months; but at least twice each calendar year	15 months; but at least once each calendar year
3	4 1/2 months; but at least four times each calendar year	7 1/2 months; but at least twice each calendar year
4	4 1/2 months; but at least four times each calendar year	4 1/2 months; but at least four times each calendar year

(4) Transmission lines: leakage surveys.

(a) Each operator of a transmission line shall provide for periodic leakage surveys of line in its operating and maintenance plan.

(b) Leakage surveys of a transmission line shall be conducted at intervals not exceeding fifteen (15) months; but at least once each calendar year. However, if a transmission line transports gas in conformity with Section 13(17) of this administrative regulation without an odor or odorant, leakage surveys using leak detector equipment shall be conducted;

1. In Class 3 locations, at intervals not exceeding seven and one-half (7 1/2) months; but at least twice each calendar year; and

2. In Class 4 locations, at intervals not exceeding four and one-half (4 1/2) months; but at least four (4) times each calendar year.

(5) Line markers for mains and transmission lines.

(a) Buried pipelines. Except as provided in paragraph (b) of this subsection, a line marker shall be placed and maintained as close as practical over each buried main and transmission line:

1. At each crossing of a public road or railroad; and

2. Wherever necessary to identify the location of the transmission line or main to reduce the possibility of damage or interference.

(b) Exceptions for buried pipelines. Line markers are not required for buried mains and transmission lines:

1. Located under inland navigable waters;

2. In Class 3 or Class 4 locations:

a. Where placement of a marker is impractical; or

b. Where a damage prevention program is in effect under Section 13(8) of this administrative regulation; or

3. In the case of navigable waterway crossings, within 100 feet of a line marker placed and maintained at that waterway in accordance with this section.

(c) Pipelines above ground. Line markers shall be placed and maintained along each section of a main and transmission line located above ground in an area accessible to the public.

(d) Markers other than at navigable waterways. The following shall be written legibly on a background of sharply contrasting color on each line marker not placed at a navigable waterway:

1. The word "Warning," "Caution," or "Danger," followed by the words "Gas (or name of gas transported) Pipeline," all of which, except for markers in heavily developed urban areas, shall be in letters at least one (1) inch high with one-quarter (1/4) inch stroke.

2. The name of the operator and telephone number (including area code) where the operator can be reached at all times.

(e) Markers at navigable waterways. Each line marker at a navigable waterway shall have the following characteristics:

1. A rectangular sign with a narrow strip along each edge, colored international orange, and the area between lettering on the sign and boundary strips colored white.

2. Written on the sign in block style, black letters:

a. The word "Warning," "Caution," or "Danger," followed by the words, "Do Not Anchor or Dredge" and the words, "Gas (or name of gas transported Pipeline Crossing);" and

b. The name of the operator and telephone number (including area code) where the operator can be reached at all times.

3. In overcast daylight, the sign is visible and the writing required by paragraph (e)2a of this subsection is legible, from approaching or passing vessels that may damage or interfere with the pipeline.

(6) Transmission lines: recordkeeping. Each utility shall keep records covering each leak discovered, repair made, transmission line break, leakage survey, line patrol, and inspection, for as long as the segment of transmission line involved remains in service.

(7) Transmission lines: general requirements for repair procedures.

(a) Each utility shall take immediate temporary measures to protect the public whenever:

1. A leak, imperfection, or damage that impairs its serviceability is found in a segment of steel transmission line operating at or above forty (40) percent of SMYS; and

2. It is not feasible to make a permanent repair at the time of discovery. As soon as feasible, the utility shall make permanent repairs. Except as provided in subsection (10)(a)3 of this section, no utility shall use a welded patch as a means of repair.

(8) Transmission lines: permanent field repair of imperfections and damages.

(a) Except as provided in paragraph (b) of this subsection, each imperfection or damage that impairs serviceability of a segment of steel transmission line operating at or above forty (40) percent of SMYS must be repaired as follows:

1. If it is feasible to take the segment out of service, the imperfection or damage must be removed by cutting out a cylindrical piece of pipe and replacing it with pipe of similar or greater design strength.

2. If it is not feasible to take the segment out of service, a full encirclement welded split sleeve of appropriate design shall be applied over the imperfection or damage.

3. If the segment is not taken out of service, operating pressure shall be reduced to a safe level during repairs.

(b) Submerged pipelines in inland navigable waters may be repaired by mechanically applying a full encirclement split sleeve of appropriate design over the imperfection or damage.

(9) Transmission lines: permanent field repair of welds. Each weld that is unacceptable under Section 5(11)(c) of this administrative regulation shall be repaired as follows:

(a) If it is feasible to take the segment of transmission line out of service, the weld shall be repaired in accordance with applicable requirements of Section 5(13) of this administrative regulation.

(b) A weld may be repaired in accordance with Section 5(13) of this administrative regulation while the segment of transmission line is in service if:

1. The weld is not leaking;

2. Pressure in the segment is reduced so that it does not produce a stress more than twenty (20) percent of SMYS of the pipe; and

3. Grinding of the defective area can be limited so that at least one-eighth (1/8) inch thickness in the pipe weld remains.

(c) A defective weld which cannot be repaired in accordance with paragraph (a) or (b) of this subsection shall be repaired by installing a full encirclement welded split sleeve of appropriate design.

(10) Transmission lines: permanent field repair of leaks.

(a) Except as provided in paragraph (b) of this subsection, each permanent field repair of a leak on a transmission line shall be made as follows:

1. If feasible, the segment of transmission line shall be taken out of service and repaired by cutting out a cylindrical piece of pipe and replacing it with pipe of similar or greater design strength.

2. If it is not feasible to take the segment of transmission line out of service, repairs shall be made by installing a full encirclement welded split sleeve of appropriate design, unless the transmission line:

a. Is joined by mechanical couplings; and

b. Operates at less than forty (40) percent of SMYS.

3. If the leak is due to a corrosion pit, repair may be made by installing properly designed bolt-on leak clamp. If the leak is due to a corrosion pit and on pipe of not more than 40,000 psi SMYS, repair may be made by fillet welding over the pitted area a steel plate patch with rounded corners, of the same or greater thickness than the pipe, and not more than one-half (1/2) of the diameter of the pipe in size.

(b) Submerged pipelines in inland navigable waters may be repaired by mechanically applying a full encirclement split sleeve of appropriate design over the leak.

(11) Transmission lines: testing of repairs.

(a) Testing of replacement pipe. If a segment of transmission line is repaired by cutting out the damaged portion of pipe as a cylinder, replacement pipe shall be tested to the pressure required for a new line installed in the same location. This test may be made on pipe before it is installed.

(b) Testing of repairs made by welding. Each repair made by welding in accordance with subsections (8), (9) and (10) of this section shall be examined in accordance with Section 5(11) of this administrative regulation.

(12) Distribution systems: patrolling.

(a) The frequency of patrolling mains shall be determined by the severity of conditions which could cause failure or leakage, and the consequent hazards to public safety.

(b) Mains in places or on structures where anticipated physical movement or external loading could cause failure or leakage shall be patrolled at intervals not exceeding four and one-half (4 1/2) months, but at least four (4) times each calendar year.

(13) Distribution systems: leakage surveys and procedures.

(a) Each utility shall provide for periodic leakage surveys in its operating and maintenance plan.

(b) The type and scope of the leakage control program shall be determined by the nature of the operations and local conditions; but it shall meet the following minimum requirements:

1. At least once each calendar year, but at intervals not exceeding fifteen (15) months, a gas detector survey shall be conducted in business districts, involving tests of the atmosphere in gas, electric, telephone, sewer and water system manholes, and where access is not denied at inside basement walls of public and commercial buildings located adjacent to gas mains and service lines, at cracks in pavement and sidewalks and at other locations providing an opportunity for finding gas leaks.

2. Leakage surveys of the distribution system outside of principal business areas shall be made as frequently as necessary, but at intervals not exceeding five (5) years.

(c) Each gas utility shall maintain a record for five (5) years of gas leaks reported by the public, utility employees, or detected by leak surveys.

(d) Each leak detected shall be graded according to the following standard:

1. Grade 1 – hazardous leaks. A leak that represents an

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existing or probable hazard to persons or property and requires immediate repair or continuous action until conditions are no longer hazardous.

2. Grade 2 – nonhazardous leaks. A leak that is recognized as being nonhazardous at time of detection but justifies scheduled repair based on probable future hazard.

3. Grade 3 – nuisance leaks. A leak that is nonhazardous at time of detection and can be reasonably expected to remain nonhazardous. Grade 3 leaks shall be monitored and reevaluated until the leak is regraded or no longer results in a reading.

(14) Test requirements for reinstating service lines.

(a) Except as provided in paragraph (b) of this subsection, each disconnected service line shall be tested in the same manner as a new service line, before being reinstated.

(b) Each service line temporarily disconnected from the main shall be tested from point of disconnection to the service line valve in the same manner as a new service line, before reconnecting. However, if provisions are made to maintain continuous service, such as by installation of a bypass, any part of the original service line used to maintain continuous service need not be tested.

(15) Abandonment or inactivation of facilities.

(a) Each utility shall provide in its operating and maintenance plan for abandonment or deactivation of pipelines, including provisions for meeting each requirement of this subsection.

(b) Each pipeline abandoned in place shall be disconnected from all sources and supplies of gas, purged of gas, and sealed at the ends. However, the pipeline need not be purged when the volume of gas is so small that there is not potential hazard.

(c) Except for service lines, each inactive pipeline not being maintained under this section shall be disconnected from all sources and supplies of gas, purged of gas, and sealed at the ends. However, the pipeline need not be purged when the volume of gas is so small that there is not potential hazard.

(d) Whenever service to a customer is discontinued, one (1) of the following steps shall be taken:

1. The valve that is closed to prevent flow of gas to the customer shall be provided with a locking device or other means designed to prevent opening of the valve by persons other than those authorized by the utility.

2. A mechanical device or fitting that will prevent flow of gas shall be installed in the service line or in the meter assembly.

3. The customer's piping shall be physically disconnected from the gas supply and the open pipe ends sealed.

(e) If air is used for purging, the utility shall insure that a combustible mixture is not present after purging.

(f) Each abandoned vault shall be filled with suitable compacted material.

(16) Compressor stations: procedures for gas compressor units. Each utility shall establish starting, operating, and shutdown procedures for gas compressor units.

(17) Compressor stations: inspection and testing of relief devices.

(a) Except for rupture discs, each pressure relieving device in a compressor station shall be inspected and tested in accordance with subsections (21) and (23) of this section, and shall be operated periodically to determine that it opens at the correct set pressure.

(b) Any defective or inadequate equipment found shall be promptly repaired or replaced.

(c) Each remote control shutdown device shall be inspected and tested at intervals not to exceed fifteen (15) months, but at least once each calendar year to determine that it functions properly.

(18) Compressor stations: isolation of equipment for maintenance or alterations. Each utility shall establish procedures for maintaining compressor stations, including provisions for isolating units or sections of pipe and for purging before returning to service.

(19) Compressor stations: storage of combustible materials.

(a) Flammable or combustible materials in quantities beyond those required for everyday use, or other than those normally used in compressor buildings, shall be stored a safe distance from the compressor building.

(b) Above ground oil or gasoline storage tanks shall be protected in accordance with National Fire Protection Association Standard No. 30.

(20) Pipe-type and bottle-type holders: plan for inspection and testing. Each utility having a pipe-type or bottle-type holder shall establish a plan for systematic, routine inspection and testing of these facilities, including the following:

(a) Provision shall be made for detecting external corrosion before strength of the container has been impaired.

(b) Periodic sampling and testing of gas in storage shall be made to determine the dew point of vapors contained in stored gas, that if condensed, might cause internal corrosion or interfere with safe operation of the storage plant.

(c) Pressure control and pressure limiting equipment shall be inspected and tested periodically to determine that it is in a safe operating condition and has adequate capacity.

(21) Pressure limiting and regulating stations: inspection and testing. Each pressure limiting station, relief device (except rupture discs), and pressure regulating station and its equipment shall be subjected, at intervals not exceeding fifteen (15) months, but at least once each calendar year, to inspections and tests to determine that it is:

(a) In good mechanical condition;

(b) Adequate from the standpoint of capacity and reliability of operation for the service in which it is employed;

(c) Set to function at the correct pressure; and

(d) Properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation.

(22) Pressure limiting and regulating stations: telemetering or recording gauges.

(a) Each utility shall keep in continual use one (1) or more accurate recording pressure gauges on its distribution systems. These gauges shall be located at such points and in such manner sufficient to reflect a continuous record of gas pressure and character of service being furnished throughout the entire system.

(b) In addition to the recording pressure gauges required in paragraph (a) of this subsection, all utilities distributing gas shall maintain one (1) or more portable recording pressure gauges with which pressure surveys shall be made in sufficient number to indicate the service furnished and to satisfy the commission of the utility's compliance with pressure requirements.

(c) All recording pressure charts or records shall be preserved and filed in a systematic manner and each chart shall show date and location when the record was made. All charts or records shall be kept on file by the utility for at least two (2) years.

(d) If there are indications of abnormally high or low pressure, the regulator and auxiliary equipment shall be inspected and necessary measures employed to correct any satisfactory operating conditions.

(23) Pressure limiting and regulating stations: testing of relief devices.

(a) If feasible, pressure relief devices (except rupture discs) shall be tested in place, at intervals not exceeding fifteen (15) months, but at least once each calendar year, to determine that they have enough capacity to limit the pressure on the facilities to which they are connected to desired maximum pressure.

(b) If a test is not feasible, review and calculation of the required capacity of the relieving device at each station shall be made, at intervals not exceeding fifteen (15) months, but at least once each calendar year. These required capacities shall be compared with the rated or experimentally determined relieving capacity of the device for operating conditions under which it works. After initial calculations, subsequent calculations are not required if review documents show that parameters have not changed to cause capacity to be less than required.

(c) If the relieving device is of insufficient capacity, a new or additional device shall be installed to provide the additional capacity required.

(24) Valve maintenance: transmission lines. Each transmission line valve that might be required during any emergency shall be inspected and partially operated, at intervals not exceeding fifteen (15) months, but at least once each calendar year.

(25) Valve maintenance: distribution systems. Each valve, the

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use of which may be necessary for safe operation of a distribution system, shall be checked and serviced, at intervals not exceeding fifteen (15) months, but at least once each calendar year.

~~(26) Vault maintenance.~~

~~(a) Each vault housing pressure regulating and pressure limiting equipment, and having volumetric internal content of 200 cubic feet or more, shall be inspected at intervals not exceeding fifteen (15) months, but at least once each calendar year to determine that it is in good physical condition and adequately ventilated.~~

~~(b) Inspection of each vault, its cover, and equipment shall include checks for proper ventilation, function, and safety. Any leaks shall be corrected immediately.~~

~~(27) Prevention of accidental ignition. Each utility shall take steps to minimize the danger of accidental gas ignition in any structure or area where presence of gas constitutes a hazard of fire or explosion, including the following:~~

~~(a) When a hazardous amount of gas is being vented into open air, each potential source of ignition shall be removed from the area and a fire extinguisher shall be provided.~~

~~(b) Gas or electric welding or cutting shall not be performed on pipe or on pipe components that contain a combustible mixture of gas and air in the area of work.~~

~~(c) Post warning signs, where appropriate.~~

~~(d) No welding or acetylene cutting shall be done on a pipeline, main or auxiliary apparatus that contains air if it is connected to a source of gas, unless a suitable means has been provided to prevent leakage of gas into the pipeline or main.~~

~~(e) In situations where welding or cutting must be done on facilities which are filled with air and connected to a source of gas and precautions recommended above cannot be taken, one (1) or more of the following precautions, depending upon circumstances at the job, are required:~~

~~1. Purging pipe or equipment upon which welding or cutting is to be done, with combustible gas or inert gas.~~

~~2. Testing of the atmosphere in the vicinity of the zone to be heated before work is started and at intervals as the work progresses, with a combustible gas indicator or by other suitable means.~~

~~3. Careful verification before work starts that valves that isolate the work from a source of gas do not leak.~~

~~(f) When the main is to be separated a bonding conductor shall be installed across the point of separation and maintained while the pipeline is separated. If overhead electric transmission lines parallel the pipeline right-of-way, the current carrying capacity of the bonding conductor should be at least one-half (1/2) of the capacity of the overhead line conductors.~~

~~(g) For additional purging procedures see A.G.A. publication "Purging Principals and Practices" (1975 Edition.)~~

~~(28) Caulked bell and spigot joints.~~

~~(a) Each cast iron caulked bell and spigot joint subject to pressures of twenty-five (25) psig or more shall be sealed with:~~

~~1. A mechanical leak clamp; or~~

~~2. A material or device which:~~

~~a. Does not reduce flexibility of the joint;~~

~~b. Permanently bonds, either chemically or mechanically, or both, with the bell and spigot metal surfaces or adjacent pipe metal surfaces; and~~

~~c. Seals and bonds in a manner that meets the strength, environmental, and chemical compatibility requirements of Section 2(2)(a) and (b) and Section 4(2) of this administrative regulation.~~

~~(b) Each cast iron caulked bell and spigot joint subject to pressures of less than twenty-five (25) psig and exposed for any reason, shall be sealed by means other than caulking.~~

~~(29) Protecting cast iron pipelines. When a utility has knowledge that the support for a segment of a buried cast iron pipeline is disturbed:~~

~~(a) That segment of pipeline shall be protected against damage during the disturbance by:~~

~~1. Vibrations from heavy construction equipment, trains, trucks, buses, or blasting;~~

~~2. Impact forces by vehicles;~~

~~3. Earth movement;~~

~~4. Apparent future excavations near the pipeline; or~~

~~5. Other foreseeable outside forces which may subject that segment of pipeline to bending stress.~~

~~(b) As soon as feasible, permanent protection shall be provided for the disturbed segment from damage that might result from external loads, including compliance with applicable requirements of subsections (10)(a) and (11) of Section 7 and subsection (6)(b) through (d) of Section 9 of this administrative regulation.]~~

Section 4[15]. Purity of Gas. (1) All gas supplied to customers shall contain no more than: a trace of hydrogen sulfide, thirty (30) grains of total sulphur per 100 cubic feet; or five (5) grains of ammonia per 100 cubic feet. No gas shall contain impurities which may cause excessive corrosion of mains or piping or form corrosive or harmful fumes when burned in a properly designed and adjusted burner.

(2) When necessary, tests for the presence of hydrogen sulfide shall be made at least once each day, except Sundays and holidays, with equipment capable of measuring hydrogen sulfide levels as low as one (1) grain per 100 cubic feet[the standard lead acetate paper method]. Results of these tests[test papers] shall be retained and provided to the commission upon request[properly recorded and filed, as specified by the commission].

(3) Manufactured and mixed gas shall be tested at least once each month for the presence of total sulphur and ammonia, except that any gas containing no coal gas need not be tested for ammonia. Approved methods of testing shall be used. Records of all tests shall be preserved as specified by the commission.

Section 5[16]. Heating Value of Gas. (1) Definitions of heating value. The heating value of gas is the number of British Thermal Units (BTUs) produced by the combustion at constant pressure, of that amount of gas which would occupy a volume of one (1) cubic foot at a temperature of sixty (60) degrees Fahrenheit, if saturated with water vapor and under pressure equivalent to thirty (30) inches of mercury at a temperature of thirty-two (32) degrees Fahrenheit and under gravity, with air of the same temperature and pressure as the gas, when the products of combustion are cooled to the initial temperature of the gas and air, and when the water formed by combustion is condensed to liquid stage.

(2) Each utility shall establish and maintain a standard heating value for its gas. The heating value standard adopted shall comply with the following:

(a) It shall be consistent with good service.

(b) It shall be that value which the utility determines is most practical and economical to supply to its customers.

(3) Each utility shall file with the commission its standard heating value as part of its schedule of Rates, Rules and Regulations.

(4) The utility shall maintain the heating value of the gas with as little variation as practicable, but this variation shall not be more than five (5) percent above or below the established standard heating value.

(5) The heating value standard shall be the monthly average heating value of gas delivered to customers at any point within one (1) mile of the center of distribution, and shall be obtained in the following manner: results of all tests for heating value made on any day during the calendar month shall be averaged, and the average of all such daily averages shall be used in computing the monthly average.

(6) Each utility, selling more than 300,000,000 cubic feet of gas annually, shall maintain a calorimeter, gas chromatograph, or other equipment for testing the heating value of gas or shall retain the services of a competent testing laboratory approved by the commission. This testing equipment owned by the utility shall be subject to approval of the commission and be made available for testing certification. Utilities served directly from a transmission line shall be exempt from this rule if there is approved equipment for measuring the heating value of gas maintained by the transmission company and if such equipment is available for testing and certification by the commission.

(7) Each utility shall conduct test and maintain necessary

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records to document that the requirements of this section are being met. Those utilities which bill on the basis of heating value shall, as part of its schedule of Rates, Rules and Regulations, file with the commission the schedule of tests and test procedure(s) it will conduct to determine the heating value of its gas.

(8) Any change in heating value greater than that allowed in subsection (4) of this section shall not be made without approval of the commission and without adequate notice to affected customers. In such event, the utility shall make any adjustments to the customer's appliances without charge and shall conduct the adjustment program with a minimum of inconvenience to the customer.

Section 6[47]. Waste. All practices in the production, distribution, consumption, or use of natural gas which are wasteful are hereby expressly prohibited.

Section 7[48]. Deviations from Rules. In special cases for good cause shown the commission may permit deviations from these rules.

APPENDIX A INCORPORATED BY REFERENCE	
I. List of Organizations and Addresses.	
A.	American National Standards Institute (ANSI), 1430 Broadway, New York, N.Y. 10018.
B.	American Petroleum Institute (API), 1400 K Street N.W., Washington, D.C. 20006 or 300 Corrigan Tower Building, Dallas, Texas 75201.
C.	American Society of Mechanical Engineers (ASME), United Engineering Center, 345 East 47th Street, New York, N.Y. 10017.
D.	American Society for Testing and Material (ASTM), 1916 Race Street, Philadelphia, Pa. 19103.
E.	Manufacturers Standardization Society of the Valve and Fittings Industry (MSS), 5203 Leesburg Pike, Suite 502, Falls Church, Va. 22041.
F.	National Fire Protection Association (NFPA), Batterymarch Park, Quincy, Massachusetts 02269.
II. Documents incorporated by reference. Numbers in parenthesis indicate applicable editions.	
A. American Petroleum Institute:	
(1)	API Specification 6D "API Specification for Pipeline Valves" (1977).
(2)	API Specification 5L "API Specification for Line Pipe" (1980).
(3)	API Recommended Practice 5L1 "API Recommended Practice for Railroad Transportation of Line Pipe" (1972).
(4)	API Standard 1104 "Standard for Welding Pipelines and Related Facilities" (17th Edition, 1988).
B. American Society for Testing and Materials:	
(1)	ASTM Specification A53 "Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated Welded and Seamless" (A53-79).
(2)	ASTM Specification A106 "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service" (A106-79b).
(3)	ASTM Specification A671 "Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures" (A671-77).
(4)	ASTM Specification A672 "Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures" (A672-79).
(5)	ASTM Specification A691 "Carbon and Alloy Steel Pipe, Electric-Fusion-Welded for High-Pressure Service at High Temperatures" (A169-79).
(6)	ASTM Specification A333 "Standard Specification for Seamless and Welded Steel Pipe for Low Temperature Service" (A333-79).
(7)	ASTM Specification A372 "Standard Specification for Carbon and Alloy Steel Forgings for Thin-Walled Pressure Vessels" (A372-78).
(8)	ASTM Specification A381 "Standard Specification for Metal-Arc-Welded Steel Pipe for Use with High-Pressure Transmission Systems" (A381-79).

(9)	ASTM Specification D638 "Standard Test Method for Tensile Properties of Plastic" (D368-77a).
(10)	ASTM Specification D900 "Standard Method Test for Caloric Value of Gaseous Fuels by the Water Flow Calorimeter" (D900-55-1974 Edition).
(11)	ASTM Specification D2513 "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings" (D2513-87).
(12)	ASTM Specification D2517 "Standard Specification for Reinforced Epoxy Resin Gas Pressure Pipe and Fittings" (D2517-73) (Reapproved 1979).
C. American National Standards Institute, Inc.:	
(1)	ANSI B16.1 "Cast Iron Pipe Flanges and Flanged Fittings" (1975).
(2)	ANSI B16.5 "Steel Pipe Flanges and Flanged Fittings" (1977).
D. American Society of Mechanical Engineers:	
(1)	ASME Boiler and Pressure Code, Section VIII "Pressure Vessels Division I" (1977).
(2)	ASME Boiler and Pressure Vessel Code, Section IX "Welding Qualifications" (1977).
E. Manufacturer's Standardization Society of the Valve and Fittings Industry:	
(1)	MSS SP 44 "Steel Pipe Line Flanges" (1975).
F. National Fire Protection Association:	
(1)	NFPA Standard 30 "Flammable and Combustible Liquids Code" (1977).
(2)	NFPA Standard 54 "National Fuel Gas Code" (1980).
(3)	NFPA Standard 58 "Standard for the Storage and Handling of Liquefied Petroleum Gases" (1979).
(4)	NFPA Standard 59 "Standards for the Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants" (1979).
(5)	NFPA Standard 59A "Storage and Handling Liquefied Natural Gas" (1979).
(6)	"National Electrical Code" NFPA-70 (ANSI) (1978).
G. National Bureau of Standards:	
(1)	Circular No. 48 "Standard Methods of Gas Testing" (1916).
(2)	Research Paper No. 1741 "Testing Large Capacity Rotary Gas Meters," National Bureau of Standards Journal of Research, September, 1946.

APPENDIX B QUALIFICATION OF PIPE	
I. Listed Pipe Specifications. Numbers in parentheses indicate applicable editions.	
API 5L - Steel Pipe (1980).	
ASTM A53 - Steel Pipe (1979).	
ASTM A106 - Steel Pipe (1979).	
ASTM A333 - Steel Pipe (1979).	
ASTM A381 - Steel Pipe (1979).	
ASTM Specification A671 - Steel Pipe (1977).	
ASTM Specification A672 - Steel Pipe (1979).	
ASTM D2513 - Thermoplastic Pipe and Tubing (1987).	
ASTM D2517 - Thermoplastic Plastic Pipe and Tubing (1973).	
II. Steel pipe of unknown or unlisted specification.	
A. Bending Properties. For pipe two (2) inches or less in diameter, a length of pipe shall be cold bent through at least ninety (90) degrees around a cylindrical mandrel that has a diameter twelve (12) times the diameter of the pipe, without developing cracks at any portion and without opening the longitudinal weld.	
Pipe more than two (2) inches in diameter shall meet the requirements of the flattening test set forth in ASTM A53, except that the number of tests shall be at least equal to the minimum required in paragraph 11-D of this appendix to determine yield strength.	
B. Weldability. A girth weld shall be made in pipe by a welder who is qualified under Subpart E of this part. The weld shall be made under the most severe conditions under which welding will be allowed in the field and by the same procedure that will be used in the field. On pipe more than four (4) inches in diameter, at least one (1) test weld shall be	

<p>made for each 100 lengths of pipe. On pipe four (4) inches or less in diameter, at least one (1) test weld shall be made for each 100 lengths of pipe. The weld shall be tested in accordance with API Standard 1104. If requirements of API Standard 1104 cannot be met, weldability may be established by making chemical test for carbon and manganese, and proceeding in accordance with Section IX of the ASME Boiler and Pressure Vessel Code. The same number of chemical tests shall be made as are required for testing a girth weld.</p>	
<p>C. Inspection. Pipe shall be clean enough to permit adequate inspection. It shall be visually inspected to ensure that it is reasonably round and straight and there are no defects which might impair strength or tightness of the pipe.</p>	
<p>D. Tensile Properties. If the pipe's tensile properties are not known, minimum yield strength may be taken as 24,000 psig or less, or tensile properties may be established by performing tensile tests as set forth in API Standard 5LX. All test specimens shall be selected at random and the following number of tests must be performed:</p>	
<p>NUMBER OF TENSILE TEST - ALL SIZES</p>	
10 lengths or less _____	1 set of tests for each length.
11 lengths to 100 lengths _____	1 set of tests for each 5 lengths, but not less than 10 tests.
Over 100 lengths _____	1 set of tests for each 10 lengths, but not less than 10 tests.
<p>If the yield-tensile ratio, based on properties determined by those tests, exceeds 0.85, pipe may be used only as provided in 192.55(c).</p>	
<p>III. Steel pipe manufactured before November 12, 1970, to earlier editions of listed specifications. Steel pipe manufactured before November 12, 1970, in accordance with a specification of which a later edition is listed in Section 1 of this appendix, is qualified for use under this part if the following requirements are met:</p>	
<p>A. Inspection. Pipe shall be clean enough for inspection to ensure that it is reasonably round and straight and that there are no defects which might impair strength or tightness of the pipe.</p>	
<p>B. Similarity of specification requirements. The edition of the listed specification under which pipe was manufactured shall have substantially the same requirements with respect to the following properties as a later edition of that specification listed in Section I of this appendix:</p>	
<p>(1) Physical (mechanical) properties of pipe, including yield and tensile strength, elongation, and yield to tensile ratio, and testing requirements to verify those properties.</p>	
<p>(2) Chemical properties of pipe and testing requirements to verify those properties.</p>	
<p>C. Inspection or test of welded pipe. On pipe with welded seams, one (1) of the following requirements shall be met:</p>	
<p>(1) The edition of the listed specification to which the pipe was manufactured shall have substantially the same requirements with respect to nondestructive inspection of welded seams and the standards for acceptance or rejection and repair as a later edition of the specification listed in Section I of this appendix.</p>	
<p>(2) Pipe shall be tested in accordance with Subpart J of this part to at least 1.25 times maximum allowable operating pressure if it is to be installed in a Class 1 location and to at least 1.5 times maximum allowable operating pressure if it is to be installed in a Class 2, 3, or 4 location. Notwithstanding any shorter time period permitted under Subpart J of this part, test pressure shall be maintained for at least eight (8) hours.</p>	
<p>APPENDIX C QUALIFICATION OF WELDERS FOR LOW STRESS LEVEL PIPE</p>	

<p>I. Basic test. Test shall be made on pipe twelve (12) inches or less in diameter. The test weld shall be made with pipe in horizontal fixed position so that test weld includes at least one (1) section of overhead position welding. Beveling, root opening, and other details shall conform to the specification of the procedure under which the welder is being qualified. Upon completion, test weld shall be cut into four (4) coupons and subjected to a root bend test. If two (2) or more of the four (4) coupons then develop a crack more than 1/8 inch long in any direction in the weld material, or between weld material and base metal, the weld shall be unacceptable. Cracks that occur on the specimen corner during testing are not considered.</p>
<p>II. Additional tests for welders of service line connections to mains. A service line connection fitting shall be welded to a pipe section with the same diameter as a typical main. The weld shall be made in the same position as it is made in the field. The weld shall be unacceptable if it shows a serious undercutting or if it has rolled edges. The weld shall be tested by attempting to break the fitting off the run pipe. The weld shall be unacceptable if it breaks and shows incomplete fusion, overlap, or poor penetration at junction of the fitting and run pipe.</p>
<p>III. Periodic tests for welders of small service lines. Two (2) samples of the welder's work, each about eight (8) inches long with the weld approximately centered, shall be cut from steel service line and tested as follows:</p>
<p>(1) One (1) sample shall be centered in a guided bend testing machine and bent to the die contour for two (2) inches on each side of the weld. If the sample shows any break or cracks after removal from the bending machine, it shall be unacceptable.</p>
<p>(2) The ends of the second sample shall be flattened and the entire joint subjected to a tensile strength test. If failure occurs adjacent to or in the weld metal, the weld shall be unacceptable. If a tensile strength testing machine is not available, this sample shall also pass the bending test prescribed in subparagraph (1) of this paragraph.</p>

<p>APPENDIX D CRITERIA FOR CATHODIC PROTECTION AND DETERMINATION OF MEASUREMENTS</p>	
<p>I. Criteria for cathodic protection:</p>	
<p>A. Steel, cast iron, and ductile iron structures.</p>	
<p>(1) Negative (cathodic) voltage of at least 0.85 volt, with reference to a saturated copper-copper sulfate half cell. Determination of this voltage shall be made with the protective current applied, and in accordance with Sections II and IV of this appendix.</p>	
<p>(2) Negative (cathodic) voltage shift of at least 300 millivolts. Determination of this voltage shift shall be made with the protective current applied, and in accordance with Sections II and IV of this appendix. This criterion of voltage shift applies to structures not in contact with metal of different anodic potentials.</p>	
<p>(3) Minimum negative (cathodic) polarization voltage shift of 100 millivolts. This polarization voltage shift shall be determined in accordance with Sections III and IV of this appendix.</p>	
<p>(4) Net protective current from the electrolyte into the structure surface as measured by an earth current technique applied at predetermined current discharge (anodic) points of the structure.</p>	
<p>B. Aluminum structures:</p>	
<p>(1) Except as provided in paragraphs (3) and (4) of this paragraph, a minimum negative (cathodic) voltage shift of 150 millivolts, produced by the application of protective current. The voltage shift shall be determined in accordance with Sections II and IV of this appendix.</p>	

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(2) Except as provided in paragraphs (3) and (4) of this paragraph, a minimum negative (cathodic) polarization voltage shift of 100 millivolts. This polarization voltage shift shall be determined in accordance with Sections III and IV of this appendix.
(3) Notwithstanding the alternative minimum criteria in paragraphs (1) and (2) of this paragraph, aluminum, if cathodically protected at voltages in excess of 1.20 volts as measured with reference to a copper-copper sulfate half cell, in accordance with Section IV of this appendix, and compensated for the voltage (IR) drops other than those across the structure-electrolyte boundary may suffer corrosion resulting from the buildup of alkali on the metal surface. A voltage in excess of 1.20 volts shall not be used unless previous test results indicate no appreciable corrosion will occur in the particular environment.
(4) Since aluminum may suffer from corrosion under high pH conditions, and since application of cathodic protection tends to increase the pH at the metal surface, careful investigation or testing shall be made before applying cathodic protection to stop pitting attack on aluminum structures in environments with a natural pH in excess of eight (8).
C. Copper structures. Minimum negative (cathodic) polarization voltage shift of 100 millivolts. This polarization voltage shift shall be determined in accordance with Sections III and IV of this appendix.
D. Metal of different anodic potentials. Negative (cathodic) voltage, measured in accordance with Section IV of this appendix, equal to that required for the most anodic metal in the system shall be maintained. If amphoteric structures are involved that could be damaged by high alkalinity covered by paragraphs (3) and (4) of paragraph B of this section, they shall be electrically isolated with insulating flanges or their equivalent.
II. Interpretation of voltage measurement. Voltage (IR) drops other than those across the structure-electrolyte boundary shall be considered for valid interpretation of the voltage measurement in paragraphs A(1) and (2) and paragraph B(1) of Section I of this appendix.
III. Determination of polarization voltage shift. Polarization voltage shift shall be determined by interrupting the protective current and measuring polarization decay. When the current is initially interrupted, an immediate voltage shift occurs. The voltage reading after the immediate shift shall be used as the base reading from which to measure polarization decay in paragraphs A(3), B(2), and C of Section I of this appendix.
IV. Reference half cells.
A. Except as provided in paragraphs B and C of this section, negative (cathodic) voltage shall be measured between the structure surface and a saturated copper-copper sulfate half cell contacting the electrolyte.
B. Other standard reference half cells may be substituted for the saturated copper-copper sulfate half cell. Two (2) commonly used reference half cells are listed below along with their voltage equivalent to -0.85 volt as referred to a saturated copper-copper sulfate half cell:
(1) Saturated KCl calomel half cell: -0.78 volt.
(2) Silver-silver chloride half cell used in sea water: -0.80 volt.
C. In addition to the standard reference half cell, an alternate metallic material or structure may be used in place of the saturated copper-copper sulfate half cell if its potential stability is assured and if its voltage equivalent referred to a saturated copper-copper sulfate half cell is established.

This is to certify that the Public Service Commission Chairman has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 278.040(3).

GWEN PINSON, Executive Director
 MICHAEL J. SCHMITT, Chairman
 APPROVED BY AGENCY: November 27, 2017
 FILED WITH LRC: November 29, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2018, at 2:00 p.m. Eastern Standard Time at the Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. 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 January 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: John Park, Staff Attorney, Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3940, fax (502) 564-7279, email john.park@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jason Whisman, phone 502-564-3940, email Jason.Whisman@ky.gov and John Park

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: Sets rates and services standards for natural gas utilities and gathering systems.
 - (b) The necessity of this administrative regulation: Ensures reliable natural gas service at reasonable rates for consumers.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: 807 KAR 5:022 conforms to KRS 278.040 ensuring that utilities provide adequate service to their customers.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Eliminates redundancy and clarifies service requirements for natural gas utilities.
- (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: Eliminates redundancy and clarifies service requirements for natural gas utilities
 - (b) The necessity of the amendment to this administrative regulation: It will clarify the service requirements for regulated natural gas utilities.
 - (c) How the amendment conforms to the content of the authorizing statutes: It ensures that utilities provide adequate service to the rate payer.
 - (d) How the amendment will assist in the effective administration of the statutes: Eliminates redundancy and clarifies service requirements for natural gas utilities.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 180 regulated natural gas utility operators within Kentucky.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
 - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None beyond what is already required.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Zero Dollars; no fiscal impact.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): One set of regulations identifying the non-federal requirements involving reliable service.
 - (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

- (a) Initially: Zero dollars; no fiscal impact.
- (b) On a continuing basis: Zero Dollars; no fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Annual Assessments paid by regulated utilities, pursuant to KRS278.130, which are deposited into a special accounting structure of the General Fund per KRS 278.150(3) for the purposing of maintaining the commission.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as all utilities must conform with uniform standards of fair, safe, reasonable, and reliable utility services.

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 impact other than reducing the managerial audit findings of regulated gas utility companies by the Kentucky Public Service Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.040

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Zero Dollars; no fiscal impact.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Zero Dollars; no fiscal impact.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Zero Dollars; no fiscal impact.

(c) How much will it cost to administer this program for the first year? Zero Dollars; no fiscal impact.

(d) How much will it cost to administer this program for subsequent years? Zero Dollars; no fiscal impact.

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

- Revenues (+/-):
- Expenditures (+/-):
- Other Explanation:

**ENERGY AND ENVIRONMENT CABINET
Public Service Commission
(Amendment)**

807 KAR 5:026. Gas service; gathering systems.

RELATES TO: KRS Chapter 278

STATUTORY AUTHORITY: KRS 278.040(3), 278.485

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) provides that the commission may adopt, in keeping with KRS Chapter 13A, reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.485(1) provides that gas service shall be furnished at rates and charges determined by the commission. KRS 278.485(3) provides that safety standards for installation of service lines may be prescribed by the commission. This administrative regulation applies to service from natural gas gathering pipeline systems.

Section 1. Definitions. For purposes of this administrative

regulation:

(1) "Average volumetric rate" means the rate of a local gas distribution utility subject to rate regulation by the commission which is an average of the utility's volumetric retail gas sales rates for residential customers as authorized by the commission.

(2) "Customer line" means all equipment and material required to transfer natural gas from the tap on the gathering line to the customer's premises and includes the saddle or tapping tee, the first service shutoff valve, the meter, and the service regulator, if one is required.

(3) "Customer meter" means the device that measures the transfer of gas from the pipeline company to the consumer.

(4) "Gas company" means the owner of any producing gas well or gathering line.

(5) "Gathering line" means any pipe which carries uncompressed gas and which is used to gather gas from a producing gas well.

(6) "Interior line" means pipe used to transfer natural gas from the point of entry into a building to the point or points of use.

(7) "Price index" means the average of the producer price index-utility natural gas (PPI 05-5) for the most recent twelve (12) month period as published monthly by the United States Department of Labor, Bureau of Labor Statistics.

Section 2. Construction Standards. Construction not specifically addressed by this administrative regulation shall meet applicable requirements of the "American National Standard Code for Pressure Piping, Gas Transmission and Distribution Piping Systems (ASME B31.8)" 1992 edition as published by the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, N. Y. 10017, which is incorporated by this reference. Copies are available for public inspection and copying, subject to copyright law, Monday through Friday, holidays excepted, from 8 a.m. to 4:30 p.m., at the commission office, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602.

Section 3. Requirements for Service. (1) Persons desiring gas service under KRS 278.485 shall apply at the local gas company office. Applications shall contain:

- (a) The name and address of the applicant.
- (b) The purpose for which gas is requested.
- (c) The name and address of the contractor who will install the customer line.

(d) The name and address of the gas company from which service is requested.

(2) The gas company shall furnish the applicant with construction drawings specifying the installation methods and the materials approved by the commission for service installation.

(3) Prior to providing service, the gas company shall furnish a copy of the application to the commission.

(4) Upon receipt of a copy of the application, the commission shall cause the customer line to be inspected for compliance with commission specifications. Service shall not commence until commission specifications have been met.

(5) The commission shall notify the applicant by mail if the customer line does not comply with commission specifications. If subsequent inspection reveals that defects have not been corrected, the commission shall notify the gas company, and the gas company shall take no further action on the application until the defects have been corrected.

(6) The gas company shall furnish, install, and maintain the meter and the service tap, including saddle and first service shutoff valve, which shall remain its property. The gas company shall ensure that its name appears on each of its meters.

(7) All other approved equipment and material required for the service shall be furnished, installed, and maintained by the customer at his expense and shall remain his property.

(8) If leaks or other hazardous conditions are detected in the customer line, the gas company shall discontinue service until the hazardous conditions have been remedied.

Section 4. Connections to High Pressure Gathering Lines. (1)

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Connections shall be smaller than the diameter of the gathering line.

(2) Connections shall be on the upper one-half (1/2) of the gathering line surface, and at a forty-five (45) degree angle where practicable.

(3) Connections shall be at right angles to the center line of the gathering line.

(4) A service shutoff valve shall immediately follow the connection to the gathering line.

(5) A drip tank shall be installed preceding regulating equipment, but may be omitted upon prior approval of the commission.

Section 5. Control and Limitation of Gas Pressure. (1) If maximum gas pressure on the gathering line may exceed sixty (60) psig, a service regulator shall be installed between the service shutoff valve and the customer meter, and a secondary regulator shall be installed between the service regulator and the customer meter. Regulators shall be spring type, and the ~~service~~secondary regulator shall not be set to maintain pressure higher than sixty (60) psig. A spring type relief valve shall be installed to limit pressure on the inlet of the service regulator to sixty (60) psig or less.

(2) Every customer line shall be equipped with an adequate spring type relief valve. The valve may be part of the final stage regulator.

(3) Regulators shall not be bypassed.

(4) Each relief valve shall be vented into outside air, and all vents shall be covered to prevent water and insects from entering.

(5) All metering and regulating equipment shall be as near to the gathering line as practicable, in accordance with safe and accepted operating practices.

(6) Regulating equipment shall be properly protected by the customer.

Section 6. Customer Lines and Metering Facilities. (1) The customer shall furnish and install the customer line from the tap to the point of use. The customer shall secure all rights-of-way and railroad, highway, and other crossing permits. The customer line shall be laid on undisturbed or well compacted soil in a separate trench, avoiding all structures and hazardous locations. No structure shall be erected over the line.

(2) No branch tee or other connection shall be installed on the line to serve any user other than the customer without prior written consent of the gas company and the customer. If consent is given, service to each user shall have an automatic shutoff valve with manual reset located on the riser in a horizontal position. The shutoff valve shall have maximum operating pressure of eight (8) ounces PSIG with a shutoff pressure setting of not less than two (2) ounces.

(3) Customer lines shall not be constructed nearer than thirty-six (36) inches to any subsurface structure.

(4) Customer lines, including the connection to the main, where feasible, shall be checked for leaks by the gas company prior to first use. If it is not feasible to test the connection to the main before first use, it shall be tested for leaks at the operating pressure when placed into service. Customer lines shall be tested by the gas company with air, natural gas, or inert gas at fifty (50) psig for at least thirty (30) continuous minutes.

(5) Customer lines shall be purged after testing to remove any accumulated air.

(6) Metering pressure shall not exceed eight (8) ounces or .5 psig, unless otherwise approved in advance by the commission.

(7) Steel customer lines shall be constructed of black finish steel pipe, ~~shall have a diameter determined by the maximum hourly load for the gas service, [at least one and one-quarter (1 1/4) inches in diameter or larger, that] and shall conform~~[conforms] to standards in the Standard Specification for Pipe, Steel, Black, and Hot-dipped, Zinc Coated, Welded and Seamless (A53-95a) 1995, as published by the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428 which is incorporated by reference. Copies are available for public inspection and copying, subject to copyright law, Monday through

Friday, holidays excepted, from 8:30 a.m. to 4:30 p.m., at the commission's offices, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602. All joints and fittings shall be coated or taped, in accordance with manufacturer's recommendations, from the gas meter to the outlet side of the stopcock located on the riser entering the building. Steel customer lines shall be installed with at least twelve (12) inches of cover on private property and at least eighteen (18) inches of cover on streets and roads. If the steel customer line passes through tillable land, the trench shall be of sufficient depth to permit twenty-four (24) inches of backfill above the service line.

(8) Each steel customer line shall have two (2) insulating joints, one (1) between the secondary regulator and the customer meter, and one (1) at the point of entry into the building.

(9) Plastic customer lines shall ~~have a diameter determined by the maximum hourly load for the gas service~~be constructed of one and one-quarter (1 1/4) pipe that] and shall meet~~[meets]~~ the Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing and Fittings (D 2513-94a), 1994 edition, as published by the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania, 19103, which is incorporated by this reference. Copies are available for public inspection and copying, subject to copyright law, Monday through Friday, holidays excepted, from 8:30 a.m. to 4:30 p.m., at the commission's offices, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602. Plastic customer lines shall be installed with at least twelve (12) inches of cover on private property and at least eighteen (18) inches of cover on streets and roads. When passing through tillable land, the plastic customer line shall be installed with at least twenty-four (24) inches of cover. Plastic customer lines shall be buried with an electrically conductive wire to enable inspectors to locate the plastic line. All joints in plastic lines shall be made by persons operator-qualified in accordance with 49 C.F.R. Part 192~~[under 807 KAR 5:022, Section 6(8),]~~ to make~~[join]~~ plastic pipe joints. No plastic line shall be installed above ground.

(10) Customer lines shall enter the building above ground level, and a stopcock valve shall be located on the riser.

(11) Each customer's service shall have an automatic shutoff valve with manual reset to stop gas flow if gas pressure fails. The valve may be part of the final stage regulator and shall have operating pressure of eight (8) ounces with shutoff pressure setting of not less than two (2) ounces.

Section 7. Failure to Pay Bills or Other Default. (1) Customers shall be required to pay the installation charge and to pay for all gas delivered at rates approved by the commission. The gas company shall render statements to the customer at regular monthly or bimonthly intervals. Statements shall be rendered within ten (10) days following each billing period. Service shall not be discontinued to any customer for nonpayment of charges unless the gas company has first made a reasonable effort to obtain payment from the customer. The customer shall be given at least forty-eight (48) hours' written notice of termination, but no termination of service shall be made until at least fifteen (15) days after the original bill has been mailed. Service shall not be reestablished until the customer has paid the gas company all amounts due for gas delivered plus a turn-on charge of twenty-five (25) dollars, and has complied fully with applicable service administrative regulations. If the customer has not paid amounts owed, or if the customer has not complied with commission administrative regulations within thirty (30) days from the date the gas is turned off, the gas company may disconnect the customer line from its gathering line. Service shall not be reestablished until the customer has complied with provisions of this administrative regulation pertaining to initial service.

(2) The gas company may require a cash deposit or other guaranty from the customer to secure payment of bills.

Section 8. General Provisions. The gas company shall have reasonable access to the customer's premises, and may shut off gas and remove its property from the premises upon reasonable notice for any of the following reasons:

(1) Need for repairs;

- (2) Nonpayment;
- (3) Failure to make a cash deposit, if required;
- (4) Any violation of this administrative regulation;
- (5) Customer's removal from premises;
- (6) Tampering with the meter, regulators, or connections;
- (7) Shortage of gas or reasons of safety;
- (8) Theft of gas;
- (9) Any action by a customer to secure gas through his meter for purposes other than those for which it was requested, or for any other party without written consent of the gas company; or
- (10) False representation with respect to ownership of property to which service is furnished.

Section 9. Rates and Charges. (1) Rates. Each gas company shall charge rates filed with and approved by, the commission. A gas company may request an adjustment in its rates to reflect changes in its costs to provide service pursuant to KRS 278.485.

(a) A gas company which provides service pursuant to KRS 278.485 may request an adjustment in rates through a proposed tariff submitted at least sixty (60) days prior to its proposed effective date if:

1. The percentage change in rates does not exceed the percentage change in the price index during the most recent twelve (12) month period immediately preceding the date the proposed tariff is filed; and

2. The proposed rate does not exceed the highest average volumetric rate of a local gas distribution utility approved by the commission and in effect on the date the proposed tariff is filed. The commission shall provide the current percentage change in the price index and the highest prevailing rate upon written request.

(b) If the proposed percentage increase in rates exceeds the percentage change in the price index but the proposed rate remains below the highest prevailing gas rate approved by the commission, the gas company shall submit, with its proposed tariff, cost data which support the proposed increase. The data shall include the gas company's costs to provide the service during each of the previous two (2) years and shall be current within ninety (90) days of the date the proposed tariff is filed.

(c) A proposed tariff increasing rates shall not be filed with a proposed effective date less than one (1) year later than the last commission approved increase. Once the commission has determined that sufficient information has been filed with the proposed tariff, the commission shall either approve or deny the proposed adjustment within sixty (60) days. The commission may suspend the proposed tariff beyond the sixty (60) day review period.

(d) A gas company which files a proposed tariff to increase rates shall mail notice to its customers no later than twenty (20) days prior to the filing date of the proposed tariff. The notice shall be dated, shall state the proposed rate and the estimated amount of monthly increase per customer, and shall state that any customer may file comments or a request to intervene by mail to the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602.

(e) In lieu of a rate adjustment through a proposed tariff, a gas company may file an application with the commission for authority to adjust rates pursuant to 807 KAR 5:001, Section 10. If eligible, the gas company may file under the alternative rate adjustment procedure, 807 KAR 5:076.

(2) Charges.

(a) Any nonrecurring, customer-specific charge, such as those listed in 807 KAR 5:006, Section 8, that is assessed by the gas company shall be listed in its tariff. These charges may be adjusted by filing a proposed tariff with the commission at least thirty (30) days prior to the effective date of the adjustment.

(b) Each gas company may charge \$150 for each service tap, including saddle and first shutoff valve which, under this administrative regulation, it must furnish and install.

(3) Provisions contained in this administrative regulation shall apply only to connections made and services provided pursuant to KRS 278.485 after the effective date of this administrative regulation.

(4) In providing notice as required by Section 9(1)(d) of this administrative regulation, the gas company shall use the following form:

NOTICE OF PROPOSED RATE CHANGE

(Name of gas company) has filed a request with the Public Service Commission to increase its rates. The rates contained in this notice are the rates proposed by (name of gas company). However, the Public Service Commission may order rates to be charged that differ from the rates in this notice. Any corporation, association, body politic, or person may file written comments or a written request for intervention within thirty (30) days of the date of this notice with the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602. Copies of the request for an increase in rates may be obtained by contacting the gas company at (address of gas company). A copy of the request for an increase in rates is available for public inspection at this address.

Present Rate	Proposed Rate	Estimated Monthly Increase Per Customer
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Section 10. Deviation from Rules. In special cases for good cause shown the commission may permit deviations from these rules.

This is to certify that the Public Service Commission Chairman has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 278.040(3).

GWEN PINSON, Executive Director
MICHAEL J. SCHMITT, Chairman

APPROVED BY AGENCY: November 28, 2017

FILED WITH LRC: November 29, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2018, at 2:00 p.m. Eastern Standard Time at the Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. 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 January 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: John Park, Staff Attorney, Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3940, fax (502) 564-7279, email john.park@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jason Whisman, phone 502-564-3940, email Jason.Whisman@ky.gov, and John Park

(1) Provide a brief summary of:

(a) What this administrative regulation does: Sets service and safety standards for natural gas gathering systems.

(b) The necessity of this administrative regulation: To ensure safe, reliable natural gas services are delivered from gathering systems to consumers and/or transmission points.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 807 KAR 5:026 conforms to KRS 278.040 which requires the Public Service Commission to set regulations for safe and reliable gathering and transmission of natural gas.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Sets service and safety standards for natural gas gathering systems.

(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: Changes the engineering specifications of piping to conform with current industry standards.

(b) The necessity of the amendment to this administrative regulation: Changes the engineering specifications of piping to conform with current industry standards.

(c) How the amendment conforms to the content of the authorizing statutes: It sets practical and updated safety standards in the construction of gas lines.

(d) How the amendment will assist in the effective administration of the statutes: Changes the engineering specifications of piping to conform with current industry standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 15-20 regulated natural gas gathering operators within Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None. Already in practice within the industry.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Zero Dollars; no fiscal impact.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It modifies state regulation to eliminate outdated standards; therefore, providing clarity for the regulated entities.

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

(a) Initially: Zero dollars; no fiscal impact.

(b) On a continuing basis: Zero dollars; no fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Annual assessments paid by regulated utilities, pursuant to KRS 278.130, which are deposited into a special fund within the General Fund per KRS 278.150(3) for the purposes of maintaining the commission.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as all utilities must conform with uniform standards of fair, safe, reasonable, and reliable utility services.

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 impact other than reducing the managerial audit findings of regulated gas utility companies by the Kentucky Public Service Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.040

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Zero dollars; no fiscal impact.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Zero dollars; no fiscal impact.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Zero Dollars; no fiscal impact.

(c) How much will it cost to administer this program for the first year? Zero dollars; no fiscal impact.

(d) How much will it cost to administer this program for subsequent years? Zero dollars; no fiscal impact.

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. 49 C.F.R. Part 192

(2) State compliance standards. Reduce state standards to mirror federal standards.

(3) Minimum or uniform standards contained in the federal mandate. Uniform standards

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? It will reduce stricter standards and become aligned with the federal requirements.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable

ENERGY AND ENVIRONMENT CABINET

Public Service Commission

(Amendment)

807 KAR 5:027. Gas pipeline safety; reports of leaks; drug testing.

RELATES TO: KRS Chapter 278, 49 C.F.R. Parts[Part] 191, 192, 199, 49 U.S.C. 1671

STATUTORY AUTHORITY: KRS 278.040(3), 278.230(3), 278.495

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) provides that the commission may adopt reasonable administrative regulations to implement the provisions of KRS Chapter 278 and to investigate methods and practices of utilities subject to commission jurisdiction. KRS 278.230(3) provides that utilities shall file any reports reasonably required by the commission. KRS 278.495 provides that the commission may promulgate administrative regulations consistent with federal pipeline safety laws. This administrative regulation establishes rules which apply to gas pipeline safety, reports of leaks, and drug testing by operators of natural gas facilities[utilities].

Section 1. Definition. (1) "Operator" means any utility, county, or city that is subject to the Commission's jurisdiction under KRS 278.495(2).

Section 2. Gas Pipeline Safety. Each operator shall comply with the minimum federal safety requirements for pipeline facilities set forth in 49 C.F.R. Part 192.

Section 3. Reports. Each operator that files an incident notice/report, a safety-related condition report, or an annual report with the United States Department of Transportation ("USDOT") pursuant to 49 C.F.R. Part 191 shall concurrently file such report with the Commission by electronic mail to Pipeline.Safety@ky.gov.

Section 4. Drug and Alcohol Testing. Each operator shall comply with 49 C.F.R. Part 199.

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Section 5. Odorization of Gas. Each Operator shall conduct sampling of combustible gases to assure proper concentrations of odorant in accordance with this section. (1) The operator shall sample gases in each separately odorized system at approximate furthest point from injection of odorant or sampling point(s) identified by engineering studies.

(2) Sampling shall be conducted with equipment designed to detect and verify proper level of odorant.

(3) Separately odorized systems with ten (10) or fewer customers shall be sampled for proper odorant level at least once each ninety-five (95) days.

(4) Separately odorized systems with more than ten (10) customers shall be sampled for proper odorant level at least once every thirty (30) days.

Section 6. Inspection prior to service connection. Each operator shall perform a leak test on all piping downstream from the meter for gas leaks, each time gas is turned on, by performing a dial check or pressure test in accordance with accepted industry practices when all appliances are turned off. The operator shall refuse to turn on gas until all gas leaks so disclosed have been properly repaired. [Definitions: (1) "Incident" means a gas leak, accident, or other event on a pipeline which requires the utility to notify United States Department of Transportation (USDOT) or the commission.

(2) "Pipeline facilities" includes, without limitation, new and existing pipe, right-of-way, and any equipment, facility, or building used in transportation of gas or treatment of gas during the course of transportation.

(3) "System" means all pipeline facilities used by a utility in transportation of gas, including but not limited to, line pipe, valves and other appurtenances connected to line pipe, compressor units, fabricated assemblies associated with compressor units, metering (including customers' meters) and delivery stations, and fabricated assemblies in metering and delivery stations.

(4) "Test failure" means a break or rupture that occurs during strength-proof testing of transmission or gathering lines that is of such magnitude as to require repair before continuation of the test.

(5) "Transportation of gas" means the gathering, transmission, or distribution of gas by pipeline, or storage of gas in or effecting interstate, intrastate or foreign commerce.

Section 2. Scope. (1) This administrative regulation prescribes requirements for reporting gas leaks that are not intended by the utility and that require immediate or scheduled repair and of test failures as defined in Section 1(4) of this administrative regulation.

(2) This administrative regulation applies to leaks and test failures that occur in the gathering of gas located in the following areas:

(a) An area within the limits of any incorporated or unincorporated city, town, or village; or

(b) Any designated residential or commercial area such as a subdivision, business or shopping center, or community development;

(c) The right-of-way of a state highway, county road or railroad on property of a school, church, hospital, park or similar public place.

Section 3. Telephonic Notice of Certain Incidents. (1) At the earliest practicable moment but no later than two (2) hours following discovery, each utility shall give notice to the commission in accordance with subsection (3) of this section of any incident that:

(a) Is reported to USDOT pursuant to 49 C.F.R. Part 191, Federal Pipeline Safety Regulations.

(b) Requires taking any segment of pipeline or mains out of service.

(c) Results in gas ignition.

(d) Causes estimated damage to property of the utility, or others, or both, of \$25,000 or more.

(e) Results in the loss of service to forty (40) or more customers for four (4) or more hours.

(f) Causes the loss of a sizable amount of gas.

~~(g) Received extensive news coverage, or in the judgment of the utility is significant, even though it does not meet the criteria of paragraphs (a) through (g) of this subsection.~~

~~(2) A utility need not give notice of an incident that meets only criteria of subsections (1)(b) and (c) of this section if it occurred solely as a result of, or in connection with, planned or routine maintenance or construction.~~

~~(3) Each notice required by subsection (1) of this section shall be made by telephone to the commission's chief engineer, gas pipeline safety branch, or designated staff; and shall include the following numbers:~~

~~(a) Names of operator and person making report and their telephone numbers.~~

~~(b) Location of incident.~~

~~(c) Time of incident.~~

~~(d) Number of fatalities.~~

~~(e) All other significant facts known by the operator that are relevant to the cause of the incident or extent of damage.~~

~~(4) If designated staff cannot be contacted, required information shall be reported by telephone to the nearest post of Kentucky State Police, followed by confirmation via electronic mail addressed to the commission.~~

~~(5) Each notice made in accordance with this section shall be supplemented by a written report within thirty (30) days giving full details such as cause; extent of injuries or damage; and steps, if any, taken to prevent reoccurrence. If additional information is received by the utility subsequent to the initial report indicating a different cause, more serious injury, or more serious property damage than was initially reported, a supplemental telephone call shall be made to the commission's chief engineer, gas pipeline safety branch, as soon as practicable.~~

~~Section 4. Addressee for Written Report. (1) Each written report required by this administrative regulation shall be transmitted to the Gas Pipeline Safety Branch, Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602.~~

~~(2) Each written report required by Sections 3 and 12 of this administrative regulation shall be transmitted to the Gas Pipeline Safety Branch, Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602; and one (1) copy shall be transmitted to the Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 8417, 400 Seventh Street, SW, Washington, D.C. 20590.~~

~~Section 5. Distribution System: Annual Report. (1) Any utility operating a distribution system and submitting an annual report to USDOT pursuant to 49 C.F.R. Part 191 on USDOT Form DOT F-7100.1-1 shall concurrently file the annual report with the commission.~~

~~(2) The annual report required by subsection (1) of this section need not be submitted with respect to petroleum gas systems which serve less than 100 customers from a single source.~~

~~Section 6. Distribution Systems Reporting Transmission Pipelines; Transmission or Gathering Systems Reporting Distribution Pipelines. Any utility primarily engaged in gas distribution which also operates gas transmission or gathering pipelines and submits an incident report or annual report to USDOT pursuant to 49 C.F.R. Part 191.15 or 191.17 shall concurrently file a copy of the report with the commission. Any utility primarily engaged in gas transmission or gathering which also operates gas distribution pipelines and submits an incident report or annual report to USDOT pursuant to 49 C.F.R. Part 191.9 or 191.11 shall concurrently file a copy of the report with the commission.~~

~~Section 7. Transmission and Gathering Systems: Incident Report. (1) A utility operating a transmission or gathering system and submitting USDOT Form RSPA F7100.2 pursuant to 49 C.F.R. 191.15 shall concurrently file a copy of the report with the commission.~~

~~(2) When additional relevant information is obtained after a~~

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report is submitted in accordance with subsection (1) of this section, the utility shall make a supplemental report as soon as practicable with clear reference by date and subject to the original report.

~~Section 8. Transmission and Gathering Systems: Annual Report. A utility operating a transmission or gathering system and submitting USDOT Form DOT- F-7100.2-1 pursuant to 49 C.F.R. Part 191.17 shall concurrently file a copy of the report with the commission.~~

~~Section 9. Report Forms. Copies of prescribed report forms are available without charge upon request from the USDOT Office of Pipeline Safety or from the commission. Additional copies in this prescribed format may be reproduced and used if of same size and kind of paper.~~

~~Section 10. Reporting Safety-Related Conditions. (1) Except as provided in subsection (2) of this section, each utility shall report in accordance with Section 11 of this administrative regulation the existence of any of the following safety-related conditions involving facilities in service:~~

~~(a) In the case of a pipeline that operates at a hoop stress of twenty (20) percent or more of its specified minimum yield strength, general corrosion that has reduced wall thickness to less than that required for the maximum allowable operating pressure, and localized corrosion pitting to a degree where leakage might result.~~

~~(b) Unintended movement or abnormal loading by environmental causes, such as an earthquake, landslide, or flood, that impairs the serviceability of a pipeline.~~

~~(c) Any material defect or physical damage that impairs serviceability of a pipeline that operates at a hoop stress of twenty (20) percent or more of its specified minimum yield strength.~~

~~(d) Any malfunction or operating error that causes the pressure of a pipeline to rise above its maximum allowable operating pressure plus the buildup allowed for operation of pressure limiting or control devices.~~

~~(e) A leak in a pipeline that constitutes an emergency.~~

~~(f) Any safety-related condition that could lead to an imminent hazard and causes (either directly or indirectly by remedial action of the operator), for purposes other than abandonment, a twenty (20) percent or more reduction in operating pressure or shutdown of operation of a pipeline.~~

~~(2) A report is not required for any safety-related condition that:~~

~~(a) Exists on a master meter system or a customer-owned service line;~~

~~(b) Is an incident or results in an incident before the deadline for filing the safety-related condition report;~~

~~(c) Exists on a pipeline that is more than 220 yards from any building intended for human occupancy or outdoor place of assembly, except that reports are required for conditions within the right-of-way of an active railroad, paved road, street, or highway; or~~

~~(d) Is corrected by repair or replacement in accordance with applicable safety standards pursuant to 807 KAR 5:022 before the deadline for filing the safety-related condition report, except that reports are required for conditions under subsection (1)(a) of this section other than localized corrosion pitting on an effectively coated and cathodically protected pipeline.~~

~~Section 11. Filing Safety-related Condition Reports. (1) Each report of a safety-related condition under Section 10 of this administrative regulation shall be filed (received by the commission) in writing within five (5) working days (not including Saturday, Sunday, or federal holidays) after the day a representative of the utility first determines that the condition exists, but not later than ten (10) working days after the day a representative of the utility discovers the condition. Separate conditions may be described in a single report if they are closely related. To file a report by telefacsimile (fax) dial 502-564-7279.~~

~~(2) The report shall be headed "Safety-related Condition Report" and provide the following information:~~

~~(a) Name and principal address of utility.~~

~~(b) Date of report.~~

~~(c) Name, job title, and business telephone number of person submitting the report.~~

~~(d) Name, job title, and business telephone number of person who determined that the condition exists.~~

~~(e) Date condition was discovered and date condition was first determined to exist.~~

~~(f) Location of condition, with reference to the town, city or county, and as appropriate nearest street address, survey station number, milepost, landmark, or name of pipeline.~~

~~(g) Description of the condition, including circumstances leading to its discovery, any significant effects of the condition on safety, and name of commodity transported or stored.~~

~~(h) Corrective action taken (including reduction of pressure or shutdown) before the report is submitted and the planned follow-up future corrective action, including anticipated schedule for starting and concluding such action.]~~

This is to certify that the Public Service Commission Chairman has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 278.040(3).

GWEN PINSON, Executive Director

MICHAEL J. SCHMITT, Chairman

APPROVED BY AGENCY: November 28, 2017

FILED WITH LRC: November 29, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on January 24, 2018, at 2:00 p.m. Eastern Standard Time at the Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. 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 January 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: John Park, Staff Attorney, Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3940, fax (502) 564-7279, email john.park@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jason Whisman, phone 502-564-3940, email Jason.Whisman@ky.gov, and John Park

(1) Provide a brief summary of:

(a) What this administrative regulation does: Sets safety standards for natural gas pipeline utilities.

(b) The necessity of this administrative regulation: Ensure safe and reliable natural gas services for consumers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 807 KAR 5:027 conforms to KRS 278.040 which requires the Public Service Commission to set regulations to ensure that utilities provide safe natural gas service to their customers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Sets safety standards for natural gas pipeline utilities.

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

(a) How the amendment will change this existing administrative regulation: It modifies the current state regulation to incorporate the federal natural gas safety regulations, 49 C.F.R. 191, 192 and 199, by reference.

(b) The necessity of the amendment to this administrative regulation: To eliminate redundant and unnecessary state

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regulations that essentially mirror the federal standards that the state has the statutory authority to enforce.

(c) How the amendment conforms to the content of the authorizing statutes: It ensures that utilities provide safe service to their customers.

(d) How the amendment will assist in the effective administration of the statutes: Eliminates redundancy and provides clarification for the regulated entities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 215 regulated natural gas utility operators within Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No new action will be required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Zero Dollars; no fiscal impact.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): One set of standards will eliminate redundancy and provide clarification to the utilities.

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

(a) Initially: Zero Dollars; no fiscal impact.

(b) On a continuing basis: Zero dollars; no fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Annual assessments paid by regulated utilities, pursuant to KRS278.130, which are deposited into a special accounting structure of the General Fund per KRS 278.150(3) for the purpose of maintaining the commission.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as all utilities must conform with uniform standards of fair, safe, reasonable, and reliable utility services.

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 impact other than reducing the managerial audit findings of regulated gas utility companies by the Kentucky Public Service Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.040

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Zero dollars; no fiscal impact.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Zero dollars; no fiscal impact.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Zero dollars; no fiscal impact.

(c) How much will it cost to administer this program for the first year? Zero Dollars; no fiscal impact.

(d) How much will it cost to administer this program for subsequent years? Zero dollars; no fiscal impact.

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. 49 C.F.R. Part 191, 49 C.F.R. Part 192, 49 C.F.R. Part 199, 49 U.S.C. 1671

(2) State compliance standards. Reduce state standards to mirror federal standards.

(3) Minimum or uniform standards contained in the federal mandate. Uniform standards

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? It will reduce stricter standards and become aligned with the federal requirements.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

811 KAR 1:215. Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund.

RELATES TO: KRS 230.215, 230.260, 230.770, 230.802, 230.990

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8), 230.770(1), (6), (7), 230.802(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.770(1) establishes the Kentucky standardbred development fund. KRS 230.770(6) and (7) authorize the commission to promulgate administrative regulations establishing the eligibility of horses participating in races for which a portion of the purse is provided by the Kentucky Standardbred Development Fund and the conditions, class, and quality of the races. KRS 230.802(1) establishes the Kentucky standardbred breeders' incentive fund. KRS 230.802(2)(b) authorizes the commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund. This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, criteria for the distribution of moneys from these funds, mandatory criteria for races, and the administration of purses and payments in these races.

Section 1. Definitions. (1) "Commission" means the Kentucky Horse Racing Commission.

(2) "Consolation" means the race following a series of preliminary legs for the next preferred horses, as set forth in section 8 of this administrative regulation, which did not qualify for the finals of each racing division of the Kentucky Sire Stakes program.

(3) "Final" means the race following a series of preliminary legs established to determine the divisional champion of each racing division of the Sires Stakes Program.

(4)[(3)] "Kentucky-bred" means, for the purposes of this administrative regulation, a standardbred horse that is:

(a) Foaled out of a standardbred mare that is registered with the commission and is a resident of Kentucky as provided in this administrative regulation; or

(b) Sired by a standardbred stallion that meets the requirements of this administrative regulation.

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~~(5)~~~~(4)~~ "Kentucky Sires Stakes" means the series of races held annually in Kentucky for two (2) and three (3) year old Kentucky-bred fillies and colts, both trotting and pacing, and funded in whole or in part by the Kentucky Standardbred Development Fund or the Kentucky Standardbred Breeders' Incentive Fund.

~~(6)~~~~(5)~~ "Kentucky Standardbred Breeders' Incentive Fund" or "KSBIF" means the trust and revolving fund as ~~established~~~~[set-out]~~ in KRS 230.802.

~~(7)~~~~(6)~~ "Kentucky Standardbred Development Fund" or "KSDF" means the trust and revolving fund as ~~established~~~~[set-out]~~ in KRS 230.770.

~~(8)~~~~(7)~~ "Stallion residing in Kentucky" means a stallion physically located and standing in Kentucky for 180 days of the calendar year in which the stallion is registered that does not service mares in any other state, jurisdiction, or country outside of Kentucky during the calendar year in which the stallion is registered.

~~(9)~~~~(8)~~ "USTA" means the United States Trotting Association.

Section 2. Domicile Requirements. (1) An owner, lessee, stallion manager, or syndicate manager of a standardbred stallion residing in Kentucky who desires to use the stallion for breeding purposes and to have his progeny eligible for the KSDF or KSBIF shall register the stallion with the commission by December 31st of the year of conception of the horse sought to be eligible. Standardbred stallions not residing in Kentucky ~~are not required~~~~[do not need]~~ to register with the commission.

(2) All standardbred stallions shall be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency whether residing in Kentucky or not.

~~(3)~~~~(a)~~ A standardbred stallion shall be registered ~~by completion and submission of~~~~on~~ the KSDF/KSBIF Stallion Certificate of Eligibility Form, KHRC 215-2, 12/16. ~~[(b)—A standardbred stallion that satisfies the provisions of this section shall be considered a registered stallion for purposes of this administrative regulation.]~~

~~(4)~~~~(3)~~ An owner, lessee, manager, or syndicate manager of a standardbred mare who desires to use the mare for breeding purposes and to have her progeny eligible for the KSDF or KSBIF shall register the mare by December 31st of the year of conception of the horse sought to be eligible.

~~(a)~~~~[Beginning January 1, 2017, in]~~ order to be eligible for registration, the mare shall be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency and shall have resided in Kentucky for a period of not less than 180 days in the calendar year of conception of the horse sought to be eligible. If a horse is conceived by embryo/ovum transplant (ET), both the donor mare and recipient mare shall be registered during the year of conception and the recipient mare shall reside in Kentucky for a period of not less than 180 days in the calendar year of conception of the horse sought to be eligible.

(b) The mare shall be registered on the KSDF/KSBIF Mare Certificate of Eligibility Form, KHRC 215-3, ~~12/17~~~~[12/16]~~.

(c) A standardbred mare that satisfies the provisions of this section shall be considered a registered mare for purposes of this administrative regulation.

~~(5)~~~~(4)~~ Registrations ~~must~~~~[shall]~~ be~~[physically]~~ received by the commission by the close of business or postmarked on the deadline established in this section in order to be eligible.

~~(6)~~~~(5)~~ An owner, lessee, stallion manager, manager, or syndicate manager of a stallion or mare eligible for the KSDF and KSBIF shall be responsible for:

(a) The registrations and records of the farm where the stallion stands or the mare resides; and

(b) Complying with all applicable~~[the]~~ requirements of this administrative regulation.

Section 3. Eligibility. (1) In order to qualify for the Kentucky Sire Stakes, a foal shall be a two (2) or three (3) year old Kentucky-bred and maintain eligibility for the KSDF and KSBIF.

(2)(a) Except as provided by paragraph (b) of this subsection,

only a foal that is the first born to a mare (donor or recipient) in each calendar year produced by any method, including embryo/ovum transplant (ET), shall be eligible for harness racing in Kentucky.

(b) Natural birth twins produced from the same pregnancy and foaling by the natural, nonrecipient mare shall also be eligible.

(3) Any future offspring of foals ineligible for racing under this section shall be ineligible for harness racing in Kentucky.

Section 4. Disputes. (1) If the commission determines that a registration is incorrect, or an application for registration, renewal of registration, or transfer of a registered stallion or mare contains false or misleading information, or that an owner, lessee, stallion manager, manager, or syndicate manager of a registered stallion or registered mare has failed to furnish information~~[the commission has requested]~~ relating to the registration or renewal of a stallion or mare, the commission shall:

(a) Temporarily suspend or deny the registration of the stallion or mare; and

(b) Summon the person who committed a violation listed in this subsection, and any person who has knowledge relating to the violation, to appear before the commission at a hearing pursuant to 811 KAR 1:105.

(2) After the hearing, the commission shall determine whether the violation was willful.

(a) If the commission finds the violation was willful, the commission shall do one (1) or more of the following~~[, based on the degree of seriousness of the willful violation]~~:

1. Deny the registration;
2. Suspend the registration;
3. Revoke the registration; or

4. Bar the owner, lessee, stallion manager, manager, or syndicate manager who willfully committed the violation from further registering stallions or mares to the KSDF and KSBIF.

(b) If the commission finds the violation was not willful, the commission shall rescind the temporary denial, suspension, or revocation of the registration.

(3) If a person summoned by the commission fails to respond to the summons, the commission:

- (a) Shall suspend or deny the registration;
- (b) Shall notify the person in writing of the action taken by the commission; and

(c) May bar the owner, lessee, stallion manager, manager, or syndicate manager who committed the violation from further registering stallions or mares to the KSDF and KSBIF, based on the degree of seriousness of the violation.

Section 5. Rules of Racing. Kentucky Sires Stakes races in which any part of the purse is provided by the KSDF or KSBIF, the requirements for which races are established in Sections 6 through 24 of this administrative regulation, shall be subject to 811 KAR Chapter 1.

Section 6. Distance. Each race shall be a one (1) mile dash.

Section 7. Post Positions. Post positions for the final, consolation and all preliminary legs shall be an open draw with two (2) horses drawn for the final and consolation races~~[race]~~ that are designated as "also eligibles" under Section 8(6) of this administrative regulation.

Section 8. Eligibility for the Final and Consolation Races. Beginning with the 2018 Kentucky Sire Stakes races, consolation races may be eligible for funding.

(1) A horse that does not start in at least one (1) of the preliminary legs scheduled shall not be eligible for the final or consolation.

(a) All horses earning points may enter in the final with the top eight (8) point earners. If the horses raced on a half mile track or five-eighths (5/8) mile track or top ten (10) point earners if the horses raced on a mile track, who are declared eligible.

(b) On a half mile track or five-eighths mile track, the top eight (8) point earners are not eligible for the consolation. On a mile

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track, the top ten (10) point earners are not eligible for the consolation.

(c) A horse that is eligible to race in the final shall only be eligible to race in the final, unless the horse is qualified as an also eligible.

(d) A horse that that is eligible to race in the consolation shall only be eligible to race in the consolation, unless qualified in the final as an also eligible.

(e) A horse that scratches from the final shall not race in the consolation.

(f) A horse that has qualified for the final or consolation, shall remain eligible for the final or consolation.

(g) At least seven (7) eligible horses must be declared for a consolation race to be contested.

(h) No horse that is automatically eligible to race in the final race shall start in the consolation race.

(2) A horse that enters a preliminary leg that does not fill and is not raced shall receive credit toward fulfilling the minimum starting requirements set forth in subsection (1) of this section and toward determining tiebreaker status as set forth in subsection (5)(b) of this section.

(3) A horse that has been scratched from an event that is raced shall not receive credit toward meeting the starting requirements set forth in subsection (1) of this section.

(4) A horse, in order to start in the final or consolation, shall be declared at the host track where the race is being held on or before the time posted on the track condition sheet.

(5)(a) If the number of horses eligible and declared into any final or consolation event exceeds the maximum number specified by the KSDF or KSBIF or the number of positions on the starting gate, the following point system as applied to KSDF preliminary legs shall determine preference for the final:

1. 1st place - fifty (50) points;
2. 2nd place - twenty-five (25) points;
3. 3rd place - twelve (12) points;
4. 4th place - eight (8) points;
5. 5th place - five (5) points;
6. 6th place and all other starters - one (1) point; and
7. A horse finishing in a dead heat for any position in a preliminary leg shall be awarded an equal share of the total number of points awarded for that position.

(b) If there is a tie among horses after the awarding of points pursuant to paragraph (a) of this subsection, there shall be a drawing by lot among those horses tied in total points to determine which horses shall be included in the final field.

(c) If a horse that is qualified for the final or consolation is not declared, the horse with the next highest point total, pursuant to paragraph (a) of this subsection, that is declared shall be eligible for the final or consolation.

(6) Also eligibles.

(a) The two (2) horses accumulating the highest point total, pursuant to subsection (5) of this section, that are declared into the final or consolation, but do not qualify for the final or consolation, shall be designated "also eligible". The horse with the highest point total from the preliminary legs shall be designated as the "first also eligible" and the horse with the next highest point total shall be designated as the "second also eligible".

(b) A horse that is scratched in the final or consolation shall be replaced by the "first also eligible" and then the "second also eligible", if necessary.

1. If post positions have not been drawn at the time of the scratch, the "also eligible" shall take the place of the horse that has been scratched and shall participate in the normal draw.

2. If post positions have been drawn at the time of the scratch, the "also eligible" shall assume the post position of the horse that has been scratched.

3. A horse shall not be moved into the final or consolation as a replacement after the official scratch time deadline that is in effect at the host track.

Section 9. Final Order of Finish. The judges' "official order of finish" shall be used in determining eligibility to the final exclusive of all appeals yet to be decided at the time of closing of the entry

box for final events.

Section 10. Detention. All starters shall be subject to the detention policy of the racetrack.

Section 11. Number of Starters. (1) There shall not be more than:

(a) Ten (10) starters in each final race on a mile track; and

(b) Eight (8) horses on a one-half (1/2) or five-eighths (5/8) mile track.

(2) All horses shall be on the gate for the final race.

Section 12. Declaration Fees. (1) For each horse declared to race in a preliminary leg, there shall be a declaration fee of \$500. If a preliminary leg splits into two (2) or more divisions, the declaration fee shall be \$500 per division. For each horse declared to race in the final or consolation, there shall be a declaration fee of one (1) percent of the total purse.

(2) The declaration fee shall be due to the racing association at the time of declaration and payable one (1) hour prior to post time of the race.

(3) Purses for the KSDF and KSBIF shall consist of money from:

(a) Nominating fees;

(b) Sustaining fees;

(c) Declaration fees; and

(d) Added money from the Commonwealth of Kentucky.

(4)(a) Distribution of revenue for Kentucky Sires Stakes races shall be reviewed and addressed annually, not later than December 15 of each calendar year, by an advisory panel appointed by the Chairman of the commission and consisting of one (1) representative from each of the following:

1. The commission, who shall serve as the chairman of the panel;

2. The Kentucky Harness Horseman's Association;

3. The host racetrack;

4. The commission recognized Standardbred Breeders Association organized in Kentucky; and

5. A participant in the fund that is nominated by the chairman of the commission from a group of up to four (4) nominees recommended by each of the above four (4) members having one (1) nomination each.

(b) Each member of the panel shall serve from July 1 through June 30 of the following year and shall be a resident of Kentucky.

(c) The final determination regarding distribution of revenue shall be made by the commission.

Section 13. Divisions of Preliminary Legs. (1) The total number of horses entered shall determine the number of divisions of the preliminary legs that shall be required.

(2) Preliminary legs shall be split into divisions as follows:

(a) One (1) mile track:

1. Twelve (12) horses or less entered - one (1) division race.

2. Thirteen (13) to twenty (20) horses entered - two (2) divisions.

3. Twenty-one (21) to thirty (30) horses entered - three (3) divisions.

4. Thirty-one (31) to forty (40) horses entered - four (4) divisions.

5. Forty-one (41) to fifty (50) horses entered - five (5) divisions.

6. Fifty-one (51) to sixty (60) horses entered - six (6) divisions.

(b) One-half (1/2) and five-eighths (5/8) mile track:

1. Nine (9) to ten (10) horses entered - one (1) division.

2. Eleven (11) to sixteen (16) horses entered - two (2) divisions.

3. Seventeen (17) to twenty-four (24) horses entered - three (3) divisions.

4. Twenty-five (25) to thirty-two (32) horses entered - four (4) divisions.

5. Thirty-three (33) to forty (40) horses entered - five (5) divisions.

6. Forty-one (41) to forty-eight (48) horses entered - six (6) divisions.

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(c) If the need exists for seven (7) or more divisions, eligibility to the final shall be determined in a manner consistent with the published conditions.

Section 14. Gait. (1) Gait shall be specified by the owner of the horse on or before the first two (2) year old payment.

(2) Change of gait:

(a) May be made at the time of declaration at the track; and

(b) Sustaining payments shall remain in the funds of the original gait specified.

(3) A horse shall not race on both gaits in the same year.

Section 15. Divisions. A race shall be raced in separate divisions as follows:

(1) Colt/gelding/ridgeling divisions; and

(2) Filly divisions.

Section 16. Purse Distributions. (1) The purses awarded for all races shall be distributed on the following percentage basis[as follows]:

(a) Five (5) starters – fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and five (5) percent;

(b) Four (4) starters – fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and the remaining five (5) percent reverts back to the fund[~~fifteen (15) percent, and ten (10) percent~~];

(c) Three (3) starters – fifty (50) percent, twenty-five (25) percent, twelve (12) percent, and the remaining thirteen (13) percent reverts back to the fund[~~sixty (60) percent, thirty (30) percent, and ten (10) percent~~];

(d) Two (2) starters – fifty (50) percent, and twenty-five (25) percent, and the remaining twenty-five (25) percent reverts back to the fund[~~sixty-five (65) percent, and thirty-five (35) percent~~]; and

(e) One (1) starter – fifty (50) percent, and the remaining fifty (50) percent reverts back to the fund[~~100 percent~~].

(2) The percentage basis established by subsection (1) of this section shall apply at each of the Kentucky pari-mutuel tracks.

(3) In addition to the purses set forth in subsection (1) of this section, \$25,000 shall be awarded in each division of the finals to the owner of the stallion or stallions residing in Kentucky that sired the first, second, or third place finisher, as follows:

(a) First place: \$15,000;

(b) Second place: \$7,500; and

(c) Third place: \$2,500.

Section 17. Cancellations. (1) If circumstances prevent the racing of an event, and the race is not drawn, all funds that have been allocated to the division in each of the preliminary legs or the final shall be refunded and pro-rated to the owners of the horses eligible at the time of cancellation.

(2) The eligible horses shall include only horses that made the payments required by Section 22 of this administrative regulation.

(3) The added monies provided by the Commonwealth of Kentucky for use in the KSDF and KSBIF shall be disbursed by December 15 of each calendar year in accordance with the formula created by the panel as set out in Section 12(4) of this administrative regulation.

Section 18. Qualifying. (1) Any horse declared into a Kentucky Sires Stakes race shall:

(a) Show at least one (1) charted race line with no breaks within forty-five (45)[~~thirty (30)~~] days prior to the day of the race; and

(b) Have satisfied the following time requirements:

1. On a track larger than five-eighths (5/8) of a mile:

a. A two (2) year old trotter shall have been timed in 2:06[8] or faster;

b. A two (2) year old pacer shall have been timed in 2:04[6] or faster;

c. A three (3) year old trotter shall have been timed in 2:02[4] or faster; and

d. A three (3) year old pacer shall have been timed in 2:00[2] or faster.

2. On a five-eighths (5/8) mile track:

a. A two (2) year old trotter shall have been timed in 2:07[9] or faster;

b. A two (2) year old pacer shall have been timed in 2:05[7] or faster;

c. A three (3) year old trotter shall have been timed in 2:03[5] or faster; and

d. A three (3) year old pacer shall have been timed in 2:01[3] or faster.

3. On a one-half (1/2) mile track:

a. A two (2) year old trotter shall have been timed in 2:08[40] or faster;

b. A two (2) year old pacer shall have been timed in 2:06[8] or faster;

c. A three (3) year old trotter shall have been timed in 2:04[6] or faster; and

d. A three (3) year old pacer shall have been timed in 2:02[4] or faster.

(2) A horse shall be scratched from a race if the person declaring the horse has failed to advise the race secretary of a start that is not reflected on the electronic eligibilities.

(3) The requirements of this section shall apply both to wagering and nonwagering races.

Section 19. Purse Allocations. (1) At a scheduled meeting of the commission, the commission:

(a) Shall establish the distribution of funds for stakes races for the upcoming year; and

(b) Shall authorize expenditures at a time it designates.

(2) The racing dates for KSDF and KSBIF stakes shall be issued after the track has established its race dates.

Section 20. Promotions. The KSDF or KSBIF shall provide a trophy for each event, and the program that provides the trophy shall purchase the trophy out of its fund.

Section 21. Nomination Fees. (1) After payment of the nomination fee, foals shall remain eligible for events each year by making the required sustaining and declaration payments for that year. The KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form, KHRC 215-1, 12/16, shall be filed with the commission along with the nomination and sustaining fees.

(2) The two (2) year old March 15 payment shall be made in order to remain eligible to the KSDF and KSBIF as a three (3) year old.

(3) Nomination and sustaining payments shall be made to the KSDF/KSBIF in U.S. funds by a money order or a check drawn on a U.S. bank account.

Section 22. Nomination Schedule. (1) Yearlings shall be nominated by May 15 of their yearling year, except as provided in subsection (4) of this section.

(2) For yearlings sired by a standardbred stallion residing in Kentucky and registered with the KSDF and KSBIF, the nomination fee shall be forty (40) dollars per yearling. For yearlings sired by a standardbred stallion not residing in Kentucky, the nomination fee shall be eighty (80) dollars per yearling.

(3) Nominated horses shall be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency and shall be properly identified to the satisfaction of the commission at the time of the nomination. Identification shall be determined by the official registration maintained by the USTA, Standardbred Canada, or other appropriate international harness racing governing agency.

(4) If a horse is not nominated during its yearling year, the horse may be nominated prior to March 15 of its two (2) year old year if:

(a) For horses sired by a standardbred stallion residing in Kentucky and registered with the KSDF and KSBIF, a nomination fee of \$500 is made by March 15 of the horse's two (2) year old year, along with the sustaining payment required by subsection (5)(a) of this section; or

(b) For horses sired by a standardbred stallion not residing in

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Kentucky, a nomination fee of \$600 is made by March 15 of the horse's two (2) year old year, along with the sustaining payment required by subsection (5)(a) of this section.

(5) Sustaining payments shall be as follows:

(a) TWO (2) YEAR OLD PAYMENTS	
March 15	\$300
April 15	\$300
May 15	\$300
March 15 payment shall be mandatory to make entry eligible as a three (3) year old.	

(b) THREE (3) YEAR OLD PAYMENTS	
February 15	\$300
March 15	\$300
April 15	\$300

Section 23. Early Closing Events. The commission, during any given year, may provide for separate early closing events for Kentucky-bred horses.

Section 24. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form", KHRC 215-1, 12/16;

(b) "KSDF/KSBIF Stallion Certificate of Eligibility Form", KHRC 215-2, 12/16; and

(c) "KSDF/KSBIF Mare Certificate of Eligibility Form", KHRC 215-3, 12/17[12/16].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the KHRC Web site at <http://khrc.ky.gov>.

FRANKLIN S. KLING, JR., Chairman
DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: December 12, 2017

FILED WITH LRC: December 14, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 405011. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by January 17, 2018, 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 through 11:59 p.m., January 31, 2018. 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: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email John.Forgy@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation prescribes the conditions under which standardbred racing shall be conducted in Kentucky. Specifically, KRS 230.770(6) authorizes the commission to promulgate regulations establishing eligibility requirements for horses participating in races for which a portion of

the purse is provided by the Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund ("KSDF/KSBIF"). This regulation establishes the eligibility requirements to receive distributions from the KSDF/KSBIF.

(b) The necessity of this administrative regulation: This regulation is necessary to exercise the statutory authority of the KHRC set forth in KRS 230.215(2) to "promulgate administrative regulations prescribing conditions under which all legitimate standardbred horse racing and wagering thereon is conducted in the Commonwealth of Kentucky" and the statutory authority set forth in KRS 230.240(1). Specifically, this regulation is necessary to establish the eligibility requirements for those desiring to receive distributions from the KSDF/KSBIF.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the statutory authority granted to the Kentucky Horse Racing Commission by KRS 230.215(2), 230.240(1), 230.260(8), 230.770(1), (6), (7), and KRS 230.802(2)(b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by outlining the qualifications required of a horse owner and breeder to be eligible to receive KSDF/KSBIF monies.

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

(a) How the amendment will change this existing administrative regulation: This amendment is necessary to update the text of the administrative regulation to reflect the current realities of standardbred horse racing and the corresponding eligibility requirements to receive KSDF/KSBIF funds. Specifically, this amendment:

Adds consolation races to allow more horses to compete;
Clarifies the mare resident requirements on embryo transplants; and
Redistributes the purse so smaller fields do not receive more funds for less competition.

(b) The necessity of the amendment to this regulation: This amendment is necessary to increase racing opportunities for eligible horses, to clarify mare residency for embryo transfers, and to redistribute the purse in a competitive manner.

(c) How the amendment conforms to the content of the authorizing statute: KRS 230.770 (2) requires the commission "to use the development fund to promote races, and to provide purses for races, for Kentucky-bred standardbred horses." KRS 230.802 (2)(a) requires the commission to "use moneys deposited in the Kentucky standardbred breeders incentive fund to provide rewards for breeders or owners of Kentucky-bred standardbred horses." This amendment fulfills that statutory mandate by implementing the changes outlined in (2)(a) above to enhance the fund.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by ensuring that the regulation accounts for the increased population of standardbred horses competing in this series, and by clarifying the eligibility requirements for resident mares.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect; standardbred breeders; Standardbred owners; boarding farm owners and employees; Kentucky veterinarians and equine healthcare facilities; horse transportation companies; farriers; farmers and suppliers of hay, feed and grain; equine supply companies; daily maintenance care and tack; Kentucky standardbred sale companies; retail stores and maintenance services; and state and local payroll tax.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In complying with this amendment, breeders will have an additional opportunity to utilize embryo

transplant and owners will have an additional opportunity to race for purses. All other entities identified in (3) will not acquire any additional responsibilities, but will reap the benefits of a stronger breeding industry in Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None of the entities identified in question (3) will incur any costs in complying with the amendments. Rather, this amendment specifically offers more racing opportunities for eligible horses to receive distributions from the fund. There is no fee to nominate a mare or stallion, and the yearling, two-year-old and three-year-old fees will not change.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will allow breeders the opportunity to utilize embryo transfer, which will have a positive effect on equine facilities, horse transport, veterinarian care and increased population at Kentucky boarding farms. The increased population will result in more foals that will be eligible to race. The additional consolation races provide more opportunities for Kentucky owners to earn purse distributions from the fund.

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

(a) Initially: There is no initial administrative cost to implement this amendment.

(b) On a continuing basis: There is no continuing cost 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 nomination fees are used for the implementation and enforcement of this regulation. This amendment does not change the nomination fees and the source of funding remains the same. No additional funding is required.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

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 Horse Racing Commission will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS 230.215(2), 230.260(8), 230.770(1), (6), (7), 230.802(2)(b).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Although specific dollar estimates cannot be determined, the greatest impact of this regulation for the first year to the state and local government will be the increase in payroll taxes imposed upon all participants as noted in the Regulatory Impact Analysis & Tiering Statement, Section (3).

(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? Although specific dollar estimates cannot be determined,

continued growth and participation in the program over subsequent years will increase payroll taxes imposed upon all participants as noted in the Regulatory Impact Analysis & Tiering Statement, Section (3).

(c) How much will it cost to administer this program for the first year? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. This administrative regulation requires mares and stallions to reside in Kentucky for 180 days during the year of conception in order for the resulting foal to be eligible to receive distributions from the fund. This requirement provides economic support to all businesses and individuals who provide services necessary for the breeding and racing of standardbred horses. See Regulatory Impact Analysis and Tiering Statement, Section (3).

Revenues (+/-): Increase – No specific estimate

Expenditures (+/-): No impact

Other Explanation: Specific dollar estimates cannot yet be determined, but this amendment is anticipated to result in increased population at Kentucky boarding farms, resulting in more foals eligible to race and additional state and local payroll taxes.

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

811 KAR 1:220. Harness racing at county fairs.

RELATES TO: KRS 230.215, 230.260, 230.280, 230.290, 230.310, 230.398

STATUTORY AUTHORITY: KRS 230.215, 230.260, 230.398

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.398 authorizes the commission to promulgate administrative regulations governing the conduct of county fair races. This amendment to the existing administrative regulation updates and clarifies the [establishes] conditions, races, purses, and payments in races conducted at county fairs in which funds for purses are provided by the commission, and regulates eligibility for participation in harness racing at county fairs.

~~Section 1. [Definitions. (1) "Individual" means a natural person, at least eighteen (18) years of age, but does not include any corporation, partnership, limited liability company, trust, estate, association, joint venture, or any other group or combination acting as a unit.~~

~~(2) "Individual or Person domiciled in Kentucky" means:~~

~~(a) An individual who has his permanent residence in Kentucky; or~~

~~(b) A person organized under the laws of Kentucky or registered to do business in Kentucky with the Kentucky Secretary of State. (3) "Person" means any corporation, whether organized for profit or not, partnership, limited liability company, trust, estate, association, joint venture, or any other group or combination acting as a unit.~~

~~Section 2. Domicile. (1) The commission shall determine all questions of domicile.~~

~~(2) In determining questions of domicile, the commission shall weigh:~~

~~(a) The eligibility factors set forth in Section 3 of this administrative regulation; and~~

~~(b) Factors which indicate domicile and intent, including:~~

~~1. The amount of time the individual spends in Kentucky each~~

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year as compared to the amount of time spent elsewhere;

~~2. Whether the individual or person owns real estate in Kentucky;~~

~~3. Whether the individual is registered to vote in Kentucky;~~

~~4. Whether the person is organized under Kentucky law;~~

~~5. The permanent residence of the individual or principal place of business of the person, as indicated by the records of the commission and the United States Trotting Association; and~~

~~6. Whether the individual has a Kentucky automobile driver's license.~~

Section 3. Eligibility. A horse is eligible to participate in a two (2) or three (3) year old stakes race at a county fair if:

(1) ~~The~~(a) Beginning January 1, 2017, the horse is a three (3) year old sired by a stallion that was registered with the Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund as defined in 811 KAR 1:215 at the time of conception;

(b) Beginning January 1, 2017, the horse is a three (3) year old whose dam was partially or wholly owned by an individual or person domiciled in Kentucky at the time of conception;

(c) Beginning January 1, 2017, the horse is a three (3) year old that is owned by an individual or person domiciled in Kentucky;

(d) Beginning January 1, 2017, the horse is a two (2) year old that is "Kentucky-bred" as defined in 811 KAR 1:215; or

(e) Beginning January 1, 2018 and thereafter, the horse is a two (2) year old or a three (3) year old that is "Kentucky-bred" as defined in 811 KAR 1:215;

(2) All owners of the participating horse are current members of the Kentucky Colt Racing Association, Inc.;

(3) All owners of the participating horse hold a current license with the commission; and

(4) The trainer and driver of the participating horse hold current licenses with the commission.

Section 2. Track Requirements. (1) A fair shall have a safe and adequate track, and the entire track, including start and finish lines, shall be visible to judges and spectators.

(2) The track shall be inspected and approved by a representative of the commission.

(3) A track shall have a hub rail or pylons approved by the commission.

(4)(a) A fair shall have safe and adequate stalls for participating horses.

(b) If permanent stalls are not available, tents or other tie-in type stalls may be used.

(c) Except as provided by paragraph (d) of this subsection, a county fair shall not charge stall rent for horses racing at the fair.

(d) A county fair may charge stall rent if the fair is held on state-owned property.

Section 3. Fair Fees. (1) The Kentucky Colt Racing Association fees shall be as follows:

(a) A nomination fee of fifty (50) dollars per horse due on or before February 15 of each racing year;

(b) A sustaining fee of \$200 per horse due on or before April 15 of each racing year;

(c) A starting fee of fifty (50) dollars per horse, per fair, due at the time of entry for the fair; and

(d) A twenty-five (25) dollar fee per horse for starting in an overnight race, due at the time of entry for the fair.

(2) A \$200 payment shall be due at the time of entry for a horse eligible for the fair finals.

Section 4. Officials. (1) The Kentucky Colt Racing Association shall submit to the commission, at least sixty (60) days prior to the opening of a race meeting, a written list of racing officials and applicable employees.

(2) At a county fair, there shall be at least one (1) presiding judge approved by the commission in the judges' stand. In addition, at a meeting in which races are chartered, the association member shall provide both a licensed charter and licensed clerk of the course.

(3) A fair shall use licensed United States Trotting Association judges to preside over the racing.

(4) The judges shall review the ownership of any horse that is entered in order to ensure the horse's eligibility to race.

(5) The judges may determine the validity for racing purposes of any lease, transfer, or agreement pertaining to ownership of a horse and may call for adequate evidence of ownership at any time.

(6) The judges may declare a horse ineligible to race if the ownership or control of the horse is in question.

(7) Officials shall be paid by the Kentucky Colt Racing Association.

Section 5. Starter. A fair shall use a licensed starter with adequate equipment.

Section 6. Use of Entry Fees. (1) The entry fees established in Section 3(1)(c) and (d)[5(4)(e) and (d)] of this administrative regulation shall be retained by each fair as compensation for conducting its harness racing program and in reimbursement of the expenses incurred.

(2) A fair shall, upon request, make a full accounting of the entry fees to the commission.

Section 7. Application for a License and Approval for Purse Distributions. (1) The Kentucky Colt Association on behalf of a fair shall apply to the commission for a license to conduct a harness racing event. A request for pari-mutuel wagering shall be included at the time of application[and for approval of funds by December 15 of the year prior to the year of the event. At the time of application, the request for pari-mutuel wagering shall be included].

(2) Distribution of revenue for the Kentucky County Fairs shall be reviewed annually, not later than December 15 of each calendar year, by the advisory panel established in 811 KAR 1:215.

Section 8. Changes in Racing Program. A fair shall have the right to change the order of its program and to postpone or cancel an event due to bad weather or unavoidable cause. If a race is canceled because of lack of entries, entry fees shall be refunded.

Section 9. Early Closers. (1) An early closing event, and all divisions of that event, shall race a single heat at a distance of one (1) mile and shall be contested for a purse approved by the commission on an annual basis.

(2) An early closing race shall be contested regardless of the number of entries. However, a fair may cancel an overnight race with less than five (5) entries.

Section 10. Number of Starters and Purse Distributions[Division of Races]. There shall be no more than two (2) trailers in any race at a county fair.

(1) On a one-mile track, there shall be ten (10) horses on the gate and the race shall split on eleven (11) horses.[If a two (2) year old race is divided into divisions, each division shall race for the entire amount of the advertised purse for the race].

(2) On a one-half (1/2) mile track or five-eighths (5/8) mile track, there shall be five (5) horses on the gate with two (2) trailers and the race shall split on eight (8) horses.[If a three (3) year old race is divided into divisions, each division shall race for a purse of \$2,500].

(3)[Beginning January 1, 2018 and thereafter, if a race is divided into divisions, each division shall race for the entire amount of the advertised purse for the race.

(4) The purse for each race shall be divided as follows:

(a) Five (5) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and five (5) percent;

(b) Four (4) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and the remaining five (5) percent reverts back to the fund[fifteen (15) percent, and ten (10) percent];

(c) Three (3) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, and the remaining thirteen (13)

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~~percent reverts back to the fund [fifty-five (55) percent, thirty (30) percent, and fifteen (15) percent];~~

(d) Two (2) starters – fifty (50) percent, twenty-five (25) percent, and the remaining twenty-five (25) percent reverts back to the fund [sixty-five (65) percent and thirty-five (35) percent]; and

(e) One (1) starter – fifty (50) percent, and the remaining (50) percent reverts back to the fund [100 percent].

Section 11[43]. Points Distribution. (1) Points shall be awarded in an early closing race, and any division of an early closing race, as follows:

- (a) First place finisher - fifty (50) points;
- (b) Second place finisher - twenty-five (25) points;
- (c) Third place finisher - twelve (12) points;
- (d) Fourth place finisher - eight (8) points;
- (e) Fifth place finisher - five (5) points; and
- (f) Each starter that finishes out of the money - one (1) point.

(2) If two (2) horses dead-heat for any position, they shall each receive one-half (1/2) of the points awarded for that position and one-half (1/2) of the points awarded for the next lower position. The same procedure shall be used for the allocation of points if there is a dead-heat of three (3) or more horses.

(3) A horse that is declared in and then is the subject of a judge's scratch shall be awarded one (1) point based upon the decision of the presiding judge. This decision shall be final.

~~(4) [A horse that starts in a Kentucky Sires Stake race within three (3) days of a scheduled county fair race of the same class shall be awarded a county fair start and one (1) point.]~~

~~(5) [If there is a tie among two (2) or more horses with the same number of points, the tie shall be resolved in favor of the horse with the higher earnings in the early closing fair events in which the horses have competed.]~~

~~(5) [(6) If any division of a race is rained out before the completion of all other divisions of that race, the points for distribution set forth in 811 KAR 1:220, Section 11 [43], shall not apply and instead, one (1) point shall be awarded to each horse entered in each division of that race that was rained out.]~~

Section 12[14]. Entry Limitation. A horse shall not be allowed to compete in more than one (1) race at any fair. ~~[Section 15. Change in Ownership. In order for a three (3)-year old horse, for whom the nomination fee has been paid, to remain eligible to race at a county fair during the calendar year of 2017 after there has been a transfer of ownership, the following payments shall be required:~~

~~(1) \$300 the first time ownership is transferred from the owner at the time of nomination; and~~

~~(2) An additional \$600 thereafter if the same horse is again transferred.]~~

Section 13[46]. Drug Testing. (1) The winning horse at a fair race and any other horse or horses as selected by the judges may be subjected to a drug test as set forth in 811 KAR 1:090 and 811 KAR 1:260.

(2) A fair shall provide two (2) enclosed stalls and bedding to be used by the commission veterinarian for drug testing.

(3) The stalls required by subsection (2) of this section shall be located as close to the race track as possible.

(4) The stalls shall be positioned to allow the track announcer to be heard.

Section 14[47]. Coggins Test. A current negative Coggins test shall be required for each horse racing at a fair.

Section 15[48]. Drivers. A driver shall wear full colors, white pants, a safety vest that meets the standards set forth in 811 KAR 1:075, Section 21, and a safety helmet that meets the standards set forth in 811 KAR 1:075, Section 20, if on the track less than one (1) hour before the start of a fair racing program.

Section 16[49]. Trophies. A fair shall provide a trophy or blanket to the winner of a race. If a race is contested in heats or divisions, the trophy shall be presented to the winner of the fastest

heat or division.

Section 17[20]. Early Deadlines. The deadline for entries at a fair shall be set by the Kentucky Colt Racing Association at its annual October meeting preceding the racing year.

Section 18[24]. Programs. A county fair track holding races for purses shall provide a printed program available to the public containing the following information for:

- (1) Non pari-mutuel tracks:
 - (a) Horse's name and sex;
 - (b) Color and age of horse;
 - (c) Sire and dam of horse;
 - (d) Owner's name;
 - (e) Driver's name and colors;
 - (f) Trainer's name; and
 - (g) Summary of starts in purse races, earnings, and the best win time for the current and preceding year. A horse's best win time may be earned in either a purse or nonpurse race; and
- (2) Pari-mutuel tracks:
 - (a) All of the program information required by subsection (1) of this section;
 - (b) At least the last six (6) performance and accurate chart lines. An accurate chart line shall include:
 1. Date of race;
 2. Location of race;
 3. Size of track if other than a one-half (1/2) mile track;
 4. Symbol for free-legged pacers;
 5. Track condition;
 6. Type of race;
 7. Distance;
 8. The fractional times of the leading horse including race times;
 9. Post position;
 10. Position of the one-quarter (1/4) marker, the one-half (1/2) marker, and the three-quarters (3/4) marker;
 11. Stretch with lengths behind leader;
 12. Finish with lengths behind leader;
 13. Individual time of the horse;
 14. Closing dollar odds;
 15. Name of the driver;
 16. Names of the horses that placed first, second, and third by the judges; and
 17. Standard symbols for breaks and park-outs, if applicable;
 - (c) Indicate drivers racing with a provisional license; and
 - (d) Indicate pacers that are racing without hobbles.

Section 19[22]. Payments. Nomination and sustaining payments shall be made to the Kentucky Colt Racing Association. Entry fees shall be paid to the fair for which the entry is taken.

Section 20[23]. Violations. A person or association that violates a provision of this administrative regulation shall have committed a Category 1 violation and shall be subject to the penalties set forth in 811 KAR 1:095.

FRANKLIN S. KLING, JR., Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: December 12, 2017

FILED WITH LRC: December 14, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by January 17, 2018, 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 through 11:59 p.m., January 31, 2018. 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: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email John.Forgy@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation prescribes the conditions under which harness racing shall be conducted at county fairs. Specifically, KRS 230.398 authorizes the Commission to promulgate regulations establishing eligibility requirements for horses participating in races held at Kentucky County Fairs. This regulation establishes eligibility for horses, conditions for races and purse distributions for races held at approved county fairs.

(b) The necessity of this administrative regulation: This regulation is necessary to exercise the statutory authority of the KHRC set forth in KRS 230.398. Specifically, this regulation is necessary to establish the eligibility requirements and purse distributions for horses participating in harness racing at Kentucky County Fairs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the statutory authority granted to the Kentucky Horse Racing Commission by KRS 230.215(2), 230.260(8), and 230.398.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by outlining the qualifications for a horse to participate in harness racing at Kentucky county fairs and for the owner of that horse to receive purse distributions.

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

(a) How the amendment will change this existing administrative regulation: This amendment is necessary to update the text of the administrative regulation to reflect the current realities of harness racing at county fairs. Specifically, this amendment:

Removes outdated language pertaining to horses that are not bred in Kentucky but rather owned or partially owned by individuals residing in Kentucky;

Synchronizes eligibility requirements for both two-and-three year olds so that all horses racing in the county fairs meet the Kentucky-bred requirements of 811 KAR 1:215; and

Clarifies the approval of county fairs and purse distributions.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to synchronize the eligibility requirements so all horses race under the same rules. This amendment is also necessary to clarify the licensing approval process for county fairs and process for reviewing purse distributions.

(c) How the amendment conforms to the content of the authorizing statute: KRS 230.398 requires the commission to "promulgate administrative regulations as may be necessary for the conduct of these races." This amendment fulfills that statutory mandate by implementing the changes outlined in (2)(a) above to facilitate harness racing at county fairs.

(d) How the amendment will assist in the effective administration of the statutes: This amendment creates eligibility requirements for Standardbred horses racing at county fairs and for purse distributions at the approved county fairs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect: standardbred breeders; standardbred owners; boarding farm owners and employees; Kentucky veterinarians and equine

healthcare facilities; horse transportation companies, farriers; farmers and suppliers of hay, feed and grain; equine supply companies; daily maintenance care and tack; Kentucky standardbred sale companies; retail stores and maintenance services; Kentucky Colt Association; the Kentucky counties hosting the fair; hotels and gas stations located near the county fairs; and state and local government entities which impose payroll taxes.

(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 expands the racing opportunities for owners and trainers of Kentucky-bred standardbred horses. All other entities identified in (3) will not acquire any additional responsibilities, but will reap the benefits of a stronger breeding industry in Kentucky as well as a supported fair circuit.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None of the entities identified in (3) will incur any costs in complying with the amendments. Rather, this amendment specifically offers more racing opportunities for Kentucky-bred standardbred horses. There are no changes in fees to participate in the county fairs and the Kentucky Colt Association pays for the race officials at each county fair.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment expands the racing opportunities for owners and trainers of Kentucky-bred standardbred horses. The amendment will increase the numbers of Kentucky-bred standardbred horses eligible to race in the county fairs. The amendment will also increase the number of participants at each county fair; will benefit the counties, hotels, gas stations, state and local government entities imposing payroll taxes, and all other persons and entities identified in (3).

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

(a) Initially: There is no initial administrative cost to implement this amendment.

(b) On a continuing basis: There is no continuing cost to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment will not require a source of funding for implementation and enforcement.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

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 Horse Racing Commission and the counties that conduct harness racing as part of their annual county fairs will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS 230.215, 230.260, and 230.398.

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? Although there are no fees that will generate revenue for state or local governments, there will be an increase in payroll taxes and potential tourism dollars for all participants as noted in the Regulatory Impact Analysis & Tiering Statement, Section (3).

(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? Continued growth in the program will increase payroll taxes and potential tourism dollars for all participants as noted in the Regulatory Impact Analysis & Tiering Statement, Section (3).

(c) How much will it cost to administer this program for the first year? There will be no cost to the agency administer this program because the program is administered by the Kentucky Colt Association. The Kentucky Colt Association is not a state agency.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to the agency to administer this program in subsequent years because the program is administered by the Kentucky Colt Association. The Kentucky Colt Association is not a state agency.

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

Revenues (+/-): No impact
Expenditures (+/-): No impact
Other Explanation: None

CABINET FOR HEALTH AND FAMILY SERVICES

**Office of Inspector General
Division of Health Care
(Amendment)**

902 KAR 20:058. Operation and services; primary care center.

RELATES TO: KRS 200.503(3), 210.005(2), (3), 216B.010, 216B.015, 216B.040, 216B.042, 216B.045-216B.055, 216B.075, 216B.105-216B.131, 216B.176, 216B.177, 216B.990, 309.080, 309.130(2), (3), Chapter 311, 314, 319.050, 319.056, 319.064, 335.080, 335.100, ~~335.330~~[335.300], ~~335.525(1)~~[335.500], 45 C.F.R. 160, 164, 20 U.S.C. 1400 et seq., 29 U.S.C. 701 et seq., 42 U.S.C. 1320d-2 – 1320d-8

STATUTORY AUTHORITY: KRS 216B.042, 216B.105

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires that the Kentucky Cabinet for Health and Family Services regulate health facilities and health services. This administrative regulation establishes licensure requirements for the operation of and services provided by primary care centers.

Section 1. Definitions. (1) "Behavioral health professional" means:

(a) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy or a medical officer of the government of the United States while engaged in the performance of official duties who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc. or the American Osteopathic Board of Neurology and Psychiatry;

(b) A physician licensed in Kentucky to practice medicine or osteopathy in accordance with KRS 311.571;

(c) A psychologist licensed and practicing in accordance with KRS 319.050;

(d) A certified psychologist with autonomous functioning or a licensed psychological practitioner practicing in accordance with KRS 319.056;

(e) A licensed clinical social worker licensed and practicing in accordance with KRS 335.100;

(f) An advanced practice registered nurse licensed and

practicing in accordance with KRS 314.042;

(g) A physician assistant licensed under KRS 311.840 to 311.862;

(h) A licensed marriage and family therapist licensed and practicing in accordance with KRS ~~335.330~~[335.300];

(i) A licensed professional clinical counselor licensed and practicing in accordance with KRS ~~335.525(1)~~[335.500]; or

(j) A licensed professional art therapist as defined by KRS 309.130(2).

(2) "Behavioral health professional under clinical supervision" means a:

(a) Certified psychologist certified and practicing in accordance with KRS 319.056;

(b) Licensed psychological associate licensed and practicing in accordance with KRS 319.064;

(c) Marriage and family therapy[~~therapist~~] associate as defined by KRS 335.300(3);

(d) Certified social worker certified and practicing in accordance with KRS 335.080;

(e) Licensed professional counselor associate as defined by KRS 335.500(4); or

(f) Licensed professional art therapist associate as defined by KRS 309.130(3).

(3) "Center" means a primary care center.

(4) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).

(5) "Child with a severe emotional disability" is defined by KRS 200.503(3).

(6) "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(7) "Licensed behavior analyst" is defined by KRS 319C.010(6).

(8) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).

(9) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(5).

(10) "Peer support specialist" means a paraprofessional who meets the application, training, examination, and supervision requirements of 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240.

(11) "Qualified dietitian" or "nutritionist" means a person who:

(a)1. Has a bachelor of science degree in foods and nutrition, food service management, institutional management, or related services;

2. Has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA); and

3. Is a member of the ADA or is registered as a dietitian by ADA;

(b)1. Has a master's degree in nutrition; and

2. Is a member of ADA or is eligible for registration by ADA; or

(c)1. Has a bachelor of science degree in home economics; and

2. Three (3) years of work experience with a registered dietitian. ~~[(12) "Severe mental illness" means the conditions defined by KRS 210.005(2) and (3).]~~

Section 2. Requirement to Provide Services. (1) A primary care center shall:

(a) Have permanent facilities; and

(b) Provide basic health care services to patients of all ages.

(2) A primary care center shall provide:

(a) A variety of preventive, diagnostic, and therapeutic services by appropriately licensed or certified health professionals to meet usual health care needs in a manner that ensures the continuity of care; and

(b) Appropriate referrals to patients who require services that are above the level of basic health care services and not provided by the center.

Section 3. Administration and Operations. (1) Licensee. The licensee shall be legally responsible for the center and for compliance with federal, state, and local laws and administrative

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regulations pertaining to the operation of the center.

(2) Administrator.

(a) Each center shall have an administrator who shall be responsible for the operation of the center.

(b) In the absence of the administrator, responsibility shall be delegated to a similarly qualified staff person.

(3) Policies.

(a) Administrative policies. The center shall have written administrative policies established by the licensee covering all aspects of the center's operation, including:

1. A description of organizational structure, staffing, and allocation of responsibility and accountability;

2. A description of referral linkages with inpatient facilities and other providers;

3. Policies and procedures for the guidance and control of personnel performances;

4. A description of services directly provided by the center;

5. A description of the administrative and patient care records and reports;

6. A policy for an expense and accrual-based revenue accounting system following generally accepted accounting procedures; and

7. A policy to specify the provision of emergency medical services.

(b) Patient care policies. Patient care policies shall be developed by the medical director and other professional staff for all medical aspects of the center's program to include:

1. Written protocols, including standing orders, rules of practice, and medical directives that apply to services provided by the center. The protocols shall be signed by the medical director; and

2. Patient care policies for patients held in the center's holding-observation accommodations.

(c) A system shall be established to ensure that, if feasible, the patient shall be always cared for by the same health professional or health team, to assure continuity of care.

(d) Patient rights policies. The center shall adopt written policies regarding the rights and responsibilities of patients. These patient rights policies shall assure that each patient shall be:

1. [a.] Informed of these rights and of all rules and requirements of 902 KAR Chapter 20 governing patient conduct and responsibilities, including:

a. A procedure for allowing the patient to voice a grievance or recommend changes in policies and services; and

b. Upon the patient's request, a grievance or recommendation shall be conveyed to a decision making level within the organization with the authority to take corrective action;

2. Informed of services available at the center and of related charges, including any charges not covered under Medicare, Medicaid, or other third-party payor arrangements;

3. Informed of his or her medical condition, unless medically contraindicated as documented in his or her medical record;

4. Afforded the opportunity to participate in the planning of his or her medical treatment and to refuse to participate in experimental research;

5. Encouraged and assisted to understand and exercise his or her patient rights;

6. Assured confidential treatment of his or her records and shall be afforded the opportunity to approve or refuse release of the records to any individual not involved in the patient's care, except as required by applicable law or third-party payment contract; and

7. Treated with consideration, respect, and full recognition of his or her dignity and individuality, including privacy in treatment and in the care of his or her personal health needs.

(4) Personnel.

(a) Primary care provider team. Except for extensions established in Section 4(4) of this administrative regulation, the center shall have a minimum of one (1) [or more] full-time licensed physician and at least one (1) [or more] full-time:

1. Advanced practice registered nurse;

2. Physician assistant; or

3. Registered nurse.

(b) Medical Director. The center shall have a medical director who shall:

1. Be a licensed physician responsible for all medical aspects of the clinic; and

2. Provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311.

(c) Physicians. Each physician employed by or having an agreement with the center to perform direct medical services shall be [a.] qualified to practice:

1. [a.] General medicine, including as a general practitioner, family practitioner, obstetrician – gynecologist, pediatrician, or internist; or

2. [b.] Psychiatry; and

~~2. A member of the medical staff or hold courtesy staff privileges at one (1) or more hospitals with which the center has a formal transfer agreement].~~

(d) Nurse. An advanced practice registered nurse or a registered nurse employed by the center directly or by contract shall provide services within his or her relative scope of practice pursuant to KRS Chapter 314.

(e) Physician [Physician's] assistant. A physician assistant shall provide services within his or her scope of practice pursuant to KRS Chapter 311.

(f) In-service training.

1. All center personnel shall participate in ongoing in-service training programs relating to their respective job activities.

2. The training programs shall include:

a. Thorough job orientation for new personnel; and

b. Regular in-service training emphasizing professional competence and the human relationship necessary for effective health care.

(5) Medical records.

(a) Ownership.

1. Medical records shall be the property of the center.

2. The original medical record shall not be removed from the center except by court order.

3. Copies of a medical record or portions of the record may be used and disclosed. Use and disclosure shall be as established in this administrative regulation.

(b) Confidentiality and security: use and disclosure.

1. The center 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 center 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 center may establish [~~This administrative regulation shall not be construed to forbid the center from establishing~~] 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.

(c) The center shall maintain a medical record for each patient. The medical record shall include:

1. The patient's medical and social history, including data obtained from other providers;

2. A description of each medical visit or contact, including the condition or reason necessitating the visit or contact, assessment, diagnosis, services provided, medications and treatments prescribed, and disposition made;

3. Reports of all laboratory, x-ray, and other test findings; and

4. Documentation of all referrals made, including the reason for the referral, to whom the patient was referred, and any information obtained from the referral source.

(d) Confidentiality of all patient records shall be maintained at all times.

(e) Transfer of records. The center shall:

1. Establish systematic procedures to assist in continuity of care if the patient moves to another source of care; and

2. Upon proper release, transfer medical records or an abstract if requested.

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(f) Retention of records. After the patient's death or discharge, the completed medical record shall be placed in an inactive file and retained for:

1. ~~Retained for~~ At least six (6) years; or

2. If a minor, at least three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

(6) Linkage agreements.

(a) The center shall have linkages through written agreements with providers of other levels of care that may be medically indicated to supplement the services available in the center. These linkages shall include:

1. Hospitals; and

2. Emergency medical transportation services in the service area.

(b) Linkage agreements with inpatient care facilities shall incorporate provisions for:

1. Appropriate referral and acceptance of patients from the center;

2. Appropriate coordination of discharge planning with center staff; and

3. The center to receive a copy of the discharge summary for each patient referred to the center.

(c) The written transfer agreements shall include designation of responsibility for:

1. Transfer of information;

2. Provision of transportation;

3. Sharing of services, equipment, and personnel;

4. Provision of total care or portions thereof in relation to facility and agency capability; and

5. Patient record confidentiality pursuant to all applicable federal and state law.

(d)1. A linkage agreement shall not be required to transfer medical records to any other treating health care facility or provider.

2. The center 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.

(7) Quality assurance program. The center shall have an ongoing, written quality assurance program approved by the licensee that:

(a) Includes effective mechanisms for reviewing and evaluating patient care in order to identify problems or opportunities to improve care;

(b) Provides for appropriate responses to findings;

(c) Assigns responsibility for monitoring and evaluating patient care;

(d) Delineates the scope of care provided by the center;

(e) Identifies the aspects of care that the center provides;

(f) Identifies indicators and appropriate clinical criteria that can be used to monitor these aspects of care;

(g) Collects and organizes data for each indicator;

(h) Contains written procedures for taking appropriate corrective action;

(i) Assesses the effectiveness of the actions taken to correct problems and documents the improvement in care; and

(j) Communicates relevant information to other individuals, departments, or services as to the quality assurance program.

Section 4. Provision of Services. (1)(a) Hours of operation and coverage. Scheduled hours of the center's operation shall accommodate the various segments of the population served.

(b) Provisions shall be made for scheduled evening hours and weekend hours, if needed.

(2) Basic services. The center shall provide directly at least the following services:

(a) Medical diagnostic and treatment services of sufficiently broad scope to accommodate the basic health needs of all age groups, including prenatal and postnatal care;

(b) Emergency services. The center shall:

1. Provide emergency medical services during the regularly-scheduled hours for treatment of injuries and minor trauma; and

2. Post in a conspicuous area at the entrance, visible from the

outside of the center:

a. The hours that emergency medical services will be available in the center; and

b. Where emergency medical services not provided by the center can be obtained during and after the center's regular scheduled hours of operation;

(c) Preventive health services of sufficiently broad scope to provide for the usual and expected health needs of persons in all age groups;

(d) Education in the appropriate use of health services and in the contribution each individual can make to the maintenance of his or her own health;

(e) Chronic illness management; and

(f) Laboratory, x-ray, and treatment services provided directly or arranged through other providers.

(3) Supplemental services.

(a) The center shall provide professional services to complement the basic services provided in accordance with subsection (2) of this section.

(b) At least two (2) of the following services shall be provided by the center at some time during the scheduled hours of operation, either directly or by contract on site. The center shall establish linkages with supplemental services that currently exist in the service area and that are not provided directly or by contract by the center, including:

1. Pharmacy: licensed pharmacist;

2. Dentistry: licensed dentist;

3. Optometry: licensed optometrist or ophthalmologist;

4. Midwifery services: certified nurse midwife;

5. Family planning;

6. Nutrition: qualified dietitian or nutritionist;

7. Social service counseling: licensed social worker;

8. Home health: licensed home health agency; and

9. Behavioral health services.

(c) A center that does not have a linkage agreement with the supplemental services pursuant to paragraph (b) of this subsection, but documents a good faith attempt to enter into the linkage agreement, shall be exempt from the linkage agreement requirement.

(4) Extension services.

(a)1. The center may provide basic primary care services as established in subsection (2) of this section, one (1) or more supplemental services as established in subsection (3) of this section, or one (1) or more outpatient behavioral health services as established in Section 5 of this administrative regulation in locations separate from the center's permanent facility.

2. The extension locations shall be listed on the Form OIG 001, Application for Licensure to Operate a Health Facility or Health Service, incorporated by reference in 902 KAR 20:008.

(b) Except for an extension located at a school, each extension that provides one (1) or more of the basic primary care services established in subsection (2) of this section shall be staffed with at least one (1):

1. Full-time advanced practice registered nurse or physician assistant; and

2. Physician who is:

a. Except in extraordinary circumstances, which shall be documented in the extension's records, present no less than once in every two (2) week period to provide medical direction, medical care services, consultation, and supervision; and

b. Available through direct telecommunication for consultation, assistance with medical emergencies, or patient referral.

(c) Except for an extension located at a school, each extension that provides one (1) or more supplemental services established in subsection (3) of this section, or one (1) or more outpatient behavioral health services established in Section 5 of this administrative regulation shall maintain a core staff of appropriately licensed or certified health professionals as necessary to carry out the services provided at the extension site.

(d) If a not-for-profit center's extension operates in a school, the extension shall comply with the staffing requirements of KRS 216B.176(3) and (4).

(e) The center shall have written policies and procedures

pertaining to all aspects of the extension service, including:

1. Patient care;
2. Treatment protocols;
3. Patient rights;
4. Provided services;
5. Medical records;
6. Linkage agreements; and
7. Hours of operation and staffing.

(f) The extension service shall be located within the primary care center's service area.

(g) The center's utilization review program shall include any extension services.

(5) Outreach activities. The center or extension's health care professionals may engage in outreach activities within the primary care center's service areas.

(6) Holding-observation accommodations. If holding-observation accommodations are maintained by the center, the center shall comply with the requirements established in paragraphs (a) through (c) of this subsection.

(a) Use of holding-observation accommodations shall not exceed twenty-four (24) hour medical observation or recuperation in anticipation of transfer to an inpatient facility or to the patient's home.

(b) The decision to hold a patient shall be the responsibility of a physician employed directly or under contract with the center.

(c) A physician or a registered nurse shall be on duty at the center while a patient is held in the center's holding-observation accommodations beyond regular scheduled hours.

(7) Plan of care. The center shall establish and periodically update a written plan of care of all patients or family units, reflecting staff discussion of all medical and social information obtained relative to the patient and the patient's family.

(8) Telephone screening and referral. The center shall provide telephone screening and referral services for prospective patients after regularly-scheduled hours of operation.

Section 5. Outpatient Behavioral Health Services. (1) A primary care center may provide one (1) or more of the following for the treatment of individuals with a mental health disorder, substance abuse disorder, or co-occurring disorder:

(a) Screening[,] that shall be provided by a behavioral health professional, behavioral health professional under clinical supervision, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate practicing within his or her scope of practice to determine the:

1. Likelihood that an individual has a mental health, substance use, or co-occurring disorder; and
2. Need for an assessment;

(b) Assessment that shall:

1. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, a certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate practicing within his or her scope of practice who gathers information and engages in a process with the client, thereby enabling the professional to:

- a. Establish the presence or absence of a mental health, substance use, or co-occurring disorder;
 - b. Determine the client's readiness for change;
 - c. Identify the client's strengths or problem areas that may affect the treatment and recovery processes; and
 - d. Engage the client in developing an appropriate treatment relationship;
2. Establish or rule out the existence of a clinical disorder or service need;
3. Include working with the client to develop a plan of care if a clinical disorder or service need is assessed; and
4. Not include psychological or psychiatric evaluations or assessments;

(c) Psychological testing that shall:

1. Be performed by a licensed psychologist, licensed psychological associate, or licensed psychological practitioner; and
2. Include a psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities and an interpretation and written report of testing results;

(d) Crisis intervention that:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to the client or another individual;
2. Shall consist of clinical intervention and support services necessary to provide:

- a. Integrated crisis response;
- b. Crisis stabilization interventions; or
- c. Crisis prevention activities;

3. Shall be provided:

- a. On-site at the facility;
- b. As an immediate relief to the presenting problem or threat;

and

- c. In a face-to-face, one-on-one encounter;

4. May include:

- a. Verbal de-escalation;
- b. Risk assessment; or
- c. Cognitive therapy;

5. Shall be provided by one (1) or more of the following practicing within his or her scope of practice:

- a. Behavioral health professional;
- b. Behavioral health professional under clinical supervision;
- c. Certified alcohol and drug counselor;
- d. Licensed clinical alcohol and drug counselor; or
- e. Licensed clinical alcohol and drug counselor associate;

6. Shall be followed by a referral to noncrisis services, if applicable; and

7. May include:

- a. Further service prevention planning, including:

- (i) Lethal means reduction for suicide risk; or
- (ii) Substance use disorder relapse prevention; or
- b. Verbal de-escalation, risk assessment, or cognitive therapy;

(e) Day treatment that shall:

1. Be a nonresidential, intensive treatment program designed for children who:

- a. Have a substance use disorder, mental health disorder, or co-occurring disorder;
- b. Are under twenty-one (21) years of age; and
- c. Are at high risk of out-of-home placement due to a behavioral health issue;

2. Consist of an organized behavioral health program of treatment and rehabilitative services for substance use disorder, mental health disorder, or a co-occurring disorder;

3. Have unified policies and procedures that address:

- a. The organization's philosophy;
- b. Admission and discharge criteria;
- c. Admission and discharge process;
- d. Staff training; and
- e. Integrated case planning;

4. Include the following:

a. Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

b. Behavior management and social skills[skill] training;

c. Independent living skills that correlate to the age and development stage of the client; and

d. Services designed to explore and link with community resources before discharge and to assist the client and family with transition to community services after discharge;

5. Be provided:

a. In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

b. On school days and during scheduled school breaks;

c. In coordination with the child's individualized[individual] educational plan or Section 504 plan if the child has an individualized[individual] educational plan or Section 504 plan;

d. By personnel that includes the following practicing within his

or her scope of practice:

- (i) Behavioral health professional;
- (ii) Behavioral health professional under clinical supervision;
- (iii) Certified alcohol and drug counselor;
- (iv) Licensed clinical alcohol and drug counselor;
- (v) Licensed clinical alcohol and drug counselor associate; or
- (vi) Peer support specialist; and

e. According to a linkage agreement with the local education authority that establishes the responsibilities of the local education authority and the day treatment provider; and

6. Not include a therapeutic clinical service that is included in a child's individualized education plan;

(f) Individual outpatient therapy that shall:

1. Be provided to promote the:

- a. Health and well-being of the client; or
- b. Recovery from a substance related disorder;

2. Consist of:

a. A face-to-face encounter with the client; and

b. A behavioral health therapeutic intervention provided in accordance with the client's plan of care;

3. Be aimed at:

- a. Reducing adverse symptoms;
- b. Reducing or eliminating the presenting problem of the client;

and

c. Improving functioning;

4. Not exceed three (3) hours per day; and

5. Be provided by the following personnel practicing within his or her scope of practice:

- a. Behavioral health professional;
- b. Behavioral health professional under clinical supervision;
- c. Licensed behavior analyst;
- d. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;
- e. Certified alcohol and drug counselor;
- f. Licensed clinical alcohol and drug counselor; or
- g. Licensed clinical alcohol and drug counselor associate;

(g) Group outpatient therapy that shall:

1. Be provided to promote the:

- a. Health and well-being of the client; or
- b. Recovery from a substance related disorder;

2. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the client's plan of care;

3. Excluding multi-family group therapy, be provided in a group setting of nonrelated individuals, not to exceed twelve (12) individuals in size. For group outpatient therapy, a nonrelated individual means any individual who is not a:

- a. Spouse;
- b. Significant other;
- c. Parent or person with custodial control;
- d. Child;
- e. Sibling;
- f. Stepparent;
- g. Stepchild;
- h. Step-brother;
- i. Step-sister;
- j. Father-in-law;
- k. Mother-in-law;
- l. Son-in-law;
- m. Daughter-in-law;
- n. Brother-in-law;
- o. Sister-in-law;
- p. Grandparent; or
- q. Grandchild;

4. Focus on the psychological needs of the client as evidenced in the client's plan of care;

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

6. Not include:

- a. Physical exercise;
- b. A recreational activity;
- c. An educational activity; or
- d. A social activity;

7. Not exceed three (3) hours per day per client unless additional time is medically necessary in accordance with 907 KAR 3:130;

8. Ensure that the group has a deliberate focus and defined course of treatment;

9. Ensure that the subject of group outpatient therapy shall be related to each client participating in the group; and

10. Be provided by one (1) or more of the following personnel practicing within his or her scope of practice, and who shall maintain individual notes regarding each client within the group in the client's record:

- a. Behavioral health professional;
- b. Behavioral health professional under clinical supervision;
- c. Licensed behavior analyst;
- d. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;
- e. Certified alcohol and drug counselor;
- f. Licensed clinical alcohol and drug counselor; or
- g. Licensed clinical alcohol and drug counselor associate;

(h) Family outpatient therapy that shall:

1. Consist of a face-to-face behavioral health therapeutic intervention provided through scheduled therapeutic visits between the therapist, at least one (1) member of the client's family, and the client unless the client's presence is not required in his or her plan of care;

2. Address issues interfering with the relational functioning of the family;

3. Seek to improve interpersonal relationships within the client's home environment;

4. Be provided to promote the health and well-being of the client or recovery from a substance use disorder;

5. Not exceed three (3) hours per day per client unless additional time is medically necessary in accordance with 907 KAR 3:130; and

6. Be provided by one (1) or more of the following personnel practicing within his or her scope of practice:

- a. Behavioral health professional;
- b. Behavioral health professional under clinical supervision;
- c. Certified alcohol and drug counselor;
- d. Licensed clinical alcohol and drug counselor; or
- e. Licensed clinical alcohol and drug counselor associate;

(i) Collateral outpatient therapy that shall consist of a face-to-face behavioral health consultation on behalf of a client under the age of twenty-one (21):

- 1. With a:
 - a. Parent;
 - b. Caregiver;
 - c. Person who has custodial control;
 - d. Household member;
 - e. Legal representative;
 - f. School staff person; or
 - g. Treating professional;

2. Provided by one (1) or more of the following personnel practicing within his or her scope of practice:

- a. Behavioral health professional;
- b. Behavioral health professional under clinical supervision;
- c. Licensed behavior analyst;
- d. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;
- e. Certified alcohol and drug counselor;
- f. Licensed clinical alcohol and drug counselor; or
- g. Licensed clinical alcohol and drug counselor associate; and

3. Provided upon the written consent of a parent, caregiver, or person who has custodial control of a client under the age of twenty-one (21). Documentation of written consent shall be signed and maintained in the client's record;

(j) Service planning that shall be provided by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst, or licensed assistant behavior analyst working under the supervision of a licensed behavior analyst to:

1. Assist a client in creating an individualized plan for services needed for maximum reduction of the effects of a mental health

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disorder;

2. Restore a client's functional level to the client's best possible functional level; and

3. Develop a service plan that:

a. Shall be directed by the client; and

b. May include:

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

(ii) A crisis plan; or

(iii) A relapse prevention strategy or plan;

(k) Substance use disorder screening, brief intervention, and referral to treatment that shall:

1. Be an evidence-based early intervention approach for an individual with non-dependent substance use prior to the need for more extensive or specialized treatment;

2. Consist of:

a. Using a standardized screening tool to assess the individual for risky substance use behavior;

b. Engaging a client who demonstrates risky substance use behavior in a short conversation that includes feedback and advice; and

c. Referring the client to therapy or other services that address substance use if it is determined that the client needs additional services; and

3. Be provided by one (1) or more of the following personnel practicing within his or her scope of practice:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision;

c. Certified alcohol and drug counselor;

d. Licensed clinical alcohol and drug counselor; or

e. Licensed clinical alcohol and drug counselor associate;

(l) Comprehensive community support services that shall:

1. Consist of activities needed to allow an individual with a mental health disorder to live with maximum independence in the community through the use of skills training as identified in the client's treatment plan;

2. Consist of using a variety of psychiatric rehabilitation techniques to:

a. Improve daily living skills;

b. Improve self-monitoring of symptoms and side effects;

c. Improve emotional regulation skills;

d. Improve crisis coping skills; and

e. Develop and enhance interpersonal skills; and

3. Be provided by one (1) or more of the following personnel practicing within his or her scope of practice;

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision;

c. Community support associate;

d. Licensed behavior analyst; or

e. Licensed assistant behavior analyst; or

(m) A therapeutic rehabilitation program for an adult with a severe mental illness or child with a severe emotional disability that shall:

1. Include services designed to maximize the reduction of mental illness or emotional disability and restoration of the client's functional level to the individual's best possible functioning;

2. Establish the client's own rehabilitative goals within the person-centered plan of care;

3. Be delivered using a variety of psychiatric rehabilitation techniques focused on:

a. Improving daily living skills;

b. Self-monitoring of symptoms and side effects;

c. Emotional regulation skills;

d. Crisis coping skills; and

e. Interpersonal skills; and

4. Be provided individually or in a group by a:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision; or

c. Peer support specialist.

(2) Plan of care.

(a) Each client receiving outpatient behavioral health services from a primary care center shall have an individual plan of care signed by a behavioral health professional.

(b) A plan of care shall:

1. Describe the services to be provided to the client, including the frequency of services;

2. Contain measurable goals for the client to achieve, including the expected date of achievement for each goal;

3. Describe the client's functional abilities and limitations or diagnosis listed in the current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders;

4. Specify each staff member assigned to work with the client;

5. Identify methods to involve the client's family or significant others if indicated;

6. Specify criteria to be met for termination of treatment;

7. Include any referrals necessary for services not provided directly by the primary care center; and

8. State the date scheduled for review of the plan.

(c) The client shall participate to the maximum extent feasible in the development of his or her plan of care, and the participation shall be documented in the client's record.

(d)1. The initial plan of care shall be developed through multidisciplinary team conferences at least thirty (30) days following the first ten (10) days of treatment.

2. The plan of care for individuals receiving intensive outpatient program services shall be reviewed every thirty (30) days thereafter and updated every sixty (60) days or earlier if clinically indicated.

3. Except for intensive outpatient program services, the plan of care for individuals receiving any other outpatient behavioral health service described in subsection (1) of this section shall be reviewed and updated every six (6) months or earlier if clinically indicated.

4. The plan of care and each review and update shall be signed by the participants in the multidisciplinary team conference that developed it.

(3) Client Records.

(a) A client record shall be maintained for each individual receiving outpatient behavioral health services.

(b) Each entry shall be:

1. Current;

2. Dated;

3. Signed; and

4. Indexed according to the service received.

(c) Each client record shall contain:

1. An identification sheet, including the client's:

a. Name;

b. Address;

c. Age;

d. Gender;

e. Marital status;

f. Expected source of payment; and

g. Referral source;

2. Information on the purpose for seeking a service;

3. If applicable, consent of appropriate family members or guardians for admission, evaluation, and treatment;

4. Screening information pertaining to the mental health or substance use disorder;

5. If applicable, a psychosocial history;

6. If applicable, staff notes on services provided;

7. If applicable, the client's plan of care;

8. If applicable, disposition;

9. If applicable, assigned status;

10. If applicable, assigned therapists; and

11. If applicable, a termination study recapitulating findings and events during treatment, clinical impressions, and condition on termination.

STEVEN D. DAVIS, Acting Inspector General

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: December 12, 2017

FILED WITH LRC: December 13, 2017 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2018, 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 January 12, 2018, 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 January 31, 2018. 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: 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 requirements for the operation of and services provided by primary care centers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish licensure requirements for the operation of primary care centers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting forth the cabinet's licensure requirements for primary care centers.

(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 requirement for hospital privileges for physicians in primary care centers and makes technical changes to comply with the drafting rules of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the minimum requirements for the operation of and services provided by primary care centers.

(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 licensure standards and procedures to ensure safe, adequate, and efficient health facilities.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by setting forth the cabinet's licensure requirements for primary care centers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects approximately 117 primary care centers.

(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 this amendment, primary care center physicians will not be required to have hospital privileges.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be incurred by any primary care centers for compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment removes the requirement for hospital privileges for physicians in primary care centers.

(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 approximately 117 primary care centers. This administrative regulation also impacts the Office of Inspector General, Cabinet for Health and Family Services.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 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:

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

902 KAR 20:145. Operations and services; rural health clinics.

RELATES TO: KRS 216B.010-216B.130, 216B.990(1), (2), 218A.175(1), 45 C.F.R. 160, 164, 42 U.S.C. Part 254r, 42 U.S.C. 1320d-2 – 1320d-8

STATUTORY AUTHORITY: KRS 216B.042(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042(1) requires 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 health facilities and health services[regulate health facilities and health services]. This administrative regulation establishes the minimum requirements for the operation of and services provided by rural health clinics.

Section 1. Location and Requirement to Provide Services. (1) A health facility shall not be licensed or relicensed as a rural health clinic shall[unless it]:

(a) Be located in:

1. A non-urbanized area, as determined by the United States Census Bureau; and

2. An area designated or certified by the Health Resources and Services Administration[Public Health Service, Division of Shortage Designation] as a:

a. Health professional shortage area; or

b. Medically-underserved area; and

(b) Comply with the requirements established in Sections 2 and 3 of this administrative regulation.

(2) A rural health clinic shall be:

(a) Freestanding; or

(b) A subordinate part of a licensed health facility or health service.

Section 2. Administration and Operation. (1) The licensee shall be legally responsible for the operation of the clinic and for compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the clinic.

(2) The rural health clinic shall be under the medical direction of a physician.

(3) The licensee shall:

(a) Establish written policies and lines of authority; and

(b) Designate an administrator who shall be principally responsible for the daily operation of the clinic.

(4) Patient care policies shall be developed by:

(a) One (1) or more physicians;

(b) One (1) or more advanced practice registered nurses or physician assistants; and

(c) At least one (1) member who is not an employee of the rural health clinic.

(5) The policies shall include:

(a) A description of the services provided directly by the rural health clinic or through agreement;

(b) Guidelines for the medical management of health problems, including conditions that require medical consultation and patient referral;

(c) Procedures for maintaining health records;

(d) Procedures for the storage, handling, and administration of drugs and biologicals; and

(e) Procedures for an annual review and evaluation of the services provided by the clinic.

(6) Personnel.

(a) The rural health clinic shall have:

1. At least one (1) physician;

2. At least one (1) advanced practice registered nurse or physician assistant; and

3. Other staff or ancillary personnel necessary to provide the services essential to the clinic's operation.

(b) The physician shall:

1. Be responsible for all medical aspects of the clinic and provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311;

2. Except in extraordinary circumstances, which shall be documented in the clinic's records, be physically present no less than once in every two (2) week period to provide medical direction, supervision, and consultation to the clinic's staff;

3. In conjunction with the advanced practice registered nurse or nurses, or physician assistant or assistants, participate in developing, executing, and reviewing the rural health clinic's written policies and services;

4. Review the rural health clinic's patient records;

5. Provide medical orders and medical care services to patients of the rural health clinic; and

6. Be available for weekly consultation;

7. Be available within one (1) hour, through direct telecommunication, for:

a. Consultation;

b. Assistance with medical emergencies; or

c. Patient referral.

(c) The advanced practice registered nurse or physician assistant shall:

1. Participate in the development, execution, and review of the written policies governing the services the rural health clinic provides;

2. Participate with the physician in review of patient health records; and

3. Provide services in accordance with rural health clinic policies established protocols.

(d) If the practitioner is an advanced practice registered nurse, the nurse shall comply with:

1. The Nurse Practice Act, KRS Chapter 314; and

2. Administrative regulations relating to the practice of an advanced practice registered nurse.

(e) If the practitioner is a

physician assistant, the physician assistant shall comply with administrative regulations relating to the practice of a physician assistant.

(f) The advanced practice registered nurse or physician assistant shall perform the following functions, to the extent they are not performed by a physician:

1. Arrange for, or refer a patient to, needed services that are not provided at the rural health clinic; and

2. Assure that adequate patient health records are maintained and transferred if a patient is referred.

(7) The rural health clinic shall have a written linkage agreement or an arrangement for referral of patients to receive the following services, if required with each of the following:

(a) Inpatient hospital care;

(b) Physician services in a hospital, patient's home, or long term care facility;

(c) Additional and specialized diagnostic and laboratory services that are not available at the rural health clinic;

(d) Home health services;

(e) Services provided by a local health department;

(f) Emergency medical services; and

(g) Pharmacy services.

(8) Medical Records.

(a) The rural health clinic shall maintain patient records in accordance with written policies and procedures.

(b) A member of the clinic's professional staff shall:

1. Be responsible for maintaining the records; and

2. Ensure that the records are:

a. Systematically organized;

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- b.[;] Readily accessible; and
- c. Accurately documented.

~~(9)~~ For a patient receiving health care services, the rural health clinic shall maintain a record that includes the following[;] as applicable:

- (a) Identification and social data;
- (b)[;] Evidence of consent forms;
- (c)[;] Pertinent medical history;

(d)[;] Assessment of the health status and health care needs of the patient;

(e)[; and] A brief summary of the episode, disposition, and instructions to the patient for each contact;

(f)[(b)] Reports of physical examinations, diagnostic, and laboratory test results;

(g)[; and] Consultative findings;

(h)[(e)] All orders, reports of treatments rendered, and medications given;

(i)[and other] Pertinent information necessary to monitor the patient's progress; and

(j)[(f)] Signature of the physician or other health care practitioner[professional] on each order written or treatment provided.

(10) Records.

(a) Ownership.

1. Medical records shall be the property of the clinic.

2. The original medical record shall not be removed from the clinic except by court order.

3. Copies of a medical record or portions of the record may be used and disclosed. Use and disclosure shall be as established in this administrative regulation.

(b) Confidentiality and Security: Use and Disclosure.

1. The clinic 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 clinic 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 clinic 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.

(c) Confidentiality of all patient records shall be maintained at all times.

(11) After the patient's death or discharge, the completed~~(9)~~ The rural health clinic shall maintain the confidentiality of medical record information and shall safeguard against loss, destruction, or unauthorized use. Written policies and procedures shall govern the use and removal of records from the clinic and the condition for release of information.~~(10)~~ medical record [records] shall be placed in an inactive file and retained for a minimum of six ~~(6)~~[five ~~(5)~~] years, or in the case of a minor, a minimum of three (3) years after the patient reaches the age of majority under state law, whichever is the longest~~[longer]~~.

~~(12)~~~~(14)~~ The rural health clinic shall:

(a) Carry out or arrange for an annual evaluation of its total program;

(b)[;] Consider the findings of the evaluation[;] and

(c) Take corrective action, if necessary.

~~(13)~~ The evaluation shall include:

(a) The utilization of clinic services, including at least the:

1. Number of patients served; and

2.[the] Volume of services;

(b) A representative sample of both active and closed clinical records; and

(c) The rural health clinic's health care policies.

Section 3. Services. (1) The rural health clinic shall develop and maintain written protocols that shall:

(a) ~~Be~~[Are] signed by a staff physician;

(b) Explicitly direct the step-by-step collection of subjective and

objective medical data from a patient;

(c) Direct explicit medical action depending on the medical data collected; and

(d) Include:

1. Standing orders;
2. Rules of practice; and
3. Medical directives.

(2) The rural health clinic staff shall provide~~[furnish]~~ diagnostic and therapeutic services, and supplies commonly furnished;

(a) In a physician's office[;] or

(b) At the entry point into the health care delivery system.

(3) Clinic services shall include:

~~(a)~~[These include] Medical history;

~~(b)~~[;] Physical examination;

~~(c)~~[;] Assessment of health status;

~~(d)~~[; and] Treatment for a variety of medical conditions;

~~(e)~~[(3) The rural health clinic shall provide] Basic laboratory services essential to the immediate diagnosis and treatment of the patient as described in this paragraph[; including]:

1.~~(a)~~ Chemical examinations of urine by stick or tablet methods, or both, including urine ketones;

2.~~(b)~~ Hemoglobin or hematocrit;

3.~~(c)~~ Glucose;

4.~~(d)~~ Examination of stool specimens for occult blood;

5.~~(e)~~ Pregnancy tests; and

6.~~(f)~~ Primary culturing for transmittal to a hospital laboratory or licensed laboratory; and

~~(f)~~[(4) The rural health clinic shall provide] Medical emergency procedures as a first response to common life-threatening injuries and acute illness.

(4) A clinic[; and] shall have available the drugs and biologicals commonly used in lifesaving procedures, including:

~~(a)~~[such as] Analgesics;

~~(b)~~[;] Local anesthetics;

~~(c)~~[;] Antibiotics;

~~(d)~~[;] Anticonvulsants;

~~(e)~~[;] Antidotes;

~~(f)~~[and] Emetics;

~~(g)~~[;] Serums; and

~~(h)~~ Toxoids.

(5) A clinic shall not operate in the same manner as or otherwise provide services that are equivalent to the services provided by a pain management facility defined by KRS 218A.175(1).

(6) A~~[The]~~ clinic shall post in a conspicuous area at the entrance, visible from the outside of the clinic:

~~(a)~~[;] The hours that emergency medical services will be available in the clinic[;] and

~~(b)~~ Where emergency medical services not provided by the clinic can be obtained during and after the clinic's regular scheduled hours of operation.

STEVEN D. DAVIS, Acting Inspector General

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: December 12, 2017

FILED WITH LRC: December 13, 2017 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2018, 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 January 12, 2018, 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 January 31, 2018. 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: 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 requirements for the operation of and services provided by rural health clinics.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the minimum requirements for the operation of and services provided by rural health clinics.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting forth the cabinet's licensure requirements for rural health clinics.

(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: Currently, this administrative regulation requires a physician to be physically present at a rural health clinic at least once weekly for consultation. This amendment will require a physician to be on-site at least once in every two (2) week period, except in extraordinary circumstances. This amendment also updates 902 KAR 20:145 for compliance with the drafting rules of KRS Chapter 13A, requires rural health clinics to demonstrate compliance with the confidentiality and security requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and clarifies that rural health clinics may not operate in the same manner as or otherwise provide services that are equivalent to the services provided by a pain management facility defined by KRS 218A.175(1).

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the minimum requirements for the operation of and services provided by rural health clinics.

(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 licensure standards and procedures to ensure safe, adequate, and efficient health facilities.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by setting forth the cabinet's licensure requirements for rural health clinics.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects approximately 205 rural health clinics.

(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 this amendment, rural health clinic physicians will be required to be on-site once in every two (2) week period rather than at least once weekly.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be incurred by any rural health clinics for compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment allows clinic physicians to be on-site once in every two (2) week period rather than at least once weekly.

(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 approximately 205 rural health clinics. This administrative regulation also impacts the Office of Inspector General, Cabinet for Health and Family Services.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 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:

NEW ADMINISTRATIVE REGULATIONS

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(New Administrative Regulation)

103 KAR 5:230. Information to be provided by the sheriff when transferring delinquent property tax bills to the county clerk.

RELATES TO: KRS 134.122

STATUTORY AUTHORITY: KRS 134.122(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 134.122 requires the Department of Revenue to promulgate an administrative regulation providing the criteria for the information required to be provided by the sheriff when transferring delinquent property tax bills to the county clerk. This administrative regulation provides a listing of information to be included in those transfers.

Section 1. Each county sheriff shall transfer all delinquent property tax bills on real and personal property to the county clerk as provided in KRS 134.122.

Section 2. (1) The sheriff and county clerk may mutually agree to a list of information that is needed to ensure a successful electronic transfer of delinquent property tax data from the sheriff's office to the county clerk's office by the date required in Section 1 of this administrative regulation.

(2) If the sheriff and county clerk do not mutually agree on the information to be provided electronically in the delinquent property tax data transfer, the following demographic information shall be included in any electronic form utilized to transfer delinquent tax bill data from the sheriff's office to the county clerk's office:

- (a) Tax year;
- (b) Tax bill number;
- (c) Tax district;
- (d) Taxpayer name;
- (e) Street address;
- (f) City, state, and zip code;
- (g) Property location address;
- (h) Class of property;
- (i) Assessed value of property;
- (j) Applicable tax districts;
- (k) Tax rates imposed by each tax district;
- (l) Tax amount due each tax district;
- (m) Total tax amount due;
- (n) Total penalty amount due;
- (o) Total sheriff's fee due;
- (p) Total sheriff's commission due; and
- (q) Grand total due at the time of transfer.

(3) The demographic information described above shall be transferred via an electronic data file that is usable by any software vendor utilized by the sheriff or county clerk.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: December 11, 2017

FILED WITH LRC: December 13, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2018, at 1:00 p.m. in Room 11A, State Office Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 January 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative

regulation to the contact person.

CONTACT PERSON: Lisa 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for all software vendors who provide collection software to county clerks and sheriffs to ensure that all information needed for an accurate transfer of data between those offices can occur.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that transfers of property tax information can occur in accordance with KRS 134.122.

(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 requirements for software vendors regarding property tax information that must transfer from a county sheriff to a county clerk electronically.

(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 ensuring that the electronic information transferred between a county sheriff and a county clerk contains the information needed to provide an accurate transfer of data.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts all 120 Kentucky county sheriff and county clerk offices. It also impacts the half dozen or so vendors who provide collection software services to these offices.

(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 will be no additional actions required of the sheriffs and county clerk's offices. All of the information pertaining to each delinquent property tax bill is already contained in each software vendor's database. This information will need to be included in the electronic downloads from one software vendor to another when two different vendors service the sheriff and county clerk.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no additional costs incurred since the information being transferred is already available in current software programs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with this regulation, accurate and complete information will be shared between software vendors so that each vendor can properly service their respective clients.

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

(a) Initially: There should not be any costs associated with implementing this regulation either initially or on a continuing basis for the sheriffs or county clerks.

(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: There is no cost to implement this regulation for the counties, therefore there is no need for a source of funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No 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 administrative regulation will not establish or increase any fees.

(9) TIERING: Is tiering applied? No. Tiering is not applied as compliance with this administrative regulation applies equally to all 120 sheriffs and county clerks across the Commonwealth 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 all county sheriffs and county clerks across the Commonwealth of Kentucky.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 134.122 requires the Department of Revenue to promulgate a regulation providing the content of information required to be provided by the county sheriff to the county clerk when filing a tax claim.

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 additional revenue generated by promulgating this regulation.

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

(c) How much will it cost to administer this program for the first year? There are no costs to the counties to administer the provisions of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs to the counties to administer the provisions of this administrative regulation on an ongoing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Medical Licensure
(New Administrative Regulation)

201 KAR 9:480. Fee schedule regarding genetic counselors.

RELATES TO: KRS 311.695, 311.697, 311.699

STATUTORY AUTHORITY: KRS 311.699

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.699 authorizes the board to promulgate administrative regulations relating to the licensing and regulation of genetic counselors and to establish fees relating to the issuance and renewal of genetic counselor licenses. This administrative regulation establishes a schedule of fees for services rendered by the board.

Section 1. Fee Schedule for Genetic Counselors. (1) The fee for initial issuance of a regular license shall be \$150.

(2) The fee for renewal of a regular license shall be \$150.

(3) The fee for reinstatement of an inactive license shall be the current renewal fee, plus ten (10) dollars.

(4) The fee for issuance of a duplicate wallet card shall be five (5) dollars.

(5) The fee for issuance of a duplicate wall license shall be ten (10) dollars.

(6) The fee for verification of a state license to another licensing agency shall be (10) dollars.

RUSSELL L. TRAVIS, M.D., President

APPROVED BY AGENCY: December 4, 2017

FILED WITH LRC: December 5, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2018 at 9:00 a.m., at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by January 16, 2018, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be transcribed 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 January 31, 2018. 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: Leanne K. Diakov, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118, email Leanne.Diakov@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leanne K. Diakov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees associated with the licensing and regulation of genetic counselors.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish fees associated with the licensing and regulation of genetic counselors.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the fees associated with the licensing and regulation of genetic counselors.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the fees associated with the licensing and regulation of genetic counselors.

(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: This amendment will affect all genetic counselors who will become licensed in the Commonwealth of Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No initial action. Will be included with initial application for licensure and renewal applications.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Initial application fee will be \$150. Renewal of license will be \$150.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will benefit because the Board will be able to provide more efficient services to the entities identified above.

(5) Provide an estimate of how much it will cost 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: Funding comes directly from applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: The applicant will be responsible for the fee.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation will establish initial and renewal licensing fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Medical Licensure 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 311.699

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? 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
Kentucky Board of Hairdressers and Cosmetologists
(Repealer)

201 KAR 12:041. Repeal of 201 KAR 12:020, 201 KAR 12:025, 201 KAR 12:031, 201 KAR 12:040, 201 KAR 12:045, 201 KAR 12:050, 201 KAR 12:055, 201 KAR 12:065, 201 KAR 12:070, 201 KAR 12:080; 201 KAR 12:083; 201 KAR 12:085, 201 KAR 12:088, 201 KAR 12:101, 201 KAR 12:105, 201 KAR 12:110, 201 KAR 12:120, 201 KAR 12:125, 201 KAR 12:130, 201 KAR 12:140, 201 KAR 12:150, 201 KAR 12:180, 201 KAR 12:190, 201 KAR 12:220, 201 KAR 12:230, 201 KAR 12:250, and 201 KAR 12:270.

RELATES TO: KRS 317A.060

STATUTORY AUTHORITY: KRS 317A.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 and 317B.020 provide for the board to promulgate administrative regulations governing the operation of any schools and salons of cosmetology, nail technology, and esthetics practices including but not limited to administrative regulations to protect the health and safety of the public. All matters repealed herein are addressed in 201 KAR 12:010; 12:030, 12:060, 12:082, 12:100, and 12:260.

Section 1. The following administrative regulations are hereby repealed:

- (1) 201 KAR 12:020. Examination;
(2) 201 KAR 12:025. Additional study after failing examination;
(3) 201 KAR 12:031. Replacement of license- duplicate license;
(4) 201 KAR 12:040. Apprentices; ratio to operators;
(5) 201 KAR 12:045. Apprentice, nail technician, esthetician, and instructor's licensing;
(6) 201 KAR 12:050. Reciprocity for valid license;
(7) 201 KAR 12:055. Instructor's license for out of state applicant;
(8) 201 KAR 12:065. New, relocated, and change of owner salons;
(9) 201 KAR 12:070. Requirements for esthetic salons;
(10) 201 KAR 12:080. Salon and school public identification;
(11) 201 KAR 12:083. Educational Requirements;
(12) 201 KAR 12:085. School Advertising;
(13) 201 KAR 12:088. Esthetic course of instruction;
(14) 201 KAR 12:101. Equipment sanitation;
(15) 201 KAR 12:105. School districts;
(16) 201 KAR 12:110. School license;
(17) 201 KAR 12:120. School faculty;
(18) 201 KAR 12:125. Schools' student administrative regulations;
(19) 201 KAR 12:130. School fees for services;
(20) 201 KAR 12:140. School equipment;
(21) 201 KAR 12:150. School records;
(22) 201 KAR 12:180. Hearing procedures;
(23) 201 KAR 12:190. Investigations and complaints;
(24) 201 KAR 12:220. Esthetic fee requirements;
(25) 201 KAR 12:230. Code of ethics;
(26) 201 KAR 12:250. School equipment for esthetics course;
and
(27) 201 KAR 12:270. Threading practice.

R. KAY SWANNER, Board Chair

APPROVED BY AGENCY: December 12, 2017

FILED WITH LRC: December 13, 2017 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2018, at 10:00 a.m. at the 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 is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If

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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 January 31, 2018. 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 repeals those regulations no longer necessary in light of amendments to existing regulations. The net effect of the contemporaneous amendments and this repealer will be six remaining administrative regulations in place of the currently existing thirty-three administrative regulations. The six remaining administrative regulations are: 201 KAR 12:010; 12:030; 12:060; 12:082; 12:100; and 12:260.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to eliminate redundancy and unnecessary regulatory requirements in many of the existing thirty-three administrative regulations. The net effect of the contemporaneous amendments to remaining administrative regulations and this repealer will be six consolidated, single subject administrative regulations that simplify and facilitate the processes, procedures, and requirements for the areas under the KBHC's jurisdiction.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 317A.060 and 317B.020 require the board to promulgate administrative regulations governing the operations of cosmetology, nail technology, and estheticians. This administrative regulation repealer removes redundancy in regulatory oversight while contemporaneous amendments to current regulations ensure continued consumer protection.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repealer will facilitate administration of KRS 317 for KBHC and will facilitate compliance by licensees through elimination of redundant and unnecessary regulations in light of contemporaneous amendments to 201 KAR 12:010, 12:030, 12:060, 12:082; 12:100, and 12:260.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is a repealer.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is a repealer.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is a repealer.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 38,000 various licensees (cosmetology students, cosmetology schools, cosmetology, nail technology, and esthetics salon owners/managers, and individual cosmetologists, nail technicians, and estheticians) 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: This administrative regulation repeals existing administrative regulations and does not impose any requirements on those regulated entities identified in question (3). This repealer is part of a comprehensive effort to simplify the

existing regulatory framework of the KBHC and eliminate redundant and unnecessary regulations.

(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 repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky's regulatory framework for cosmetology students and schools, cosmetology salon owners, and individual cosmetologists, nail technicians, and estheticians will be far simpler, easier to navigate, and more closely aligned with similar licensing frameworks of other states.

(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 because 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 changes or increases in fees will be required as a result of this administrative regulation.

(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 administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this administrative regulation apply equally to all affected entities and persons.

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 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.060 and 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.

(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 state or local government 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 for the state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No additional cost is anticipated as a result of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional cost is anticipated as a result 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 (+/-): No impact

Expenditures (+/-): No impact

Other Explanation: None

**GENERAL GOVERNMENT
Board of Physical Therapy
(New Administrative Regulation)**

201 KAR 22:170. Physical Therapy Compact Commission.

RELATES TO: KRS 327.300(12)

STATUTORY AUTHORITY: KRS 327.300(12)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.300(12) requires the Board of Physical Therapy to review any rule adopted by the Physical Therapy Compact Commission within sixty (60) days of adoption for the purpose of filing the rule as an emergency administrative regulation pursuant to KRS 13A.190 and for filing the rule as an accompanying ordinary administrative regulation, following the requirements of KRS Chapter 13A. This administrative regulation sets forth the rules adopted by the Physical Therapy Compact Commission on November 5, 2017.

Section 1. Definitions. (1) "Adverse action" means a publicly available disciplinary action taken against a license or compact privilege by a licensing board. Adverse action does not include nondisciplinary remediation required by the licensing board.

(2) "Alternative program" means any nondisciplinary monitoring program intended to remediate the licensee that is not a matter of public record and to which a licensing board refers a licensee, or of which the licensing board is aware of the licensee's participation.

(3) "Applying for a license" means the individual has submitted an application for licensure to the licensing board or requested that the Federation of State Boards of Physical Therapy transfer the individual's National Physical Therapy Examination score to the licensing board.

(4) "Commission" means the Physical Therapy Compact Commission.

(5) "Compact" or "Physical Therapy Compact" means the Physical Therapy Licensure Compact.

(6) "Compact administrator" shall be synonymous with "executive director" referenced in Section 7.G. of the Compact.

(7) "Encumbrance" means any action taken by the licensing board that limits the practice or work of the physical therapist or physical therapist assistant. An encumbrance may be disciplinary or nondisciplinary in nature.

(8) "FSBPT ID" means the identification number assigned by the Federation of State Boards of Physical Therapy to all individuals in the Exam, Licensure, and Disciplinary Database.

(9) "Home state" means a person's true, fixed, and permanent home and is the place where the person intends to remain indefinitely, and to which the person expects to return if absent without intending to establish a new domicile elsewhere.

(10) "License" means the authorization from the state to practice as a physical therapist or to work as a physical therapist assistant. For purposes of the Compact, a certification for a physical therapist assistant is synonymous with "license."

(11) "Licensing board" means the agency of a state that is responsible for the licensing and regulation of physical therapists and physical therapist assistants.

(12) "Member state" means a state that has enacted the Compact.

(13) "Non-member state" means a state that has not enacted the Compact.

(14) "Party state" means any member state where the individual currently holds, or has ever held a physical therapist or physical therapist assistant license or compact privilege.

(15) "State" means any state, commonwealth, district, or territory of the United States of America that regulates the practice of physical therapy.

Section 2. Member State Participation. (1) Criminal background check:

(a) Member states shall have completed all required processes, requirements, and applications necessary to receive an originating agency identification (ORI) number, as required by the Compact.

1. States that were members of the Compact as of November

5, 2017, shall complete the requirements specified in paragraph (A) of this rule within six (6) months of the adoption of this rule.

2. States that join the Compact after November 5, 2017, shall complete the requirements specified in paragraph (A) of this rule within six (6) months of the effective date of the legislation to implement the Compact in that state.

(b) Results of the criminal background check shall be reviewed solely by the member state in accordance with state law and shall not be shared, unless otherwise permitted under state law, with individuals, other member states or the commission.

(2) Continuing competence requirements:

(a) Member states shall require continuing competence for renewal of a license for both the physical therapist and physical therapist assistant.

(b) Continuing education meets the requirements for continuing competence for renewal of a license.

(3) Compact privilege fee and expiration date. Any compact privilege held by the individual shall expire on the same date as the individual's home state license. The fee paid to the member state for a compact privilege shall cover the period of time the individual has remaining on the home state license.

Section 3. Compact privilege eligibility, adverse actions, and encumbrances. (1) Home state license:

(a) Compact privilege holders may be audited at any time by the commission to verify compliance with home state residency requirements.

(b) An individual holding a temporary permit, temporary license, or temporary authorization to practice shall not be eligible for a Compact privilege.

(c) In addition to complying with reporting name and address change as required by the home state, compact privilege holders shall also notify the commission of a change of name and or home address within thirty (30) business days of the change.

(2) Self-reporting of an encumbrance or adverse action on a license. A compact privilege holder shall report to the commission any encumbrance or adverse action placed upon any physical therapist or physical therapist assistant license held by the compact privilege holder in a non-member state within two (2) business days of the effective date.

(3) Eligibility for Compact privilege after an adverse action or encumbrance:

(a) An individual immediately loses any and all compact privilege(s) upon the effective date of either of the following actions taken by a licensing board:

1. Adverse action taken against a license or compact privilege; or

2. Encumbrance placed upon the individual's license or compact privilege.

(b) Following an adverse action or encumbrance, an individual regains eligibility for compact privilege(s):

1. Immediately after the removal of all nondisciplinary encumbrance(s), provided there are no current adverse actions against the license or compact privilege; or

2. Two (2) years from the effective date of the board order of the adverse action.

a. If the timeframe imposed by the licensing board is greater than two (2) years, the individual will not regain eligibility until the greater timeframe has elapsed; or

b. If the timeframe when all disciplinary encumbrances have passed and all fines are paid is greater than two (2) years, the individual will not regain eligibility until that timeframe has elapsed.

(c) The two (2) year waiting period is from the effective date of the most recent adverse action and restarts if subsequent adverse action is taken by a licensing board.

(d) If a remote state removes an individual's compact privilege in the remote state for a period of more than two years, the individual remains subject to the removal even if the individual does not renew the compact privilege.

(e) As used in Section 4.D. of the Compact, the word "removed" does not mean lapsed or voluntarily not renewed.

(4) Fee for compact privilege:

(a) The commission shall charge a fee for the purchase of

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each compact privilege. This fee shall be in addition to any state fee that the member board may charge.

(b) The commission's compact privilege fee shall be posted on the commission's Web site (<http://www.ptcompact.org>).

(c) The commission shall give thirty (30) days' notice before modifying its compact privilege fee by posting notice of the new fee on the commission's Web site.

(5) Expiration or termination of a compact privilege:

(a) All compact privileges shall expire on the actual expiration date of the home state license even if the home state allows practice beyond the license expiration date.

(b) Impact of changing the primary state of residence.

1. Moving to another member state.

a. The compact privilege holder shall hold an active license in the new home state prior to changing the primary state of residence or all current compact privileges will be terminated.

b. When a compact privilege holder obtains the license in the new home state and changes the primary state of residence, the expiration date of all current compact privileges will be updated to match the expiration date of the new home state license.

2. Moving to a non-member state. If the compact privilege holder's new primary state of residence is a non-member state, all current compact privileges will be immediately terminated.

(6) Participation in an Alternative Program. Member state licensing boards shall add language to any alternative program agreements entered into with a licensee or compact privilege holder prohibiting practice or work in any other member states.

(7) Joint Investigations. When participating with other member states in joint investigations, the member state where the violation initially occurred will take the lead on any investigation.

(8) Jurisprudence. If a member state has a jurisprudence requirement in accordance with Section 4.A.7 of the Compact that may be completed after the issuance of the compact privilege, the deadline to complete the jurisprudence requirement is thirty (30) days.

(9) Impact of nonpayment on eligibility. If an individual fails to pay any applicable fees, including any state fee, the commission may:

a. Terminate the existing Compact privilege associated with the nonpayment; and

b. Prevent the individual from purchasing any additional Compact privileges until the nonpayment is remedied.

Section 4. Active Duty Military Personnel or Their Spouses. For the purposes of Section 5 of the Compact, the following definitions shall apply:

(1) "Home of record" means, for purposes of the Compact only, the military personnel's State of Legal Residence on record with the military.

(2) "Permanent Change of Station" or "PCS" means the state of the duty station noted in the active duty military personnel's PCS orders.

(3) "State of current residence" means the state in which the active duty military personnel or spouse is currently physically residing.

(4) The active duty military member or spouse of an individual who is active duty military may change the member state designated as the individual's home state by notifying the commission.

Section 5. Physical Therapy Compact Commission. (1) Ex-Officio, Non-Voting Members.

(a) For the purposes of the Compact, the American Physical Therapy Association (APTA) is the recognized physical therapy professional association.

(b) For the purposes of the Compact, the Federation of State Boards of Physical Therapy (FSBPT) is the recognized membership organization of the physical therapy licensing boards.

(c) A member of the board of directors of any of the following organizations shall be ineligible to serve as the delegate for a member state:

1. The American Physical Therapy Association;
2. The Federation of State Boards of Physical Therapy;

3. Any state chapter of the American Physical Therapy Association;

4. Any section of the American Physical Therapy Association; or

5. Any council of the American Physical Therapy Association; and

(2) Annual assessment for compact members.

(a) The annual assessment on each member state for participation in the Compact will be determined by vote annually at the annual meeting of the commission, and communicated to the member states. The fee will become effective on the first day of the fiscal year that starts immediately following the commission meeting.

(b) The commission may choose to have a zero dollar assessment.

(c) The annual assessment shall be paid by the member state within ninety (90) days from the start of the fiscal year.

(d) Moneys derived from a line of credit may be considered revenue when determining an annual assessment required from member states.

Section 6. Data System. (1) Required elements of the data system.

(a) The uniform data set shall be submitted on all individuals applying for, or currently holding, a physical therapist or physical therapist assistant license of any status, including expired status, in the member state. The required elements for all licenses shall be submitted in each data file submitted to the commission's data system.

(b) Each member state shall submit the following data elements to the commission's data system:

1. First name;
2. Middle name;
3. Last name;
4. Suffix, if applicable;
5. Birth date, including month, day, and year;
6. Unique identifier;
7. License number;
8. License type (PT or PTA);
9. Initial issue date;
10. Most recent renewal date;
11. Expiration date; and
12. License status, including expired statuses.

(c) The unique identifier required by Section 3.A.1. of the Compact is the individual's Social Security number.

1. The member state shall submit the data file identified in this Chapter within one (1) month of the effective date of the legislation to implement the Compact. The initial licensure data file(s) shall include the Social Security number for every licensee in each file.

2. Within twenty-four (24) months of the effective date of the legislation to implement the Compact, the FSBPT ID number shall be present for every licensee in each file, and may replace the Social Security number as the unique identifier.

3. Until the initial data file is submitted to the commission, the following shall apply:

a. Individuals whose home state is the member state shall be ineligible to apply for any compact privilege; and

b. Individuals in other member states will be unable to purchase a compact privilege in the member state.

4. Notwithstanding paragraph (C)(1) of this rule, commission staff may approve an alternate mechanism to comply with the initial licensure data file(s) requirement if the member state does not maintain the full, unmasked, Social Security number for licensees within the member state's database.

(2) Frequency of submission of required elements.

(a) Member states shall submit the data elements outlined in rule 6.1 to the commission at least one (1) time per week.

(b) The full extract of the data shall be provided in a file format and in a manner agreed to by the commission and the member state.

(3) Required Use of FSBPT Online Processing System. Member states shall use the FSBPT Online Processing System to report the following information:

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(a) License number, initial issue date, and expiration date to new score reports and transfer score reports. In lieu of reporting this information via the FSBPT Online Processing System, a member state can meet the requirement of this paragraph if the data submitted in accordance with rules 6.1 and 6.2 contains the Social Security number and date of birth for all records.

(b) Completion of all required fields when reporting adverse actions.

(c) Any encumbrance not associated with an adverse action.

(4) Frequency of reporting adverse actions.

(a) Within two (2) business days of the effective date of the adverse action against a licensee or compact privilege holder, the licensing board shall, through the interface described in rule 6.3 at a minimum, report the following information and complete the following action:

1. Home address.

2. Date action became effective.

3. Select a save status of temporary.

(b) Within ten (10) business days of the effective date of the adverse action against a licensee or compact privilege holder, the licensing board shall, through the interface described in rule 6.3, complete all required information and select the save status.

(c) Within two (2) business days of the effective date to void, update, revise, or correct an adverse action against a licensee or compact privilege holder, the licensing board shall report such decision to the commission through the interface described in rule 6.3.

(d) Within two (2) business days of the effective date to impose a nondisciplinary encumbrance on a license or licensee, the licensing board shall report such decision to the commission through the interface described in rule 6.3.

(5) Discrepancy with the commission data set. The licensee or compact privilege holder may request from the home state licensing board in writing a review of the data relating to the licensee in the commission's data system.

(a) In the event a licensee or compact privilege holder asserts that any data relating to the licensee or compact privilege holder is inaccurate, the burden of proof shall be upon the licensee or compact privilege holder to provide evidence that substantiates such claim.

(b) The licensing board shall verify and within ten (10) business days correct inaccurate data in the commission's data system.

(6) Compact termination and the data system.

(a) Upon the effective date of the termination of a state's membership in the Compact, the state will no longer receive information available only to member states.

(b) Any and all data provided prior to the effective date of the termination of the state's membership in the Compact will remain in the data system.

(7) Indicating availability of investigative information. A member state shall notify the commission that investigatory information is available to party states when a member state has determined probable cause exists that the allegations against the licensee may constitute a violation of that member's state statute or regulations.

(8) Public verification of Compact privilege. The public shall have access, via the commission's Web site, to information limited to the verification of compact privilege(s) held by individuals.

(9) Terms of use, privacy policy, and intellectual property rights.

(a) Subject to the terms of use and to the privacy policy posted at the time on the Web site of the Federation of State Boards of Physical Therapy (FSBPT), the following shall be binding upon the commission, the member states, and individuals purchasing or holding a Compact privilege.

(b) Submission and access to, and the use of, and other matters relating to:

1. The data elements outlined in rule 6.1;

2. Other information reported through the interface described in rule 6.3; and

3. The FSBPT's exam, licensure, and disciplinary database (eldd) and online processing system (OPS).

(c) The Federation of State Boards of Physical Therapy owns all tangible and intangible property, intellectual and other

proprietary rights, titles, and interests in and to the FSBPT OPS or ELDD. Neither the commission nor any member state shall have any rights, titles, or interests in or to the FSBPT OPS or ELDD.

Section 7. Rulemaking. (1) Adoption of rules; amendments.

(a) Proposed new rules and amendments to existing rules shall be referred to the Rules and Bylaws Committee as follows:

1. Any delegate may propose rules or rule amendments during the annual commission meeting. This proposal shall be made in the form of a motion and approved by a majority vote.

2. Standing committees of the commission or of the executive board may propose rules or rule amendments by majority vote of that committee.

3. The executive board may propose rules or rule amendments by majority vote.

(b) The Rules and Bylaws Committee shall prepare a draft of all proposed rules and provide the draft to the executive board for review and comments. The Rules and Bylaws Committee shall revise the draft based on feedback from the executive board.

1. The executive board shall ensure that all proposed rules comply with the statutory provisions of the Compact and do not conflict with any other existing commission rule.

2. If the executive board determines that the proposed rules should be recommended to the full commission, the proposed rules shall be posted on the commission's Web site. Any written comments shall be reviewed by the executive board. Based on the written comments, and at the direction of the executive board, the Rules and Bylaws Committee shall prepare a final draft of the proposed rule(s) or amendments for consideration by the commission.

(c) Prior to promulgation and adoption of a final rule by the commission, but not later than thirty (30) days prior to the meeting at which the vote is scheduled, the commission shall publish a Notice of Proposed Rule Making on its Web site and send the notice to all member states for publishing on the licensing board in the member state's Web site.

(d) The Notice of Proposed Rule Making shall include:

1. The place, time, and date of the meeting in which the rule will be considered;

2. The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments; and

3. The name, position, physical and electronic mail address, and telephone number of the person to whom interested persons may respond with notice of their attendance and written comments.

(e) Every public hearing shall be conducted in a manner guaranteeing each person who wishes to comment a fair and reasonable opportunity to comment. No transcript of the public hearing is required, unless a written request for a transcript is made within thirty (30) days of the hearing, in which case the person or entity making the request shall pay for the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection shall not preclude the commission from making a transcript or recording of the public hearing if it chooses to do so.

(f) Nothing in this rule shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this rule.

(g) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

(h) The commission shall, by majority vote, take final action on the proposed rule and determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

(i) Upon determination by the executive board or commission that an emergency exists, the commission may promulgate an emergency rule that shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided in the compact and in this section shall be retroactively applied to the rule, no later than ninety (90) days after the effective date of the rule. An emergency rule is one that shall be made effective immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;
2. Prevent a loss of federal or state funds;
3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule.

(2) Publication of rules. A copy of the commission's current rules shall be published on its Web site.

Section 8. Oversight, Dispute Resolution, and Enforcement. (1) Definition of party state in dispute resolution process. As used in Chapter 8 of the rules, "party state" means a state that is party to a dispute.

(2) Dispute Resolution Process – Informal, Mediation and Arbitration.

(a) The delegate in each member state shall enforce the compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The commission supports collaborative efforts to resolve disputes or controversies between and among all member states. All affected parties are encouraged to communicate with each other directly and make every effort to resolve issues informally prior to application of paragraphs (B) and (C) of this rule.

1. Any member state may submit a written request to the executive board for assistance in interpreting the law, rules, and policies of the Compact. The executive board may seek the assistance of the commission's legal counsel in interpreting the Compact. The executive board shall issue the commission interpretation of the Compact to all parties to the dispute.

2. A member state that is party to a dispute may request the submission of a matter in controversy to mediation. Mediation shall be conducted by a mediator appointed by the executive board from a list of mediators approved by the National Association of Certified Mediators, unless a mediator is otherwise agreed to by all parties to the dispute and pursuant to procedures customarily used in mediation proceedings.

(b) When disputes among party states are unresolved through informal attempts, the commission shall request assistance from the executive board.

1. It is the duty of the executive board to address disputes between or among the member states concerning the Compact when informal attempts between the member states to resolve disputes have been unsuccessful.

2. The executive board, on behalf of the commission, in the reasonable exercise of its discretion, has the authority to assist in the resolution of disputes between and among member states concerning the Compact. This rule defines the course of action the executive board may take when such disputes cannot be informally resolved and the matter is received by or referred to the executive board.

(c) Disputes between two (2) or more member states which cannot be resolved through informal resolution or through the executive board, may be referred to an arbitration panel.

(d) Informal resolution.

1. The delegate of the state disputing another member state's interpretation or application of the Compact shall contact the delegate of the member state with which the dispute has arisen. A written statement describing the situation should be provided and sufficient time allowed for response and opportunity for the other delegate to review and investigate the issues raised in the dispute.

2. If interpretation of the Compact is necessary, the delegate shall contact the executive board and request assistance in interpreting relevant provisions. This communication to the executive board should be made through the Compact administrator.

3. The delegate raising the concern shall document attempts to resolve the issues.

4. If all issues are resolved to the satisfaction of all party states involved, no further action is required.

(e) Mediation.

1. A state that is a party to a dispute may request, or the executive board may require, the submission of a matter in controversy to mediation.

2. If a member of the executive board is a party to the dispute, that individual shall recuse him or herself from participation in the

matter.

3. Mediation shall be conducted by a mediator appointed by the executive board from a list of mediators approved by the National Association of Certified Mediators, or a mediator is otherwise agreed to by all parties to the dispute and pursuant to procedures customarily used in mediation proceedings.

4. If all issues are resolved through mediation to the satisfaction of all party states involved, no further action is required.

(f) Executive board resolution.

1. Member states shall report to the executive board, through the Compact administrator, issues pertaining to disputes concerning the interpretation or application of the Compact in a timely fashion.

2. If the executive board determines that the dispute arises from noncompliance with the Compact, the committee may, in its discretion, reclassify the dispute as a noncompliance case and will provide a written notice to all parties of the dispute citing the allegation(s) of noncompliance and follow the procedures in the bylaws and as provided in Section 10 of the Compact.

3. In the event there are factual and or legal issues to be resolved, the states involved in the dispute shall provide written responses regarding the factual and or legal issues in dispute and the position of each party to the dispute on those issues to the executive board within thirty (30) days after receipt of the report referenced in paragraph (D) of this rule for distribution to the executive board.

4. Upon receipt of the party states' responses, the executive board shall develop a dispute resolution proposal or plan within sixty (60) days and submit the proposal or plan to the party states unless all parties agree that a longer period of time is needed to address the issues in dispute.

5. Any controversy or dispute not resolved in accordance with paragraphs (D) through (F) of this rule may result in dispute arbitration, as recommended by the executive board pursuant to paragraph (G) of this rule 15.4.

(g) Arbitration.

1. In the event of a dispute between states that cannot be resolved through informal means, and upon the recommendation by the executive board, the delegate of the initiating state(s) shall submit an arbitration request form to the Compact administrator with a copy to be sent by the initiating state to the other party state(s) involved.

2. Each state party to the dispute and the executive board shall submit a signed arbitration agreement form which shall include:

a. Consent that the decision of the majority of the arbitrators is final and binding;

b. The name of an appointee representing each state, unless more than two (2) states are parties, on an arbitration panel. In the event there are more than two (2) states that are parties to the dispute, the parties shall agree on an arbitrator selected by the state or states arguing either the affirmative or the negative of the issue in dispute so that only one (1) arbitrator is selected by the state or states on either side of the controversy. In the event an agreement cannot be reached, such selection shall be made by the executive board; and

c. The name of a third arbitration panel appointee mutually agreed upon and independent of all the states involved in the dispute.

3. The Compact administrator shall coordinate the arbitration process.

4. Pursuant to paragraph (G)(2)(b) of this rule, appointment of the arbitration panel shall be completed by the party states involved within thirty (30) days of the decision to appoint a panel.

5. All involved states shall agree on arbitration procedures, including a date and location for the arbitration to take place which shall be within forty-five (45) days of the appointment of the arbitration panel. In the event the parties cannot agree, the arbitration panel shall make these and other procedural decisions.

6. The panel shall render a decision within forty-five (45) days of the completion of the arbitration.

7. The panel shall forward its decision to the Compact administrator and chair of the commission and to each involved

party state within seven (7) days of its decision.

8. The decision of the arbitration panel shall be final and binding.

9. In the event arbitration is necessary, and unless otherwise agreed by the parties, at the discretion of the arbitration panel, the prevailing party or parties may be entitled to recover the costs of such arbitration, including reasonable attorneys' fees, to the extent permitted by state law of the prevailing party state.

10. Arbitration award decisions may be enforced in a court of competent jurisdiction.

(3) Compliance and enforcement.

(a) The DELEGATE in each party state shall enforce the Compact and shall take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The commission supports voluntary, collaborative efforts to resolve compliance and enforcement issues in lieu of formal dispute resolution procedures or other legal enforcement action between and among all Compact party states. All affected parties are encouraged to communicate with each other directly and make every effort to resolve issues informally prior to application of paragraphs (E) through (G) of rule 8.2 and paragraphs (E) and (F) of this rule.

1. Any party state may submit a written request to the executive board for assistance in interpreting the Compact. The executive board may seek the assistance of legal counsel in interpreting the Compact, particularly concerning compliance and enforcement. The executive board's interpretation of the Compact will be issued in writing to all parties to the dispute.

2. At the discretion of the executive board, appropriate technical assistance and training may be provided to any party state seeking to voluntarily address a compliance issue.

(b) When compliance or enforcement is unresolved through informal attempts, the delegate shall request assistance from the executive board.

1. It is the duty of the executive board to address alleged substantive or recurrent violations of the Compact when informal attempts to attain compliance have been unsuccessful.

2. The commission, in the reasonable exercise of its discretion, shall enforce the Compact.

(c) Compliance and enforcement issues that cannot be resolved through informal resolution or through the executive board shall be referred to an arbitration panel or other appropriate legal action as provided in Section 10. of the Compact at the discretion of the executive board.

(d) Informal resolution.

1. When an alleged violation of the Compact comes to the attention of the Compact administrator or, a written statement describing the situation should be provided, and sufficient time allowed for response and opportunity for other delegate(s) to review and investigate the issues raised in the dispute. The Compact administrator, on behalf of the executive board, shall contact the delegate of the state(s) alleged to be in noncompliance with the Compact and, when applicable, the delegate of the state alleged noncompliance with the provisions of the Compact.

2. If the party state alleged to be in noncompliance with the Compact requires assistance with interpretation of the Compact, the delegate of that state, or the state's legal representative may contact the executive board to request assistance in interpreting relevant Compact provisions and identifying steps to achieve compliance.

3. The executive board may consult with legal counsel and shall document efforts to resolve the issues.

4. If all issues are resolved to the satisfaction of the executive board and the state(s) involved, the Compact administrator shall prepare a written report to document the resolution, and no further action is required.

(e) Executive board resolution.

1. In the event that informal resolution of alleged noncompliance is not possible, the Compact administrator shall notify the executive board and furnish a report of all issues pertaining to noncompliance allegations, including details of informal resolution efforts, in a timely fashion.

2. If the executive board determines that a state is not in compliance with the Compact, the executive board shall provide a

written notice to the state(s) citing the specific allegation(s) of noncompliance or default.

3. The state(s) shall provide a written response regarding the alleged default or noncompliance to the executive board within forty-five (45) days.

4. The executive board, Compact administrator, and legal counsel shall develop and propose a plan for voluntary resolution of the allegation(s) of default or noncompliance within sixty (60) days, which may include technical assistance and training, and submit such plan to the involved state(s) for approval unless all parties agree that a longer period of time is needed to address the default/noncompliance or related issues.

5. If the state alleged to be in noncompliance or default does not agree with the executive board's proposed plan for resolution, or if the state fails to cure the default or noncompliance after initially agreeing with the executive board to follow a remediation plan, the executive board may conduct an investigation to examine any evidence relevant to the allegation(s). Such evidence may include statements and or testimony of witnesses, documents, and other information. An investigator may be appointed by the executive board to conduct the investigation.

6. The commission shall bear the expense of any investigation.

7. The state alleged to be in noncompliance or default will be informed by the executive board in writing if additional incidents of apparent noncompliance are discovered during the course of the investigation.

8. All information obtained during the investigation, and reports prepared by the commission, shall be confidential and not subject to public disclosure unless otherwise required by the laws of any state involved in the dispute.

9. The state alleged to be in noncompliance will be provided an opportunity to submit a written response to the preliminary findings within twenty (20) days, including documentary evidence, and to meet with the investigator, if any, at the expense of the commission.

10. Within forty-five (45) days after the conclusion of the investigation, the executive board or its investigator shall prepare a written report including a summary of factual findings. The report is provided to the state who is the subject of the investigation for review and comment, including the opportunity to provide corrections to the report, as appropriate. Any comments and or corrections are returned to the executive board, through the Compact administrator, within fourteen (14) days of issuance of the initial report.

11. After review of the response of the state alleged to be in noncompliance, the executive board shall determine, based on a preponderance of the evidence standard, violation(s), if any, of the Compact. If the executive board substantiates the allegations based on the evidence and legal authorities cited, the executive board shall schedule a conference, either in person or by telephonic or electronic means, with the noncompliant state's delegate, assistant attorney general (or other legal representative), and presiding officer of the state's licensing board (or designee) to determine if the violations may be remedied through training, technical assistance, or other voluntary means within forty-five (45) days, unless all parties agree that a longer period of time is needed to address the default/noncompliance.

12. Any compliance or enforcement issue pursuant to this section not resolved may result in formal dispute arbitration, or other appropriate enforcement action pursuant to Section 10. of the Compact, as determined by the executive board.

13. Any member(s) of the executive board whose state is involved in any compliance or enforcement issue shall be recused from consideration, discussion, or voting on any such case.

(f) Dispute arbitration.

1. In the event that a member state's Compact default/noncompliance cannot be resolved through the procedures described in Chapter 8 of the rules, the executive board may order arbitration before a three (3) member arbitration panel for determination of the default/noncompliance and enforcement of the Compact.

2. Each involved state shall submit a signed Arbitration Agreement form which shall include:

a. Consent that the decision of the majority of the arbitrators is final and binding;

b. The name of an appointee to the arbitration panel selected by the state(s) alleged to be in default/noncompliance;

c. The name of an appointee to the arbitration panel selected by the commission, or

d. A suggested arbitration panel appointee mutually agreed upon by all parties and independent of the involved state(s).

3. The Compact administrator shall coordinate the arbitration process.

4. Selection of the panel of arbitrators shall be completed, at the direction of the Compact administrator, within forty (40) days of the decision to appoint a panel.

5. All parties shall agree on a date for the arbitration to take place, as well as applicable deadlines and procedures for any necessary discovery. In the event no agreement can be reached, these and other procedural decisions shall be made by the arbitration panel.

6. The location of arbitration shall be the principal offices of the commission.

7. The panel shall render a decision within forty-five (45) days of the completion of the arbitration based upon the facts as stipulated, or proven by preponderance of the evidence at any hearing, and as required under the provisions of the Compact and any other applicable statutes, regulations and or case law.

8. The panel shall forward its decision to the chair of the commission, via the Compact administrator, and to each involved party state within twenty-one (21) days of its decision.

9. The decision of the arbitration panel is final and binding.

10. Unless otherwise agreed by the parties, and at the discretion of the arbitration panel, the prevailing party or parties may be entitled to recover the costs of the arbitration, including reasonable attorneys' fees, if permitted by the laws of the prevailing state.

(4) Enforcement remedies against a defaulting state.

(a) Notwithstanding the provisions of paragraphs (D) through (G) of rule 8.2 and paragraphs (D) and (E) of rule 8.3, if the commission determines that any state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this Compact, or the provisions of the Bylaws or any duly promulgated rules, the commission may impose any or all of the following penalties:

1. Remedial training and technical assistance as directed by the commission;

2. Damages or costs in such amounts as are deemed to be reasonable as fixed by the commission;

3. Suspension of membership in the Compact; and

4. Termination of membership in the Compact.

a. Suspension and termination shall be imposed only after all other reasonable means of securing compliance under the Bylaws and rules have been exhausted.

b. Notice of suspension or notice of termination shall be sent by the commission in accordance with the bylaws.

(b) The grounds for default include failure of a member state to perform such obligations or responsibilities imposed upon it by this Compact, commission bylaws, or duly promulgated rules. The commission shall notify the defaulting state in writing of the penalty imposed by the commission on the defaulting state pending a cure of the default within a reasonable timeframe. The commission shall stipulate the conditions and the time period within which the defaulting state shall cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the member states and all rights, privileges, and benefits conferred by this Compact shall be terminated from the effective date of termination.

(c) The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

(d) The commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between

the commission and the defaulting state.

(e) Reinstatement following termination of any party state requires both a reenactment of the Compact by the defaulting state and the approval of the commission pursuant to the rules.

(5) Judicial enforcement. The commission may also, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the commission, in the United States District Court for the Eastern District of Virginia, to enforce compliance with the provisions of the Compact, its duly promulgated rules, and bylaws, against any member state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorneys' fees.

LOUIS D. KELLY, General Counsel

APPROVED BY AGENCY: December 14, 2017

FILED WITH LRC: December 14, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 30, 2018, at 4:00 p.m. (EST) at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2018. 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 PERSONS: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142, email ScottD.Majors@ky.gov; and Louis D. Kelly, Esq., General Counsel, Board of Physical Therapy, Adams, Stepler, Woltermann & Dusing, 40 W. Pike Street, P.O. Box 861, Covington, Kentucky 41012, phone (859) 394-6200, fax (859) 392-7239, email lkelly@aswdlaw.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Scott D. Majors; and Louis D. Kelly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the rules for the Physical Therapy Compact Commission.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS Chapter 327.300(12).

(c) How this administrative regulation conforms to the content of the authorizing statutes: It promulgates the rules established by the Physical Therapy Compact Commission as administrative regulations pursuant to KRS 327.300(12).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It complies with the requirement that any rule adopted by the Physical Therapy Compact Commission receive appropriate oversight.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: The Kentucky Board of Physical Therapy.

(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 Kentucky Board of Physical Therapy will have to adhere to the rules established by the Physical Therapy Compact Commission to continue its participation in the Physical Therapy Compact.

(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): Credentialed physical therapists and physical therapist assistants in Kentucky will be able to participate in the Physical Therapy Compact.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue Fund and funds derived from compact privilege applications from other states.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None.

(9) TIERING: Is tiering applied? Tiering was not used in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 327.300(12).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

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

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

(d) How much will it cost to administer this program for subsequent years? 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:

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Kentucky Board of Emergency Medical Services
(New Administrative Regulation)

202 KAR 7:545. License classifications.

RELATES TO: KRS 311A.030, 311A.190

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.020 requires the board to exercise all administrative functions in the regulation of the ambulance services and medical first response agencies. KRS 311A.030 requires the board to promulgate administrative regulations to establish requirements for various classes of ambulance and emergency medical service agencies. This administrative regulation establishes requirements for each class of ambulance service and medical first response agencies.

Section 1. License Classifications. (1) License classifications for ambulance providers shall include:

(a) A Class I ground ambulance agency operating at the Advanced Life Support (ALS), Basic Life Support (BLS), or Adult Critical Care Transport level to provide emergency and nonemergency care and transportation;

(b) A Class II ground ambulance agency operating at the BLS level only to provide nonemergency care and transportation;

(c) A Class III ground ambulance agency operating at the ALS level to provide critical care, specialty care, emergency or nonemergency care, and transportation between health care facilities. Based on the Certificate of Need and scope of care policy, a Class III ground ambulance agency shall be designated as one (1) of the following types:

1. A Class III Adult Critical Care agency providing critical care transport services to patients ages twelve (12) and above;

2. A Class III Pediatric Specialty Care agency providing specialty care transport services to patients under the age of twelve (12); or

3. A Class III Neonatal Specialty Care agency providing specialty care transport services to patients less than twenty-nine (29) days of age;

(d) A Class IV ground ambulance agency operating at the ALS or BLS level to provide emergency and nonemergency care and transportation for restricted locations, such as industrial sites or other sites that do not provide services outside the designated geographic service area;

(e) A Class VI agency providing medical first response without patient transport at the BLS or ALS level.

1. Each BLS First Response agency shall be licensed separately as a Class VI BLS agency unless a mutual aid agreement is executed with a licensed Class I ambulance agency that provides 911 response services for the geographic service area.

2. A nonlicensed BLS First Response Agency may execute a mutual aid agreement with multiple nonlicensed BLS First Response Agencies that serve the same geographic service area.

3. A mutual aid agreement shall automatically renew at the conclusion of a calendar year.

4. A nonlicensed BLS First Response Agency or a Class I ALS agency may terminate a mutual aid agreement thirty (30) days after written notice is provided to the other party.

5. A mutual aid agreement between a Class I ALS agency and a nonlicensed BLS First Response agency serving the same geographic area shall be updated as changes to the agreement occur and shall include provisions for:

a. Medical direction;

b. BLS protocols;

c. Response protocol;

d. Geographic service areas to be served;

e. Circumstances causing dispatch of the nonlicensed BLS first response agency;

f. Training;

- g. Quality assurance processes; and
- h. Liability Insurance if applicable.

6. A nonlicensed BLS First Response agency shall not provide BLS care outside of the geographic service area of the Class I ALS agency.

7. A nonlicensed BLS First Response agency unable to secure a written mutual aid agreement with a Class I ALS agency within its geographic service area, may operate within the jurisdiction as a nonlicensed BLS First Response agency if the agency has written correspondence from at least two (2) Class I 911 agencies denying the agency's request to enter into a mutual aid agreement. The correspondence denying the mutual aid request shall be maintained on file at the agency.

8. A license to provide BLS care shall not be issued solely through the execution of a mutual aid agreement between a Class I agency and a nonlicensed BLS First Response agency;

(f) A Class VII rotor wing air ambulance service providing ALS emergency or nonemergency air transportation;

(g) A fixed wing class VII service provides ALS or BLS emergency or nonemergency air transportation; and

(h) A Class VIII agency providing BLS or ALS pre-hospital care above the first-aid level at special events, sports events, concerts, or large social gatherings.

1. A Class VIII agency shall not transport patients beyond the grounds of an event and shall be bound by the geographic service area of its Certificate of Need.

2. A Class VIII agency shall not transport patients independently to a hospital.

3. If transport of a patient is required, a Class VIII agency shall contact 911 for transport by a Class I agency licensed for the geographic service area.

(2) The KBEMS office shall license agencies in accordance with subsection (1 or i) of this section.

(3) An agency shall obtain a license from the board within ninety (90) days of issuance of a Certificate of Need from the Cabinet for Health and Family Services.

(4) An agency that does not receive a license within ninety (90) days of the issuance of its Certification of Need shall not be granted a license by the board.

(5) An agency shall not hold more than one (1) license per level of classification in one (1) defined geographic service area unless each license was obtained prior to January 1, 2018.

Section 2. Public Notice of Negative Action. The board office shall publish on the KBEMS Web site or similar publication of the board, the name of any licensed agency that is fined, placed on probationary status, placed on restricted status, suspended, or had a license revoked.

JIM DUKE, Chairperson

APPROVED BY AGENCY: December 7, 2017

FILED WITH LRC: December 13, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2018 at 10:00 a.m. Eastern Standard Time at 118 James Court, Suite 50, Lexington, Kentucky 40505. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Angela Evans; Legal Counsel, Kentucky Board of Emergency Medical Services; McBrayer, McGinnis, Leslie & Kirkland, PLLC, 201 East Main Street Suite 900, Lexington, Kentucky 40507, phone (859) 231-8780, fax (859) 231-1175, email

aevans@mmlk.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the different classes of ambulance agencies and the specific requirements for each class.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to differentiate the services each ambulance class can provide.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is authorized by statute to establish specific requirements for the different ambulance classes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs potential applicants of the various ground ambulance classifications and the types within the classes, assisting potential applicants in determining which class is the most appropriate for them to apply.

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

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

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

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute allows the board to establish specific requirements for each classification.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 213 licensed agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require any additional action by existing 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 cost to existing entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The potential applicants will be educated on the various classes of ambulance services and be less likely to provide services beyond their classification which benefits the existing agencies.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(a) Initially: None

(b) On a continuing basis: None

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Ambulance providers and first response agencies.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 311A.020, 311A.025, 311A.030, 311A.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? No revenue will be generated by this administrative regulation.

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

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

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

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation: None

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Kentucky Board of Emergency Medical Services
(New Administrative Regulation)**

202 KAR 7:550 Required equipment and vehicle standards.

RELATES TO: KRS 311A.030, 311A.180, 311A.190

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.020 requires the board to exercise all administrative functions in the regulation of the emergency medical services system and the licensing of ambulance services and medical first response agencies. KRS 311A.030 requires the board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies. This administrative regulation establishes the required equipment to operate an ambulance service.

Section 1. Ground Ambulance Specifications. (1) Ground ambulances utilized by Class I, II, III, and IV agencies shall:

(a) Have the name of the provider permanently affixed by paint, decal, or wrap on both sides of the exterior surface of the vehicle.

1. The name shall be the incorporated name or the name under which the provider does business and as it appears on the provider's license.

2. This requirement shall not preclude a provider from adding additional names from another entity on the vehicle due to a joint venture, if the name as licensed by the board is the larger, and visible and legible by the public.

3. A vehicle operated by an agency shall not be marked with the words "advanced life support", "paramedic," or similar words that convey essentially the same meaning on the vehicle's exterior surface visible to the public unless the vehicle is always staffed at an Advanced Life Support level or unless the agency was licensed by the board prior to January 1, 2018;

(b) Be maintained in good operating condition and in full repair

without obvious apparent problems relating to tires, exhaust, body integrity, warning devices, or mechanical reliability, which would be recognized by the average lay person who is not an automotive mechanic;

(c) Be designed to provide for the medical care or transportation of patients;

(d) Stow all equipment weighing three (3) pounds or more in an enclosure, bracket, mount, or other appropriate securing device; and

(e) Have tires that meet the manufacturer's standards for the gross vehicle weight of the vehicle.

1. A tire shall not display exposed tire cord or have tread depth less than 2/32 on back tires and 4/32 on front tires if measured in any two (2) adjacent grooves at three (3) locations spaced equally around the tire.

2. Retread tires shall not be used on ground vehicles.

3. Internal patches may be utilized for tire repairs if necessary.

4. More than two (2) patches shall not be used on any one (1) defective tire.

5. Plugs shall not be used for the repair of defective ambulance tires.

(2) All Class I, II, III, and IV ground ambulances shall meet or exceed the minimum physical characteristics established in paragraphs (a) through (e) of this subsection.

(a) A ground ambulance licensed in Kentucky shall be affixed with an official Kentucky Board of Emergency Medical Services decal that states, at a minimum, the expiration date of the license for the agency.

(b) An ambulance manufactured prior to January 1, 2018 shall meet or exceed the standards established in the U.S. General Services Administration Federal Specification for the Star-of-Life Ambulance (GSA KKK-A-1822) in effect on the original date of manufacture.

(c) The agency shall require, for a unit in which the chassis of an ambulance is later replaced, the conversion company to supply a letter to verify that no modification exists that was contained in GSA KKK-A-1822 on the original date of module manufacture.

(d) A new production ground ambulance that is ordered after January 1, 2018 shall comply fully with the ambulance design criteria contained in the most recent version of the Commission on Accreditation of Ambulance Services Ground Vehicle Standard for Ambulances (GVS). A decal or letter of verification from the manufacturer certifying that the vehicle meets the GVS standard, if ordered after January 1, 2018, shall be made available upon inspection.

(e) The agency shall require for any GVS certified vehicle, in which the chassis of an ambulance is later replaced, the conversion company shall supply a letter to verify that no modification exists that was contained in the GVS standard on the original date of module manufacture.

(3) In addition to the GSA KKK-A-1822 or the GVS standards, additional requirements shall be met as established in paragraphs (a) through (d) of this subsection.

(a) The air-conditioning system shall minimally deliver a temperature of sixty-five (65) degrees Fahrenheit or less from the vent or vents in the driver and patient compartments in warm weather conditions as determined by a standard automotive testing thermometer.

(b) The heating system shall minimally deliver a temperature of eighty-five (85) degrees Fahrenheit or more from the vent or vents in the driver and patient compartments in cool weather conditions as determined by a standard automotive testing thermometer.

(c) There shall be no more patients, personnel, and other persons than can be safely secured by means of permanently installed safety belts in the vehicle while the vehicle is in motion.

(d) The patient care area lighting shall be fully functional.

(4) A preventive maintenance program shall be maintained for each vehicle and its equipment to keep them in optimum working order to protect the health and safety of the patient and ambulance personnel.

(5) Documentation shall be maintained by the agency to support evidence of periodic inspections as recommended by the manufacturer, including calibrations required for maintenance and

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operation of the vehicle and its equipment.

(6) Each vehicle and its equipment shall be checked after each use to ensure that it is in a clean and sanitary condition, unless precluded by emergency conditions.

(7)(a) Except as established in paragraph (b) of this subsection, all linen used for patient care including sheets, blankets, pillowcases, pillows, towels, and washcloths shall be stowed in a separate cabinet and secured from body fluids.

(b) One (1) pillow, one (1) pillow-case, one (1) fitted sheet, two (2) flat sheets, one (1) towel, and two (2) blankets may be utilized on the stretcher that is in-service and shall not require stowing.

Section 2. Class I, II, and IV Basic Life Support Ambulance Equipment and Supplies. (1) Each BLS agency shall maintain evidence in the form of a letter that adult and pediatric medical protocols have been reviewed and approved by the board pursuant to KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.

(2) Each Class I, II, and IV BLS agency shall carry and maintain, in full operational order, the following minimum basic life support equipment and supplies:

(a) Suction, ventilation, and blood pressure equipment, which shall include:

1. Two (2) sources of suction apparatus, one (1) of which shall be mechanically operated;
2. Rigid catheters;
3. Flexible catheters in adult, pediatric, and infant sizes;
4. Bulb syringe for infant and neonate suction;
5. Disposable adult and pediatric bag-valve-mask with a pediatric pop-off valve with oxygen reservoir, oxygen tubing, and adult, pediatric, infant, and neonate masks;
6. Nasopharyngeal airways (16F-34F; adult and child sizes) with water-soluble lubricant;
7. Oropharyngeal airways (sizes 0-5; adult, child, and infant sizes);
8. Blind-Insertion Airway Device (BIAD) (adult and pediatric); and
9. Manual pediatric and adult regular and large sphygmomanometer cuffs with stethoscope;

(b) Oxygen equipment, including:

1. A fixed oxygen system for each ambulance;
2. Two (2) portable, adequately filled, secured oxygen tanks that are minimally size D;
3. Pressure gauge and flow rate regulator for fixed and portable units with a range of zero to fifteen (15) liters per minute; and
4. Transparent non-rebreather oxygen masks and nasal cannulas for adults and pediatrics;

(c) Bandages, bandaging supplies and tape, including:

1. Commercially packaged or sterile burn sheets;
2. Triangular bandages;
3. Dressings of the following types:
 - a. Sterile dressings, including gauze sponges of suitable size; and
 - b. Abdominal dressings;
4. Gauze rolls, various sizes;
5. Occlusive dressing, or equivalent;
6. Adhesive tape of various sizes (include one (1) inch and two (2) inch);
7. Arterial tourniquet; and
8. Shears for bandages;

(d) Miscellaneous supplies, including:

1. Hand held flashlight capable of providing adequate lighting to assess a scene or a patient away from the vehicle;
2. Penlight;
3. A copy or electronic equivalent of the most current edition of the U.S. Department of Transportation, Emergency Response Guidebook;
4. A minimum of ten (10) triage tags consistent with START System of Triage;
5. Obstetrical supplies that shall include at a minimum:
 - (a) Sterile scalpels or scissors;
 - (b) Sterile gloves;
 - (c) Bulb suction;

(d) Two (2) umbilical clamps; and

(e) Thermal absorbent blanket and head cover, aluminum foil roll, or appropriate heat-reflective material (enough to cover newborn infant);

6. Sterile irrigation fluids;

7. Glucometer or blood glucose measuring device with reagent strips and lancets for obtaining a blood glucose sample;

8. Oral glucose;

9. Cold packs;

10. Heat packs;

11. An AED with a minimum of two (2) complete sets of pads suitable for adult and pediatric populations for all non-ALS vehicles;

12. Pulse oximeter with pediatric and adult probes;

13. A length-based resuscitation tape or a reference material that provides appropriate guidance for pediatric drug dosing and equipment sizing based on length OR weight;

(e) Splints, including:

1. Lower extremity mechanical traction splint in adult and pediatric sizes; and

2. Upper and lower extremity rigid splint devices for adult and pediatric patients;

(f) Immobilization devices, including:

1. Short extrication and immobilization device;

2. Adult and pediatric impervious long spine boards or other full body immobilization devices with a minimum of three (3) appropriate restraint cross-straps;

3. Cervical collars in the following sizes:

a.(i) Cervical collars for pediatric patients ages two (2) years or older; and

(ii) Cervical collars for adults in small, medium, large, and other available sizes; or

b. Pediatric and adult adjustable cervical collars; and

4. Towel rolls or other commercially available cervical immobilization devices for adults and pediatrics;

(g) Two (2) currently certified five (5) pound size or larger, secured, ABC multipurpose fire extinguishers, approved by Underwriters Laboratory, Coast Guard, or Factory Mutual. One (1) shall be accessible to the driver and the other to the attendant or attendants in the patient compartment in the ambulance;

(h) Multi-position stretcher with wheels and a minimum of three (3) cross-straps in addition to one (1) set of shoulder straps for securing the patient to the stretcher, and a fixed mechanism to secure the stretcher while in transit;

(i) A pediatric transport device with a minimum weight range of ten (10) to forty (40) pounds; and

(j) A stair chair for the movement of patients in a seated position.

(3) Personal protective equipment shall be available to each staff member responding on the vehicle, including:

(a) One (1) clean scrub gown (or substitute, such as disposable coveralls);

(b) Simple disposable face mask;

(c) Clear protective goggles or safety glasses;

(d) Disposable gloves;

(e) One (1) particulate filter mask rated at N95 or better without an exhaust port for patient use;

(f) One (1) particulate filter mask rated at N95 or better with or without an exhaust port for protection of crew members; and

(g) A means of cleansing the hands, such as disposable towelettes or other solutions.

(4) Cleaning materials shall be available including:

(a) Hospital grade disinfectants;

(b) Trash bags for disposal of nonbiohazard waste materials;

(c) Biohazard bags for the disposal of biohazard waste; and

(d) Puncture resistant containers for disposal of sharp objects that are secured to the vehicle.

(5) Patient comfort items shall be available including:

(a) Two (2) clean blankets, sheets, pillows, and pillowcases;

(b) A disposable urinal;

(c) A disposable bed pan; and

(d) An emesis container or similar substitute.

(6) All items with an expiration date shall not be expired.

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Section 3. Class I, Class III ACC, Class III PSC, and Class IV Advanced Life Support Ambulance Equipment and Supplies. (1) Each ALS agency shall maintain evidence in the form of a letter that adult and pediatric medical protocols have been reviewed and approved by the board pursuant to KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.

(2) In addition to the BLS equipment required in Section 2 of this administrative regulation, each Class I, Class III ACC, Class III PSC, and Class IV ALS agency shall carry on each vehicle and maintain in fully operational order, supplies and equipment required by the agency's protocols, including a minimum of:

(a) Endotracheal intubation equipment consisting of:

1. Laryngoscope handle with extra batteries, bulbs, or blades if applicable;
2. Laryngoscope blades in the following sizes:
 - a. 0-4, straight Miller; and
 - b. 2-4, curved Macintosh;
3. Endotracheal tubes in the following sizes:
 - a. 2.5, 3.0, 3.5, 4.0, 4.5, 5.0, and 5.5 cuffed or uncuffed; and
 - b. 6.0, 6.5, 7.0, 7.5 and 8.0 cuffed;
4. Stylettes in adult and pediatric sizes;
5. 10-mL syringes;
6. Magill forceps in adult and pediatric sizes;
7. Water-soluble lubricant for lubrication of endotracheal and nasotracheal tubes;
8. End-Tidal CO₂ detection capability (adult and pediatric);
9. One-half (1/2) inch wide twill tape or equivalent for securing endotracheal tubes;
10. Equipment necessary to perform emergency percutaneous cricothyrotomy; and
11. Disposable nebulizer;

(b) A portable, battery-operated monitor defibrillator that:

1. Has a tape write-out or recorder, hands-free defibrillator pads, electrocardiogram monitoring leads, and electrodes for adults and pediatrics;
2. Is capable of delivering direct current energy over a variable range, which is suitable for pediatric and adult usage;
3. Has synchronized counter-shock capability for cardioversion;
4. Has a transcutaneous cardiac pacemaker, including adult and pediatric pads and cables; and
5. Has 12-Lead ECG capability if the vehicle is staffed to provide ALS services;

(c) Vascular Access supplies consisting of:

1. Isotonic crystalloid solutions;
2. Antiseptic solution (alcohol wipes and providone-iodine wipes);
3. Intravenous catheters, 14G-24G;
4. Long-large bore needles or angiocatheters (at least 3.25' in length for needle chest decompression in large patients);
5. Intraosseous needles or intraosseous devices appropriate for children and adults; and
6. Latex-free tourniquet;

(d) Needles of various sizes, including suitable sizes for intramuscular injections;

(e) Intravenous macrodrip and microdrip administrations sets; and

(f) Intravenous arm boards, adult and pediatric, or appropriate substitute.

(3) An ALS agency shall stock and maintain drugs and medications as required by the master drug list contained in protocols established in accordance with this section.

(4) Controlled drugs shall be stored in a locked storage box in a locked compartment on the vehicle that is immediately accessible to personnel.

(5) This administrative regulation shall not prevent an agency from maintaining other supplies or equipment that are required to carry out its protocols as approved by the board in accordance with KRS 311A.180.

(6) All items with expiration dates shall not be expired.

Section 4. Class III Adult Critical Care (ACC) Transport

Equipment. (1) Each Class III ACC agency shall maintain evidence in the form of a letter that medical protocols have been reviewed and approved by the board in accordance with KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.

(2) In addition to the BLS equipment required in Section 2 of this administrative regulation and the ALS equipment required in Section 3 of this administrative regulation, Class III Adult Critical Care agencies shall carry on each vehicle and maintain in fully operational order all supplies and equipment required by the agency's protocols, including at a minimum:

(a) A portable transport ventilator, the capabilities of which shall include:

1. Controlling rate;
2. Volume;
3. FiO₂ up to 100 percent;
4. I:E ratio;
5. PEEP;
6. Volume control;
7. Pressure control;
8. SIMV mode;
9. NPPV mode; and
10. Low- and high-pressure warning alarms;

(b) Two (2) portable transport ventilator circuits appropriately sized for the patient being transported;

(c) Continuous Positive Airway Pressure (CPAP) ventilation portable equipment;

(d) Electronic waveform capnography, intubated patient, capable of waveform display;

(e) Difficult airway equipment in the form of a bougie gum elastic ET introducer;

(g) Sterile cricothyrotomy set, surgical or needle;

(h) Invasive pressure monitoring capability electronic waveform available on two (2) channels;

(i) An infusion pump or pumps capable of infusing three (3) separate medications simultaneously;

(j) Six (6) IV infusion pump tubing sets;

(k) Two (2) blood infusion sets; and

(l) A device to monitor core body temperature through rectal or esophageal probe.

Section 5. Class III Pediatric Specialty Care (IIIPSC) Transport Equipment. (1) Each Class III Pediatric Specialty Care agency shall maintain evidence in the form of a letter that all medical protocols have been reviewed and approved by the board in accordance with KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.

(2) In addition to the BLS equipment required in Section 2 of this administrative regulation, the ALS equipment required in Section 3 of this administrative regulation, and the Critical Care equipment listed in Section 4 of this administrative regulation, each Class III Pediatric Specialty Care agency shall carry on each vehicle and maintain in fully operational order supplies and equipment required by the agency's protocols, including:

(a) Two (2) 250 ml bags of normal saline or lactated ringers;

(b) Twelve (12) syringes assorted from 1cc to 2cc;

(c) Four (4) three-way stopcocks;

(d) A needle cricothyrotomy kit for children from the ages of twenty-nine (29) days until twelve (12) years of age;

(e) A laryngeal mask airway in sizes 1, 2, and 3; and

(f) A king LTD airway in sizes 2, 2.5, 3, and 4.

Section 6. Class III Neonatal Specialty Care (III NSC) Transport Equipment. (1) Each Class III Neonatal Specialty Care agency shall maintain evidence in the form of a letter that all medical protocols have been reviewed and approved by the board in accordance with KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.

(2) In addition to compliance with Section 1 of this administrative regulation, each Class III Neonatal Specialty Care agency shall carry on each vehicle and maintain in fully operational

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order all supplies and equipment required by the agency's protocols, including:

- (a) Direct two-way communications with the designated neonatologist, attending physician, or receiving NICU;
- (b) A standby or backup power source other than the one (1) contained in the isolette;
- (c) A source of electrical power sufficient to operate the isolette and ancillary electrically powered equipment;
- (d) A transport incubator with portable power supply, portable oxygen tanks, or liquid oxygen, and a source of compressed air, including appropriate valves, meters, and fittings. The transport incubator shall be secured in the vehicle using a manufacturer-approved vehicle-mounting device;
- (e) One (1) portable heart rate monitor with visual or audible display and alarm system per patient;
- (f) One (1) portable blood pressure monitor with an assortment of cuff sizes suitable for infants;
- (g) Three (3) battery powered mechanical IV pumps capable of delivering as low as 1cc increments for IV fluids;
- (h) A battery or self-powered oxygen sensor and transcutaneous oxygen monitor or oxygen saturation monitor;
- (i) Oxygen delivery devices and tubing capable of administering high concentrations of oxygen;
- (j) A temperature-monitoring device;
- (k) A portable ventilator appropriate for neonatal patients;
- (l) An anesthesia or self-inflating bag with an oxygen reservoir of less than 750 ml, a manometer pressure gauge, and premature newborn and infant size clear masks;
- (m) A laryngoscope handle;
- (n) Laryngoscope Blades in Miller sizes 00, 0, 1, 2, 3;
- (o) Two (2) bulbs;
- (p) Two (2) batteries;
- (q) Endotracheal tubes in various sizes;
- (r) Two (2) stylets;
- (s) Two (2) meconium aspirators;
- (t) Oral airways in various sizes;
- (u) Suction equipment with low suction capabilities of less than eighty (80) mmHg;
- (v) Two (2) suction catheters in sizes 5.0, 6, 6.5, 8, and 10 each;
- (w) Syringes sizes 1 cc through 60 cc in various sizes;
- (x) Two (2) medication access devices;
- (y) 23-27 gauge vascular access devices in various sizes;
- (z) Sterile gloves in various sizes and sufficient quantity for all crewmembers;
- (aa) Medications as required by the master drug list contained in protocols established in accordance with this section;
- (bb) IV extension tubing in sufficient length to administer IV fluids or medications;
- (cc) IV securing devices in various sizes;
- (dd) Two (2) IV filters;
- (ee) Two (2) umbilical catheters, sizes 3.5 and 5;
- (ff) Ten (10) antiseptic solution wipes;
- (gg) One (1) blood glucose-monitoring device;
- (hh) Five (5) lancets for obtaining a blood glucose sample;
- (ii) One (1) neonatal stethoscope.
- (jj) One (1) flashlight;
- (kk) Gauze pads;
- (ll) One (1) No. 5 and one (1) No. 8 French feeding tube;
- (mm) One (1) high intensity light capable of transillumination;
- (nn) A biomedical waste plastic bag or impervious container;
- (oo) Puncture resistant containers for disposal of sharp objects that shall be secured to the vehicle;
- (pp) Gloves made of nitrile or other suitable materials in sufficient quantity for all crewmembers;
- (qq) Respiratory face masks in sufficient quantity for all crew members;
- (rr) Special procedure trays or instruments capable of performing umbilical catheterization, venous cutdown, and thoracostomy in accordance with established protocol;
- (ss) One (1) bulb syringe;
- (tt) One (1) cord clamp;
- (uu) One (1) age appropriate chest tube evacuation device;

and

- (vv) Needle aspiration device or chest tubes in appropriate sizes for a neonate patient.

Section 7. Class VI and Class VIII BLS Agency Equipment. (1) Each Class VI and VIII BLS agency shall maintain evidence in the form of a letter that all medical protocols have been reviewed and approved by the board in accordance with KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.

(2) Each Class VI and VIII BLS agency shall be exempt from the ground ambulance requirements established in Sections 1 through 7 of this administrative regulation.

(3) Each Class VI and VIII BLS agency shall provide ready access to and maintain in fully operational order all supplies and equipment required by the agency's protocols.

(4)(a) Each Class VIII BLS agency shall have ready access to and maintain in operational order, two (2) complete sets of equipment required by the agency's protocols and this administrative regulation.

(b) Each Class VI BLS agencies shall be required to maintain one (1) complete set of equipment.

(5) Each basic life support non-transport vehicle shall wrap, properly store, and handle all single-service implements to be inserted into the patient's nose or mouth.

(6) Each Class VI and VIII BLS agency shall properly store and keep multiuse items clean and sterile if indicated.

(7) Each Class VI and VIII BLS agency shall carry the following assembled and readily accessible equipment:

- (a) Respiratory and resuscitation equipment, including:
 1. Portable suction apparatus, capable of a minimum vacuum of 300 millimeters mercury, equipped with two (2) each of the following:
 - a. Wide-bore tubing;
 - b. Rigid catheters;
 - c. Soft pharyngeal suction tips in child size; and
 - d. Soft pharyngeal suction tips in adult size;
 2. One (1) hand-operated bag-mask ventilation unit equipped with clear facemasks and oxygen reservoirs with oxygen tubing in each of the following sizes:
 - a. Adult;
 - b. Child;
 - c. Infant; and
 - d. Neonatal mask only;
 3. Two (2) oropharyngeal airways in each of the following sizes:
 - a. Adult;
 - b. Child; and
 - c. Infant;
 4. One (1) pocket mask with a one (1) way valve;
 5. Blind-Insertion Airway Devices (BIAD) in adult and pediatric sizes; and
 6. Portable oxygen equipment of at least 300 liters capacity and D size cylinder with a regulator capable of delivering 25LPM;
- (b) Oxygen delivery devices, including:
 1. Two (2) non-rebreathing oxygen masks in both adult and pediatric sizes;
 2. Two (2) nasal cannula in both adult and pediatric sizes;
 3. Two (2) nasopharyngeal airways with water-soluble lubricant in each of the following sizes:
 - a. Adult;
 - b. Child; and
 - c. Infant;
 - (c) Wound care supplies, including:
 1. Two (2) airtight dressings for open chest wounds;
 2. Assorted bandaging supplies for the care of soft tissue injuries; and
 3. Sterile water for irrigation;
 - (d) An AED with a minimum of two (2) complete sets of pads for all non-ALS providers and vehicles;
 - (e) Patient stabilization equipment, including:
 1. Two (2) upper and two (2) lower extremity-splinting devices;

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2. Two (2) cervical collars in each of the following sizes or adjustable equivalents:

- a. Pediatric;
- b. Small;
- c. Medium;
- d. Large; and
- e. No-Neck;

(f) Personal protection and body substance isolation equipment, including at least one (1) of each of the following for each EMS provider:

1. Gown;
2. Face mask and shield;
3. Gloves;
4. Biohazard bag;
5. Puncture resistant container for the disposal of sharp objects; and

6. Antimicrobial hand cleaner; and
(g) Miscellaneous items, including:

1. Obstetrical supplies, including:
 - a. Sterile scalpels or scissors;
 - b. Sterile gloves;
 - c. Bulb suction; and
2. Two (2) umbilical clamps;

2. One (1) blood pressure sphygmomanometer in each of the following cuff sizes:

- a. Large adult;
- b. Adult; and
- c. Pediatric;
3. One (1) stethoscope in each of the following sizes:

- a. Adult; and
- b. Pediatric; and

4. A glucometer or blood glucose-measuring device with reagent strips and lancets for obtaining a blood glucose sample.

Section 8. Class VI and VIII ALS Agency Equipment. (1) Each Class VI and VIII ALS agency shall maintain evidence in the form of a letter that medical protocols have been reviewed and approved by the board in accordance with KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.

(2) Each Class VI and VIII ALS agency shall be exempt from the ambulance requirements established in Sections 1 through 6 of this administrative regulation.

(3)(a) Each Class VIII ALS agency shall have ready access to and maintain in operational order, two (2) complete sets of equipment required by the agency's protocols and this administrative regulation.

(b) Each Class VI ALS agency shall be required to maintain one (1) complete set of equipment.

(4) In addition to the BLS equipment required in Section 7 of this administrative regulation, each Class VI and VIII ALS agency shall provide ready access to and maintain in fully operational order, supplies and equipment required by the agency's protocols, including a minimum of:

(a) Endotracheal intubation equipment consisting of:

1. Laryngoscope handle;
2. Various laryngoscope blades in adult, pediatric, and infant sizes;
3. Extra batteries and bulbs for handles or blades;
4. A minimum of seven (7) different sizes of endotracheal tubes for oral and nasal placement in adult, pediatric, and infant sizes;
5. Equipment necessary to perform emergency cricothyrotomy;
6. An end tidal carbon dioxide detection device;
7. Stylettes in adult and pediatric sizes;
8. Magill forceps in adult and pediatric sizes;
9. One-half (1/2) inch wide twill tape or equivalent for securing endotracheal tubes; and
10. Water-soluble lubricant for lubrication of endotracheal and nasotracheal tubes;

(b) A portable monitor defibrillator that:

1. Is capable of displaying a visual display of cardiac electrical activity;

2. Is capable of providing a hard copy of cardiac electrical activity measure;

3. Is capable of delivering direct current energy over a variable range, which is suitable for pediatric and adult usage;

4. Is capable of providing external cardiac pacing;

5. Has adult and pediatric external pads, capable of utilization for immediate monitoring of heart activity and delivery of counter shock in both the adult and pediatric patient;

6. Is capable of being operated from internal rechargeable batteries;

7. Has synchronized counter shock capability for cardioversion; and

8. Has a patient monitoring cable with electrode pads or equivalent for use with the patient monitoring cable;

(c) Sterile, disposable needles, in types and sizes sufficient for personnel to administer medications and perform procedures allowed by the agency's patient treatment protocols;

(d) Disposable syringes in types and sizes sufficient for personnel to administer medications and perform procedures allowed by the agency's patient treatment protocols;

(e) Restriction band appropriate for use with venipuncture procedure;

(f) Disposable, individually packaged antiseptic wipes;

(g) Intravenous fluids as required by the agency's protocol, with macrodrip and microdrip fluid sets, and accessory items including over the needle catheter devices in sizes fourteen (14) to twenty-four (24) gauge;

(h) Intraosseous needles or intraosseous devices appropriate for children and adults; and

(i) Pediatric drug dosage tape or equivalent that provides easy reference for pediatric and infant treatment and drug dosages.

(5) All items with expiration dates shall not be expired.

(6) An ALS agency shall stock and maintain drugs and medications as required by the master drug list contained in protocols established in accordance with this section.

(7) Controlled drugs shall be stored in a locked storage box in a locked compartment that is immediately accessible to personnel.

(8) This administrative regulation shall not prevent an agency from maintaining other supplies or equipment that are required to carry out its protocols as approved by the board in accordance with KRS 311A.180.

Section 9. Safety Equipment. (1) Each ground agency licensed to respond to emergency pre-hospital responses shall provide and maintain in full operational order the following minimum light access and extrication equipment on the ambulance for each staff member:

(a) Eye protection goggles or safety glasses;

(b) Heavy work gloves;

(c) Hard hats that meet ANSI standards;

(d) Reflective safety wear for each crew member that meet current ANSI standard ANSI 107-2010 or ANSI 207-2011; and

(e) Three (3) reflective triangles or strobes, or equivalent warning devices.

(2) A ground ambulance agency subject to emergency pre-hospital response not equipped to provide extrication and rescue services shall execute an agreement with an agency capable of providing extrication and rescue services to the primary geographic service area.

(3) Each Class II, III ACC, III PSC, III NSC, and VIII agency shall be exempt from the requirements of this section unless emergency pre-hospital response is included in the agency's scope of care.

Section 10. Equipment or Medication Waiver. (1) The board for good cause shall grant a waiver of any section of this administrative regulation upon request. An applicant for waiver shall submit an:

(a) "EMS Equipment or Staff Waiver Request"; and

(b) A nonrefundable application fee of \$500 per waiver request.

(2) The application request shall include:

(a) Evidence of prior good faith efforts to comply with each section for which a waiver is requested;

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(b) A written explanation of the agency's inability to comply with each section for which a waiver is requested, including any financial or other significant hardship resulting from the agency's efforts to comply;

(c) A written plan for providing adequate care to patients;

(d) The length of time the waiver is requested; and

(e) A plan for compliance with each section of this administrative regulation for which a waiver has been requested.

(3) Requests for waivers shall be submitted to the executive director of the board.

(4) The administrator and medical director of the agency requesting a waiver shall appear before the board's executive committee and the full board at a regularly scheduled meeting to present evidence of hardship that compliance with this administrative regulation will cause.

(5) Waivers shall not be issued for minimum staffing requirements.

(6) Any waiver issued by the board shall expire on December 31 of the year of issue.

(7) Within twenty (20) days of the board's decision, the executive director shall notify the applicant of the decision in writing.

(8) A waiver approved by the board upon a finding of good cause shall be considered a fulfillment of the licensing requirements established in the waiver through December 31 of the year of issue.

(9) The board shall deny the waiver request if, after reviewing the application, it is determined the:

(a) Agency is unable to meet the needs of the agency's patients or geographic service area in the event that the waiver is granted; or

(b) Health or safety of the agency's patients or geographic service area may be jeopardized in the event that the waiver is granted.

(10) An applicant whose request for waiver is denied may file a written request for a hearing before the board within thirty (30) days of the written notice of denial.

(11) A hearing shall be conducted in accordance with KRS Chapter 13B.

Section 11. Public Notice of Negative Action. The board office shall cause to be published, on the KBEMS Web site or similar publication of the board, or otherwise disseminate, the name of any licensed agency that is fined, placed on probationary status, placed on restricted status, suspended, or had a license revoked.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "EMS Equipment or Staff Waiver Request", (12/2017);

(b) "U.S. Department of Transportation, Emergency Response Guidebook", (2016);

(c) "Commission on Accreditation of Ambulance Services Ground Vehicle Standard for Ambulances (GVS)", (8/2007); and

(d) "U.S. General Services Administration Federal Specification for the Star-of-Life Ambulance (GSA KKK-A-1822)", (7/2016).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 118 James Court, Suite 50, Lexington, Kentucky 40505, Monday through Friday, 8 a.m. to 4:30 p.m.

JIM DUKE, Chairperson

APPROVED BY AGENCY: December 7, 2017

FILED WITH LRC: December 13, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2018 at 10:00 a.m. Eastern Standard Time at 118 James Court, Suite 50, Lexington, Kentucky 40505. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an

opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Angela Evans; Legal Counsel, Kentucky Fire Commission; McBrayer, McGinnis, Leslie & Kirkland, PLLC, 201 East Main Street Suite 900, Lexington, Kentucky 40507, phone (859) 231-8780, fax (859) 231-1175, email aevans@mmlk.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the equipment and vehicle standards for ambulance and medical first response agencies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a minimum equipment and vehicle standard for all emergency medical services agencies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with the board's statute as it establishes minimum standards to operate emergency medical service agency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation lists the minimum vehicle specifications and specific equipment each vehicle must have in stock.

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

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

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

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute allows the board to establish minimum standards for the operation of emergency medical service agencies.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 213 licensed agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities will need to review their equipment and vehicles to ensure they are in compliance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will vary depending on the equipment or medication needed if they do not currently have it in stock.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will know exactly the type of vehicles and equipment required.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds are not needed to implement or enforce the 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 fee increase is necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does establish a fee for the waiver request application.

(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 agencies 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? Ambulance providers and first response agencies.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 311A.020, 311A.025, 311A.030, 311A.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? This administrative regulation will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue.

(c) How much will it cost to administer this program for the first year? No cost

(d) How much will it cost to administer this program for subsequent years? No cost

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation: None

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM Kentucky Board of Emergency Medical Services (New Administrative Regulation)

202 KAR 7:555. Ground agencies.

RELATES TO: KRS 311A.030, 311A.190

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.020 requires the board to exercise all administrative functions in the regulation of the EMS system and the licensing of ambulance services and medical first response agencies. KRS 311A.030 requires the board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies. This administrative regulation establishes minimum licensing requirements.

Section 1. Utilization of Ground Vehicles by Class I, II, III, and IV Licensed Agencies. (1) At the time of initial inspection, each agency shall inform the Kentucky Board of Emergency Medical Services (KBEMS) office of the make, model, year, vehicle identification number or serial number, and license tag number for each vehicle the agency plans to use for medical care and transportation.

(2) A vehicle shall not be placed into operation until the board has conducted a physical inspection of the vehicle and determined it meets the requirements of 202 KAR Chapter 7.

(3) Each agency shall complete a Vehicle Change Form, no later than the next business day after the permanent removal of any licensed vehicle from service by the license holder.

(4) A licensed agency may use a replacement vehicle that meets all of the requirements of 202 KAR Chapter 7 on a temporary basis while a permitted vehicle is out of service. The agency shall complete a Vehicle Change Form within twenty-four (24) hours of the replacement.

(b) A temporary replacement vehicle shall not be used for more than thirty (30) days annually unless the KBEMS office has verified, through a physical inspection, that it meets the requirements of 202 KAR Chapter 7.

(5) The KBEMS office shall be notified by a completed Vehicle Change Form within twenty-four (24) hours or on the next business day if a temporary vehicle is removed from service and the original licensed vehicle is returned to service.

(6)(a) An agency that fails to report using a temporary vehicle shall be required to immediately cease use of the replacement vehicle until the reporting requirements are met.

(b) An agency that fails to remove a temporary vehicle from service after thirty (30) days shall be fined \$500 for each day or partial day the vehicle is in service and not reported.

(7) This administrative regulation shall not prevent a licensed agency from utilizing other means of transporting patients in:

- (a) Disasters;
- (b) Mass casualty incidents; or
- (c) Extraordinary scene conditions that would impair access to the safety or care of the patient or personnel operating at the scene.

Section 2. Provider Management Requirements. (1) All licensed agencies shall maintain:

(a) An organizational chart that establishes lines of authority, including the designation of:

1. An administrator responsible for assuring compliance with KRS Chapter 311A and 202 KAR Chapter 7 during the daily operation of the service; and

2. A designee who shall serve in the absence of the administrator;

(b) Records and reports at the ambulance agency base station including:

1. An original, electronic equivalent, or copy of all patient care records consistent with the U.S. Department of Transportation National Highway Traffic Safety Administration (NHTSA) National Emergency Medical Services Information System (NEMSIS) data dictionary found at www.nemsis.org/technical-resources/version-3;

2. An electronic copy of all completed patient care reports, which shall be maintained to ensure confidentiality and safekeeping for at least seven (7) years from the date on which the service was rendered, or in the case of a minor, at least three (3) years after the minor reaches the age of majority.

3. Copies of Patient Care Reports for the preceding twelve (12) months, which shall be accessible and be immediately available to the board, KBEMS office, or representatives upon request;

(c) Personnel files for each employee or volunteer who staffs a vehicle of a licensed agency. Personnel files shall be maintained for at least one (1) year following separation from employment. As a minimum, all personnel files shall contain:

1. A pre-employment and annual criminal background check administered by the Kentucky Administrative Office of the Courts;

2. A copy of the employee's valid KBEMS certification or licensure card; and

3. A copy of each employee's completion of NIMS ICS 100, 200, 700, and 800;

(d) A policy for the provision of a pre-employment and annual health assessment of employees of the agency, which shall include reporting mechanisms for work-related illness or injury;

(e) A written plan for providers to consult with online adult and pediatric medical direction. This plan shall address as a minimum:

1. The availability of medical direction twenty-four (24) hours a

day, seven (7) days a week;

2. The availability of medical direction during an emergency event;

3. The provision of medical direction by a medical professional with a higher level of training or expertise; and

4. Recommended actions in the event of equipment failure, communication barriers, or other unusual circumstance if it is not possible to contact online medical direction;

(f) A plan and records for the provision of continuing education for staff and volunteers, including:

1. A written plan for the method of assessment of staff continuing education needs; and

2. A coordinated plan to meet those needs, including a provision that all continuing education shall be provided either by a licensed TEI or in accordance with 202 KAR 7:601;

(g) An infection control plan in accordance with 29 C.F.R. 1910.1030;

(h) A written plan for training or educating personnel for responding to hazardous materials, criminal, and potential terrorist incidents, including plans for the protection and decontamination of patients, ambulances, equipment, and staff;

(i) A written policy regarding the appropriate destination of a patient who expires during transport if a valid Kentucky EMS, DNR, or MOST form is present;

(j) A written plan for the quality assessment of patient care and provider quality improvement, including a monthly review of patient care reports and evaluation of staff performance related to patient care. This plan shall address as a minimum:

1. Employee health and safety;
2. Compliance with protocols and operating procedures;
3. Assessment of dispatch protocols;
4. Vehicle operations and vehicle safety;
5. Additional training necessary for the patient care provider or providers;

6. Equipment preventive maintenance programs; and

7. A process for the resolution of customer complaints;

(k) A written plan for training personnel and responding to mass casualty incidents and disasters;

(l) A written orientation program for all personnel, including at a minimum:

1. Validation of certification or license with KBEMS;
2. Validation of NIMS ICS 100, 200, 700, and 800 within sixty (60) days of employment for any employee who staffs a licensed vehicle;

3. Validation of Driver's License if applicable;

4. A review of all agency policies, procedures, and protocols;

5. Communication equipment at the base station and on each vehicle;

6. Operational aspects of the agency fleet and equipment;

7. Inspection and routine maintenance of agency fleet, facilities, and equipment;

8. Appropriate processes for disinfection of agency fleet, facilities, and equipment;

9. Local navigation and geographic orientation; and

10. Completion of Patient Care Reports and other documentation as established by the agency;

(m) Proof of professional liability malpractice insurance of a minimum of \$1,000,000;

(n) Proof of vehicular liability insurance.

(2) Each agency shall notify the board at least twenty-four (24) hours prior to the transfer of coverage, cancellation, lapse, or other cessation or change in professional liability malpractice insurance or vehicular liability insurance.

(3) Each agency shall verify valid staff certification or licensure as of the first day of the calendar year.

(4) If ceasing to operate, an agency shall provide the board with the physical storage location of all Patient Care Reports within five (5) business days of closure. These reports shall be maintained by the owner of the licensed agency, or a contracted third party to meet the timeline established in subsection (1)(b) of this section.

(5) Each agency that allows an employed emergency responder to provide medical services while off duty in accordance

with 202 KAR 7:701, Section 6, shall maintain and implement a policy regarding which employees are approved to provide medical services off duty by the agency's medical director and the manner in which worker's compensation and general liability insurance covers employees off duty. The policy shall be signed by both the agency's administrator and medical director, shall be reviewed annually, and shall include:

(a) Direction on which employees may remove medical equipment from the agency's premises for the purpose of providing care off duty;

(b) Direction on which equipment may be removed from the agency's premises for the purpose of providing care off duty; and

(c) A provision that controlled substances shall not be removed from the agency's premises for the purposes of providing care off duty.

(6) Each agency shall in the county in which the agency's base station or a satellite is located:

(a) Document evidence of participation in a local, county, regional, or state disaster or preparedness exercise within the preceding twelve (12) months;

(b) Coordinate with the county emergency management director plans for the possible use of agency personnel for use in the emergency operations center in a disaster; and

(c) Maintain a hard copy or electronic equivalent of the most current adopted city, county, or urban county government emergency management agency's emergency operations plan at the ambulance base station.

Section 3. Operating Requirements. (1) Each licensed agency, except Class IV and VIII, shall provide service twenty-four (24) hours, a day, and seven (7) days a week. Class IV and VIII agencies shall operate during the hours of operation for their geographical service area or designated event.

(2) Each licensed agency shall retain staffing schedules for at least the previous twelve (12) months.

(3) Each agency administrator or designee shall be familiar with emergency management reporting and procurement processes and software platforms utilized to communicate the needs of the local government to state agencies.

(4) A licensed Class I, II, III, VI, or VII agency that ceases to provide continuous service on a twenty-four (24) hour basis shall surrender its license to the board's office within twenty-four (24) hours of the agency ceasing to provide continuous service.

(5) A licensed agency shall have a written plan to assure all requests for service shall be promptly answered.

(6) A licensed agency shall have a written scope of care policy to include the types of services performed, limitations of response, and the types of medical teams provided.

(7) Any agency licensed and located within the geographical service area that determines it is unable to have a vehicle responding within ten (10) minutes from the initial time an emergency call is received from the dispatch center shall notify the next closest appropriate licensed agency to respond.

(8) An agency shall enter into a mutual aid agreement with another Kentucky licensed ambulance agency operating within the same or contiguous counties that provide response to medical emergencies. These agreements shall be in writing and address:

(a) The type of mutual aid assistance to be provided, including ALS or BLS medical care and transport and ALS or BLS medical first response;

(b) Response personnel, including levels of training or education and provisions for joint in-service training or education if appropriate;

(c) Response vehicles, including unit identifiers and the station or location from which the vehicles shall be operated;

(d) A plan of action for the mutual aid agreement, including dispatch and notification procedures;

(e) Radio and other communications procedures between the ambulance agency and other response agencies with which the agency has mutual aid agreements;

(f) On-scene coordination and scene control including medical direction if several agencies respond to the same incident;

(g) Exchange of patient information, records, and reports as

allowed by law; and

(h) The effective dates and process for amendment or termination.

(9) A ground agency shall send a written request for a mutual aid agreement to at least two (2) contiguous counties and retain a copy of each request and each county's response;

(10) Each agency shall maintain a policy or affiliation agreement with the primary call-taking center that provides dispatch services for all or part of the service area of the ground agency. The agreement shall state at a minimum that:

(a) Requests for emergency ambulance service shall be dispatched or notified within two (2) minutes from determining that the caller is requesting ambulance response;

(b) In the event that the closest licensed agency for that geographic service area is unable to have a vehicle responding to an emergency call within ten (10) minutes from the time the call is dispatched, the agency shall notify the next closest appropriate licensed agency to respond; and

(c) The agreement shall specify which patient information shall be collected by the call-taking center during a call for service.

(11) If a ground agency is unable to secure a written affiliation agreement with the dispatch center, the ground agency shall retain all written correspondence to the dispatch center requesting an affiliation agreement and the dispatch center's denial of the agency's request.

(12) An agency shall not respond to requests for service outside of its licensed geographic service area without first receiving authorization from the licensed agency in the geographic service area in which the request originates.

(13) A licensed Class I ground agency that is located in a geographical service area containing multiple destination hospitals, with regard to the furnishing of 911 response and transportation, shall not engage in:

(a) Exclusive or coercive practices regarding transportation decisions with regard to any affiliated hospital or hospital emergency department;

(b) Preferential transportation to any affiliated hospital emergency department if the transports are not justified by time, place, patient convenience, or other objective factors affecting a patient;

(c) Noncompetitive transportation to any affiliated hospital emergency department; or

(d) Transports to any affiliated hospital emergency department if that hospital is not the closest to the patient location or most appropriate based on the availability of particular services or patient preference.

(14) An agency that cannot meet the timelines established in subsection (10) of this section shall contact another licensed agency and receive an estimated time of arrival to the request for service. If the mutual aid agency can arrive at the location where the request originated more quickly than the agency licensed for the geographic service area, the agency licensed for the geographic service area shall request mutual aid from its neighboring agency to respond to the call.

(15) An agency shall not refuse a request for emergency pre-hospital response if a unit is available in its geographic service area.

(16) An agency shall not exhaust its resources by answering a nonemergency call or for response to mutual aid requests.

(17) This administrative regulation shall not be construed to prevent a licensed agency from providing medical first response emergency or nonemergency pre-hospital care at or below the level for which the agency is licensed through the use of designated agency-owned response vehicles.

(18) A communications system shall be developed, coordinated, and maintained by each licensed agency. The communication system shall comply with paragraphs (a) through (e) of this subsection.

(a) Radio equipment used in emergency medical services vehicles shall be appropriately licensed through the FCC. Copies of the current FCC licenses shall be on file in the agency office.

(b) A licensed agency shall have the capability to communicate on all VHF Kentucky State Mutual Aid Frequencies in accordance

with the Commonwealth of Kentucky Field Operations Guide (KY-FOG).

(c) Each ambulance shall be equipped with mobile two (2) way radio communication equipment with a control point located in both the driver's compartment and patient care compartment of the vehicle capable, under normal conditions, of operating on agency, dispatch center, mutual aid, and hospital frequencies.

(d) Each ambulance shall have a minimum of two (2) portable push-to-talk two (2) way radio communication devices capable of operating on the agency dispatch center, mutual aid, and hospital frequencies.

(e) One (1) alternative method of two (2) way communication may be substituted for one (1) portable two (2) way radio.

Section 4. Medical Directors. (1) Each licensed agency shall have a medical director who meets the requirements established in 202 KAR 7:801.

(2) A licensed agency shall notify KBEMS within twenty-four (24) hours of a decision to discontinue a medical director agreement by either the agency or the medical director.

(3)(a) If an agency is found to be operating without a medical director, the agency shall be provided emergency medical direction by the KBEMS Medical Advisor for a fee of \$100 per day for the first thirty (30) calendar days the agency is without a medical director.

(b) The fee shall increase to \$500 per day after thirty (30) calendar days.

Section 5. Public Notice of Negative Action. The board office shall cause to be published, on the KBEMS web site or similar publication of the board, the name of any licensed agency that is fined, placed on probationary status, placed on restricted status, suspended, or had a license revoked.

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

(a) "Commonwealth of Kentucky Field Operations Guide (KY-FOG)", (6/2012);

(b) "NHTSA NEMSIS Data Dictionary", (v3.40) U.S. Department of Transportation National Highway Traffic Safety Administration (NHTSA) National Emergency Medical Services Information System (NEMSIS) data dictionary found at https://www.nemsis.org/media/nemsis_v3/3.4.0.150302/DataDictionary/PDFHTML/DEMMS/NEMSISDataDictionary.pdf; and

(c) "Vehicle Change Form", (12/2017).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 118 James Court, Suite 50, Lexington, Kentucky 40505, Monday through Friday, 8 a.m. to 4:30 p.m.

JIM DUKE, Chairperson

APPROVED BY AGENCY: December 7, 2017

FILED WITH LRC: December 13, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2018 at 10:00 a.m. Eastern Standard Time at 118 James Court, Suite 50, Lexington, Kentucky 40505. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Angela Evans; Legal Counsel, Kentucky Fire Commission; McBrayer, McGinnis, Leslie & Kirkland, PLLC,

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201 East Main Street Suite 900, Lexington, Kentucky 40507,
phone (859) 231-8780, fax (859) 231-1175, email
aevans@mmlk.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the operating procedures for ground ambulance agencies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide a uniform process for ground ambulance operations for which all agencies are required to abide by.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with the board's authority to create standards for ground ambulance services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the requirements for ground ambulances to operate.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 1,264 licensed ground ambulance agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation establishes a twenty-four (24) hour time frame for an agency to surrender its license when it ceases to provide continuous twenty-four (24) hour service and a twenty-four (24) hour time frame to notify the board of a transfer or lapse in insurance.

(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 agencies.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The agencies will have set standards for the ground ambulance agencies and clearly defined time frames to notify the board of various circumstances.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(a) Initially: None

(b) On a continuing basis: None

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the

basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Ambulance providers and first response agencies.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 311A.020, 311A.025, 311A.030, 311A.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? This administrative regulation will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue.

(c) How much will it cost to administer this program for the first year? No cost

(d) How much will it cost to administer this program for subsequent years? No cost

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM Kentucky Board of Emergency Medical Services (New Administrative Regulation)

202 KAR 7:560. Ground vehicle staff.

RELATES TO: KRS 189.910-189.950, 311A.030, 311A.190
STATUTORY AUTHORITY: KRS 311A.020, 311A.025,
311A.030, 311A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.020 requires the board to exercise all administrative functions in the regulation of the emergency medical services system and the licensing of ambulance services and medical first response agencies. KRS 311A.030 requires the board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies. This administrative regulation establishes the minimum staffing requirements for ground vehicles.

Section 1. Staffing Requirements. (1) Each Class I agency BLS ambulance shall at minimum, be staffed by:

(a) A driver certified as an emergency medical technician (EMT); and

(b) An attendant certified as an emergency medical technician (EMT).

(2) Each Class I agency ALS ambulance shall at minimum be staffed by:

(a) A driver certified as an emergency medical technician (EMT); and

(b) An attendant certified as an Advanced EMT or licensed as a paramedic.

1. Each Class I ALS agency providing primary 911 emergency ambulance service shall ensure that an on-duty paramedic shall staff at least twenty-five (25) percent of the agency's ambulances at any time during a twenty-four (24) hour period.

2. To ensure compliance, each agency shall maintain its work schedules from the previous twelve (12) months until reviewed

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during its annual inspection.

(3) Each Class I agency operating an ALS ambulance providing a BLS level of care shall at minimum be staffed by:

(a) A driver certified as an emergency medical technician (EMT); and

(b) An attendant certified as an emergency medical technician (EMT).

(4) Each Class II agency shall at minimum be staffed by:

(a) A driver certified as an emergency medical technician (EMT); and

(b) An attendant certified as an emergency medical technician (EMT).

(5) A Class III Adult Critical Care ambulance agency shall at minimum be staffed by:

(a) A driver certified as an emergency medical technician (EMT);

(b) An attendant licensed as a paramedic; and

(c) One (1) licensed:

1. Registered nurse with a current certification as a CCRN for adults that shall be obtained within one (1) year of hire;

2. Advanced practice registered nurse certified in adult acute care;

3. Respiratory therapist;

4. Physician assistant specializing in critical care;

5. Physician; or

6. Additional paramedic.

(6) Each Class III Pediatric Specialty Care Ambulance Agency shall at minimum be staffed by:

(a) A driver certified as an emergency medical technician (EMT); and

(b) Two (2) attendants licensed as a:

1. Registered nurse with a current certification as a CCRN for Pediatrics that is obtained within one (1) year of hire;

2. Advanced practice registered nurse certified in pediatric acute care;

3. Respiratory therapist;

4. Physician assistant;

5. Physician; or

6. Paramedic.

(c) A paramedic and respiratory therapist shall not simultaneously serve as attendants.

(7) Each Class III Neonatal Specialty Care Ambulance Agency shall at minimum be staffed by:

(a) A driver certified as an emergency medical technician (EMT); and

(b) An attendant licensed as a registered nurse with a current certification as a CCRN in Neonatology or RNC-NIC that is obtained within one (1) year of hire; and

(c) One (1) licensed:

1. Advanced practice registered nurse certified in neonatology;

2. Respiratory therapist;

3. Physician assistant specializing in neonatology;

4. Physician; or

5. Registered nurse with a current certification as a CCRN in Neonatology or RNC-NIC that is obtained within one (1) year of hire.

(8) Each Class IV agency operating a BLS ambulance shall at minimum be staffed by:

(a) A driver certified as an emergency medical technician (EMT); and

(b) An attendant certified as an emergency medical technician (EMT).

(9) Each Class IV service operating an ALS ambulance shall at minimum be staffed by:

(a) A driver certified as an emergency medical technician (EMT); and

(b) An attendant certified as an Advanced EMT or licensed as a paramedic.

1. Each Class IV ALS agency that provides emergency and nonemergency transportation for restricted locations, such as industrial sites or other sites, shall ensure an on-duty paramedic staffs at least twenty-five (25) percent of the agency's ambulances at any time during a twenty-four (24) hour period.

2. To ensure compliance, each agency shall maintain its work schedules from the previous twelve (12) months until reviewed by board staff during its annual inspection.

(10) Each Class VI BLS medical first response agency shall at minimum be staffed by a certified:

(a) Emergency medical responder (EMR); or

(b) Emergency medical technician (EMT).

(11) Each Class VI ALS medical first response agency shall at minimum be minimally staffed by:

(a) A certified Advanced EMT; or

(b) A licensed paramedic.

(12) Each Class VIII BLS agency shall be minimally staffed by a certified:

(a) Emergency medical responder (EMR); or

(b) Emergency medical technician (EMT).

(13) Each Class VIII ALS agency shall be minimally staffed by:

(a) A certified Advanced EMT; or

(b) A licensed paramedic.

(14) Each Class I ALS, Class III ACC, Class IV ALS, and Class VI ALS agency shall have a licensed paramedic on duty at all times.

(15) At all times, the attendant shall monitor the patient and remain with the patient in the patient compartment.

(16) This administrative regulation shall not prevent an agency from utilizing staff other than those required by this administrative regulation in:

(a) Disasters;

(b) Mass casualty incidents; or

(c) Extraordinary scene conditions that would impair the safety of the patient or personnel operating at the scene.

(17) A certified emergency medical responder who were employed by a Class I, II, or III agency as a driver prior to January 1, 2018 may continue in that role if the emergency medical responder's employment relationship with the Class I, II, or III agency does not lapse.

(18) Alternative staff shall not operate a licensed vehicle unless at the direction of the agency administrator and the vehicle is out of service and not subject to an emergency response.

Section 2. Motor Vehicle Operator Requirements. (1) Each person operating a vehicle shall:

(a) Be at least eighteen (18) years of age;

(b) Hold a valid driver's license in any state or territory of the United States; and

(c) Complete at least four (4) hours of driver training and education every two (2) years.

(2) The driver training and education shall consist of a:

(a) Review of driving a vehicle under emergency conditions;

(b) Review of KRS 189.910 through 189.950 regarding operation of emergency vehicles;

(c) Demonstration by the student of forward and back-up driving maneuvers in a controlled situation, such as in an obstacle course designed specifically for this purpose; and

(d) Review of defensive driving techniques and procedures with hands-on experience or exposure by visual aids or planned demonstrations.

Section 3. Public Notice of Negative Action. The board office shall cause to be published, on the KBEMS Web site or similar publication of the board, or otherwise disseminate, the name of any licensed agency that is fined, placed on probationary status, placed on restricted status, suspended, or had a license revoked.

JIM DUKE, Chairperson

APPROVED BY AGENCY: December 7, 2017

FILED WITH LRC: December 13, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2018 at 10:00 a.m. Eastern Standard Time at 118 James Court, Suite 50, Lexington, Kentucky 40505. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that

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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 January 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Angela Evans; Legal Counsel, Kentucky Fire Commission; McBrayer, McGinnis, Leslie & Kirkland, PLLC, 201 East Main Street Suite 900, Lexington, Kentucky 40507, phone (859) 231-8780, fax (859) 281-6480, email aevans@mmlk.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the staffing requirements for ground vehicles.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a minimum staffing standard for all ground emergency medical services agencies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with the board's statute as it establishes minimum standards for staff of ground emergency medical service agencies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation lists the minimum staffing requirements for each class of ground emergency medical service agencies.

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

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

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

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute allows the board to establish minimum standards for the operation of emergency medical service agencies.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 1,264 ground ambulance agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities will need to review their staffing of vehicles to ensure they are in compliance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will vary depending on the amount of staff, if any, needed to be in compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The agencies will know the level of certification required to serve in each role on an ambulance based on its classification.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(a) Initially: None

(b) On a continuing basis: None

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

Board funds, if needed.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated agencies 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? Ambulance providers and first response agencies.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 311A.020, 311A.025, 311A.030, 311A.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? This administrative regulation will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue.

(c) How much will it cost to administer this program for the first year? No cost.

(d) How much will it cost to administer this program for subsequent years? No cost

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Kentucky Board of Emergency Medical Services (New Administrative Regulation)

202 KAR 7:565. Clinical pilot programs.

RELATES TO: KRS 216B.020(2)(f), 311A.030, 311A.060, 311A.180, 311A.190

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.035, 311A.165, 311A.170, 311A.175, 311A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.020 requires the board to exercise all administrative functions in the regulation of the EMS system and the licensing of ambulance services and medical first response agencies. KRS 311A.035 authorizes the board to develop, monitor, and encourage other projects and programs that may be of benefit to emergency medical services in the Commonwealth. This administrative regulation establishes the process for agencies to submit clinical pilot programs and the standards for approval by the board.

Section 1. (1) A clinical pilot program shall allow for the use of assessment techniques or clinical procedures beyond the regular scope of practice of emergency medical responders established in 202 KAR 7:701.

(2)(a) A licensed agency seeking authorization for a clinical

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pilot program shall submit a written proposal that includes a:

1. Letter of intent;
2. Description of the type of pilot project;
3. General project description;
4. Patient Interaction Plan;
5. Staffing Plan;
6. Training and Education Plan;
7. Medical Direction and Quality of Improvement Plan;
8. Data Collection and Quantitative Reporting;
9. Completed "Request for Expedited or Full Review" form located on pages 42 through 45 of the "Kentucky Community and Technical College System Human Subjects Review Board Handbook for Investigators: For the Protection of Human Subjects in Research," (6/2015), if applicable; and
10. Nonrefundable application fee of \$500.

(b) The applicant agency's administrator and medical director shall appear before the Medical Oversight Committee and subsequent meeting of the board to present the applicant agency's proposed pilot program for review or additional information.

(c) The Medical Oversight Committee shall review the applicant's proposal and assess on its individual merits if the project or program to be developed or implemented by the applicant is likely to benefit patients and providers of emergency medical services. The Medical Oversight Committee shall present its recommendation of approval or denial to the board at the next regularly scheduled board meeting.

(d) Upon approval of a clinical pilot program, the board shall develop quarterly report deadlines and data points for quarterly review by the Medical Oversight Committee.

1. The data points shall relate to the specific methods and goals identified in the applicant's proposal.

2. The reporting deadlines and data points shall be incorporated into a Memorandum of Understanding between the board and the applicant.

(3) An individual certified or licensed by the board who successfully completes an approved educational pilot program in accordance with 202 KAR 7:601 shall perform the procedures relevant to the training and education received in the pilot program subject to protocols established by the medical director and approved by the board in accordance with KRS 311A.180.

(4) The board may limit:

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

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

1. Specific and defined event;
2. Disaster; or
3. Designated directive.

(5) The board shall authorize the use of physicians or other medical professionals to supervise and monitor the training and education of providers involved in a pilot program.

(6) The board may restrict actions that involve the performance of an invasive procedure or the administration of medication subject to:

(a) Physician or medical director oversight; or

(b) The use of protocols that have been submitted to the board for review and approved by the state medical advisor and the board in accordance with KRS 311A.180.

(7) The office of the board shall retract the approval of any Clinical Pilot Program immediately if:

(a) The agency is in violation of any provisions approved by the board, including data submission requirements; or

(b) There is evidence the assessment technique or procedure has caused physical or psychological harm to a patient.

(8) Violation of any provision of a Clinical Pilot Program shall be grounds for discipline in accordance with KRS Chapter 311A.060.

Section 2. Public Notice of Negative Action. The board office shall publish on the KBEMS web site or similar publication of the board the name of any licensed agency that is fined, placed on probationary status, placed on restricted status, suspended, or had a license revoked.

Section 3. Incorporation by Reference. (1) "Kentucky Community and Technical College System Human Subjects Review Board Handbook for Investigators: For the Protection of Human Subjects in Research", (6/2015), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Emergency Medical Services, 118 James Court, Suite 50, Lexington, Kentucky 40505, Monday through Friday, 8 a.m. to 4:30 p.m.

JIM DUKE, Chairperson

APPROVED BY AGENCY: December 7, 2017

FILED WITH LRC: December 13, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2018 at 10 a.m. Eastern Standard Time at 118 James Court, Suite 50, Lexington, Kentucky 40505. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Angela Evans; Legal Counsel, Kentucky Fire Commission; McBrayer, McGinnis, Leslie & Kirkland, PLLC, 201 East Main Street Suite 900, Lexington, Kentucky 40507, phone (859) 231-8780, fax (859) 281-6480, email aevars@mmlk.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application monitoring process for clinical pilot programs.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform process for agencies to submit a clinical pilot project for approval by the Kentucky Board of Emergency Medical Services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with the board's delegated authority to develop and monitor programs that may be of benefit to emergency medical services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the board's application process and specifies the requirements to obtain approval for a clinical pilot project.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 213 ambulance providers and medical first response agencies that could present a pilot program to the board.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The agencies are not required to submit a pilot program, therefore no action is required of them to be in compliance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is a \$500 application fee for any agency that chooses to submit a pilot program for approval by the board.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The agencies choosing to submit a pilot project will have a uniform application process with clear expectations of the project set forth by the board.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(a) Initially: None

(b) On a continuing basis: None

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes a \$500 application fee that goes towards the cost of staff time to process and review the application.

(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? Ambulance providers and first response agencies.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 311A.020, 311A.025, 311A.030, 311A.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? This administrative regulation will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue.

(c) How much will it cost to administer this program for the first year? The cost to administer the program is approximately \$500, which is the cost of the application.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the program is approximately \$500, which is the cost of the application.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

**GENERAL GOVERNMENT
Department of Agriculture
Office of Agricultural Marketing
(Repealer)**

302 KAR 50:011. Repeal of 302 KAR 50:010.

RELATES TO: KRS 260.850-260.869, 7 U.S.C. 5940

STATUTORY AUTHORITY: KRS 260.862, 250.355

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations to prescribe rules for any industrial hemp research pilot program in the Commonwealth of Kentucky. This administrative regulation repeals 302 KAR 50:010 as it is outdated and will conflict with the new administrative filings for industrial hemp.

Section 1. 302 KAR 50:010, Industrial hemp license, is hereby repealed.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: December 15, 2017

FILED WITH LRC: December 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2018, at 2:00 p.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, 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 January 31, 2018. 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 302 KAR 50:010.

(b) The necessity of this administrative regulation: This regulation is necessary to to repeal the current industrial hemp regulation that is outdated and does not conform to the current statutory requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260.850-260.869 requires the Kentucky Department of Agriculture to regulate industrial hemp. This repealer will remove an administrative regulation that will be in conflict new administrative regulation being filed today.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer will remove the possibility for conflicts among administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: 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: No person or entity will be effected as 302 KAR 50:010 is not followed.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no anticipated actions associated with the implementation of this repealer.

(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 anticipated costs associated with the implementation of this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no anticipated benefits associated with the implementation of this repealer.

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

(a) Initially: The administrative regulation itself adds very little cost to the KDA over previous growing seasons. 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: There are no funding sources associated with the implementation of this repealer.

(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 anticipated costs associated with the implementation of this repealer, no changes in funding are needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees associated with the implementation of this repealer.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 U.S.C. 5940

2. State compliance standards. KRS 260.850-260.869

3. Minimum or uniform standards contained in the federal mandate. 7 U.S.C. 5940. Establish requirements for industrial hemp pilot programs. This administrative regulation establishes the requirements for participation in Kentucky.

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? There are no anticipated impacts to state or local government associated with this repealer.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 260.850-260.869 and 7 U.S.C. 5940.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There are no anticipated impacts to state or local government associated with this repealer.

(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 costs are expected for the first year with 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 costs are expected for subsequent years with 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.

GENERAL GOVERNMENT
Department of Agriculture
Office of Agricultural Marketing
(New Administrative Regulation)

302 KAR 50:020. Policies and procedures for growers.

RELATES TO: KRS 260.850-260.869, 7 U.S.C. 5940.

STATUTORY AUTHORITY: KRS 260.862.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations to prescribe rules for any industrial hemp research pilot program in the Commonwealth of Kentucky. KRS 260.862(1)(c) authorizes the department to license persons who wish to participate in an industrial hemp research pilot program by cultivating, handling, processing, or marketing industrial hemp. This administrative regulation establishes procedures and requirement for licensing persons who wish to grow or cultivate industrial hemp as a participant in the department's industrial hemp research pilot program.

Section 1. Definitions. (1) "Applicant" means a person, or a person who is authorized to sign for a business entity, who submits an application to participate in the industrial hemp pilot program.

(2) "Brokering" means engaging or participating in the marketing of hemp by acting as an intermediary or negotiator between prospective buyers and sellers.

(3) "Cannabis" means all parts of the cannabis plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts. Cannabis does not include publicly marketable hemp products, as defined in this administrative regulation.

(4) "CBD" means cannabidiol.

(5) "Commissioner" means the Commissioner of the Department of Agriculture.

(6) "Certified seed" means seed for which a certificate or any other instrument has been issued by an agency authorized under the laws of a state, territory, or possession to officially certify seed and which has standards and procedures approved by the United States Secretary of Agriculture to assure the genetic purity and identity of the seed certified.

(7) "Commonwealth" means the Commonwealth of Kentucky.

(8) "DEA" means the United States Drug Enforcement

Administration.

(9) "Decarboxylated" means the completion of the chemical reaction that converts THC-acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value may also be calculated using a conversion formula that sums delta-9-THC and 87.7 percent of THC-acid.

(10) "delta-9-THC" means delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis).

(11) "Department or KDA" means the Kentucky Department of Agriculture.

(12) "Grower licensing agreement" means a document executed by a person and the department authorizing the person to grow, handle, and store hemp at one or more specified locations in the Commonwealth under the terms established in the document, KRS 260.850 - 260.863, and this administrative regulation.

(13) "GPS" means Global Positioning System.

(14) "Handling" is defined by KRS 260.850(4).

(15) "Hemp" or "industrial hemp" is defined by KRS 260.850(5).

(16) "Hemp product" or "industrial hemp product" is defined by KRS 260.850(6).

(17) "Law enforcement agency" means the Kentucky State Police, DEA, or other federal, state, or local law enforcement agency or drug suppression unit.

(18) "Licensed grower" means a person authorized in the Commonwealth by the department to grow, handle, store, and market hemp under the terms established in a grower licensing agreement, KRS 260.850 - 260.859, and this administrative regulation.

(19) "Licensed processor" means a person in the Commonwealth authorized by the department to process, handle, store, and market hemp under the terms established in a processor licensing agreement, KRS 260.850 - 260.859, and 302 KAR 50:030.

(20) "Location ID" means the unique identifier established by the applicant for each unique set of GPS coordinates where hemp will be grown, handled, stored, or processed, which may include a field name or building name.

(21) "Nonviable seed" means a seed that has been crushed, dehulled, or otherwise rendered to have a zero percent germination rate.

(22) "Person" means an individual or business entity.

(23) "Pesticide" means any substance or mixture of substances intended to prevent, destroy, control, repel, attract, or mitigate any pest; intended to be used as a plant regulator, defoliant, or desiccant; or intended to be used as a spray adjuvant, once they have been mixed with a U.S. Environmental Protection Agency registered product.

(24) "Plot" means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of hemp throughout the area.

(25) "ppm" means parts per million.

(26) "Post-harvest sample" means a sample taken from the harvested hemp from a particular plot's harvest in accordance with the procedures as defined in 302 KAR 50:050; the entire plot's harvest shall be in the same form (e.g., intact-plant, flowers, ground materials, etc.), homogenous, and not mixed with nonhemp materials or hemp from another plot.

(27) "Pre-harvest sample" means a composite, representative portion from plants in a hemp plot collected in accordance with the procedures as established in 302 KAR 50:050.

(28) "Prohibited variety" means a variety or strain of cannabis excluded from the department's program.

(29) "Processing" is defined by KRS 260.850(9).

(30) "Processor licensing agreement" means a document executed by a person and the department authorizing the person to process, handle, and store hemp at one (1) or more specified locations in the Commonwealth under the terms established in the document, KRS 260.850 - 260.869, and 302 KAR 50:030.

(31) "Program" means the department's Industrial Hemp Research Pilot Program.

(32) "Propagule" means a plant or plant part that can be

utilized to grow a new plant.

(33) "Publicly marketable hemp product" means a hemp product that meets one (1) or more of the following descriptions:

(a) The product does not include any living hemp plants, viable seeds, leaf materials, floral materials, or delta-9-THC content above three-tenths (0.3) percent; and does include, without limitation, the following products: bare stalks, bast fiber, hurd fiber, nonviable roots, nonviable seeds, seed oils, and plant extracts (excluding products containing delta-9-THC above three-tenths (0.3) percent);

(b) The product is CBD that was derived from hemp, as defined in this administrative regulation; or

(c) The product is CBD that is approved as a prescription medication by the United States Food and Drug Administration.

(34) "Secondary pre-harvest sample" means a pre-harvest sample that is taken:

(a) In a given plot after the first pre-harvest sample is taken; and

(b) On a different day than the initial pre-harvest sample.

(35) "Seed source" means the origin of the seed or propagules as determined by the department.

(36) "Signing authority" means an officer or agent of the organization with the written power to commit the legal entity to a binding agreement.

(37) "UK DRS" means the Division of Regulatory Services at the University of Kentucky College of Agriculture, Food, and Environment.

(38) "University" means an accredited institution of higher learning located in the Commonwealth.

(39) "Variety" means a subdivision of a species, uniform, and stable; distinct in the sense that the variety can be differentiated by one (1) or more identifiable morphological, physiological, or other characteristics from all other publicly known varieties, or other characteristics from all other publicly known varieties; uniform in the sense that the variations in essential and distinctive characteristics are describable; and stable in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties.

(40) "Variety of concern" means any variety of hemp in the department's program that tests above 3000 ppm or 0.3000 percent delta-9-THC in one (1) or more pre-harvest samples. A hemp variety designated as a "variety of concern" may be subject to restrictions and additional testing.

(41) "Volunteer hemp plant" means any cannabis plant that:

(a) Grows of its own accord from seeds or roots in the years following an intentionally planted cannabis crop; and

(b) Is not intentionally planted.

Section 2. Who Must Apply for Grower Licensing Agreement.

(1) Any person who wishes to grow hemp at any location in the Commonwealth shall apply for a grower licensing agreement, incorporated by reference in 302 KAR 50:080, from the department.

(2) A person who does not hold a license from the department shall not grow, cultivate, handle, store, process, broker, or market hemp or other cannabis that does not fall within the definition of a "publicly marketable hemp product" at any location within the Commonwealth.

(3) A person under the age of eighteen (18) years of age shall not apply for or hold a grower license.

Section 3. Application for Grower Licensing Agreement -- Deadlines and Fees. (1) A person interested in holding a grower license shall complete a Grower License Application form, incorporated by reference in 302 KAR 50:080, annually.

(2) Completed Grower License Application forms shall be postmarked or received by the department by the end of the application period specified in the application. Completed Grower License Application forms shall be delivered to KDA Industrial Hemp Research Pilot Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(3) The Department shall deny any Grower License Application

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that fails to meet the deadline established in the application.

(4) Each applicant shall pay a grower application fee in the amount specified in 302 KAR 50:060.

(5) Application fees shall not cover or include the cost of the criminal background checks required by KRS 260.862(2)(d). Applicants and license holders shall pay criminal background check fees directly to the Kentucky State Police or other law enforcement agency designated by the department.

(6) The department may deny any Grower License Application that is received without the application fee specified in 302 KAR 50:060.

Section 4. Application for Grower Licensing Agreement -- Required Components. (1) The Grower License Application form shall require applicants to submit, at a minimum, the following information and documents:

(a) Full name, Kentucky residential address, telephone number, and email address, if an email address is available;

(b) If the applicant represents a business entity, the full name of the business, the principal Kentucky business location address, the full name of the applicant who will have signing authority on behalf of the entity, title, and email address if an email address is available, of the person;

(c) Research plan, including the proposed acreage or greenhouse or indoor square footage to be planted;

(d) A statement of previous farming experience;

(e) Planned source of seeds or propagules;

(f) Street address; location ID; and GPS coordinates for each field, greenhouse, building, or site where hemp will be grown, handled, or stored;

(g) Maps depicting each site where hemp will be grown, handled, or stored, with appropriate designations for entrances, field boundaries, and specific locations corresponding to the GPS coordinates; and

(h) Marketing plan summary.

(2) The department may deny any Grower License Application that is missing required information.

Section 5. Criminal Background Check. (1) Each licensed grower or applicant shall undergo and pay for an annual criminal background check as required by KRS 260.862(2)(d).

(2) A licensed grower or applicant shall:

(a) Submit a criminal background check request to the Kentucky State Police or other law enforcement agency designated by the department;

(b) Submit payment for the background check fee directly to the Kentucky State Police or other law enforcement agency designated by the department;

(c) Following completion of the background check, ensure delivery of the report to the department not more than fourteen (14) days after the application deadline.

(3) The department shall not accept a report from a criminal background check that occurred prior to October 1 of the application year.

(4) Failure to submit the background check by the deadline stated in subsection (2)(c) of this section shall be cause for denial of application.

(5) Substitution of a signing authority shall require approval from the department and the submission of a current criminal background check.

Section 6. Application for Grower Licensing Agreement -- Criteria and Procedure for Evaluation. (1) The department shall apply the following criteria in evaluating an application for the Grower Licensing Agreement:

(a) In accordance with Section 4 of this administrative regulation, the applicant submitted a complete application with all required components and attachments.

(b) For applicants who have been program participants previously, the applicant complied with the responsibility to submit the following reports:

1. Field Planting Reports and Greenhouse Planting Report, incorporated by reference in 302 KAR 50:080;

2. Harvest/Destruction Reports, incorporated by reference in 302 KAR 50:080;

3. Production reports; and

4. Any other reports deemed necessary by the department.

(c) The applicant has farming experience, as demonstrated by:

1. Filing an IRS Schedule F federal tax form at least once in the past three (3) years;

2. Providing the applicant's farm serial number (FSN) issued by the USDA Farm Service Agency;

3. Attesting to at least one (1) year of full-time farm work; or

4. Holding a bachelor's degree in agriculture from an accredited university.

(d) The applicant's growing sites, handling sites, storage sites, and primary residence are located in the Commonwealth of Kentucky.

(e) Affirm that the applicant will reside in Kentucky at the primary residence listed on the Grower License Application form from May 1 to September 30.

(f) The criminal background check report indicates that, within ten (10) years from the date when the background check was issued, the applicant does not have:

1. A felony conviction; and

2. A drug-related misdemeanor conviction or violation.

(g) The research plan is compliant with state and federal law.

(h) The applicant has a seed or propagule acquisition plan.

(i) The applicant has a marketing plan that is compliant with state and federal law.

(j) In the past, including those times when the applicant was not a participant in the department's program, the applicant demonstrated a willingness to comply with the department's rules, instructions from department staff, and instructions from representatives of Kentucky State Police and other law enforcement agencies.

(k) The applicant is not delinquent in making any required reports or payments to the department in connection with the applicant's participation in the program or other programs within the department.

(l) The applicant does not have any unpaid fines or civil penalties owed to the department.

(m) The applicant has not made any false statements or representations to a representative of the department or a law enforcement agency.

(2) The department shall conditionally approve an application for a Grower Licensing Agreement when the application satisfies the criteria established in this administrative regulation.

(3) The department may approve an applicant to grow an acreage or square footage that is equal to, greater than, or less than the acreage or square footage stated in the application.

(4) The department shall notify applicants by letter or email whether the application has been denied or conditionally approved. A person shall not be a participant in the department's program until the applicant and the department have executed a Grower Licensing Agreement following the applicant's attendance at the department's mandatory orientation session as required by Section 10 of this administrative regulation.

Section 7. Land Use Restrictions for Licensed Growers. (1) A licensed grower shall not plant or grow any cannabis that is not hemp.

(2) A licensed grower shall not plant or grow hemp or other cannabis on any site not listed in the Grower Licensing Agreement.

(3) A licensed grower shall not grow hemp or other cannabis in or adjacent to any structure that is used for residential purposes.

(4) A licensed grower shall not handle or store leaf or floral material from hemp or other cannabis in or adjacent to any structure that is used for residential purposes.

(5) Hemp shall be physically segregated from other crops unless prior approval is obtained in writing from the department.

(6) A licensed grower shall not plant hemp or other cannabis plants in an outdoor growing location of less than one-quarter acre and 1,000 plants unless prior approval is received in writing from the department.

(7) A licensed grower shall not grow hemp or other cannabis in

any outdoor field or site that is located within 1,000 feet of a school or a public recreational area.

(8) An applicant or licensed grower shall not include any property on his or her application or Site Modification Request, incorporated by reference in 302 KAR 50:080, to grow or cultivate hemp that is not owned or completely controlled by the applicant or licensed grower.

(9) A licensed grower shall not grow, handle, or store hemp or other cannabis on property owned by, leased from, or previously submitted in a license application by any person who is ineligible or was terminated, or denied admission to the program for one (1) or both of the following reasons:

- (a) Failure to obtain an acceptable criminal background check;
- or
- (b) Failure to comply with an order from a representative of the department.

(10) Licensed growers with plots of one (1) acre or less are required to post signage at the plot location. The signage shall include the following information:

- (a) The Statement, "Kentucky Department of Agriculture Industrial Hemp Research Pilot Program";
- (b) License holder's Name;
- (c) License holder's license number; and
- (d) The department's telephone number.

Section 8. Administrative Appeal from Denial of Application. (1) An applicant wishing to appeal the department's denial or partial denial of an application shall submit a written request for a hearing postmarked within fifteen (15) days of the date of the department's notification letter or email.

(2) An appealing applicant shall mail a hearing request letter to KDA Industrial Hemp Research Pilot Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(3) Appeals shall be heard by a three (3) person administrative panel whose members shall be designated by the commissioner. The panel shall include at least one (1) person who is a department employee and at least one (1) person who is not a department employee and not involved or invested in any hemp research projects in Kentucky.

(4) The members of the administrative panel shall not be required to accept or consider information or documents that were not compliant with application deadlines set forth in this administrative regulation.

(5) The members of the administrative panel shall apply the same standards established in this administrative regulation to determine if the department's action in denying the application was arbitrary or capricious.

(6) Hearings on appeals shall be open to the public and occur at a time and date and location designated by the commissioner.

(7) An appealing applicant shall appear in person at the assigned hearing time. Failure to appear on time shall constitute grounds for dismissal of the appeal.

(8) The three (3) members of the administrative panel shall rule on the appeal by a majority vote.

Section 9. Grower Licensing Agreements. (1) An applicant shall not be a participant in the department's Program until the conditionally approved applicant and the department have executed a Grower Licensing Agreement following the applicant's attendance at the department's mandatory orientation session.

(2) The Grower Licensing Agreement shall establish the terms and conditions governing participation in the department's program.

(3) The terms and conditions established in the Grower Licensing Agreement shall include, at a minimum, the following requirements for licensed growers:

- (a) Acknowledgement that licensed growers are acting as agents of the department and shall comply with instructions from representatives of the department and law enforcement agencies;
- (b) Agreement to pay a licensing fee in the amount specified in 302 KAR 50:060;
- (c) Consent to entry onto, and inspection of, all premises where hemp or other cannabis plants or materials are located, or

licensed to be located, by representatives of the Department and law enforcement agencies, with or without cause, with or without advance notice;

(d) Consent to forfeiture and destruction, without compensation, of:

1. Material found to have a measured delta-9-THC content in excess of three-tenths (0.3) percent on a dry weight basis;

2. Plants located in an area that is not licensed by the department; and

3. Plants not properly accounted for in required reporting to the department;

(e) Agree to apply for registration of all growing, handling, and storage locations, including GPS coordinates, and receive department approval for those locations prior to having hemp on those premises;

(f) Acknowledgement that licensed growers shall submit a Site Modification Request Form, the appropriate fees based on the requested changes, and obtain prior written approval from a representative of the department before implementing any change to the licensed sites stated in the Grower Licensing Agreement, and that growing site changes are subject to a site modification surcharge in the amount specified in 302 KAR 50:060 for a new set of GPS coordinates;

(g) Acknowledgement that hemp shall not be grown, handled, or stored in any location other than the location listed in the Grower Licensing Agreement;

(h) Agreement not to interplant hemp with any other crop without express written permission from the department;

(i) Acknowledge that anyone applying pesticides to hemp shall hold a pesticide license and apply pesticides in accordance with Section 20 of this administrative regulation;

(j) Acknowledgement that licensed growers shall comply with restrictions established by the department limiting the movement of hemp plants and plant parts;

(k) Acknowledgment that the risk of financial or other loss is borne solely by the licensed grower;

(l) Agreement that any time hemp is in transit, a copy of the Grower Licensing Agreement shall be available for inspection upon the request of a representative of the department or a law enforcement agency;

(m) Agreement to, upon request from a representative of the department or a law enforcement agency, a licensed grower shall immediately produce a copy of his or her Grower Licensing Agreement for inspection;

(n) Agreement to submit Planting Reports, Harvest/Destruction Reports, and Production Reports, and other reports required by the department, on or before the deadlines set forth in this administrative regulation;

(o) Agree to scout and monitor unregistered fields for volunteer cannabis plants and to destroy those volunteer cannabis plants for three (3) years past the last date of planting reported to the department;

(p) Agreement not to employ or rent land to cultivate hemp from any person who was terminated or denied admission to the program for one or both of the following reasons:

- 1. Failure to obtain an acceptable criminal background check;
- or
- 2. Failure to comply with an order from a representative of the department.

(q) Agreement that land used for the cultivation or storage of hemp shall not be owned by or leased from any person who was terminated, or denied admission to the program for one or both of the following reasons:

- 1. Failure to obtain an acceptable criminal background check;
- or
- 2. Failure to comply with an order from a representative of the department.

(r) Agreement to notify the department of any infraction with law enforcement immediately by phone and follow-up in writing within three (3) calendar days of the occurrence; and

(s) Agreement to notify the department of any theft of cannabis materials, whether growing or not.

(4) Failure to agree or comply with terms and conditions

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established in the Grower Licensing Agreement or this administrative regulation shall constitute grounds for appropriate departmental action, up to and including termination of the Grower Licensing Agreement and expulsion from the department's program.

(5) A person who has been expelled from the program shall not be eligible to reapply to the program for a period of five (5) years from the date of expulsion.

(6) Failure to agree and sign the Grower Licensing Agreement will terminate conditional approval and a licensing agreement shall not be executed.

Section 10. Mandatory Orientation Session. (1) Conditionally approved applicants shall attend a mandatory orientation session at a location designated by the department.

(2) The department shall require in-person attendance.

(a) The department shall not permit any person to attend a mandatory orientation session telephonically or by video.

(b) The department shall not allow any person to attend in lieu of the conditionally approved applicant.

Section 11. Licensing Fees -- Participation Fee, Secondary Pre-Harvest Sample Fee, Post-Harvest Retest Fee. (1) Participation fee.

(a) The Licensed grower shall pay a participation fee.

(b) The participation fee for each growing address in the amount specified in 302 KAR 50:060.

(c) Participation fees shall be paid in full prior to the execution of the Grower Licensing Agreement with a check or money order payable to the Kentucky State Treasurer.

(2) Secondary Pre-Harvest Sample fee.

(a) If a licensed grower fails to complete the harvest within fifteen (15) days after the department collects the pre-harvest sample, the licensed grower shall submit a new Harvest/Destruction Report and may be required to pay a secondary pre-harvest sample fee.

(b) If three (3) or more harvests are taken from the same plot, the licensed grower may be required to pay a secondary pre-harvest sample fee.

(c) The secondary pre-harvest sample fee shall be paid to the department with a check or money order payable to the Kentucky State Treasurer within fifteen (15) days of invoice by the department. The secondary pre-harvest sample fee is specified in 302 KAR 50:060.

(d) If the licensed grower fails to pay the secondary pre-harvest sample fee within fifteen (15) days of invoice, the lack of payment shall be considered a violation of the Grower Licensing Agreement.

(e) The licensed grower shall not harvest the remaining crop until the department collects a secondary pre-harvest sample if one is required.

(3) Post-harvest retest fee.

(a) The department may order post-harvest THC testing of a plot when the results of an initial THC test on the pre-harvest sample indicate a delta-9-THC concentration in the pre-harvest Sample in excess of what is permitted by the department.

(b) A licensed grower shall pay the post-harvest retest fee when post-harvest testing is ordered by a representative of the department.

(c) The post-harvest retest fee is specified in 302 KAR 50:060.

(d) The fee shall be paid prior to the department collecting the post-harvest sample.

(e) If a licensed grower fails to request a retest or to pay a post-harvest retest fee within fifteen (15) days of notification of pre-harvest results on a floral material harvest from the department, then the pre-harvest sample or secondary pre-harvest test result shall stand, and the department shall destroy or seize, without compensation, all hemp or other cannabis from this plot.

Section 12. Site Modifications and Site Modification Surcharge Fees. (1) A licensed grower who elects to grow hemp in a new growing location or store or handle at a site other than the sites specified by the GPS coordinates listed in the Grower Licensing Agreement shall submit a Site Modification Request form,

incorporated by reference in 302 KAR 50:080, and obtain written approval from a representative of the department, prior to planting or storing at the proposed location.

(2) Any request for a new growing location shall comply with the land use restrictions established in Section 7 of this administrative regulation.

(3) The land or growing structure being requested shall not be owned by or leased from any person who was terminated, or denied admission to the program for one or both of the following reasons:

(a) Failure to obtain an acceptable criminal background check;

or

(b) Failure to comply with an order from a representative of the department.

(4) The department shall charge a site modification surcharge fee for each new growing location, be it an individual field or greenhouse or indoor structure, where hemp will be planted. The amount of the site modification surcharge fee shall be specified in 302 KAR 50:060.

(5) The department shall not approve a site modification Request for a new growing location until the Department has received the site modification surcharge fee. Surcharge fees shall be submitted to the Department with a check or money order payable to the Kentucky State Treasurer.

(6) The department shall not assess a site modification surcharge for changes to storage-only locations.

Section 13. Seed Acquisition From a Source Within the Commonwealth. (1) A department pre-approval shall not be required for a transfer of hemp seed or propagules of any variety listed on the department's published summary of varieties list, excluding prohibited varieties, between Kentucky licensed growers and/or licensed processors/handlers within the Commonwealth of Kentucky.

(2) A licensed grower or licensed processor/handler shall not buy, sell, possess, transfer seeds or propagules to or from any person in the Commonwealth without first verifying that the person is licensed by the department.

(3) A licensed grower or licensed processor/handler shall obtain written approval from the department to change the name of any variety in the department's program.

(4) A licensed grower shall provide the name of his or her seed or propagule source on the Field Planting Report form or Greenhouse Planting Report form.

(5) Upon request from a representative of the department, a licensed grower or licensed processor or handler shall provide a distribution list showing locations where and to whom hemp seeds or propagules were distributed.

Section 14. Seed Acquisition from a Source in a U.S. Territory, Tribal Land, or State other than the Commonwealth of Kentucky.

(1) A person shall not acquire seeds or propagules from a source in a U.S. territory, tribal land, or state other than the Commonwealth of Kentucky without first:

(a) Submitting a complete Domestic Seed/Propagule Request incorporated by reference in 302 KAR 50:080, form and all required attachments; and

(b) Obtaining written approval of the Domestic Seed/Propagule Request from a representative of the department.

(2) The department shall not approve a Domestic Seed/Propagule Request unless the licensed grower affirms in writing that the requested seed acquisition plan will not infringe on the intellectual property rights of any person.

(3) A person submitting a Domestic Seed/Propagule Request form shall submit to the department documentation showing that mature plants grown from that seed variety or strain have a floral material delta-9-THC content of not more than three-tenths (0.30) percent on a dry weight basis from an independent third-party laboratory.

(4) A person submitting a Domestic Seed/Propagule Request form shall submit to the department documentation verifying the seed/propagule source as a current legal hemp operation in the state of origin.

(5) A person acquiring seeds or propagules from a source outside the Commonwealth shall arrange for the seeds or propagules to arrive at the department's facility at 105 Corporate Drive, Frankfort, Kentucky 40601, for inventory and distribution.

(6) Upon request from a representative of the department, a licensed grower or licensed processor shall provide a distribution list showing locations where and to whom the hemp seeds were distributed following inventory at the department's facility.

Section 15. Seed Acquisition from a Source Outside the United States. (1) A person seeking to obtain seeds from an international source shall submit a complete International Seed Request form, incorporated by reference in 302 KAR 50:080, to the department.

(a) If approved, the department shall request the DEA Permit to Import under the department's DEA registration.

(b) A person shall not acquire seeds from a source outside the United States unless the department first obtains a Permit to Import from the DEA.

(2) A person shall not acquire propagules other than seeds from outside the United States.

(3) The department shall not approve an International Seed Request form for any purpose other than seeds for planting in Kentucky. All licensed growers intending to plant the requested seed shall be listed on the request form.

(4) The department shall not approve an International Seed Request form unless the licensed grower affirms in writing that the licensed grower's planned activities will not infringe on the intellectual property rights of any person.

(5) A person submitting an International Seed Request form shall submit to the department documentation showing that mature plants grown from that seed variety have a floral material delta-9-THC content of not more than three-tenths (0.30) percent on a dry weight basis.

(6) A person acquiring seeds or propagules from a source outside the United States shall arrange for the seeds or propagules to arrive at the department's facility at 105 Corporate Drive, Frankfort, Kentucky 40601, for inventory and distribution.

(7) Upon request from a representative of the department, a licensed grower shall provide a distribution list showing locations where and to whom the imported hemp seeds were distributed following inventory at the department's facility.

Section 16. Seeds of Wild, Landrace, or Unknown Origin. (1) A person shall not acquire or grow hemp or cannabis seeds or propagules of wild, landrace, or unknown origin without first obtaining written approval from a representative of the department.

(2) The department shall not permit hemp or cannabis seeds or propagules of wild, landrace, or unknown origin to be planted, cultivated, or replicated by any person without the department first arranging for replication and THC testing of mature plants grown from the seeds or propagules by the department or its designee.

(3) Any licensed grower or licensed processor found to have saved seed, propagules, or cuttings, or cultivated seeds, propagules, or cuttings from a cannabis plant of wild, landrace, or unknown origin, without advance written permission from the department may be subject to suspension or revocation of his or her license and forfeiture without compensation of his or her materials.

Section 17. Planting Reports for Outdoor Plantings. (1) A licensed grower shall submit to the department a complete and current Field Planting Report, within fifteen (15) days after every planting, including replanting, of seeds or propagules in an outdoor location.

(2) Each Field Planting Report shall identify the correct variety name as designated upon approval of the acquisition request or as approved by the department, the field location ID as listed in the Grower Licensing Agreement, and the primary intended use of the harvest for each planting.

(3) A licensed grower who does not plant hemp in an approved outdoor site listed in the grower license agreement shall submit a Field Planting Report, on or before July 31, stating that hemp has not and will not be planted at that site.

Section 18. Planting Reports for Indoor Plantings. (1) A licensed grower shall submit to the department a complete and current Greenhouse/Indoor Planting Report within fifteen (15) days after establishing plants at an indoor location.

(2) Each Greenhouse/Indoor Planting Report shall identify the correct hemp variety name as designated in the Domestic Seed/Propagule Request form or International Seed Request form and approved by the department, the greenhouse or indoor growing location ID as listed in the Grower Licensing Agreement, and the primary intended use for the harvest of each planting.

(3) In addition to the initial Greenhouse/Indoor Planting Report, a licensed grower with an approved greenhouse or indoor growing site shall submit quarterly reports for each location ID to the department. Greenhouse/Indoor Planting Reports shall be due no later than March 31, June 30, September 30, and December 31.

Section 19. Site Access for Representatives of the Department and Law Enforcement Agencies. (1) The department shall provide information about approved growing, handling, and storage site locations to representatives of the Kentucky State Police, DEA, and other law enforcement agencies whose representatives request registered site information, including GPS coordinates.

(2) Licensed growers shall have no reasonable expectation of privacy with respect to premises where hemp or other cannabis seeds, plants, or materials are located, and any premises listed in the Grower Licensing Agreement.

(3) A Licensed grower, whether present or not, shall permit a representative of the department or a law enforcement agency to enter into premises where hemp or other cannabis seeds, plants, or materials are located and any premises listed in the Grower Licensing Agreement with or without cause and with or without advanced notice.

Section 20. Pesticide Use. (1) A licensed grower who uses a pesticide on hemp shall be certified to apply pesticides by the department pursuant to KRS Chapter 217B.

(2) A licensed grower who is certified to apply pesticides by the department pursuant to KRS Chapter 217B shall not use, or be eligible to use, a Category 10 license to apply pesticides to hemp in violation of the product label.

(3) A licensed grower shall not use any pesticide in violation of the product label.

(4) A licensed grower who uses a pesticide on a site where hemp will be planted shall comply with the longest of any planting restriction interval on the product label prior to planting the hemp.

(5) The department may perform pesticide testing on a random basis or when representatives of the Department have reason to believe that a pesticide may have been applied to hemp in violation of the product label.

(6) Hemp seeds, plants, and materials bearing pesticide residue in violation of the label shall be subject to forfeiture or destruction without compensation.

Section 21. Responsibility of a Licensed Grower Prior to Harvest of Hemp Plots. (1) The department may collect samples of any cannabis material prior to harvest at any time.

(2) A licensed grower shall submit a complete and current Harvest/Destruction Report form to the department at least fifteen (15) days prior to the intended harvest date or intended destruction of a failed crop.

(3) The department's receipt of a Harvest/Destruction Report shall trigger a sample collection by the department.

(4) During the department's scheduled sample collection, the grower or an authorized representative shall be present at the growing site.

(5) Representatives of the department shall be provided with complete and unrestricted access to all hemp and other cannabis plants, whether growing or harvested, and all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants; and all locations listed in the Grower Licensing Agreement.

(6) The licensed grower shall harvest the crop not more than fifteen (15) days following the date of sample collection by the

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department, unless specifically authorized in writing by the department.

(7) If the licensed grower fails to complete harvest within fifteen (15) days, the department may order a secondary pre-harvest sample of the plot, and the licensed grower shall be assessed a secondary pre-harvest sample fee per plot in the amount specified in 302 KAR 50:060 prior to the department collecting the sample.

(8) Harvested materials from varieties of concern shall not be commingled with other harvests without prior written permission from the department.

(9) Floral materials harvested for phytocannabinoid extraction shall not be moved outside the Commonwealth or beyond a processor, nor commingled, nor extracted, until the department releases the material in writing.

(10) A licensed grower who fails to submit a Harvest/Destruction Report or who does submit a Harvest/Destruction Report and proceeds to harvest a crop prior to a sample being collected by the department shall be subject to revocation of his or her license.

Section 22. Collection of Samples -- THC Testing -- Post-Testing Actions. (1) The hemp to be selected for sampling shall be determined by a representative of the department.

(2) The department shall collect and retain samples from each plot in accordance with the procedures established in 302 KAR 50:050, Section 2.

(3) UK DRS shall receive, prepare and release hemp samples in accordance with the procedures established in 302 KAR 50:050, Section 3.

(4) UK DRS shall measure THC concentration of each hemp sample in accordance with the procedures established in 302 KAR 50:050, Section 4.

(5) The department shall undertake post-testing actions in accordance with the procedures established in 302 KAR 50:050, Section 5.

(6) All samples become the property of the department and are non-returnable. Compensation shall not be owed by the department.

(7) If UK DRS is not able to provide THC testing services required by the department, the department may identify and contract with a third party lab to perform THC testing services.

Section 23. Restrictions on Sale or Transfer. (1) A licensed grower shall not sell or transfer, or permit the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person in the Commonwealth who does not hold a license issued by the department.

(2) A licensed grower shall not sell or transfer, or permit the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person outside the Commonwealth (but within the United States) who is not authorized by a university or state department of agriculture under the authority of 7 U.S.C. 5940 and the laws of that state. The licensed grower shall ensure that the sale or transfer is lawful in other states.

(3) The department shall permit the sale or transfer of stripped stalks, fiber, dried roots, nonviable seeds, seed oils, floral and plant extracts (excluding THC in excess of three-tenths (0.3) percent, and other marketable hemp products to members of the general public, both within and outside the Commonwealth, provided that the marketable hemp product's delta-9-THC level is not more than three-tenths (0.3) percent.

(4) A licensed grower selling or transferring, or permitting the sale or transfer, of floral or plant extracts (including CBD), shall retain testing data or results for at least three (3) years demonstrating that the extract's delta-9-THC level is not more than three-tenths (0.3) percent.

(5) A licensed grower may transfer up to one (1) pound of hemp per transfer to testing laboratories, both within and outside the Commonwealth, for the purpose of measuring THC, CBD, or other phytocannabinoid profile levels. The licensed grower shall ensure compliance with laws with other states.

(6) Licensed growers shall comply with the federal Food Drug and Cosmetic Act and all other applicable local, state, and federal

laws and regulations relating to product development, product manufacturing, consumer safety, and public health.

(7) A licensed grower shall not knowingly permit hemp to be sold to or used by any person involved in the manufacture of an item named on the prohibited products list established in 302 KAR 50:070.

Section 24. Other Prohibited Activities. (1) A licensed grower shall not plant or grow hemp on any site not listed in the Grower Licensing Agreement.

(2) A licensed grower shall not transport live hemp plants, viable seeds, leaf materials, or floral materials to unapproved locations including trade shows, county fairs, educational or other events, or any other address not listed on the licensed grower's current Grower Licensing Agreement or within another research program.

(3) A licensed grower shall not allow unsupervised public access to hemp plots, including activities such as a hemp maze.

(4) A person shall not ship or transport, or allow to be shipped or transported, live hemp plants, cuttings for planting, or viable seeds from a variety that is currently designated by the department as a prohibited variety or variety of concern to any location outside the Commonwealth of Kentucky.

(5) A person shall not ship or transport, or allow to be shipped or transported, any hemp product with a delta-9-THC concentration in excess of three-tenths (0.3) percent.

Section 25. Other Required Reports. (1) A licensed grower shall submit a completed Production Report annually.

(2) A licensed grower's failure to submit an accurate and complete report that is required by the department before the deadline specified by the department shall constitute grounds for the department to terminate the Grower Licensing Agreement and deny future applications for licensure.

Section 26. Information Submitted to the Department Subject to Open Records Act. (1) Except as provided in subsection (2) of this section, information and documents generated or obtained by the department in connection with the program shall be subject to disclosure pursuant to the Kentucky Open Records Act, KRS 61.870 - 61.884.

(2) Personally identifiable information including physical address, mailing address, driver's license numbers, background checks, GPS coordinates, telephone, and email addresses shall be shielded by the department to the maximum extent permitted by law.

Section 27. Immediate License Suspension. (1) The department shall immediately suspend a license, without an opportunity for a hearing, if the licensed person pleads guilty to, or is convicted of, any felony or drug-related misdemeanor or violation in accordance with KRS 260.864.

(2) The department shall immediately suspend a license, without an opportunity for a hearing, if the licensed person or his or her agent admits to having:

(a) Violated any provision of KRS 260.850 to 260.869 or an administrative regulation promulgated under the authority of KRS 260.850 to 260.869;

(b) Made any false statement to the department or its representative; or

(c) Failed to comply with any instruction or order from the department, a representative of the department, of Kentucky State Police, or any law enforcement officer.

Section 28. Temporary License Suspension Procedures. (1) The department shall notify a licensed grower in writing that the Grower Licensing Agreement has been temporarily suspended if a representative of the department receives information supporting an allegation that a licensed grower has:

(a) Engaged in conduct violating a provision of this administrative regulation, KRS 260.850 - 260.869, or the Grower Licensing Agreement;

(b) Made a false statement to a representative of the

department or a law enforcement agency;

(c) Been found to be growing or in possession of cannabis with a measured delta-9-THC concentration at or above 30,000 ppm (3 percent); or

(d) Failed to comply with an order from a representative of the department or a law enforcement agency.

(2) A person whose Grower Licensing Agreement has been temporarily suspended shall not harvest, process, or remove cannabis from the premises where hemp or other cannabis was located at the time when the department issued its notice of temporary suspension, except as authorized in writing by a representative of the department.

(3) As soon as possible after the notification of temporary suspension, a representative of the department shall inspect the licensed grower's premises and perform an inventory of all cannabis, hemp, and hemp products that are in the Licensed grower's possession.

(4) The department shall schedule a license revocation hearing for a date as soon as practicable after the notification of temporary suspension, but in any event not later than sixty (60) days following the notification of temporary suspension.

Section 29. License Revocation Hearings and Consequences of Revocation. (1) The department shall notify a person whose Grower Licensing Agreement has been temporarily suspended of the date when the person's license revocation hearing will occur at a time and place designated by the commissioner.

(2) License revocation hearings shall be adjudicated by a three (3)-person administrative panel in accordance with KRS 260.864.

(3) License revocation hearings shall be open to the public.

(4) A person whose Grower Licensing Agreement has been temporarily suspended shall appear in person at the assigned hearing time. Failure to appear on time shall constitute a waiver of the person's right to present information and arguments against revoking the Grower Licensing Agreement.

(5) A representative of the department shall be allowed an opportunity to present information and arguments for revoking the Grower Licensing Agreement.

(6) A person whose Grower Licensing Agreement has been temporarily suspended shall be allowed an opportunity to present information and arguments against revoking the Grower Licensing Agreement.

(7) The three (3) members of the administrative panel shall rule on the question of revocation by a majority vote.

(8) If a majority of the three (3) members of the administrative panel find that it is more likely than not that a licensed grower has committed any of the acts listed in Section 28(1) of this administrative regulation or violated any provision of the Grower Licensing Agreement, then the Grower Licensing Agreement shall be revoked effective immediately.

(9) If a majority of the members of the administrative panel vote against revoking the Grower Licensing Agreement, the department shall lift the temporary suspension within twenty-four (24) hours of the vote.

(10) If a majority of the members of the administrative panel vote in favor of revoking the Grower Licensing Agreement, then a representative of the department or a law enforcement agency shall destroy or confiscate all cannabis, hemp, and hemp products that are in the person's possession.

(11) A person whose property is destroyed or confiscated by a representative of the department or a law enforcement agency shall be owed no compensation or indemnity for the value of the cannabis, hemp, or hemp products that were destroyed or confiscated.

(12) A person whose Grower Licensing Agreement has been revoked shall be barred from participation in the program in any capacity for a minimum period of five (5) years.

Section 31. Monetary Civil Penalties. (1) If the department receives information supporting a finding that it is more likely than not that a person has engaged in conduct violating a provision of this regulation, KRS 260.850 - 260.869, or the Grower Licensing Agreement, then the department shall assess a monetary civil

penalty not to exceed \$2,500 per violation.

(2) A person wishing to appeal the department's assessment of a monetary civil penalty shall submit a written request for a hearing within fifteen (15) days of the notification date.

(3) A person wishing to appeal the department's assessment of a monetary civil penalty shall mail a hearing request letter to KDA Industrial Hemp Research Pilot Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(4) Appeals shall be heard by a three (3) person administrative panel whose members shall be designated by the commissioner. The administrative panel shall include at least one (1) person who is a department employee and at least one (1) person who is not a department employee and not involved or invested in any Kentucky hemp projects.

(5) The members of the administrative panel shall determine if the department's action in assessing the monetary civil penalty was arbitrary or capricious.

(6) Hearings on the appeal shall be open to the public and occur at a time, date, and location designated by the commissioner.

(7) An appealing person shall appear in person at the assigned hearing time. Failure to appear on time shall constitute grounds for dismissal of the appeal.

(8) An appealing person shall be allowed an opportunity to present arguments for reversing the assessed monetary civil penalty.

(9) A representative of the department shall be allowed an opportunity to present arguments for affirming the assessed monetary civil penalty.

(10) The three (3) members of the administrative panel shall rule on the appeal by a majority vote.

(11) A majority of the three (3) members of the administrative panel may affirm the assessed monetary civil penalty, affirm and increase or decrease the assessed monetary civil penalty, or reverse the assessed monetary civil penalty.

(12) The department shall have the authority to pursue unpaid monetary civil penalties by filing a civil cause of action in the Franklin Circuit Court.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: December 15, 2017

FILED WITH LRC: December 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2018, at 2:00 p.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, 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 January 31, 2018. 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation established the guidelines for participation in the Industrial Hemp Pilot Project administered by the Department of Agriculture.

(b) The necessity of this administrative regulation: This regulation is necessary to establish provisions for growing, movement, processing and possession of industrial hemp.

(c) How this administrative regulation conforms to the content

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of the authorizing statutes: KRS 260.850-260.869 requires the Kentucky Department of Agriculture to regulate industrial hemp. This administrative regulation satisfies this mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation codifies the industrial hemp pilot program that has been administered by the KDA since the 2014 growing season.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The KDA has 243 grower applications, and 56 processor applications for the 2018 growing season. Additionally, this regulation affects the KDA and the Kentucky State Police, the University of Kentucky Division of Regulatory Services, and possibly local law enforcement agencies.

(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 2018 applicants wishing to grow, process, or handle industrial hemp must comply with the administrative requirements listed in this collection of filings, including a criminal background check and testing of the crop produced.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will add little to no cost to the entities listed for the growing seasons since 2014, other than the fees established and the governmental costs of additional testing and manpower.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be allowed to grow, process, handle and conduct research on industrial hemp.

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

(a) Initially: The administrative regulation itself adds very little cost to the KDA over previous growing seasons. The KDA employs three (3) full time staff, seasonal contractors, and the partial staff time of several employees to administer the pilot program.

(b) On a continuing basis: The KDA anticipates that the growing market demand for the crop may necessitate additional staff and resources in the future.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funds to administer will come from the fees created by this administrative regulation, as well as the KDA 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: This administrative regulation creates new fees. The KDA will evaluate after a period of time to determine if fee amounts will cover expenses of administration of the program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are directly established.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 U.S.C. 5940

2. State compliance standards. KRS 260.850-260.869

3. Minimum or uniform standards contained in the federal mandate. 7 U.S.C. 5940. Establish requirements for industrial hemp pilot programs. This administrative regulation establishes the requirements for participation in Kentucky.

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? The Kentucky Department of Agriculture for the administration of the pilot program, plus Kentucky State Police, University of Kentucky Division of Regulatory Services, and local law enforcement.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 260.850-260.869 and 7 U.S.C. 5940.

(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 KDA cannot estimate the costs of other agencies, but would reasonably guess that marginal costs increases may be anticipated due to program popularity.

(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 KDA estimates revenue of \$250,000 at this time. Revenue for UK DRS will be approximately 85 dollars per test sample submitted. We estimate no revenue for law enforcement agencies.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The KDA cannot estimate this amount as it is based on number of applicants and growing addresses.

(c) How much will it cost to administer this program for the first year? The KDA fully anticipates the revenue generated to cover only a fraction of the costs to administer the program.

(d) How much will it cost to administer this program for subsequent years? The KDA cannot estimate this amount as it is based on number of applicants and growing addresses.

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

Revenues (+/-): Perhaps \$250,000

Expenditures (+/-): Well in excess of \$250,000

Other Explanation:

GENERAL GOVERNMENT Department of Agriculture Office of Agricultural Marketing (New Administrative Regulation)

302 KAR 50:030. Policies and procedures for processors and handlers.

RELATES TO: KRS 260.850-260.869, 7 U.S.C. 5940

STATUTORY AUTHORITY: KRS 260.862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations to prescribe rules for the industrial hemp

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research pilot program in the Commonwealth of Kentucky. KRS 260.862(1)(c) authorizes the department to license persons who wish to participate in an industrial hemp research pilot program by cultivating, handling, processing, or marketing industrial hemp. This administrative regulation sets forth rules and procedures for licensing persons who wish to process and handle industrial hemp as a participant in the department's industrial hemp research pilot program.

Section 1. Definitions. (1) "Applicant" means a person, or a person who is authorized to sign for a business entity, who submits an application to participate in the industrial hemp pilot program.

(2) "Brokering" means engaging or participating in the marketing of industrial hemp by acting as an intermediary or negotiator between prospective buyers and sellers.

(3) "Cannabis" means all parts of the cannabis plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts. Cannabis does not include publicly marketable hemp products, as defined in this administrative regulation.

(4) "CBD" means cannabidiol.

(5) "Commissioner" means the Commissioner of the Department of Agriculture.

(6) "Certified seed" means seed for which a certificate or any other instrument has been issued by an agency authorized under the laws of a state, territory, or possession to officially certify seed and which has standards and procedures approved by the United States Secretary of Agriculture to assure the genetic purity and identity of the seed certified.

(7) "Commonwealth" means the Commonwealth of Kentucky.

(8) "DEA" means the United States Drug Enforcement Administration.

(9) "Decarboxylated" means the completion of the chemical reaction that converts THC-acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value may also be calculated using a conversion formula that sums delta-9-THC and 87.7 percent of THC-acid.

(10) "delta-9-THC" means delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis).

(11) "Department or KDA" means the Kentucky Department of Agriculture.

(12) "Grower Licensing Agreement" means a document executed by a person and the department authorizing the person to grow, handle, and store hemp at one or more specified locations in the Commonwealth under the terms established in the document, KRS 260.850 - 260.863, and 302 KAR 50:020.

(13) "GPS" means Global Positioning System.

(14) "Handling" is defined in KRS 260.850(4).

(15) "Hemp" or "industrial hemp" is defined in KRS 260.850(5).

(16) "Hemp product" or "industrial hemp product" means a product derived from, or made by processing, hemp plants or plant parts.

(17) "Law enforcement agency" means the Kentucky State Police, DEA, or other federal, state, or local law enforcement agency, or drug suppression unit.

(18) "Licensed grower" means a person authorized in the commonwealth by the department to grow, handle, store, and market hemp under the terms established in a grower licensing agreement, KRS 260.850 - 260.859, and 302 KAR 50:020.

(19) "Licensed processor" means a person in the Commonwealth authorized by the department to process, handle, store, and market hemp under the terms established in a processor licensing agreement, KRS 260.850 - 260.859, and this administrative regulation.

(20) "Location ID" means the unique identifier established by the applicant for each unique set of GPS coordinates where hemp will be grown, handled, stored, or processed, which may include a field name or building name.

(21) "Nonviable seed" means a seed that has been crushed, dehulled, or otherwise rendered to have a zero percent germination rate.

(22) "Person" means an individual or business entity.

(23) "Pesticide" means any substance or mixture of

substances intended to prevent, destroy, control, repel, attract, or mitigate any pest; intended to be used as a plant regulator, defoliant, or desiccant; or intended to be used as a spray adjuvant, once they have been mixed with a U.S. Environmental Protection Agency registered product.

(24) "Plot" means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of hemp throughout the area.

(25) "ppm" means parts per million.

(26) "Post-harvest sample" means a sample taken from the harvested hemp from a particular plot's harvest in accordance with the procedures as defined in 302 KAR 50:050; the entire plot's harvest shall be in the same form (intact-plant, flowers, ground materials, etc.), homogenous, and not mixed with nonhemp materials or hemp from another plot.

(27) "Pre-harvest sample" means a composite, representative portion from plants in a hemp plot collected in accordance with the procedures as established in 302 KAR 50:050.

(28) "Prohibited variety" means a variety or strain of cannabis excluded from the department's program.

(29) "Processing" is defined by KRS 260.850(9).

(30) "Processor licensing agreement" means a document executed by a person and the department authorizing the person to process, handle, and store hemp at one or more specified locations in the Commonwealth under the terms established in the document, KRS 260.850 - 260.869, and this administrative regulation.

(31) "Program" means the department's Industrial Hemp Research Pilot Program.

(32) "Propagule" means a plant or plant part that can be utilized to grow a new plant.

(33) "Publicly marketable hemp product" means a hemp product that meets one or more of the following descriptions:

(a) The product does not include any living hemp plants, viable seeds, leaf materials, floral materials, or delta-9-THC content above three-tenths (0.3) percent; and does include, without limitation, the following products: bare stalks, bast fiber, hurd fiber, nonviable roots, nonviable seeds, seed oils, and plant extracts (excluding products containing delta-9 THC above three-tenths (0.3) percent);

(b) The product is CBD that was derived from hemp, as defined in this administrative regulation; or

(c) The product is CBD that is approved as a prescription medication by the United States Food and Drug Administration.

(34) "Secondary pre-harvest sample" means a pre-harvest sample that is taken:

(a) In a given plot after the first pre-harvest sample is taken; and

(b) On a different day than the initial pre-harvest sample.

(35) "Seed source" means the origin of the seed or propagules as determined by the department.

(36) "Signing authority" means an officer or agent of the organization with the written power to commit the legal entity to a binding agreement.

(37) "UK DRS" means the Division of Regulatory Services at the University of Kentucky College of Agriculture, Food, and Environment.

(38) "University" means an accredited institution of higher learning located in the Commonwealth.

(39) "Variety" means a subdivision of a species, uniform, and stable; distinct in the sense that the variety can be differentiated by one (1) or more identifiable morphological, physiological, other characteristics from all other publicly known varieties, or other characteristics from all other publicly known varieties; uniform in the sense that the variations in essential and distinctive characteristics are describable; and stable in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties.

(39) "Variety of concern" means any variety of hemp in the department's program that tests above 3000 ppm or 0.3000 percent delta-9-THC in one (1) or more pre-harvest samples. A hemp variety designated as a "variety of concern" may be subject

to restrictions and additional testing.

(40) "Volunteer hemp plant" means any cannabis plant that:

- (a) Grows of its own accord from seeds or roots in the years following an intentionally planted cannabis crop; and
- (b) Are not intentionally planted.

Section 2. Who Shall Apply for a Processor/Handler Licensing Agreement. (1) Any person who wishes to engage in the processing, handling, brokering or marketing of hemp that does not fall within the definition of a "publicly marketable hemp product" at any location in the Commonwealth shall apply for a Processor/Handler Licensing Agreement, incorporated by reference in 302 KAR 50:080, from the department.

(2) Any person who does not hold a license from the department shall not grow, cultivate, handle, store, process, broker, or market hemp or other cannabis that does not fall within the definition of a "publicly marketable hemp product" at any location within the commonwealth.

(3) No person under the age of eighteen (18) years of age shall apply for or hold a Processor/Handler License.

Section 3. Application for Processor/Handler Licensing Agreement -- Deadlines and Fees. (1) A person interested in holding a Processor/Handler License shall complete a Processor/Handler License Application form incorporated by reference in 302 KAR 50:080.

(2) Completed Processor/Handler License Application forms shall be postmarked or received by the department by the end of the application period specified in the application. Completed Processor/Handler License Application forms shall be delivered to KDA Industrial Hemp Research Pilot Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(3) The department shall deny any Processor/Handler License Application that is not received by the deadline set forth in the application.

(4) The department shall require each applicant to pay a processor/handler application fee in the amount specified in 302 KAR 50:060.

(5) Application fees shall not cover or include the cost of criminal background checks. Applicants and license holders shall pay criminal background check fees directly to the Kentucky State Police or other law enforcement agency designated by the department.

(6) The department may deny any Processor/Handler License Application that is received without the application fee specified in 302 KAR 50:060.

Section 4. Application for Processor/Handler Licensing Agreement -- Required Components. (1) The Processor/Handler License Application form shall require applicants to submit, at a minimum, the following information and documents:

(a) Full name, mailing address, telephone number, and email address, if an email address is available;

(b) If the applicant represents a business entity, the full name of the business, the principal Kentucky business location address, the full name of the applicant who will have signing authority on behalf of the entity, title, and email address if an email address is available, of the person;

(c) Research plan;

(d) Planned source of hemp; and

(e) Maps and the street address, location ID, and GPS coordinates for each building or site where hemp will be processed, handled, or stored.

(2) The department may deny any Processor/Handler License Application that is missing required information.

Section 5. Criminal Background Check. (1) Each licensed processor/handler or applicant shall undergo and pay for an annual criminal background check.

(2) Each person who is required to undergo an annual criminal background check shall:

(a) Submit a criminal background check request to the Kentucky State Police or other law enforcement agency designated

by the department;

(b) Submit payment for the background check fee directly to the Kentucky State Police or other law enforcement agency designated by the department;

(c) Following completion of the background check, ensure delivery of the report to the department not more than fourteen (14) days following the date the application was received by the department.

(3) The department shall not accept a report from a criminal background check that occurred prior to October 1 of the application year.

(4) Failure to submit the background check by the deadline stated in subsection (2)(c) shall be cause for denial of application.

(5) Substitution of a signing authority shall require approval from the department and the submission of a current criminal background check.

Section 6. Application for Processor/Handler Licensing Agreement -- Criteria and Procedure for Evaluation. (1) The department shall apply the following criteria in evaluating applications for a Processor/Handler Licensing Agreement:

(a) In accordance with Section 4 of this administrative regulation, the applicant submitted a complete application with all required components and attachments.

(b) For applicants who have been program participants previously, the applicant complied with the responsibility to submit any reports required by the department.

(c) All involved business entities are registered and in good standing with the Kentucky Secretary of State.

(d) The applicant's processing sites, handling sites, and storage sites, are located in the Commonwealth of Kentucky.

(e) The criminal background check report indicates that, within ten (10) years from the date when the background check was issued, the applicant has:

1. No felony convictions; and

2. No drug-related misdemeanor convictions or violations.

(f) The research plan is compliant with state and federal law.

(g) The applicant's planned activities require licensure to remain compliant with state law and KDA policy.

(h) The applicant has a hemp acquisition plan.

(i) The applicant has a marketing plan that is compliant with state and federal law.

(j) The applicant has adequate facilities, or plans to acquire adequate facilities sufficiently soon enough, to complete their research plan.

(k) In the past, including those times when the applicant was not a participant in the department's program, the applicant demonstrated a willingness to comply with the department's rules, instructions from department staff, and instructions from representatives of Kentucky State Police and other law enforcement agencies.

(l) The applicant is not delinquent in making any required reports or payments to the department in connection with the applicant's participation in the Program or other programs within the department.

(m) The applicant does not have any unpaid fines or civil penalties owed to the department.

(n) The applicant has not made any false statements or representations to a representative of the department or a law enforcement agency.

(2) The department shall conditionally approve an application for a Processor/Handler Licensing Agreement when the application satisfies the criteria set forth in this administrative regulation.

(3) The department shall notify applicants by letter or email whether the application has been denied or conditionally approved. No person shall be a participant in the department's program until the applicant and the department have executed a Processor/Handler Licensing Agreement following the applicant's attendance at the department's mandatory orientation session.

Section 7. Land Use Restrictions for Licensed Processors/Handlers. (1) A licensed processor/handler shall not process or store leaf or floral material from hemp or other cannabis

in or adjacent to any structure that is used for residential purposes.

(2) A licensed processor/handler shall not process hemp or other cannabis in a site that is located within 1,000 feet of a school or a public recreational area.

(3) A licensed processor/handler shall not apply to process, handle, or store hemp on any property which is not owned or completely controlled by the applicant or licensed processor.

(4) A licensed processor/handler shall not process, handle, or store hemp on property owned by, leased from, or previously submitted in an application by any person who is ineligible or was terminated, or denied admission to the program for one (1) or both of the following reasons:

- (a) Failure to obtain an acceptable criminal background check, or
- (b) Failure to comply with an order from a representative of the department.

Section 8. Administrative Appeal from Denial of Application. (1) An applicant wishing to appeal the department's denial or partial denial of an application shall submit a written request for a hearing postmarked within fifteen (15) days of the date of the department's notification letter or email.

(2) An appealing applicant shall mail a hearing request letter to KDA Industrial Hemp Research Pilot Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(3) Appeals shall be heard by a three (3) person administrative panel whose members shall be designated by the commissioner. The panel shall include at least one (1) person who is a department employee and at least one (1) person who is not a department employee and not involved or invested in any hemp research projects in Kentucky.

(4) The members of the administrative panel shall not be required to accept or consider information or documents that were not compliant with application deadlines set forth in this administrative regulation.

(5) The members of the administrative panel shall apply the same standards set forth in this regulation to determine if the department's action in denying the application was arbitrary or capricious.

(6) Hearings on appeals shall be open to the public and occur at a time and date and location designated by the commissioner.

(7) An appealing applicant shall appear in person at the assigned hearing time. Failure to appear on time shall constitute grounds for dismissal of the appeal.

(8) An appealing applicant shall be allowed an opportunity to present arguments for reversing the department's denial of the application.

(9) A representative of the department shall be allowed an opportunity to present arguments for affirming the department's denial of the application.

(10) The three (3) members of the administrative panel shall rule on the appeal by a majority vote.

Section 9. Processor/Handler Licensing Agreements. (1) An applicant shall not be a participant in the department's program until the conditionally approved applicant and the department have executed a Processor/Handler Licensing Agreement following the applicant's attendance at the department's mandatory orientation session.

(2) The Processor/Handler Licensing Agreement shall set forth the terms and conditions governing participation in the Department's program.

(3) The terms and conditions set forth in the Processor/Handler Licensing Agreement shall include, at a minimum, the following requirements for licensed processor/handler:

(a) Acknowledgement that licensed processor/handler are acting as agents of the department and shall comply with instructions from representatives of the department and law enforcement agencies;

(b) Agreement to pay a licensing fee in the amount specified in 302 KAR 50:060;

(c) Consent to entry onto, and inspection of, all premises where hemp or other cannabis materials are located, or licensed to

be located, by representatives of the department and law enforcement agencies, with or without cause, with or without advance notice;

(d) Consent to forfeiture and destruction, without compensation, of:

1. Material found to have a measured delta-9-THC content in excess of three-tenths (0.3) percent on a dry weight basis;

2. Material located in an area that is not licensed by the department; or

3. Material not properly accounted for in required reporting to the department;

(e) Acknowledgement that no hemp shall be processed, handled, or stored in any location other than the location listed in the Processor/Handler Licensing Agreement;

(f) Acknowledgement that licensed processor/handler shall comply with restrictions set forth by the department limiting the movement of hemp plants and plant parts;

(g) Acknowledgment that the risk of financial or other loss is borne solely by the licensed processor/handler;

(h) Agreement that any time the hemp is in transit, a copy of the Processor/Handler's Licensing Agreement shall be available for inspection upon the request of a representative of the department or a law enforcement agency;

(i) Agreement to immediately produce a copy of the Processor/Handler Licensing Agreement for inspection upon request from a representative of the department or a law enforcement agency; and

(j) Agreement to submit reports required by the department on or before the deadlines set by the department;

(k) Agreement to notify the department of any infraction with law enforcement immediately by phone and follow-up in writing within three (3) calendar days of the occurrence; and

(l) Agreement to notify the department of any theft of cannabis materials.

(4) Failure to agree or comply with terms and conditions set forth in the Processor/Handler Licensing Agreement or this regulation shall constitute grounds for appropriate departmental action, up to and including termination of the license and expulsion from the department's program.

(5) A person who has been expelled from the program is not eligible to reapply to the program for a period of five (5) years from the date of expulsion.

(6) Failure to agree and sign the Processor/Handler Licensing Agreement will terminate conditional approval and no licensing agreement shall be executed.

(7) A multi-year licensed processor/handler shall:

(a) Submit to the department an annual criminal background check for the signing authority of record;

(b) Attend a mandatory, annual program orientation session hosted by the department;

(c) Pay annual fees in the amount specified in 302 KAR 50:060;

(d) Update all registered addresses, location IDs, and GPS coordinates with the department; and

(e) Agree to comply with the department's program policies.

Section 10. Mandatory Orientation Session. (1) Conditionally approved applicants and multi-year licensed processor/handler shall attend an annual mandatory orientation session at a location designated by the department.

(2) The department shall require in-person attendance.

(a) The department shall not permit any person to attend a mandatory orientation session telephonically or by video.

(b) The department shall not allow any person to attend in lieu of the conditionally approved applicant or licensed processor/handler.

Section 11. Processor/Handler Licensing Fee. (1) The licensed processor/handler fee for processing one (1) or more fiber harvests is required in the amount specified in 302 KAR 50:060.

(2) The licensing fee for processing one (1) or more grain harvests is required in the amount specified in 302 KAR 50:060.

(3) The Licensing fee for processing floral material (for

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example, CBD) is required in the amount specified in 302 KAR 50:060.

(4) A licensed processor/handler that processes more than one (1) crop type (for example, fiber, grain and CBD) shall pay the licensing fee that is required for each crop type that is applicable.

(5) A handler that does not engage in processing (for example, a seed cleaner, or laboratory) is subject to a licensing fee in the amount specified in 302 KAR 50:060.

(6) The licensed processor/handler fee shall be paid annually in full prior to the execution of the Processor/Handler Licensing Agreement with a check or money order payable to the Kentucky State Treasurer.

Section 12. Seed Acquisition from a Source within the Commonwealth. (1) No department pre-approval shall be required for a transfer of hemp seed or propagules of any variety listed on the department's published Summary of Varieties list, excluding Prohibited Varieties, between Kentucky licensed growers and licensed processor/handler within the Commonwealth of Kentucky.

(2) A licensed grower or licensed processor/handler shall not buy, sell, possess, or transfer hemp seeds or propagules to or from any person in the Commonwealth without first verifying that the person is licensed by the department.

(3) A licensed grower or licensed processor/handler shall obtain written approval from the department to change the name of any variety in the department's program.

(4) Upon request from a representative of the department, a licensed grower or licensed processor/handler shall provide a distribution list showing locations where and to whom hemp seeds or propagules were distributed.

Section 13. Seed Acquisition from a Source in a U.S. territory, Tribal Land, or State Other than the Commonwealth of Kentucky.

(1) No person shall acquire seeds or propagules from a source in a U.S. territory, tribal land, or state other than the Commonwealth of Kentucky without first:

(a) Submitting a complete Domestic Seed/Propagule Request form and all required attachments, and

(b) Obtaining written approval of the Domestic Seed/Propagule Request from a representative of the department.

(2) The department shall not approve a Domestic Seed/Propagule Request unless the Domestic Seed/Propagule Request form affirms in writing that the requested seed acquisition plan will not infringe on the intellectual property rights of any person.

(3) A person submitting a Domestic Seed/Propagule Request form shall submit to the department THC test results showing that floral material sampled from mature plants grown from that seed or propagule variety or strain has a delta-9-THC content of not more than three-tenths (0.3) percent on a dry weight basis from an independent third-party laboratory.

(4) A person submitting a Domestic Seed/Propagule Request form shall submit to the department documentation verifying the seed or propagule source as a current legal hemp operation in the state of origin.

(5) A person acquiring seeds or propagules from a source outside the Commonwealth shall arrange for the seeds or propagules to arrive at the department's facility at 105 Corporate Drive, Frankfort, Kentucky 40601, for inventory and distribution.

(6) Upon request from a representative of the department, a Domestic Seed/Propagule Request form shall provide a distribution list showing locations where and to whom the hemp seeds were distributed following inventory at the department's facility.

Section 14. Seed Acquisition From a Source Outside the United States. (1) A person seeking to obtain seeds from an international source shall submit a complete International Seed Request form to the department.

(a) If approved, the department shall request the DEA Permit to Import under the department's DEA registration.

(b) No person shall acquire seeds from a source outside the United States unless the Department first obtains a permit to import from the DEA.

(2) No person shall acquire propagules other than seeds from outside the United States.

(3) The department shall not approve an International Seed Request form for any purpose other than seeds for planting in Kentucky. All licensed growers intending to plant the requested seed shall be listed on the request form.

(4) The department shall not approve an International Seed Request form unless the licensed processor affirms in writing that the licensed processor's planned activities will not infringe on the intellectual property rights of any person.

(5) A person submitting an International Seed Request form shall submit to the department documentation showing that mature plants grown from that seed variety have a floral material delta-9 THC content of not more than three-tenths (0.3) percent on a dry weight basis.

(6) A person acquiring seeds or propagules from a source outside the United States shall arrange for the seeds or propagules to arrive at the department's facility at 105 Corporate Drive, Frankfort, Kentucky 40601, for inventory and distribution.

(7) Upon request from a representative of the department, a licensed processor/handler shall provide a distribution list showing locations where and to whom the imported hemp seeds were distributed following inventory at the department's facility.

Section 15. Seeds of Wild, Landrace, or Unknown Origin. (1) No person shall acquire or grow hemp or cannabis seeds or propagules of wild, landrace, or unknown origin without first obtaining written approval from a representative of the department.

(2) The department shall not permit hemp or cannabis seeds or propagules of wild, landrace, or unknown origin to be planted, cultivated, or replicated by any person without the department first arranging for replication and THC testing of mature plants grown from such seeds or propagules by the department or its designee.

(3) Any licensed grower or licensed processor/handler found to have saved seed, propagules, or cuttings, or cultivated seeds, propagules, or cuttings from a cannabis plant of wild, landrace, or unknown origin, without permission from the department may be subject to suspension or revocation of their license and forfeiture without compensation of their materials.

Section 16. Site Access for Representatives of the Department and Law Enforcement Agencies. (1) The department shall provide information about approved growing, handling, processing, and storage site locations to representatives of the Kentucky State Police, DEA, and other law enforcement agencies whose representatives request registered site location information, including GPS coordinates.

(2) Licensed processors/handlers shall have no reasonable expectation of privacy with respect to premises where hemp or other cannabis seeds, plants, or materials are located and any premises listed in the Processor Licensing Agreement.

(3) A licensed processor/handler, whether present or not, shall permit a representative of the department or a law enforcement agency to enter into premises where hemp or other cannabis seeds, plants, or materials are located and any premises listed in the Processor/Handler Licensing Agreement, with or without cause, and with or without advance notice.

Section 17. Collection and Retention of Cannabis Samples. (1) The department shall have the authority to collect and retain samples of hemp or other cannabis, and products derived from all hemp or cannabis in the possession of a licensed processor/handler.

(2) All samples collected by the department become the property of the department and are nonreturnable. No compensation shall be owed by the department.

(3) The material to be collected for sampling will be determined by the department inspector.

Section 18. Restrictions on Sale or Transfer. (1) A licensed processor/handler shall not sell or transfer, or permit the sale or transfer, of living plants, viable seeds, leaf material or floral material to any person in the Commonwealth who does not hold a

license issued by the department.

(2) A licensed processor/handler shall not sell or transfer, or permit the sale or transfer, of living plants, viable seeds, leaf material or floral material to any person outside the Commonwealth (but within the United States) who is not authorized by a university or state department of agriculture under the authority of 7 U.S.C. 5940 and the laws of that state. The licensed processor/handler is responsible for insuring that such sale or transfer is lawful in other states.

(3) The department shall permit the sale or transfer of stripped stalks, fiber, dried roots, nonviable seeds, seed oils, floral and plant extracts (excluding THC in excess of three-tenths (0.3) percent), and other marketable hemp products to members of the general public, both within and outside the Commonwealth, provided that the product's delta-9-THC level is not more than three-tenths (0.3) percent.

(4) A licensed processor/handler selling or transferring, or permitting the sale or transfer, of floral or plant extracts (including CBD), shall conduct and retain testing data or results for at least three (3) years demonstrating that the product's delta-9-THC level is not more than three-tenths (0.3) percent.

(5) The department shall permit a licensed processor/handler to transfer up to one (1) pound of hemp per transfer to testing laboratories, both within and outside the Commonwealth, for the purpose of measuring THC, CBD or other phytocannabinoid profile levels. It is the responsibility of the licensed processor/handler to ensure compliance with laws with other states.

(6) licensed processor/handler shall comply with the federal Food Drug and Cosmetic Act and all other applicable local, state, and federal laws and regulations relating to product development, product manufacturing, consumer safety, and public health.

(7) A licensed processor/handler shall not knowingly permit hemp to be sold to or used by any person involved in the manufacture of an item named on the prohibited products list in 302 KAR 50:070.

Section 19. Other Prohibited Activities. (1) A licensed processor/handler shall not process or store hemp on any site not listed in the Processor/Handler Licensing Agreement.

(2) A person shall not ship or transport, or allow to be shipped or transported, live hemp plants, cuttings for planting, or viable seeds from a variety that is currently designated by the department as a prohibited variety or variety of concern to any location outside the Commonwealth of Kentucky.

(3) A person shall not ship or transport, or allow to be shipped or transported, any hemp product with a delta-9-THC concentration in excess of three-tenths (0.3) percent.

(4) A licensed processor/handler shall not transport live hemp plants, viable seeds, leaf materials, or floral materials to unapproved locations including trade shows, county fairs, educational or other events, or any other address not listed on the licensed processor/handler current Processor/Handler Licensing Agreement or within another research program.

(5) A licensed processor/handler shall not allow unsupervised public access to hemp plots, including, but not limited to, activities such as a hemp maze.

(6) No person shall possess live hemp or other cannabis plants without a Grower Licensing Agreement.

Section 20. Required Reports. (1) A licensed processor/handler shall submit a completed Production Report annually.

(2) A licensed processor/handler's failure to submit an accurate and complete report that is required by the department on or before the deadline specified by the department shall constitute grounds for the department to terminate the Processor/Handler Licensing Agreement and deny future applications for licensure.

Section 21. Information Submitted to Department Subject to Open Records Act. (1) Except as provided in subsection (2) of this section, information and documents generated or obtained by the department in connection with the program shall be subject to disclosure pursuant to the Kentucky Open Records Act, KRS

61.870 - 61.884.

(2) Personally identifiable information including physical address, mailing address, driver's license numbers, background checks, GPS coordinates, telephone, and email addresses shall be shielded by the department to the maximum extent permitted by law.

Section 22. Immediate License Suspension. (1) The department shall immediately revoke a license, without an opportunity for a hearing, if the licensed person pleads guilty to, or is convicted of, any felony or drug-related misdemeanor or violation.

(2) The department shall immediately revoke a license, without an opportunity for a hearing, if the licensed person or his or her agent admits to having:

(a) Violated any provision of KRS 260.850 to 260.869 or an administrative regulation promulgated under the authority of KRS 260.850 to 260.869;

(b) Made any false statement to the department or its representative; or

(c) Failed to comply with any instruction or order from the department, a representative of the Kentucky State Police, or any law enforcement officer.

Section 23. Temporary License Suspension Procedures. (1) The department shall notify a licensed processor/handler in writing that the Processor/Handler Licensing Agreement has been temporarily suspended if a representative of the department receives information supporting an allegation that a licensed processor/handler has:

(a) Engaged in conduct violating a provision of this administrative regulation, KRS 260.850 - 260.869, or the Processor Licensing Agreement;

(b) Made a false statement to a representative of the department or a law enforcement agency;

(c) Been found to be in possession of cannabis with a measured delta-9-THC concentration at or above 30,000 ppm (3 percent); or

(d) Failed to comply with an order from a representative of the department or a law enforcement agency.

(2) A person whose Processor/Handler Licensing Agreement has been temporarily suspended shall not harvest, process, or remove cannabis from the premises where hemp or other cannabis was located at the time when the department issued its notice of temporary suspension, except as authorized in writing by a representative of the department.

(3) As soon as possible after the notification of temporary suspension, a representative of the department shall inspect the licensed processor/handler's premises and perform an inventory of all cannabis, hemp, and hemp products that are in the Licensed Processor/Handler's possession.

(4) The department shall schedule a license revocation hearing for a date as soon as practicable after the notification of temporary suspension, but in any event not later than sixty (60) days following the notification of temporary suspension.

Section 24. License Revocation Hearings and Consequences of Revocation. (1) The department shall notify a person whose Processor/Handler Licensing Agreement has been temporarily suspended of the date when the person's license revocation hearing will occur at a time and place designated by the commissioner.

(2) License revocation hearings shall be adjudicated by a three (3) person administrative panel whose members shall be designated by the commissioner. The panel shall include at least one (1) person who is a department employee and at least one (1) person who is not a department employee and not involved or invested in any Kentucky hemp projects.

(3) License revocation hearings shall be open to the public.

(4) A person whose Processor/Handler Licensing Agreement has been temporarily suspended shall appear in person at the assigned hearing time. Failure to appear on time shall constitute a waiver of the person's right to present information and arguments

against revoking the Processor/Handler Licensing Agreement.

(5) A representative of the department shall be allowed an opportunity to present information and arguments for revoking the Processor/Handler Licensing Agreement.

(6) A person whose Processor/Handler Licensing Agreement has been temporarily suspended shall be allowed an opportunity to present information and arguments against revoking the Processor/Handler Licensing Agreement.

(7) The three (3) members of the administrative panel shall rule on the question of revocation by a majority vote.

(8) If a majority of the three (3) members of the administrative panel find that it is more likely than not that a licensed processor/handler has committed any of the acts listed in Section 23(1) of this administrative regulation or violated any provision of the Processor/Handler Licensing Agreement, then the Processor/Handler Licensing Agreement shall be revoked effective immediately.

(9) If a majority of the members of the administrative panel vote against revoking the Processor/Handler Licensing Agreement, the department shall lift the temporary suspension within twenty-four (24) hours of the vote.

(10) If a majority of the members of the administrative panel vote in favor of revoking the Processor/Handler Licensing Agreement, then a representative of the department or a law enforcement agency shall have authority to destroy or confiscate all cannabis, hemp, and hemp products that are in the person's possession.

(11) A person whose property is destroyed or confiscated by a representative of the department or a law enforcement agency shall be owed no compensation or indemnity for the value of the cannabis, hemp, or hemp products that were destroyed or confiscated.

(12) A person whose Processor/Handler Licensing Agreement has been revoked shall be barred from participation in the hemp research pilot program in any capacity for a minimum period of five (5) years.

Section 25. Monetary Civil Penalties. (1) If a representative of the department receives information supporting a finding that it is more likely than not that a person has engaged in conduct violating a provision of this regulation, KRS 260.850 - 260.869, or the Processor/Handler Licensing Agreement, then the department shall assess a monetary civil penalty not to exceed \$2,500 per violation.

(2) A person wishing to appeal the department's assessment of a monetary civil penalty shall submit a written request for a hearing within fifteen (15) days of the notification date.

(3) A person wishing to appeal the department's assessment of a monetary civil penalty shall mail a hearing request letter to KDA Industrial Hemp Research Pilot Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(4) Appeals shall be heard by a three (3) person administrative panel whose members shall be designated by the commissioner. The administrative panel shall include at least one (1) person who is a department employee and at least one (1) person who is not a department employee and not involved or invested in any Kentucky hemp projects.

(5) The members of the administrative panel shall determine if the department's action in assessing the monetary civil penalty was arbitrary or capricious.

(6) Hearings on the appeal shall be open to the public and occur at a time, date, and location designated by the commissioner.

(7) An appealing person shall appear in person at the assigned hearing time. Failure to appear on time shall constitute grounds for dismissal of the appeal.

(8) An appealing person shall be allowed an opportunity to present arguments for reversing the assessed monetary civil penalty.

(9) A representative of the department shall be allowed an opportunity to present arguments for affirming the assessed monetary civil penalty.

(10) The three (3) members of the administrative panel shall

rule on the appeal by a majority vote.

(11) A majority of the three (3) members of the administrative panel may affirm the assessed monetary civil penalty, affirm and increase or decrease the assessed monetary civil penalty, or reverse the assessed monetary civil penalty.

(12) The department shall have the authority to pursue unpaid monetary civil penalties by filing a civil cause of action in the Franklin Circuit Court.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: December 15, 2017

FILED WITH LRC: December 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2018, at 2:00 p.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, 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 January 31, 2018. 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation established the guidelines for participation in the Industrial Hemp Pilot Project administered by the Kentucky Department of Agriculture.

(b) The necessity of this administrative regulation: This regulation is necessary to establish provisions for growing, movement, processing and possession of industrial hemp.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260.850-260.869 requires the Kentucky Department of Agriculture to regulate industrial hemp. This administrative regulation satisfies this mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation codifies the industrial hemp pilot program that has been administered by the KDA since the 2014 growing season.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The KDA has 243 grower applications, and 56 processor applications for the 2018 growing season. Additionally, this regulation affects the KDA and the Kentucky State Police, the University of Kentucky Division of Regulatory Services, and possibly local law enforcement agencies.

(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 2018 applicants wishing to grow, process, or handle industrial hemp must comply with the administrative requirements listed in this collection of filings, including a criminal background check and testing of the crop produced.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will add little to no cost to the entities listed for the growing seasons since 2014, other than the fees established and the governmental costs of additional testing and manpower.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be allowed to grow, process, handle and conduct research on industrial hemp.

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

(a) Initially: The administrative regulation itself adds very little cost to the KDA over previous growing seasons. The KDA employs three (3) full time staff, seasonal contractors, and the partial staff time of several employees to administer the pilot program.

(b) On a continuing basis: The KDA anticipates that the growing market demand for the crop may necessitate additional staff and resources in the future.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funds to administer will come from the fees created by this administrative regulation, as well as the KDA 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: This administrative regulation creates new fees. The KDA will evaluate after a period of time to determine if fee amounts will cover expenses of administration of the program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are directly established.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 U.S.C. 5940

2. State compliance standards. KRS 260.850-260.869

3. Minimum or uniform standards contained in the federal mandate. 7 U.S.C. 5940. Establish requirements for industrial hemp pilot programs. This administrative regulation establishes the requirements for participation in Kentucky.

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? The Kentucky Department of Agriculture for the administration of the pilot program, plus Kentucky State Police, University of Kentucky Division of Regulatory Services, and local law enforcement.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

regulation. KRS 260.850-260.869 and 7 U.S.C. 5940.

(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 KDA cannot estimate the costs of other agencies, but would reasonably guess that marginal costs increases may be anticipated due to program popularity.

(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 KDA estimates revenue of \$250,000 at this time. Revenue for UK DRS will be approximately 85 dollars per test sample submitted. We estimate no revenue for law enforcement agencies.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The KDA cannot estimate this amount as it is based on number of applicants and growing addresses.

(c) How much will it cost to administer this program for the first year? The KDA fully anticipates the revenue generated to cover only a fraction of the costs to administer the program.

(d) How much will it cost to administer this program for subsequent years? The KDA cannot estimate this amount as it is based on number of applicants and growing addresses.

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

Revenues (+/-): Perhaps \$250,000
Expenditures (+/-): Well in excess of \$250,000
Other Explanation:

**GENERAL GOVERNMENT
Department of Agriculture
Office of Agricultural Marketing
(New Administrative Regulation)**

302 KAR 50:040. Affiliated universities and colleges.

RELATES TO: KRS 260.850-260.869, 7 U.S.C. 5940

STATUTORY AUTHORITY: KRS 260.862(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(d) authorizes the department to promulgate administrative regulations to prescribe rules for a university's participation in, or affiliation with, any industrial hemp research pilot program in the Commonwealth of Kentucky. This administrative regulation establishes procedures and requirements for eligible universities and colleges with faculty or staff members who wish to affiliate with the department's industrial hemp research pilot program for the purpose of conducting academic research projects.

Section 1. Definitions. (1) "Cannabis" means all parts of the cannabis plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts. Cannabis does not include publicly marketable hemp products, as defined in this administrative regulation.

(2) "Commonwealth" means the Commonwealth of Kentucky.

(3) "DEA" means the United States Drug Enforcement Administration.

(4) "Decarboxylated" means the completion of the chemical reaction that converts THC-acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value may also be calculated using a conversion formula that sums delta-9-THC and THC-acid.

(5) "Department" means the Kentucky Department of Agriculture.

(6) "GPS" means Global Positioning System.

(7) "Handling" is defined in KRS 260.850(4).

(8) "Hemp" or "industrial hemp" is defined in KRS 260.850(5).

(9) "Law enforcement agency" means the Kentucky State Police, DEA, or other federal, state, or local law enforcement agency or drug suppression unit.

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(10) "Location ID" means the unique identifier established for each unique set of GPS coordinates where hemp will be grown, handled, stored, or processed, which may include a field name or building name.

(11) "Plot" means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of hemp throughout the area.

(12) "Processing" is defined in KRS 260.850(9).

(13) "Program" means the department's Industrial Hemp Research Pilot Program.

(14) "Propagule" means a plant or plant part that can be utilized to grow a new plant.

(15) "Seed source" means the origin of the seed or propagules as determined by the department.

Section 2. Eligible Institutions of Higher Education. (1) To be eligible to affiliate with the department's program, an institution of higher education shall:

(a) Be accredited by, and in good standing with, a regional or national higher education accreditation agency;

(b) Confer academic degrees at the associate, bachelor, master, or doctoral level; and

(c) Have a principal campus or office that is located at a site within the Commonwealth of Kentucky.

(2) An institution of higher education shall not conduct hemp research under the authority of the department's program at a campus or other site that is located outside the Commonwealth of Kentucky.

Section 3. Affiliation with Department Required. (1) An authorized representative of an eligible institution of higher education with faculty, administration, or staff members who wish to conduct academic research projects involving hemp under the auspices of the department's program shall complete and submit a University/College Affiliation Application, incorporated by reference in 302 KAR 50:080, annually.

(2) No institution of higher education shall authorize its faculty, administration, or staff members, or any sponsored student, to conduct academic research involving hemp without first completing and submitting a University/College Affiliation Application.

(3) The department shall accept annual University/College Affiliation Applications at any time during a program year.

(4) Upon request from the department, a letter from a faculty department chair or other appropriate academic authority shall be provided in support of a University/College Affiliation Application.

(5) Following receipt of a University/College Affiliation Application form from an authorized representative of an eligible institution of higher education, the department shall issue a University/College Affiliation Confirmation Letter authorizing that person to grow, cultivate, and process hemp:

(a) In accordance with the institution's research plan;

(b) In accordance with state and federal law; and

(c) In accordance with this administrative regulation.

Section 4. Affiliation Application Form - Required Components. A University/College Affiliation Application form shall contain, at a minimum, the following information:

(1) The full name of each person authorized by the institute of higher education who will be responsible for overseeing the academic research project;

(2) The full name of each person who will be involved in growing, processing, or handling hemp;

(3) An academic research plan summary;

(4) The full name of the landowner, street address and GPS coordinates for each field, greenhouse, building, or site where hemp will be grown, handled, processed, or stored; and

(5) Maps depicting each site where hemp will be grown, handled, processed, or stored, with appropriate designations for entrances, field boundaries, and specific locations corresponding to GPS coordinates.

Section 5. Restrictions on Affiliated Projects. (1) An institution of higher education with a project affiliated with the department's

program shall not involve any person who is ineligible or was terminated, or denied admission to the program for one (1) or both of the following reasons:

(a) Failure to obtain an acceptable criminal background check; or

(b) Failure to comply with an order from a representative of the department.

(2) An institution of higher education with a project affiliated with the department's program shall not grow, handle, process, or store hemp on property owned by or leased from any person who is ineligible or was terminated, or denied admission to the program for one (1) or both of the following reasons:

(a) Failure to obtain an acceptable criminal background check; or

(b) Failure to comply with an order from a representative of the department.

Section 6. No Fees -- Sampling and THC Testing Services Available at Cost. (1) The department shall not assess fees on affiliated institutions of higher education except as provided in subsection (2) of this section.

(2) If a representative of an affiliated institution of higher education requests assistance from the department in collecting samples from hemp plants or testing the THC concentration, then the department shall collect a nonrefundable service charge in an amount sufficient to pay for staff time and other expenses incurred in visiting the site, collecting the samples, and testing the samples.

Section 7. Seed Acquisition. (1) An institution of higher education shall not acquire hemp seeds or propagules from a source outside the Commonwealth of Kentucky except as provided in subsection (2) of this section.

(2) A representative of an affiliated institution of higher education shall obtain hemp seeds or propagules from a source outside the Commonwealth by submitting a Seed/Propagule Request form and obtaining written approval from a representative of the department.

(3) A person submitting a Seed/Propagule Request form shall submit to the department documentation showing that the mature plants grown from that seed or propagule variety have a floral material decarboxylated delta-9 THC content of not more than three-tenths (0.3) percent on a dry weight basis.

(4) A person acquiring seeds or propagules from a source outside the Commonwealth shall arrange for the seeds or propagules to arrive at the department's facility at 105 Corporate Drive, Frankfort, Kentucky 40601, for inventory and distribution.

(5) Upon request from a representative of the department, a representative of an affiliated institution of higher education shall provide a distribution list showing the locations where and to whom the hemp seeds were distributed following inventory at the department's facility.

(6) A Seed/Propagule Request shall not be required for the acquisition of seeds or propagules from a source inside the Commonwealth of Kentucky.

Section 8. Site Access for Representatives of the Department and Law Enforcement Agencies. (1) The department shall provide information about approved growing, handling processing, and storage site locations to representatives of the Kentucky State Police, DEA, and other law enforcement agencies whose representatives request registered site information, including GPS coordinates.

(2) Representatives of affiliated institutions of higher education who are participating in hemp research shall have no reasonable expectation of privacy with respect to premises where hemp or other cannabis seeds, plants, or materials are located and any premises listed in the University/College Affiliation Confirmation Letter.

(3) A representative of an affiliated institution of higher education shall permit a representative of the department or a law enforcement agency to enter into premises where hemp or other cannabis seeds, plants, or materials are located and any premises listed in the University/College Affiliation Confirmation Letter with or

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without cause and with or without advanced notice.

Section 9. Academic Research Project Summary to be Submitted to the Department. Following the completion of an academic research project conducted under the auspices of the department's program, the person responsible for overseeing the research project shall submit to the department a summary of the research's objectives and findings. The results of research that is proprietary in nature need not be reported to the department.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: December 15, 2017

FILED WITH LRC: December 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2018, at 2:00 p.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, 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 January 31, 2018. 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation established the guidelines for participation in the Industrial Hemp Pilot Project administered by the Kentucky Department of Agriculture.

(b) The necessity of this administrative regulation: This regulation is necessary to establish provisions for growing, movement, processing and possession of industrial hemp.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260.850-260.869 requires the Kentucky Department of Agriculture to regulate industrial hemp. This administrative regulation satisfies this mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation codifies the industrial hemp pilot program that has been administered by the KDA since the 2014 growing season.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The KDA has 243 grower applications, and 56 processor applications for the 2018 growing season. Additionally, this regulation affects the KDA and the Kentucky State Police, The University of Kentucky Division of Regulatory Services, and possibly local law enforcement agencies.

(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 2018 applicants wishing to grow, process, or handle industrial hemp must comply with the administrative requirements listed in this collection of filings, including a criminal background check and testing of the crop produced.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will add little to no cost to the entities listed for the growing seasons since 2014, other than the fees established and the governmental costs of additional testing and manpower.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be allowed to grow, process, handle and conduct research on industrial hemp.

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

(a) Initially: The administrative regulation itself adds very little cost to the KDA over previous growing seasons. The KDA employs three (3) full time staff, seasonal contractors, and the partial staff time of several employees to administer the pilot program.

(b) On a continuing basis: The KDA anticipates that the growing market demand for the crop may necessitate additional staff and resources in the future.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funds to administer will come from the fees created by this administrative regulation, as well as the KDA 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: This administrative regulation creates new fees. The KDA will evaluate after a period of time to determine if fee amounts will cover expenses of administration of the program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are directly established.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 U.S.C. 5940

2. State compliance standards. KRS 260.850-260.869

3. Minimum or uniform standards contained in the federal mandate. 7 U.S.C. 5940. Establish requirements for industrial hemp pilot programs. This administrative regulation establishes the requirements for participation in Kentucky.

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? The Kentucky Department of Agriculture for the administration of the pilot program, plus Kentucky State Police, University of Kentucky Division of Regulatory Services, and local law enforcement.

(2) Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. KRS 260.850-260.869 and 7 U.S.C. 5940.

(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 KDA cannot estimate the costs of other agencies, but would reasonably guess that marginal costs increases may be anticipated due to program popularity.

(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 KDA estimates revenue of \$250,000 at this time. Revenue for UK DRS will be approximately 85 dollars per test sample submitted. We estimate no revenue for law enforcement agencies.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The KDA cannot estimate this amount as it is based on number of applicants and growing addresses.

(c) How much will it cost to administer this program for the first year? The KDA fully anticipates the revenue generated to cover only a fraction of the costs to administer the program.

(d) How much will it cost to administer this program for subsequent years? The KDA cannot estimate this amount as it is based on number of applicants and growing addresses.

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

Revenues (+/-): Perhaps \$250,000

Expenditures (+/-): Well in excess of \$250,000

Other Explanation:

**GENERAL GOVERNMENT
Department of Agriculture
Office of Agricultural Marketing
(New Administrative Regulation)**

302 KAR 50:050. THC sampling and testing; post-testing actions.

RELATES TO: KRS 260.850-260.869, 7 U.S.C. 5940

STATUTORY AUTHORITY: KRS 260.862, 250.355

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations to prescribe rules for any industrial hemp research pilot program in the Commonwealth of Kentucky. KRS 260.862(1)(e) authorizes the department to prescribe sampling and testing procedures to ensure that industrial hemp and industrial hemp products cultivated, handled, processed, or marketed under the authority of KRS 260.862 do not exceed the concentration levels defined in 7 U.S.C. 5940 as it currently exists or as it may be subsequently amended. KRS 250.355 requires the director of the Agricultural Experiment Station or his or her designee to receive samples and test industrial hemp plants, plant parts, and materials grown or located within the Commonwealth in order to determine whether the industrial hemp plants, plant parts, and materials are in compliance with the provisions of KRS 260.850 to 260.869 and 302 Chapter 50. This administrative regulation establishes the procedures and requirements of the sampling and testing, and post-testing actions.

Section 1. Definitions. (1) "Department" means the Kentucky Department of Agriculture.

(2) "UK DRS" means the University of Kentucky Division of Regulatory Services.

Section 2. Department's Procedures for Collecting and Retaining Hemp Samples. (1) The department shall collect and handle hemp samples in accordance with the department SOP# KDA-HEMP-20171214-1 (Procedures for Sampling, THC Testing, and Post-Testing Actions), December 14, 2017 edition, Sections II

through VII.

Section 3. UK DRS's Procedures for Receiving, Preparing, and Releasing Hemp Samples. (1) UK DRS shall receive, prepare, and release hemp samples in accordance with the UK DRS SOP# HM-LB-001 (Procedures for Receiving, Preparing and Releasing Hemp Samples), August 1, 2017 edition.

Section 4. UK DRS's Procedures for Measuring THC Content. (1) UK DRS shall measure delta-9-THC content in accordance with the UK DRS SOP# HMP-LB-002 (Procedures for Measuring Delta 9 THC Content in Industrial Hemp by Gas Chromatography with Flame Ionization Detection), August 1, 2017 edition.

Section 5. Department's Procedures for Post-Testing Actions. (1) Following the delivery of THC testing results from UK DRS, the department shall undertake post-testing actions in accordance with the Department SOP# KDA-HEMP-20171214-1 (Procedures for Sampling, THC Testing, and Post-Testing Actions), December 14, 2017 edition, Section IX.

Section 6. Incorporation by Reference. (1)(a) SOP# KDA-HEMP-20171214-1 (Procedures for Sampling, THC Testing, and Post-Testing Actions), December 14, 2017 edition;

(b) UK DRS SOP# HMP-LB-002 (Procedures for Measuring Delta 9 THC Content in Industrial Hemp by Gas Chromatography with Flame Ionization Detection), August 1, 2017 edition; and

(c) SOP# HM-LB-001 (Procedures for Receiving, Preparing and Releasing Hemp Samples), August 1, 2017 edition.

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Office of Agricultural Marketing, 105 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: December 15, 2017

FILED WITH LRC: December 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2018, at 2:00 p.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, 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 January 31, 2018. 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation established the guidelines for participation in the Industrial Hemp Pilot Project administered by the Kentucky Department of Agriculture.

(b) The necessity of this administrative regulation: This regulation is necessary to establish provisions for growing, movement, processing and possession of industrial hemp.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260.850-260.869 requires the Kentucky Department of Agriculture to regulate industrial hemp.

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This administrative regulation satisfies this mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation codifies the industrial hemp pilot program that has been administered by the KDA since the 2014 growing season.

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

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

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

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(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The KDA has 243 grower applications, and 56 processor applications for the 2018 growing season. Additionally, this regulation affects the KDA and the Kentucky State Police, the University of Kentucky Division of Regulatory Services, and possibly local law enforcement agencies.

(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 2018 applicants wishing to grow, process, or handle industrial hemp must comply with the administrative requirements listed in this collection of filings, including a criminal background check and testing of the crop produced.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will add little to no cost to the entities listed for the growing seasons since 2014, other than the fees established and the governmental costs of additional testing and manpower.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be allowed to grow, process, handle and conduct research on industrial hemp.

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

(a) Initially: The administrative regulation itself adds very little cost to the KDA over previous growing seasons. The KDA employs three (3) full time staff, seasonal contractors, and the partial staff time of several employees to administer the pilot program.

(b) On a continuing basis: The KDA anticipates that the growing market demand for the crop may necessitate additional staff and resources in the future.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funds to administer will come from the fees created by this administrative regulation, as well as the KDA 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: This administrative regulation creates new fees. The KDA will evaluate after a period of time to determine if fee amounts will cover expenses of administration of the program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are directly established.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 U.S.C. 5940

2. State compliance standards. KRS 260.850-260.869

3. Minimum or uniform standards contained in the federal mandate. 7 U.S.C. 5940. Establish requirements for industrial hemp pilot programs. This administrative regulation establishes the requirements for participation in Kentucky.

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? The Kentucky Department of Agriculture for the administration of the pilot program, plus Kentucky State Police, University of Kentucky Division of Regulatory Services, and local law enforcement.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 260.850-260.869 and 7 U.S.C. 5940.

(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 KDA cannot estimate the costs of other agencies, but would reasonably guess that marginal costs increases may be anticipated due to program popularity.

(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 KDA estimates revenue of \$250,000 at this time. Revenue for UK DRS will be approximately 85 dollars per test sample submitted. We estimate no revenue for law enforcement agencies.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The KDA cannot estimate this amount as it is based on number of applicants and growing addresses.

(c) How much will it cost to administer this program for the first year? The KDA fully anticipates the revenue generated to cover only a fraction of the costs to administer the program.

(d) How much will it cost to administer this program for subsequent years? The KDA cannot estimate this amount as it is based on number of applicants and growing addresses.

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

Revenues (+/-): Perhaps \$250,000

Expenditures (+/-): Well in excess of \$250,000

Other Explanation:

GENERAL GOVERNMENT Department of Agriculture Office of Agricultural Marketing (New Administrative Regulation)

302 KAR 50:060. Fees and forms.

RELATES TO: KRS 260.850-260.869, 7 U.S.C. 5940

STATUTORY AUTHORITY: KRS 260.862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations to prescribe rules for any industrial hemp research pilot program in the Commonwealth of Kentucky. KRS

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260.862(1)(g) authorizes the department authority to establish a schedule of nonrefundable fees. This administrative regulation establishes a schedule of fees for the department's industrial hemp research pilot program.

Section 1. Schedule of Fees for Growers. (1) The definitions for this subsection shall be the same definitions that appear in 302 KAR 50:020.

- (2) The fees set forth in this subsection shall be nonrefundable.
- (3) The Grower License Application fee shall be \$100 for each application.
- (4) The annual grower participation fee shall be \$400 for each growing address.
- (5) The secondary pre-harvest sample fee shall be \$250 for each sample.
- (6) The post-harvest retest fee shall be \$250 for each sample.
- (7) The site modification surcharge fee shall be \$750 for each GPS coordinate location change for each growing site after the grower licensing agreement has been executed.

Section 2. Schedule of Fees for Processors/Handlers. (1) The definitions for this subsection shall be the same definitions that appear in 302 KAR 50:030 (Policies and Procedures for Processors and Handlers).

- (2) The fees established in this subsection shall be nonrefundable.
- (3) The Processor/Handler License Application fee shall be \$100 per application.
- (4) The annual participation fee for processing the grain component of hemp shall be \$500.
- (5) The annual participation fee for processing the fiber component of hemp shall be \$500.
- (6) The annual participation fee for processing the floral material component of hemp (such as CBD) shall be \$3,000.
- (7) The annual participation fee for a handler (such as a seed cleaner or laboratory) shall be \$500.
- (8) A processor for more than one (1) component (grain, fiber, or floral material) shall pay the annual participation fee for each component. (For example, a person who processes hemp for fiber, grain, and CBD shall pay a participation fee of \$4,000.)
- (9) The site modification surcharge fee shall be \$750 for each GPS coordinate location change for each processing site after the Processor/Handler Licensing Agreement has been executed.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: December 15, 2017

FILED WITH LRC: December 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2018, at 2:00 p.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, 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 January 31, 2018. 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This regulation established the guidelines for participation in the Industrial Hemp

Pilot Project administered by the Department of Agriculture.

(b) The necessity of this administrative regulation: This regulation is necessary to establish provisions for growing, movement, processing and possession of industrial hemp.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260.850-260.869 requires the Kentucky Department of Agriculture to regulate industrial hemp. This administrative regulation satisfies this mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation codifies the industrial hemp pilot program that has been administered by the KDA since the 2014 growing season.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The KDA has 243 grower applications, and 56 processor applications for the 2018 growing season. Additionally, this regulation affects the KDA and the Kentucky State Police, the University of Kentucky Division of Regulatory Services, and possibly local law enforcement agencies.

(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 2018 applicants wishing to grow, process, or handle industrial hemp must comply with the administrative requirements listed in this collection of filings, including a criminal background check and testing of the crop produced.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will add little to no cost to the entities listed for the growing seasons since 2014, other than the fees established and the governmental costs of additional testing and manpower.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be allowed to grow, process, handle and conduct research on industrial hemp.

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

(a) Initially: The administrative regulation itself adds very little cost to the KDA over previous growing seasons. The KDA employs three (3) full time staff, seasonal contractors, and the partial staff time of several employees to administer the pilot program.

(b) On a continuing basis: The KDA anticipates that the growing market demand for the crop may necessitate additional staff and resources in the future.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funds to administer will come from the fees created by this administrative regulation, as well as the KDA 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: This administrative regulation creates new fees. The KDA will evaluate after a period of time to determine if fee amounts will cover expenses of administration of the program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are directly established.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

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FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 U.S.C. 5940
2. State compliance standards. KRS 260.850-260.869
3. Minimum or uniform standards contained in the federal mandate. 7 U.S.C. 5940. Establish requirements for industrial hemp pilot programs. This administrative regulation establishes the requirements for participation in Kentucky.
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? The Kentucky Department of Agriculture for the administration of the pilot program, plus Kentucky State Police, University of Kentucky Division of Regulatory Services, and local law enforcement.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 260.850-260.869 and 7 U.S.C. 5940

(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 KDA cannot estimate the costs of other agencies, but would reasonably guess that marginal costs increases may be anticipated due to program popularity.

(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 KDA estimates revenue of \$250,000 at this time. Revenue for UK DRS will be approximately \$85 per test sample submitted. We estimate no revenue for law enforcement agencies.

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(c) How much will it cost to administer this program for the first year? The KDA fully anticipates the revenue generated to cover only a fraction of the costs to administer the program.

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

Revenues (+/-): Perhaps \$250,000

Expenditures (+/-): Well in excess of \$250,000

Other Explanation:

GENERAL GOVERNMENT Department of Agriculture Office of Agricultural Marketing (New Administrative Regulation)

302 KAR 50:070. Prohibited products.

RELATES TO: KRS 260.850-260.869, 7 U.S.C. 5940
STATUTORY AUTHORITY: KRS 260.862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations to prescribe rules for any industrial hemp research pilot program in the Commonwealth of Kentucky. This administrative regulation establishes classes or categories of industrial hemp products that are eligible for sale, transfer, or distribution to members of the public.

Section 1. Products Not to be Sold to Members of the Public.

(1) The following hemp-derived products shall not be manufactured:

- (a) Hemp cigarettes;
- (b) Hemp cigars;
- (c) Chew, dip, or other smokeless material consisting of hemp leaf material or hemp floral material; and
- (d) Hemp leaf material or floral material teas.

(2) The following hemp-derived products shall not be marketed, sold, or distributed to any person in Kentucky who does not hold a license from the Department, or any person outside the Commonwealth (but within the United States) who is not authorized by an institution of higher education, or state department of agriculture under the authority of 7 U.S.C. 5940 and the laws of that state:

- (a) Whole hemp buds;
- (b) Ground hemp floral material;
- (c) Ground hemp leaf material; and
- (d) Any hemp product with a delta-9-THC concentration in excess of three-tenths (0.3) percent.

(3) If the department finds that it is more likely than not that a person has manufactured, marketed, sold, or distributed a hemp-derived product in violation of this administrative regulation, the department shall assess a civil monetary penalty against that person of not less than \$100 and not more than \$1,000 per violation, in addition to possible termination of the Grower Licensing Agreement or Processor/Handler Licensing Agreement.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: December 15, 2017

FILED WITH LRC: December 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2018, at 2:00 p.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, 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 January 31, 2018. 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation established the guidelines for participation in the Industrial Hemp Pilot Project administered by the Kentucky Department of Agriculture.

(b) The necessity of this administrative regulation: This regulation is necessary to establish provisions for growing, movement, processing and possession of industrial hemp.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260.850-260.869 requires the Kentucky Department of Agriculture to regulate industrial hemp.

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This administrative regulation satisfies this mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation codifies the industrial hemp pilot program that has been administered by the KDA since the 2014 growing season.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The KDA has 243 grower applications, and 56 processor applications for the 2018 growing season. Additionally, this regulation affects the KDA and the Kentucky State Police, the University of Kentucky Division of Regulatory Services, and possibly local law enforcement agencies.

(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 2018 applicants wishing to grow, process, or handle industrial hemp must comply with the administrative requirements listed in this collection of filings, including a criminal background check and testing of the crop produced.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will add little to no cost to the entities listed for the growing seasons since 2014, other than the fees established and the governmental costs of additional testing and manpower.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be allowed to grow, process, handle and conduct research on industrial hemp.

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

(a) Initially: The administrative regulation itself adds very little cost to the KDA over previous growing seasons. The KDA employs three (3) full time staff, seasonal contractors, and the partial staff time of several employees to administer the pilot program.

(b) On a continuing basis: The KDA anticipates that the growing market demand for the crop may necessitate additional staff and resources in the future.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funds to administer will come from the fees created by this administrative regulation, as well as the KDA 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: This administrative regulation creates new fees. The KDA will evaluate after a period of time to determine if fee amounts will cover expenses of administration of the program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are directly established.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 U.S.C. 5940
2. State compliance standards. KRS 260.850-260.869
3. Minimum or uniform standards contained in the federal

mandate. 7 U.S.C. 5940. Establish requirements for industrial hemp pilot programs. This administrative regulation establishes the requirements for participation in Kentucky.

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? The Kentucky Department of Agriculture for the administration of the pilot program, plus Kentucky State Police, University of Kentucky Division of Regulatory Services, and local law enforcement.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 260.850-260.869 and 7 U.S.C. 5940.

(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 KDA cannot estimate the costs of other agencies, but would reasonably guess that marginal costs increases may be anticipated due to program popularity.

(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 KDA estimates revenue of \$250,000 at this time. Revenue for UK DRS will be approximately \$85 per test sample submitted. We estimate no revenue for law enforcement agencies.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The KDA cannot estimate this amount as it is based on number of applicants and growing addresses.

(c) How much will it cost to administer this program for the first year? The KDA fully anticipates the revenue generated to cover only a fraction of the costs to administer the program.

(d) How much will it cost to administer this program for subsequent years? The KDA cannot estimate this amount as it is based on number of applicants and growing addresses.

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

Revenues (+/-): Perhaps \$250,000

Expenditures (+/-): Well in excess of \$250,000

Other Explanation:

GENERAL GOVERNMENT Department of Agriculture Office of Agricultural Marketing (New Administrative Regulation)

302 KAR 50:080. Materials incorporated by reference.

RELATES TO: KRS 260.850-260.869, 7 U.S.C. 5940

STATUTORY AUTHORITY: 260.850-260.869

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations to prescribe rules for any industrial hemp research pilot program in the Commonwealth of Kentucky. This administrative regulation incorporates the materials and forms used in the program, other than 302 KAR 50:050.

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

- (a) "Grower License Application", 2017;
- (b) "Field Planting Report", 2017;
- (c) "Greenhouse Planting Report", 2017;
- (d) "Harvest/Destruction Report", 2017;
- (e) "Production Report, Grower", 2017;
- (f) "Production Report, Processor/Handler", 2017;
- (g) "Site Modification Request Form", 2017;
- (h) "Domestic Seed/Propagule Request", 2017;
- (i) "International Seed Request", 2017;
- (j) "Processor/Handler License Application"; and
- (k) "University/College Affiliation Application", 2017.

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Office of Agricultural Marketing, 105 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: December 15, 2017

FILED WITH LRC: December 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22nd, 2018, at 2:00 p.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, 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 January 31, 2018. 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation established the guidelines for participation in the Industrial Hemp Pilot Project administered by the Kentucky Department of Agriculture.

(b) The necessity of this administrative regulation: This regulation is necessary to establish provisions for growing, movement, processing and possession of industrial hemp.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260.850-260.869 requires the Kentucky Department of Agriculture to regulate industrial hemp. This administrative regulation satisfies this mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation codifies the industrial hemp pilot program that has been administered by the KDA since the 2014 growing season.

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

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

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

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

(d) How the amendment will assist in the effective

administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The KDA has 243 grower applications, and 56 processor applications for the 2018 growing season. Additionally, this regulation affects the KDA and the Kentucky State Police, The University of Kentucky Division of Regulatory Services, and possibly local law enforcement agencies.

(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 2018 applicants wishing to grow, process, or handle industrial hemp must comply with the administrative requirements listed in this collection of filings, including a criminal background check and testing of the crop produced.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will add little to no cost to the entities listed for the growing seasons since 2014, other than the fees established and the governmental costs of additional testing and manpower.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be allowed to grow, process, handle and conduct research on industrial hemp.

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

(a) Initially: The administrative regulation itself adds very little cost to the KDA over previous growing seasons. The KDA employs three (3) full time staff, seasonal contractors, and the partial staff time of several employees to administer the pilot program.

(b) On a continuing basis: The KDA anticipates that the growing market demand for the crop may necessitate additional staff and resources in the future.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funds to administer will come from the fees created by this administrative regulation, as well as the KDA 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: This administrative regulation creates new fees. The KDA will evaluate after a period of time to determine if fee amounts will cover expenses of administration of the program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are directly established.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 U.S.C. 5940

2. State compliance standards. KRS 260.850-260.869

3. Minimum or uniform standards contained in the federal mandate. 7 U.S.C. 5940. establish requirements for industrial hemp pilot programs. This administrative regulation establishes the requirements for participation in Kentucky.

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? The Kentucky Department of Agriculture for the administration of the pilot program, plus Kentucky State Police, University of Kentucky Division of Regulatory Services, and local law enforcement.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 260.850-260.869 and 7 U.S.C. 5940.

(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 KDA cannot estimate the costs of other agencies, but would reasonably guess that marginal costs increases may be anticipated due to program popularity.

(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 KDA estimates revenue of \$250,000 at this time. Revenue for UK DRS will be approximately 85 dollars per test sample submitted. We estimate no revenue for law enforcement agencies.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The KDA cannot estimate this amount as it is based on number of applicants and growing addresses.

(c) How much will it cost to administer this program for the first year? The KDA fully anticipates the revenue generated to cover only a fraction of the costs to administer the program.

(d) How much will it cost to administer this program for subsequent years? The KDA cannot estimate this amount as it is based on number of applicants and growing addresses.

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

Revenues (+/-): Perhaps \$250,000

Expenditures (+/-): Well in excess of \$250,000

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Repealer)

804 KAR 9:051. Repeal of 804 KAR 9:010, 804 KAR 9:040, and 804 KAR 9:050.

RELATES TO: KRS 241.060, 241.065, 243.240, 243.250

STATUTORY AUTHORITY: KRS 241.060(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate administrative regulations regarding matters over which the board has jurisdiction. KRS 241.060(2) authorizes the board to limit the number of licenses of each kind or class to be issued in this state or any political subdivision. This administrative regulation repeals 804 KAR 9:010, 804 KAR 9:040, and 804 KAR 9:050, which limit the number of available quota retail package licenses and quota retail drink licenses. By repealing these administrative regulations, quotas for licenses will exist only in counties containing a first class city and in those cities that voted to become wet pursuant to a local option election under KRS 242.1292.

Section 1. The following administrative regulations are hereby repealed:

- (1) 804 KAR 9:010, Quota retail license limits for counties;
- (2) 804 KAR 9:040, Quota retail package licenses; and
- (3) 804 KAR 9:050, Quota retail drink licenses.

CHRISTINE TROUT, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: December 14, 2017

FILED WITH LRC: December 14, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2018 at 10:00 a.m. Eastern Time at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by 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 January 31, 2018. 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: Stephen B. Humphress, General Counsel, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479, email Steve.Humphress@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen B. Humphress

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation repeals 804 KAR 9:010, 804 KAR 9:040, and 804 KAR 9:050.

(b) The necessity of this administrative regulation: The Board previously promulgated the subject regulations to create quotas (a limited number of licenses) for only two (2) types of licenses: quota retail package licenses and quota retail drink licenses. The number of licenses was limited based on the population of a given community. For the 40+ other existing license types administered by the Department, there is no similar limitation and economic factors have determined the number of businesses that a community can support to prevent the oversaturation of licensed alcohol businesses in a community. In some larger metropolitan areas, market competition has already reduced the number of competing businesses below existing available quotas so that quotas serve no purpose in those jurisdictions (e.g., Louisville). Since the 1980s, the legislature has enacted laws that allow many business types, like restaurants and hotels, to obtain nonquota drink licenses and the lack of quotas has not resulted in oversaturation. In sum, market competition and market forces serve to determine the number of licensed businesses that can survive in a given geographic area. This same rationale applies to the repeal of outdated retail quota package and drink licenses.

This administrative regulation repeals the existing quota regulations to allow broader market competition for businesses holding retail quota package and drink licenses in all Kentucky communities, excepting counties containing a first class city (Jefferson County, See KRS 241.065) and those cities that voted to become wet pursuant to a local option election under KRS 242.1292 (Ashland). It is anticipated that eliminating quotas may encourage entrepreneurship, foster creativity for new business models, and create jobs. The board believes that market forces rather than arbitrary quota limits should determine the number of businesses competing in a community.

The current quota system also creates a disparate treatment of the types of alcoholic beverages: distilled spirits, wine, and malt beverages. There are no quotas for the license types that authorize malt beverage package sales and malt beverage drink sales. Dissimilarly, there are quotas for the license types that authorize distilled spirits and wine package sales and distilled spirits and wine drink sales. Thus, elimination of the quota system accomplishes equitable treatment of all alcoholic beverage licensees.

The existing quota system burdens the department's limited licensing staff and resources. Although the state is becoming progressively more wet, the department's resources have not kept pace with increasing responsibilities. To meet its regulatory obligations, the department is taking steps to streamline processes and eliminate unnecessary administrative tasks. The quota system conflicts with these objectives because it creates an entirely separate licensing scheme for certain applicants, utilizes complicated processes for tracking and issuance, and requires additional tasks not needed for all other license types. Licensing staff must check yearly population figures against ratios to set quotas, maintain additional records of quota licenses, add or subtract quotas as the population fluctuates, place advertisements in newspapers for vacancies at considerable costs, request and receive economic impact studies from competing quota license candidates, and answer many public calls about the quota application process. The selection process for quota licenses takes several months. Newly wet communities are often anxious for these new businesses to open immediately. Elimination of the quota system will streamline and simplify department licensing processes and eliminate unnecessary administrative tasks for prompt issuance of all licenses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations, and KRS 241.060(2) allows the board to use its discretion to determine whether any limitations need to be placed on the number or type of licenses issued in a territory. The applicable legal jurisprudence recognizes that the board may increase the number of quota licenses even though it may adversely affect existing licensees' competitive position since it is a normal business risk that they assume. See *Lexington Retail Beverage Dealers Ass'n v. Department of Alcoholic Beverage Control Bd.*, 303 S.W.2d 268, 270 (Ky. 1957).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of these administrative regulations will eliminate unnecessary burdens to commerce and market entry by removing the ratio-determined number of quota licenses available in a community. By doing so, the marketplace and competition will determine how many licenses that a community can support. Removing quotas for these license types will increase the efficiency of the licensing staff, whose duties would no longer include: (1) checking population figures to set ratios; (2) adding or subtracting quotas as the population fluctuates; (3) placing advertisements in newspapers; (4) adhering to a more complicated licensing process only applicable to quota license applications; and (5) fielding numerous questions from the public, the answers to which often serve only to confuse the matter. It will also ease the burden on the local alcoholic beverage control administrators, since they will no longer have to consult the department to determine how many licenses they may issue. Finally, it will allow many businesses the opportunity to compete since artificial market barriers will no longer exist.

(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 this administrative regulation. Local governments, current quota licensees, and prospective applicants for quota licenses are also 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. Although regulated entities will not have to take any actions to comply with the repeal of these regulations, current licensees who purchased quota licenses from others in the past will not be able to sell and transfer those licenses. The applicable legal jurisprudence recognizes that current licensees have no right to be free from competition and that they assume the normal business risk that the board may increase the number of licenses which adversely affects their competitive position. See *Lexington Retail Beverage Dealers Ass'n v. Department of Alcoholic Beverage Control Bd.*, 303 S.W.2d 268, 270 (Ky. 1957).

(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 these administrative regulations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The department will benefit from increased licensing staff efficiency and local governments' alcoholic beverage control administrators will benefit from a lightened work responsibility when they no longer have to consult with the department to determine how many licenses are available. Finally, this repeal will open the marketplace to competition and allow more businesses and new business models to operate. Increased business will result in additional licensing fees to the department as well as local governments and will offer more shopping choices and competitive prices for the consumer.

(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 these administrative regulations.

(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 these administrative regulations.

(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; however, the department and local governments may see an increase in the number of fees generated from additional license applicants.

(9) TIERING: Is tiering applied? No tiering is applied because this regulation repeals earlier regulations 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 and local governments are impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060(1) authorizes the board to promulgate administrative regulations. KRS 241.060(2) allows the board to use its discretion to determine whether any limitations need to be placed on the number or type of licenses issued in a territory.

(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

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unknown how much revenue may be generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is unknown how much revenue may be generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? There are no costs to repeal these administrative regulations.

(d) How much will it cost to administer this program for subsequent years? There are no costs to repeal these administrative 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: It is unknown how many additional quota license applicant fees the department and local governments may receive as a result of removing the quota ratio.

PUBLIC PROTECTION CABINET Department of Insurance Commissioner's Office (Repealer)

806 KAR 20:021. Repeal of 806 KAR 20:020.

RELATES TO: KRS 304.12-020, 304.20-040

STATUTORY AUTHORITY: KRS 13A.310, 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to promulgate regulations to aid in the effectuation of any provision of the Insurance Code, as defined in KRS 304.1-010. KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. This administrative regulation repeals 806 KAR 20:020, Cancellation and nonrenewal of automobile liability insurance policies, because the administrative regulation restates statutory provisions included within KRS 304.20-040 and includes duplicative sections of 806 KAR 20:010 now combined to achieve regulatory efficiency.

Section 1. 806 KAR 20:020, Cancellation and nonrenewal of automobile liability insurance policies, is hereby repealed.

NANCY G. ATKINS, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: December 15, 2017

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2018 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 January 18, 2018, 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 January 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the pro-posed 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 administrative regulation repeals 806 KAR 20:020.

(b) The necessity of this administrative regulation: This administrative regulation repeals 806 KAR 20:020, cancellation and nonrenewal of automobile liability insurance policies, because the administrative regulation restates statutory provisions included within KRS 304.20-040 and includes duplicative sections of 806 KAR 20:010 which have been combined to achieve regulatory efficiency.

(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 one (1) duplicative administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals one (1) administrative regulation that is no longer necessary due to the consolidation with another related 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: This administrative regulation is a repealer.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is a repealer.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is a repealer.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will not have a direct impact on insurers or other regulated entities as it maintains the statutory requirements and deletes duplicative regulatory provisions.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: 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): Individuals and entities will be able to refer to one regulation for the requirements of all declinations, terminations, and non-renewals related to property and casualty insurance policies.

(5) Provide an estimate of how much it will cost 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 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 regulation is applied equally to regulated entities subject to KRS 304.20-300 and 304.20-040.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The 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 provides the commissioner with authority to promulgate administrative regulations necessary for the administration of statutory requirements.

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 for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? The Department does not anticipate any cost to administer the repeal of these regulations.

(d) How much will it cost to administer this program for subsequent years? The Department does not anticipate any cost to administer 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 (+/-): No impact
Expenditures (+/-): No impact
Other Explanation: None

ENERGY AND ENVIRONMENT CABINET
Public Service Commission
(Repealer)

807 KAR 5:081. Repeal of 807 KAR 5:023 and 807 KAR 5:031.

RELATES TO: KRS Chapter 278, 49 C.F.R. Part 199, 49 U.S.C. 1674

STATUTORY AUTHORITY: KRS 278.010(3)(b), 278.040(3), 278.110, 278.280(2), 49 C.F.R. Part 199, 49 U.S.C. 1674

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) provides for the repeal of 807 KAR 5:023 and 807 KAR 5:031. These administrative regulations are being repealed as a result of the Governor's Red Tape Reduction Initiative. 807 KAR 5:023 is being repealed in order to incorporate the federal requirement for drug testing of employees of operators of natural gas facilities found in 49 C.F.R. into 807 KAR 5:027. 807 KAR 5:031 is being repealed due to the enactment of the Natural Gas Wellhead Decontrol Act of 1989, which eliminated the need for gas well determinations.

Section 1. The following administrative regulations are hereby repealed:

- (1) 807 KAR 5:023, Control of drug use in gas operations; and
- (2) 807 KAR 5:031, Gas well determinations.

This is to certify that the Public Service Commission Chairman has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 278.040(3).

GWEN PINSON, Executive Director

MICHAEL J. SCHMITT, Chairman

APPROVED BY AGENCY: November 28, 2017

FILED WITH LRC: November 29, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on these administrative regulations shall be held on January 24, 2018, at 2:00 p.m. Eastern Standard Time at the Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. 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 January 31, 2018. 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: Jason Whisman, Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3940, fax (502) 564-7279, email john.park@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jason Whisman

(1) Provide a brief summary of:

(a) What this administrative regulation does: Repeals redundant state regulations that mirror federal regulations controlling drug usage at natural gas utility operations and repeals a state regulation governing gas well determinations in accordance with the Natural Gas Policy Act of 1978.

(b) The necessity of this administrative regulation: Eliminates a duplicative state regulation to that of a federal regulation already enforced by the Commission and eliminates an obsolete regulation that is no longer needed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Repeal of 807 KAR 5:023 and 5:031 conforms to KRS 278.040 which allows the Kentucky Public Service Commission to adopt regulations pertaining to the utility and consumer protection within the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Eliminates redundancy of federal and state regulations and clarifies requirements for natural gas utilities.

(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: Eliminates federal and state regulation redundancy and clarifies service requirements for natural gas utilities.

(b) The necessity of the amendment to this administrative regulation: Eliminates federal and state regulation redundancy and clarifies service requirements for natural gas utilities.

(c) How the amendment conforms to the content of the authorizing statutes: The Kentucky Public Service Commission has the authority under KRS 278.040 to adopt regulations pertaining to the utility and consumer protection within the Commonwealth.

(d) How the amendment will assist in the effective administration of the statutes: Eliminates redundancy and clarifies service requirements for natural gas utilities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 212 regulated natural gas utility operators within Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No impact beyond what is already required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Zero Dollars; no fiscal impact.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): One set of regulations referencing the federal requirements.

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

(a) Initially: Zero dollars; no fiscal impact.

(b) On a continuing basis: Zero dollars; no fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Annual Assessments paid by regulated utilities, pursuant to KRS 278.130, which are deposited into a special accounting structure of the General Fund per KRS 278.150(3) for the purposing of maintaining the commission.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied.

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 impact other than reducing regulation management to keep the Kentucky Public Service Commission regulations parallel with the federal regulations.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.040

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Zero dollars; no fiscal impact.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Zero dollars; no fiscal impact.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Zero Dollars; no fiscal impact.

(c) How much will it cost to administer this program for the first year? Zero dollars; no fiscal impact.

(d) How much will it cost to administer this program for subsequent years? Zero dollars; no fiscal impact.

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 Securities
(Repealer)

808 KAR 10:082. Repeal of 808 KAR 10:080 and 808 KAR 10:310.

RELATES TO: KRS 292.370, 292.390(1)(f), KRS 292.410(1)(q), KRS 292.330(4)(b), 15 U.S.C. 78o(i)(3).

STATUTORY AUTHORITY: KRS 292.500(3).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to repeal any administrative regulation necessary to carry out the provisions and intent of KRS Chapter 292. This administrative regulation repeals 808 KAR 10:080 and 808 KAR 10:310, which are outdated and no longer necessary for regulatory supervision of the securities industry.

Section 1. The following administrative regulations are repealed:

(1) 808 KAR 10:080, Guidelines for issuers; and

(2) 808 KAR 10:310, Broker-dealer agent de minimis rules.

CHARLES A. VICE, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: December 13, 2017

FILED WITH LRC: December 13, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2018, at 1:00 p.m. Eastern Time 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., January 31, 2018. 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 P. 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.Reg@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 808 KAR 10:080 and 808 KAR 10:310, which are unnecessary and obsolete regulations.

(b) The necessity of this administrative regulation: This regulation is necessary because 808 KAR 10:080 and 808 KAR 10:310 are outdated and no longer necessary for the regulatory supervision of the securities industry. 808 KAR 10:080 is unnecessary because there has not been a request for a promotional company registration in over 10 years, and alternative registration options are available for promotional companies. 808 KAR 10:310 is unnecessary and redundant because it adopts federal rules where the federal law already preempts any state rules on the topic of de minimis rules for broker-dealer agents.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 292.500(3) provides that the commissioner may repeal any administrative regulation to carry out the provisions and intent of KRS Chapter 292. Due to the

availability of other registration options for promotional companies and the lack of registration requests from these entities, and because federal law establishes the de minimis rules for broker-dealer agents, these regulations are no longer necessary for the regulatory supervision of the industry.

(d) How this administrative regulation currently assists or will assist in the effective administrative of the statutes: This regulation will assist in the administration of KRS Chapter 292 by repealing regulations that are outdated and no longer necessary for the regulatory supervision of the industry.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is a repealer.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is a repealer.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is a repealer.

(d) How the amendment will assist in the effective administrative of the statutes: This administrative regulation is a repealer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of August 16, 2017, there were 125,320 registered broker-dealer agents in Kentucky who will benefit from the repeal of 808 KAR 10:310, which will clarify and simplify regulatory requirements. In addition, the repeal of 808 KAR 10:080 will clarify the statutory and federal exemptions that are already in place for securities professionals.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation is a repealer that will not require compliance from any regulated entity.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation is a repealer.

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

(a) Initially: There will be no initial cost to implement this regulation.

(b) On a continuing basis: There will be no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation: No source of funding will be 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 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 does not establish or increase any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not applied because this regulation will apply to similarly situated entities in an equal manner.

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 KRS 292.500(3) and 292.410(1)(q).

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 repealer will not generate revenue for state or local government 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 repealer will not generate revenue for state or local government for subsequent years.

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

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

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

Revenues (+/-): No impact

Expenditures (+/-): No impact

Other Explanation: None

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Human Resource Management

(New Administrative Regulation)

900 KAR 1:009. Employee Access to Federal Tax Information (FTI).

RELATES TO: KRS 18A.095, 194A.005, 194A.062, 335B.010, 335B.020, 26 C.F.R. 301.6103(p)(7)-1, 26 U.S.C. 6103

STATUTORY AUTHORITY: KRS 194A.062(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.062(1) requires each employee of the cabinet, 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. KRS 194A.062(2) requires the cabinet to promulgate an administrative regulation to implement that requirement. This administrative regulation establishes requirements for fingerprint-based state and national criminal background checks for prospective and current employees, including contract staff whose job duties include access to or use of FTI.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 194A.005(1).

(2) "Disqualifying offense" means a conviction, plea of guilty, Alford plea, or plea of nolo contendere to any felony, misdemeanor during the preceding seven (7) years, or offense the nature of which indicates that the employee constitutes an unreasonable and immediate risk to the security of federal tax information, as determined by the cabinet.

(3) "Federal tax information" or "FTI" means federal tax returns and return information that may:

(a) Contain personally identifiable information; and

(b) Include information created by the recipient that is:

1. Derived from federal return or return information; and

2. Received directly from the Internal Revenue Service (IRS) or obtained through an authorized secondary source, which may include:

a. Social Security Administration (SSA);

- b. Federal Office of Child Support Enforcement (OCSE);
- c. Bureau of the Fiscal Service (BFS);
- d. Centers for Medicare and Medicaid Services (CMS); or
- e. Another entity acting on behalf of the IRS.

(4) "Rap back service" means a notification program in which the cabinet or responsible agency, upon approval to participate in the program, will be informed if an individual who has undergone a fingerprint-based criminal background check in accordance with the requirements of this administrative regulation, and whose fingerprints are retained by the Department of Kentucky State Police or the Federal Bureau of Investigation, is subsequently arrested.

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

Section 2. Requirement for Criminal Background Checks. (1) As a condition of initial application for employment or continued employment either directly or by contract in a position for which the job duties include access to or use of FTI, the cabinet or responsible agency shall require a prospective or current employee, including contract staff, to submit to a fingerprint-based state and national criminal background check:

(a) After the individual is offered a job but before he or she begins working; and

(b) At least one (1) time during each ten (10) year period for a current employee or contract staff.

(2) The responsible agency that requests a fingerprint-based state and national criminal background check on behalf of a prospective or current employee shall incur all fees included in the actual cost of each background check requested, including the rap back service.

(3) The cabinet or responsible agency shall not employ directly or by contract an individual in a position for which the job duties include access to or use of FTI if the individual:

(a) Refuses to consent to a fingerprint-based state and national criminal background check; or

(b) Is found to have a disqualifying offense.

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

Section 3. Disqualification for Other Criminal Offenses or Factors. The cabinet or responsible agency shall not be obligated to employ or offer employment to an individual with a criminal offense not specifically listed in Section 1(2) of this administrative regulation or other factor that bears upon the fitness of the individual to work in a position for which the job duties include access to or use of FTI.

Section 4. Challenges to Criminal History Record Information. An individual subject to a criminal background check required by KRS 194A.062(1) 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 5. Rehabilitation Review. (1) A prospective or current cabinet employee found to have a disqualifying offense upon completion of the criminal background check shall be eligible for consideration of rehabilitation under an independent review process.

(2) A prospective or current cabinet employee may submit a written request for a rehabilitation review to the Office of Human Resource Management no later than fourteen (14) calendar days from the date of notice of a disqualifying offense issued pursuant to Section 2(4) of this administrative regulation.

(3) A current cabinet employee who requests a rehabilitation review may be retained on staff if the employee is assigned duties that do not include access to or use of FTI.

(4) The request for a rehabilitation 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;

4. Evidence that the individual has pursued or achieved rehabilitation with regard to the disqualifying offense; and

5. Any other circumstances surrounding the offense;

(b) Official documentation showing that all fines, including court-imposed fines 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.

(5) A rehabilitation review shall be conducted by a committee of three (3) employees of the Office of Human Resource Management.

(6) The committee shall consider the information required under subsection (4) of this section, and shall also consider mitigating circumstances including:

(a) The amount of time that has elapsed since the disqualifying offense;

(b) The lack of a relationship between the disqualifying offense and the:

- 1. Position for which the prospective employee has applied; or
- 2. Cabinet employee's current position; and

(c) Evidence that the prospective or current cabinet employee has pursued or achieved rehabilitation with regard to the disqualifying offense.

(7) No later than thirty (30) calendar days from receipt of the written request for the rehabilitation review, the Office of Human Resource Management shall send the committee's determination on the rehabilitation waiver to the prospective or current employee.

(8) The prospective or current employee may appeal the results of a rehabilitation review to the Personnel Board in accordance with KRS 18A.095.

Section 6. Pardons and Expungement. An applicant or current employee who has received a pardon for a disqualifying offense or has had the record expunged may be employed in a position with job duties that include access to or use of FTI.

J. ALAN SISK, Executive Director

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: December 12, 2017

FILED WITH LRC: December 13, 2017 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2018, 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 January 12, 2018, 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 January 31, 2018. 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: 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 requirements for fingerprint-based state and national criminal background checks for prospective and current cabinet employees including contract staff whose job duties include access to or use of Federal Tax Information (FTI).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the fingerprint-based background check requirement established by IRS Publication 1075 (Rev. 11-2016) and HB 262 from the 2017 legislative session.

(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 requirements for fingerprint-based state and national criminal background checks for prospective and current cabinet employees including contract staff whose job duties include access to or use of FTI.

(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 requirements for fingerprint-based state and national criminal background checks for prospective and current cabinet employees including contract staff whose job duties include access to or use of FTI.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects prospective and current cabinet employees including contract staff whose job duties include access to or use of FTI and are therefore subject to fingerprint-based state and national background checks in accordance with IRS Publication 1075 (Rev. 11-2016) and KRS 194A.062.

(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: Prospective and current cabinet employees including contract staff will be subject to fingerprint-based state and national background checks in accordance with the IRS Publication 1075 (Rev. 11-201) and KRS 194A.062.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cabinet will absorb the cost of the fingerprint-based state and national background checks required by IRS Publication 1075 and KRS 194A.062.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Determining the suitability of individuals who require access to FTI is a key factor in ensuring adequate information security. Moreover, this administrative regulation ensures the Cabinet's compliance with current state and

federal requirements governing the security of FTI.

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

(a) Initially: The cabinet estimates approximately 3,000 staff will be subject to fingerprint-based state and national criminal background checks initially, resulting in approximately \$186,000 in costs to the cabinet.

(b) On a continuing basis: Current staff subject to fingerprint-based state and national criminal background checks in accordance with this administrative regulation must submit to a new fingerprint check at least once every ten years as well as new staff offered a job in a position with access to or use of FTI. Cabinet expenditures on a continuing basis are indeterminable, but anticipated to be less than the costs incurred during the first year of implementation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation is from general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The cabinet will absorb costs associated with the required fingerprint checks.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation will 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 prospective and current cabinet employees including contract staff whose job duties include access to or use of FTI and are therefore subject to fingerprint-based state and national background checks in accordance with IRS Publication 1075 (Rev. 11-2016) and KRS 194A.062.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.062

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? Because the Department of Kentucky State Police (KSP) charges \$25 for a criminal background check, including rap back, and approximately 3,000 cabinet staff and contractors are expected to submit to fingerprint checks during the first year, this administrative regulation is expected to generate approximately \$75,000 in revenue for KSP initially.

(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 volume of fingerprint checks facilitated in accordance with this administrative regulation is indeterminable during subsequent years. However, the revenue generated for KSP on an ongoing basis is expected to decrease.

(c) How much will it cost to administer this program for the first year? Approximately \$186,000

(d) How much will it cost to administer this program for subsequent years? Cabinet expenditures on a continuing basis are indeterminable, but anticipated to be less than the costs incurred during the first year of implementation.

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. IRS Publication 1075 (Rev. 11-2016), 26 C.F.R. 301.6103(p)(7)-1, 26 U.S.C. 6103
2. State compliance standards. KRS 194A.062
3. Minimum or uniform standards contained in the federal mandate. IRS Publication 1075 (Rev. 11-2016) requires an FBI fingerprint check for any individual granted access to FTI. 26 C.F.R. 301.6103(p)(7)-1 allows the Internal Revenue Service (IRS) to terminate or suspend disclosure of returns and return information to any authorized recipient if the IRS determines that:
 - (1) The authorized recipient has allowed an unauthorized inspection or disclosure of returns or return information and the authorized recipient has not taken adequate corrective action to prevent the recurrence of an unauthorized inspection or disclosure; or
 - (2) The authorized recipient does not satisfactorily maintain the safeguards for protecting returns and return information, and has made no adequate plan to improve its system to maintain the safeguards satisfactorily. 26 U.S.C. 6103 pertains to the confidentiality and disclosure of returns and return information.
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 stricter requirements than those required by federal mandate.
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 Community Based Services
Division of Child Care
(New Administrative Regulation)

922 KAR 2:280. Background checks for child care staff members, reporting requirements, and appeals.

RELATES TO: KRS 17.165, 17.500-17.580, 199.011(14), 199.466, 199.894, 336.220, 620.050-620.120, 45 C.F.R. 98.43, 34 U.S.C. 20921, 42 U.S.C. 9857-9858q

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), 199.8965(8), 199.8982(1)(f), 199.8994(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, qualify for the receipt of federal funds, and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its program. KRS 199.896(2), 199.8982(1)(f), and 199.8994(6) authorize the cabinet to promulgate administrative regulations pertaining to standards of a child-care center, family child-care home, and a child care provider that receives a child care subsidy administered by the cabinet, including criminal convictions that impact the safety and security of children in care. KRS 199.8965(8) requires the cabinet to promulgate an administrative regulation necessary to implement child care staff member background checks in accordance with 42 U.S.C. 9858f and implementing federal rule. This administrative regulation establishes background check requirements for child care staff members, reporting requirements, and appeals.

Section 1. Definitions. (1) "Address check" means a cabinet search of the Kentucky or National Sex Offender Registry to determine if a person's residence is a known address of a registered sex offender.

(2) "Cabinet" is defined by KRS 199.894(1).

- (3) "Child-care center" is defined by KRS 199.894(3).
- (4) "Child care provider" is defined by 45 C.F.R. 98.43(a)(2)(i).
- (5) "Child care staff member" is defined by 45 C.F.R. 98.43(a)(2)(ii).
- (6) "Family child-care home" is defined by KRS 199.894(5).
- (7) "Kentucky National Background Check Program" or "NBCCP" means a background screening program administered by the cabinet in accordance with 906 KAR 1:190.
- (8) "Rap back system" is defined by KRS 199.011(13).
- (9) "Type II child-care center" means the primary residence of the licensee in which child care is regularly provided for at least seven (7), but not more than twelve (12), children including children related to the licensee.

Section 2. Applicability and Exceptions. This administrative regulation shall apply to a child care staff member age eighteen (18) or older, including:

- (1) An owner, operator, or employee of a child care provider;
- (2) A child-care center licensee or director;
- (3) An adult household member of a Type II child-care center, family child-care home, or provider registered in accordance with 922 KAR 2:180;
- (4) An employee or volunteer who is present during the time a child is receiving care;
- (5) Any person with supervisory or disciplinary control over a child in care; and
- (6) Any person having unsupervised contact with a child in care.

Section 3. Implementation and Enforcement. (1) A person who is a child care staff member prior to January 1, 2018, shall submit to and complete background checks in accordance with this administrative regulation no later than September 30, 2018.

(2) A child care staff member hired on or after January 1, 2018, shall:

- (a) Have completed the background checks required in accordance with this administrative regulation and been found to have no disqualifying offense prior to becoming a child care staff member; or
- (b)1. Have submitted to the background checks required in accordance with this administrative regulation;
2. Not be left unsupervised with a child in care pending the completion of the background checks in accordance with this administrative regulation; and
3. Be dismissed or relocated from the residence if the person is found to have a disqualifying background check result.

(3) To assure timely processing of background checks and organize background checks of existing child care staff members, the cabinet shall prioritize the processing of background checks for an individual who is a:

- (a) New hire on or after January 1, 2018; or
- (b) Child care staff member before January 1, 2018, using the following schedule:

Background Check Submission and Fingerprinting Month	Renewal Month of the Child Care Provider's License, Certification, or Registration
January or February 2018	April or May
March 2018	June or July
April 2018	August
May 2018	September or October
June 2018	November or December
July or August 2018	January or February
September 2018	March

(4) A current or prospective child care staff member shall be subject to background checks in accordance with Sections 4 and 5 of this administrative regulation at intervals pursuant to 45 C.F.R. 98.43(d).

(5) This administrative regulation shall govern a pilot of child care staff member's background check that shall:

- (a) Commence in December 2018; and
- (b) Include volunteer child care providers representing differing provider types and geographical areas of the state.

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Section 4. Procedures and Payments. (1) To initiate the process for obtaining background checks on a prospective child care staff member, the child care provider shall:

(a) Request that the prospective child care staff member provide a copy of his or her driver's license or other government-issued photo identification and verify that the photograph clearly matches the prospective child care staff member;

(b) Request that the prospective child care staff member complete and sign the:

1. DCC-500, Applicant Child Care Staff Member Waiver Agreement and Statement; and

2. DCC-501, Disclosures to Be Provided to and Signed by the Applicant Child Care Staff Member; and

(c) Log on to the NBCP portal and enter the prospective child care staff member's demographic information for a check of the:

1. Child abuse and neglect central registry pursuant to 922 KAR 1:470;

2. National Crime Information Center's National Sex Offender Registry in accordance with 34 U.S.C. 20921; and

3. Sex Offender Registry established in accordance with KRS 17.500 through 17.580.

(2)(a) In accordance with KRS 199.8965(8), 336.220, and 45 C.F.R. 98.43(f), a child care provider shall submit payment via credit or debit card for a state and national fingerprint-supported criminal history background check performed by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI), including the rap back system. If a child care staff member's rap back has not expired, a new fingerprint check shall not be needed.

(b) A child care provider enrolled in the Kentucky NBCP shall pay a fee not to exceed twenty-five (25) dollars in addition to any fees charged in accordance with paragraph (a) of this subsection for the actual cost of processing a fingerprint-supported state and national criminal background check and for providing rap back services.

(3) To the extent funds are available, the:

(a) Race to the Top-Early Learning Challenge Grant in accordance with Pub. L. 112-10 shall cover the cost of background checks performed in accordance with subsection (1) of this section until close of the grant or exhaustion of grant funds, whichever occurs first; or

(b) Cabinet shall absorb, in whole or in part, fees using funding in accordance with 42 U.S.C. 9857-9858q.

(4)(a) Upon submission of payment in accordance with subsections (2) and (3) of this section, the child care provider shall print a copy of the DCC-504, Applicant Child Care Staff Member Live Scan Fingerprinting Form, from the NBCP portal and provide the form to the child care staff member.

(b) The child care staff member shall:

1. Have no more than ninety (90) calendar days from the date of payment pursuant to subsections (2) and (3) of this section to submit the child care staff member's fingerprints at an authorized collection site for NBCP; and

2. Present the DCC-504 and driver's license or other government-issued photo identification to the designated agent at an authorized collection site prior to fingerprint submission.

(5) Upon completion of the background checks in accordance with this section and Section 5 of this administrative regulation, the cabinet:

(a) Shall provide notice to the child care provider in accordance with 45 C.F.R. 98.43(e) that the prospective child care staff member is:

1. Eligible for hire; or

2. Not eligible for hire if the prospective child care staff member is found by the cabinet to have a disqualifying background check result in accordance with Section 6 of this administrative regulation;

(b) May release any record of state criminal history found in the files of the Kentucky centralized criminal history record information system to the child care provider or another entity provided on the waiver in accordance with subsection (1)(b) of this section; and

(c) Shall, upon receipt of written request from an applicant, send a copy of a KSP or FBI criminal history report to the

prospective child care staff member by certified mail, restricted delivery service. The prospective child care staff member shall show proof of identity and sign to receive his or her criminal history report from the local post office.

(6) A child care provider shall not be obligated to employ or offer employment to an individual who has been found by the cabinet to be eligible for hire pursuant to subsection (5)(a) of this section.

(7) A child care staff member may submit a request for a protection and permanency record in accordance with 922 KAR 1:510.

Section 5. Checks of Other States. (1) In accordance with 45 C.F.R. 98.43(b)(3), a prospective child care staff member who resides in or has resided in another state within the last five (5) years shall:

(a) Request from each state of current or prior residency, in accordance with the state's laws, policies, and procedures, with a courtesy notice to the cabinet:

1. An in-state criminal records check by:

a. Means of fingerprints for the state of residence; or

b. Any means accepted by a state of prior residency;

2. A check of the state's sex offender registry or repository; and

3. A check of the state-based child abuse and neglect registry and database; and

(b) Direct results of the checks required in paragraph (a) of this subsection to the Department for Community Based Services, Division of Child Care, 275 East Main Street, 3C-F, Frankfort, Kentucky 40601.

(2) If the prospective child care staff member's current or prior state of residency participates in the FBI's National Fingerprint File Program, a prospective child care staff member shall be exempt from the requirements of subsection (1)(a)1. of this section.

(3) In accordance with KRS 336.220, a child care provider shall pay any fee charged by another state for a background check as permitted pursuant to 45 C.F.R. 98.43(f) for a prospective child care staff member.

(4) If another state fails to respond to a check submitted in accordance with subsection (1) of this section within thirty (30) calendar days from the date of the background check's request as verified by the child care staff member, the cabinet shall:

(a) Process a child care staff member's background checks and issue notice to the child care provider in accordance with Section 4(5) of this administrative regulation to ensure compliance with 45 C.F.R. 98.43(e); and

(b) Send notice in accordance with Section 4(5) of this administrative regulation if:

1. Another state provides requested background check results at a later date; and

2. A disqualifying background check result is identified.

(5) A child abuse and neglect central registry check in accordance with 922 KAR 1:470 may be requested by a:

(a) Parent or legal guardian in accordance with KRS 199.466; or

(b) Child care staff member in another state.

Section 6. Disqualifying Background Check Results. (1) Unless a rehabilitative review pursuant to Section 9 of the administrative regulation determines the individual is eligible to be hired, an individual shall be ineligible to:

(a) Be hired or otherwise serve as a child care staff member if the individual:

1. Meets a criterion specified in 45 C.F.R. 98.43(c);

2. Has been convicted of, or has entered an Alford plea, a plea of guilty, or a plea of nolo contendere to, a:

a. Drug-related felony, and five (5) years has not elapsed since the person was fully discharged from imprisonment, probation, or parole;

b. Sex or violent crime pursuant to KRS 17.165; or

c. A felony offense under:

(i) KRS Chapter 506, inchoate offenses;

(ii) KRS Chapter 511, burglary and related offenses;

- (iii) KRS Chapter 515, robbery;
- (iv) KRS Chapter 520, escape and other offense related to custody;
- (v) KRS Chapter 525, riot, disorderly conduct, and related offenses;
- (vi) KRS Chapter 527, offense relating to firearms and weapons;
- (vii) KRS Chapter 529, prostitution offenses; or
- (viii) KRS Chapter 530, family offenses;

3. Is listed on the:

- a. Central registry established in accordance with 922 KAR 1:470; or
 - b. Another state's state-based child abuse and neglect registry or database;
4. Has been convicted of, or has entered an Alford plea, plea of guilty, or a plea of nolo contendere to, an offense under a criminal statute of the United States or of another state similar to an offense specified in this paragraph;
5. Has an open warrant;
6. Has a criminal background check result indicating that the individual should be approached with caution by authorities; or
7. Has a pending charge for a criminal offense specified in this paragraph; or

(b) Serve as a child-care center's applicant, licensee, or director if the individual has been convicted of, or has entered an Alford plea, a plea of guilty, or a plea of nolo contendere to, a felony offense involving fraud, embezzlement, theft, or forgery.

(2) An individual who has received a pardon for a disqualifying offense, has had the record expunged, or has evidenced dismissal of a warrant or disqualifying charge may serve as a child care staff member.

(3) Unless there is a pending informal review, rehabilitative review, or appeal in accordance with Section 7 of this administrative regulation, a child care provider shall be ineligible for the Child Care Assistance Program and shall be subject to a cabinet action against the child care provider's license in accordance with 922 KAR 2:090, certification in accordance with 922 KAR 2:100, or registration in accordance with 922 KAR 2:180, if the child care provider:

(a) Employs a child care staff member who is ineligible for employment under subsections (1) and (2) of this section; or

(b) Is a registered child care provider, certified family child-care home, or Type II licensed child-care center and includes an adult household member who has a disqualifying background check result in accordance with subsections (1)(a) and (2) of this section.

Section 7. Notice of a Disqualifying Background Check Result and Appeals. (1) The cabinet shall notify each prospective or current child care staff member determined to have a disqualifying background check result in accordance with Section 6 of this administrative regulation.

(2) In addition to the cabinet's notification in accordance with subsection (1) of this section, a child care provider that receives notice from the cabinet that a prospective or current child care staff member has been determined to have a disqualifying background check result in accordance with Section 6 of this administrative regulation shall notify the child care staff member of the cabinet's determination within three (3) business days of receipt of the notice.

(3) Pursuant to 45 C.F.R. 98.43(e)(3), a prospective or current child care staff member who receives notice of having a disqualifying background check result in accordance with Section 6 of this administrative regulation may:

(a) Challenge the accuracy of the cabinet's determination by submitting a written request for informal review, including any information the individual wishes to be considered, to the Department for Community Based Services, Division of Child Care, 275 East Main Street, 3C-F, Frankfort, Kentucky 40621, within ten (10) calendar days of the date of notice in accordance with subsection (1) of this section; or

(b) Request a rehabilitative review pursuant to Section 9 of this administrative regulation.

(4) Upon completion of an informal review upon request

pursuant to subsection (3)(a) of this section, the cabinet shall provide written notice of the cabinet's decision to uphold or rescind the notice of disqualifying background check result to the prospective or current child care staff member.

(5) A prospective or current child care staff member may appeal the results of an informal review or a rehabilitative review pursuant to Section 9 of this administrative regulation and 45 C.F.R. 98.43(e)(3), in accordance with 922 KAR 2:260.

(6) If a prospective or current child care staff member wishes to challenge the accuracy of a criminal background check, the cabinet shall refer the individual to the appropriate state or federal law enforcement agency.

(7) If a prospective or current child care staff member challenges the finding that he or she is the true subject of the results from a registry or repository check, the cabinet shall refer the individual to the agency responsible for maintaining the registry or repository.

Section 8. Termination or Relocation of a Child Care Staff Member upon Receipt of Notice of a Disqualifying Background Check Result. (1) If a prospective or current child care staff member has not requested an informal review or a rehabilitative review in accordance with Section 9 of this administrative regulation, the child care provider shall:

(a)1. Terminate the child care staff member no later than ten (10) calendar days after receipt of notice of the cabinet's determination, including the disqualifying background check result; or

2. Change residence of an adult household member in the child care provider's home no later than fifteen (15) calendar days after receipt of notice of the cabinet's determination, including disqualifying background check result; and

(b) Use the NBCP to provide electronic notification to the cabinet affirming the child care staff member's dismissal or household member's change in residence within three (3) business days of termination or residence change.

(2)(a) If a prospective or current child care staff member requests an informal review or a rehabilitative review in accordance with Section 9 of this administrative regulation, the child care provider:

1. May retain the child care staff member pending resolution of the informal review or rehabilitative review; and

2. Shall ensure that the child care staff member:

a. Is subject to direct, onsite supervision; or

b. Does not have duties or proximity that involves one-on-one contact with a child in care.

(b) A child care provider shall terminate the child care staff member or relocate the adult household member if the:

1. Informal review upholds the cabinet's determination of a disqualifying background check result, or the rehabilitative review committee does not grant a waiver; and

2. Child care staff member does not request an administrative hearing in accordance with Section 7(5) of this administrative regulation, in which the child care provider shall terminate the child care staff member or relocate the adult household member no later than the thirty-first calendar day following written notice of the results of the informal review or rehabilitative review.

(c) If a child care staff member requests an administrative hearing in accordance with Section 7(5) of this administrative regulation to appeal the decision from an informal review or rehabilitative review, the child care provider:

1. May retain the child care staff member pending the appeal's resolution if the child care staff member:

a. Remains subject to direct, onsite supervision; or

b. Does not have duties or proximity that involves one-on-one contact with a child in care; and

2. Shall terminate the child care staff member or relocate the adult household member no later than the thirty-first calendar day from the issuance of the final order if the child care staff member or adult household member does not prevail.

(d) Using the NBCP, the child care provider shall provide electronic notification to the cabinet affirming the individual's dismissal or relocation within three (3) business days of the

termination or relocation.

Section 9. Rehabilitative Review. (1)(a) A prospective or current child care staff member found to have a disqualifying background check result shall be eligible for consideration of rehabilitation under an independent review process.

(b) Consideration of a disqualifying background check result under the rehabilitative review process described in this section shall not apply to:

1. A disqualifying felony offense that occurred less than ten (10) years prior to the date of the criminal background check;
2. Any disqualifying felony or misdemeanor offense related to abuse, neglect, or exploitation of a child;
3. Registration as a sex offender under federal law or under the law of any state;
4. A sex or violent crime as defined by KRS 17.165; or
5. A child abuse and neglect substantiated finding that:
 - a. Occurred less than five (5) years prior to the date of the registry check; or
 - b. Involved:
 - (i) Sex abuse or sex exploitation of a child;
 - (ii) A child fatality related to abuse or neglect;
 - (iii) A near fatality of a child related to abuse or neglect; or
 - (iv) The involuntary termination of parental rights in accordance with KRS 625.050 through 625.120.

(2)(a) A prospective or current child care staff member may submit a written request for a rehabilitative review to the cabinet no later than fourteen (14) calendar days from the date of the notice of the cabinet's determination issued pursuant to Section 4(5) or 7(4) of this administrative regulation regarding a determination of a disqualifying background check result.

(b) If a prospective or current child care staff member requests a rehabilitative review, the child care staff member:

1. May be retained by the child care provider pending the rehabilitative review; and
2. Shall be subject to restrictions and termination or relocation in accordance with Section 8 of this administrative regulation.

(3) The request for a rehabilitative review shall include the following information:

(a) A written explanation of each disqualifying background check result, including:

1. A description of the events related to the disqualifying background check result;
2. The number of years since the occurrence of the disqualifying background check result;
3. The age of the individual at the time of the disqualifying background check result; and
4. Any other circumstances surrounding the disqualifying background check result;

(b) Official documentation showing that all fines, including court-imposed fines 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;

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

(e) Evidence that the individual has pursued or achieved rehabilitation with regard to a disqualifying background check result.

(4) A rehabilitative review shall be conducted by a committee of three (3) employees of the cabinet, none of whom was responsible for determining that the individual has a disqualifying background check result.

(5) The committee shall consider the information required under subsection (3) of this section, and shall also consider mitigating circumstances including:

(a) The amount of time that has elapsed since the disqualifying background check result;

(b) The lack of a relationship between the disqualifying background check result and the position for which the individual has applied; and

(c) Evidence that the applicant has pursued or achieved rehabilitation with regard to the disqualifying background check result.

(6) No later than thirty (30) calendar days from receipt of the written request for the rehabilitative review, the cabinet shall send the committee's determination on the rehabilitation waiver to the prospective or current child care staff member.

(7) The decision of the committee shall be subject to appeal in accordance with Section 7(5) of this administrative regulation.

(8) A child care provider shall not be obligated to accept an individual who is granted a waiver pursuant to this section as a child care staff member.

Section 10. Transparency. The cabinet shall maintain information concerning the background check processes in accordance with this administrative regulation on its Web site in accordance with 45 C.F.R. 98.43(g).

Section 11. Status of Employment. (1) A child care provider shall maintain the employment or residential status of each child care staff member who has submitted to a fingerprint-based criminal background check by reporting the status using the NBCP web-based system.

(2) The cabinet shall inspect a child care provider to verify conformity with this administrative regulation.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-500, Applicant Child Care Staff Member Waiver Agreement and Statement", 12/2017;

(b) "DCC-501, Disclosures to Be Provided to and Signed by the Applicant Child Care Staff Member", 12/2017; and

(c) "DCC-504, Applicant Child Care Staff Member Live Scan Fingerprinting Form", 12/2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: December 12, 2017

FILED WITH LRC: December 14, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2018, 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 January 12, 2018, 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 January 31, 2018. 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: Elizabeth Caywood, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov, and Laura Begin

- (1) Provide a brief summary of:

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(a) What this administrative regulation does: This administrative regulation establishes background check requirements for child care staff members, reporting requirements, and appeals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish background check requirements for child care staff members, reporting requirements, and appeals.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of child care staff members' background checks, reporting requirements, and appeals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes through its establishment of child care staff member background checks, reporting requirements, and appeals. The emergency administrative regulation supports initiation of a pilot program and implementation of the new background check requirements in late 2017 and 2018, respectively, to ensure the state's compliance with the federally mandated deadline and children's health, safety, and welfare.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The department has projected upwards of 24,000 new and existing child care staff members will be subject to this administrative regulation in its first year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Child care providers will be required to submit anyone meeting the federal definition of "child care staff member" to background checks in accordance with this administrative regulation. Federal law and related federal waiver mandate the background checks be performed on new hires and existing child care staff members no later than September 30, 2018.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated entities will be required to absorb fees imposed by agencies for the provision of background checks. To the extent possible, the department plans to use its resources to absorb or offset costs for regulated entities, thereby ensuring that child care providers are paying the same or only slightly more than present day for more comprehensive background checks. In addition, the department has been successful in securing federal Race to the Top-Early Learning Challenge Grant funds to absorb all costs for providers through the exhaustion of those funds or the sunset of the grant, whichever is first. In addition, the rap back feature will help child care providers avoid costs if the child care staff member remains with the provider or within the child care provider community for five years.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will have access to more comprehensive background checks for child care staff members. The health, safety, and welfare of children served by regulated entities will be better preserved. The utilization of the Kentucky National Background Check Program is also consistent

with federal recommendations and is unique opportunity available in Kentucky due to a prior federal grant through the Centers for Medicare and Medicaid Services.

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

(a) Initially: The department has secured federal Race to the Top-Early Learning Challenge Grant funds to assist with initial implementation, projected to be \$1.5 million. If the state fails to adhere to the new federal mandate, the state risks being subject to corrective action and a minimal, initial federal penalty of no less than \$4.4 million of its Child Care and Development Fund award, which will increase in amount in subsequent years of noncompliance.

(b) On a continuing basis: After initial implementation, which will include checks of existing child care staff members, the department will absorb or offset costs associated with implementation of the federal mandate within its existing appropriations, including federal award, to the extent possible.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Initial implementation and enforcement of this administrative regulation will include the use of federal Race to the Top-Early Learning Challenge Grant funds. The Child Care and Development Fund Block Grant, state match, and maintenance of effort for the block grant, and limited agency funds will support the ongoing implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no 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: At this time, this administrative regulation does not directly establish any fees, but rather, passes along fees established by the agencies conducting the background checks, most often law enforcement. The cabinet has no control over the fees charged by law enforcement agencies. Per state law, law enforcement agencies and the cabinet cannot charge a child care provider more than the actual cost of processing the background check.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98.43, 42 U.S.C. 9857-9858q

(2) State compliance standards. KRS 194A.050(1), 199.896(2), 199.8965(8), 199.8982(1)(f), 199.8994(6)

(3) Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different responsibilities or requirements 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? The Cabinet for Health and Family Services will be impacted by this administrative regulation. Quasi-governmental agencies, local governments, and school districts that operate a licensed child-care center will be

impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.896(2), 199.8965(8), 199.8982(1)(f), 199.8994(6), 45 C.F.R. 98.43, 42 U.S.C. 9857-9858q

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no revenue in its first year. Fees passed along to regulated entities will be established by the agency conducting the background check and are not allowed to exceed the actual cost of performing the check.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenues in its subsequent years.

(c) How much will it cost to administer this program for the first year? This program is anticipated to cost upwards of \$1.5 million within its first year of implementation due to the federal requirement applying to new hires and existing child care staff members. The department has identified federal grant funds to cover most, if not all, these initial costs.

(d) How much will it cost to administer this program for subsequent years? Ongoing costs are unknown, but are projected to be much less than the possible \$4.4 million federal penalty that can be levied upon the state for the first year of noncompliance with the federal mandate. The department anticipates being able to absorb or offset costs within its existing state and federal awards. The enhanced safety measures afforded through the more comprehensive background checks will also ensure avoidance of costs that are associated with child maltreatment.

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

Revenues (+/-)

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of December 12, 2017

Call to Order and Roll Call

The December meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, December 12, 2017, at 10:00 a.m. in Room 154 of the Capitol Annex. Representative Upchurch, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the November 2017 meeting were approved.

Present were:

Members: Senators Perry Clark, Ernie Harris, Alice Forgy Kerr and Julie Raque Adams, and Representatives Jason Petrie, Tommy Turner 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; Jeremy Branham, Todd Renner; Department of Revenue; Steve Hart, Board of Pharmacy; Julie Campbell, Quincy Ward, Board of Hairdressers and Cosmetologists; Nathan Goldman, Board of Nursing; John Marcus Jones, Board of Alcohol and Drug Counselors; Steve Beam, Larry Clarke, John Hast, Gregory Johnson, Karen Waldrop, Department of Fish and Wildlife Resources; William Codell, Miranda Denney, Department of Juvenile Justice; Ann Dangelo, Godwin Onodu, Scott Shannon, Department of Transportation; Brooken Smith, Labor Cabinet; Jim Vicini, Division of Mine Safety; Nancy Atkins, Patrick O'Connor, Department of Insurance; Donna Little, Department of Medicaid; Elizabeth Caywood, Krista Quarles, Maribeth Schneber-Rhemrev; Department of Community Based Services; Ron Gagliardi, Jason Luparus, Bruce Mitchell, Michael Muller, John Sabbak, Doug Morgan.

The Administrative Regulation Review Subcommittee met on Tuesday, December 12, 2017, and submits this report:

Administrative Regulations Reviewed by the subcommittee:

DEPARTMENT OF STATE: Registry of Election Finance: Reports and Forms

32 KAR 1:045 & E. Election Finance Statement – State Executive Committee Building Fund. Emily Dennis, general counsel, represented the registry.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to revise the State Executive Committee – Building Fund Election Finance Statement form. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Income Tax; General Administration

103 KAR 15:050. Filing dates and extensions. Jeremy Branham, tax consultant, and Todd Renner, executive director, represented the department.

In response to questions by Co-Chair Harris, Mr. Renner stated that digital property included previously tangible media that was now digitized, such as music, books, movies, and video gaming. KRS 139.200 established that sales tax applied to digital property. Because sales tax was already being applied to digital property based on the statute, these administrative regulations were being updated to add digital property to the list of sales taxable items. There were no public comments received during the public comment period for these administrative regulations.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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.

A motion was made and seconded to amend Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Sales and Use Tax; Miscellaneous Retailer Occupations

103 KAR 27:180. Vending machines.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add statutory citations; and (2) to amend Sections 1, 2, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Sales and Use Tax; Miscellaneous Retail Transactions

103 KAR 28:051. Leases and rentals.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 5, 6, 9, and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Sales and Use Tax; General Exemptions

103 KAR 30:235. Sales to the federal government.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 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.

Sales and Use Tax; Administration and Accounting

103 KAR 31:030. Direct pay authorization.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4, 5, and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 31:102. Rebate for governmental public facility.

103 KAR 31:111. Sales and purchases for resale.

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 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.

103 KAR 31:170. Disaster area relief sales and use tax refunds.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:390 & E. Third-party logistics provider. Steve Hart, executive director, represented the board.

In response to questions by Co-Chair Harris, Mr. Hart stated that third-party logistics providers contracted with companies to

store legend and nonlegend pharmaceutical products without taking ownership of the products. Third-party logistics providers also shipped and delivered pharmaceutical products. Kentucky was home to the nation's largest third-party logistics provider, UPS, located in Louisville. This administrative regulation was being amended to comply with federal requirements and established licensure for third-party logistics providers for autonomy in shipping throughout the United States. Ninety (90) to ninety-five (95) percent of pharmaceuticals consumed on the east coast passed through Louisville before delivery.

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.

201 KAR 2:400 & E. Outsourcing facility.

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.

Board of Hairdressers and Cosmetologists

201 KAR 12:082 & E. Education requirements and school administration. Julie Campbell, board administrator, and Quincy Ward, executive advisor, represented the board.

In response to questions by Co-Chair Harris, Ms. Campbell stated that the board's authorizing statute was amended to reduce the minimum-required curriculum hours. This administrative regulation was being amended to comply with that statutory change. The board notified all education facilities of this change and did not receive any public comments. Kentucky previously had more minimum-required curriculum hours than many surrounding states, and this change would make Kentucky requirements more comparable, thus incentivizing students to come from other states.

A motion was made and seconded to approve the following amendments: (1) to amend Section 15 to establish what constitutes satisfactory proof of error for an amended report; (2) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to insert statutory citations; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3 through 5, 7, 8, 12 through 15, 17, 19, 20, 25, and 27 through 29 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 20:065. Professional standards for prescribing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone by APRNs for medication assisted treatment for opioid use disorder. Nathan Goldman, general counsel, represented the board.

In response to questions by Senator Clark, Mr. Goldman stated that this administrative regulation allowed APRNs to prescribe Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for opioid treatment if the APRN met federal standards to obtain a DEA waiver. Opinions differed as to the success of this type of treatment program.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO 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 Alcohol and Drug Counselors

201 KAR 35:040. Continuing education requirements. Marcus Jones, assistant attorney general, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 4, 5, 9, and 10 to comply with

the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 35:055. Temporary registration or certification.

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.

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. Gregory Johnson, commissioner, and Karen Waldrop, deputy commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 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.

301 KAR 2:081. Transportation and holding of live native wildlife.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Hunting and Fishing

301 KAR 3:022. License, tag, and permit fees. Ron Gagliardi, Commonwealth Chapter, Quail Forever and Long Run Sportsmen's Club, and Jason Lupardus, field manager, National Wild Turkey Federation and other conservation organizations, appeared in support of this administrative regulation.

Representative Turner proposed an amendment to reduce the fee for the senior or disabled combination hunting and fishing license for residents from the agency-proposed eighteen (18) dollars to twelve (12) dollars. Mr. Johnson stated that the department agreed to the amendment.

Mr. Lupardus stated that many sportsmen supported this administrative regulation.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 5 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend the fee for the senior or disabled combination hunting and fishing license for residents from the agency-proposed eighteen (18) dollars to twelve (12) dollars. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 3:120. Commercial nuisance wildlife control.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3, 6, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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. William Codell, attorney, and Miranda Denney, deputy commissioner, represented the department.

In response to questions by Representative Petrie, Mr. Codell stated that the primary change to this administrative regulation was to clarify that the out-of-home maximum provisions were determined at disposition, rather than after adjudication, for a youth committed to residential treatment with the department. The

change was based on Kentucky statutes, rather than a federal mandate. Previously this administrative regulation was silent as to if the out-of-home maximum was based on adjudication.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Motor Vehicle Licensing: Certification of Title

601 KAR 23:020. Military surplus vehicle. Ann D'Angelo, assistant general counsel, and Godwin Onodu, assistant director, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add statutory citations; and (2) to amend Sections 2 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Aviation: Airport Development

602 KAR 15:030. Fees for services and facilities of the Capitol City Airport.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to specify the "cost per square foot" to be used in calculating hangar fees; (2) to amend Sections 4 and 7 to require the airport to review rates and charges prior to the beginning of each fiscal year and compare with rates in effect at non state-owned airports in the geographical region; (3) to amend Sections 5 and 10 to correct web addresses; and (4) to amend Sections 3 and 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.

LABOR CABINET: Department of Workplace Standards: Division of Wages and Hours: Collective Bargaining and Arbitration

803 KAR 3:051. Repeal of 803 KAR 3:050. Brooken Smith, chief of staff, represented the division.

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. Jim Vicini, director, represented the division.

In response to a question by Co-Chair Harris, Mr. Vicini stated that most changes to these administrative regulations were technical name changes.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the TITLE; NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (3) to amend Section 2 and establish new Sections 3 and 4 to clarify required training topics to obtain a permit as an inexperienced underground or surface miner. Without objection, and with agreement of the agency, the amendments were approved.

805 KAR 7:030. Annual retraining.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the TITLE; NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (3) to amend Section 2 to establish annual retraining requirements for surface miners. Without objection, and with agreement of the agency, the amendments were approved.

805 KAR 7:040. Training of newly employed miners.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the TITLE; NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Section 1 to comply with the drafting and

formatting requirements of KRS Chapter 13A; and (3) to amend Section 1 and establish a new Section 2 to clarify mine-specific training requirements for new employed inexperienced and experienced miners. Without objection, and with agreement of the agency, the amendments were approved.

805 KAR 7:050. Training of miners for new work assignments.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the TITLE; 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.

805 KAR 7:060. Program approval.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the TITLE; 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.

Sanctions and Penalties

805 KAR 8:030. Criteria for the imposition and enforcement of sanctions against certified miners.

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.

805 KAR 8:040. Criteria for the imposition and enforcement of sanctions against owners and part-owners of licensed premises.

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.

805 KAR 8:050. Criteria for the imposition and enforcement of sanctions against noncertified personnel.

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 requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Insurance: Motor Vehicle Repairs (No-fault)

806 KAR 39:030. Kentucky No-Fault Form. Nancy Atkins, commissioner, and Patrick O'Connor, deputy commissioner, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 through 5 to comply with the drafting requirements of KRS Chapter 13A; (2) to amend Sections 2 and 3 to establish who shall execute the form for a minor under age eighteen (18) years of age; (3) to amend Sections 2 and 5 to clarify that the date of filing for a rejection shall be indicated by the department file stamp; and (4) to revise the Kentucky No-Fault Rejection Form. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services: Division of Policy and Operations: Payment and Services

907 KAR 3:005. Coverage of physicians' services. Donna Little, deputy executive director, Office of Legislative and Regulatory Affairs, represented the division.

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

A motion was made and seconded to approve the following amendments: to amend Section 12 to also allow supplemental payments for a medical school faculty physician at a state university school of medicine that is part of a university health care system. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Division of Family Support: Supplemental Nutrition Assistance Program

921 KAR 3:045. Issuance procedures. Elizabeth Caywood, executive advisor; Krista Quarles, branch manager; and Maribeth Schreiber – Rhemrev, director, represented the division.

A motion was made and seconded to approve the following amendment: to amend Section 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

921 KAR 3:090 & E. Simplified assistance for the elderly program or "SAFE".

OTHER BUSINESS

806 KAR 12:095. Unfair claims settlement practices for property and casualty insurance. Nancy Atkins, commissioner, and Patrick O'Connor, deputy commissioner, represented the department. Bruce Mitchell and Michael Muller, Covenant Roofing and Construction, and John Sabbak, Owens Corning, appeared in support of amending this administrative regulation to clarify standards.

Senator Raque Adams stated that a constituent expressed concern regarding Section 9 of this administrative regulation because the language seemed vague. The constituent's insurer replaced some, but not all, roofing shingles with cheaper shingles that did not match the remaining roofing. The department was requested to appear at this subcommittee meeting to consider clarifying the standards in Section 9 of this administrative regulation.

Ms. Atkins stated that there was a formal complaint process if a consumer believed an insurer was in violation of a standard established in this administrative regulation. The constituent in this matter filed a formal complaint. An investigator was dispatched to determine if insurer repairs to the constituent's roof were in compliance with Section 9 of this administrative regulation, which required a "reasonably uniform appearance."

Mr. O'Connor stated that the department had guidance materials to determine compliance with this administrative regulation. There was also significant case law to aid in making determinations as to what constituted a "reasonably uniform appearance." Federal district courts had interpreted "reasonable match" or "reasonably uniform appearance" to mean comparable in uniformity, not necessarily a complete match. Amending this administrative regulation to clarify the standards might be difficult and create unintended consequences, such as insurers paying cash value for damages rather than for repairs. Care needed to be taken in revising this language, and the department would investigate similar provisions in other states in considering an amendment. The department agreed to consider an amendment to clarify standards in this administrative regulation.

Mr. Muller stated that he was appearing on behalf of Senator Adams' constituent. Pursuant to Section 9 of this administrative regulation, the dilemma for roofing repairs was that shingle color faded over time, making a comparable match very difficult. Most insurers realized that, in the majority of cases pertaining to roofs in which most of the roof can be seen from the ground, if one (1) portion of a roof required repair, all shingles needed to be replaced. Kentucky was a color-matching state; therefore, premiums were higher, but home values were protected. In the case of Senator Adams' constituent, the department determined that it was reasonable for the insurer to only replace shingles on some, but not all, slopes of the roof. Mr. Muller requested that this administrative regulation be amended to clarify that, if more than one (1) side of a roof was visible at a line of sight and replacement shingles did not match, all shingles shall be replaced.

Mr. Mitchell stated that, as general manager of Covenant Roofing and Construction, it was customary if two (2) sides of a roof could be seen simultaneously and repairs were needed, all

shingles were replaced for uniformity. As a former realtor and real estate appraiser, mismatched slopes negatively affected curb appeal and value of a home.

In response to questions by Co-Chair Harris, Mr. Mitchell stated that in six (6) years in the roofing and construction industry, this was the first time he had witnessed an insurer fail to replace all shingles for uniformity. This insurance company seemed to be failing to acknowledge what other insurance agencies routinely acknowledged, that it was often necessary to replace all shingles for uniform appearance. Rates were already higher to account for Kentucky being a color-matching state; therefore, clarifying the standards in this administrative regulation should not lead to higher rates.

Senator Adams stated that clarifying requirements in this administrative regulation did not mean that insurance rates would automatically increase. This was a good example of a situation that has happened once and could happen again; therefore, a proactive consideration of this administrative regulation seemed prudent.

Mr. Sabbak, who had worked in the roofing and construction industry for over twenty-nine (29) years, stated that shingle discoloration over time occurred due to ultraviolet degradation of the composite granules. As a result, over time, even the exact same new shingle would not be reasonably uniform with existing shingles. The standards required "like type quality or color," rather than "like type quality and color." Because a home was the most expensive item most consumers purchased, it was important to protect that investment by amending this administrative regulation for clarity.

The following administrative regulations were deferred or removed from the December 12, 2017, subcommittee agenda:

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Income Tax; Corporations

103 KAR 16:240. Nexus standard for corporations and pass-through entities.

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: Child Welfare

505 KAR 1:170. Department of Juvenile Justice Policies and procedures: Prison Rape Elimination Act of 2003 (PREA).

EDUCATION AND WORKFORCE DEVELOPMENT: Kentucky Board of Education: Department of Education: Charter Schools

701 KAR 8:010. Charter school student application, lottery, and enrollment.

701 KAR 8:020. Valuation of charter school authorizers.

701 KAR 8:030. Charter school appeal process.

701 KAR 8:040. Conversion charter school petition, conversion, and operation.

Office of Instruction

704 KAR 3:370. Kentucky framework for personnel evaluation.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Malt Beverage Equipment, Supplies, and Service

804 KAR 11:010. Equipment and supplies.

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.

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Department for Community Based Services: Division of Family Support: K-TAP, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 2:040 & E. Procedures for determining initial and continuing eligibility.

Department for Community Based Services: Division of Family Support: Division of Child Care: Daycare

922 KAR 2:160 & E. Child Care Assistance Program.

Division of Child Care: Daycare

922 KAR 2:260 & E. Child care service appeals.

The subcommittee adjourned at 2 p.m. until January 8, 2018, 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.

**INTERIM JOINT COMMITTEE ON NATURAL RESOURCES
AND ENERGY
Meeting of December 7, 2017**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Energy for its meeting of

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12/7/2017, having been referred to the Committee on 12/6/2017, pursuant to KRS 13A.290(6):

301 KAR 1:086; 301 KAR 1:130; 301 KAR 1:155; 302 KAR 17:010;
401 KAR 31:002; 401 KAR 32:002; 401 KAR 33:002;
401 KAR 34:002; 401 KAR 35:002; 401 KAR 36:002;
401 KAR 37:002; 401 KAR 38:002; 401 KAR 39:005;
401 KAR 39:011; 401 KAR 39:060; 401 KAR 39:080;
401 KAR 39:090; 401 KAR 43:002; 401 KAR 44:002;
401 KAR 45:060; 401 KAR 48:005; 401 KAR 48:090;
410 KAR 1:002; 805 KAR 1:060; 805 KAR 1:071;
805 KAR 9:041; and 902 KAR 100:180.

The following administrative regulations were available for consideration, but were not placed on the agenda of the Interim Joint Committee on Natural Resources and Energy for its meeting of 12/7/2017, having been referred to the Committee on 12/6/2017, pursuant to KRS 13A.290(6):

405 KAR 7:001; 405 KAR 7:095; 405 KAR 8:001;
405 KAR 8:010; 405 KAR 8:040; 405 KAR 8:050;
405 KAR 10:001; 405 KAR 12:001; 405 KAR 16:001;
405 KAR 16:110; 405 KAR 18:001; 405 KAR 18:010;
405 KAR 18:040; 405 KAR 18:060; 405 KAR 18:110;
405 KAR 18:260; 405 KAR 20:001; 405 KAR 20:080;
and 405 KAR 20:090.

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

**INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
AND FAMILY SERVICES
Meeting of December 13, 2017**

The following administrative regulation was available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare and Family Services for its meeting of December 13, 2017, having been referred to the Committee on December 6, 2017, pursuant to KRS 13A.290(6):

201 KAR 2:380

The following administrative regulation was approved as amended at the Committee meeting pursuant to KRS 13A.320:

201 KAR 2:380

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the December 13, 2017 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

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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

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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

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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

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The Subject Index is a general index of administrative regulations published in VOLUME 44 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date	Regulation Number	43 Ky.R. Page No.	Effective Date
VOLUME 43					
The administrative regulations listed under VOLUME 43 are those administrative regulations that were originally published in Volume 43 (last year's) issues of the <i>Administrative Register of Kentucky</i> but had not yet gone into effect when the <i>2017 Kentucky Administrative Regulations Service</i> was published.					
SYMBOL KEY:					
* Statement of Consideration not filed by deadline			Amended	2184	See 44 Ky.R.
** Withdrawn, not in effect within 1 year of publication			201 KAR 20:056		
*** Withdrawn before being printed in Register			Amended	1799	
‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))			As Amended	2125	6-21-2017
IJC Interim Joint Committee			201 KAR 20:057		
(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.			Amended	1802	6-21-2017
-----			201 KAR 20:070		
EMERGENCY ADMINISTRATIVE REGULATIONS:			Amended	2187	See 44 Ky.R.
(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.)			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.
301 KAR 2:225E	2112	5-12-2017	201 KAR 26:130		
Replaced	2199	8-3-2017	Amended	1807	See 44 Ky.R.
501 KAR 1:030E	2115	4-17-2017	201 KAR 26:140		
Replaced		See 44 Ky.R.	Amended	1809	See 44 Ky.R.
787 KAR 2:040E	1922	3-31-2017	201 KAR 26:145		
Replaced		See 44 Ky.R.	Amended	1811	See 44 Ky.R.
907 KAR 1:041E(r)	1924	3-31-2017	201 KAR 26:155		
Expired		9-27-2017	Amended	1814	See 44 Ky.R.
907 KAR 3:206E(r)	1925	3-31-2017	201 KAR 26:160		
Expired		9-27-2017	Amended	1816	See 44 Ky.R.
907 KAR 23:001E	1927	3-31-2017	201 KAR 26:165		
Expired		9-27-2017	Amended	1818	See 44 Ky.R.
907 KAR 23:010E	1930	3-31-2017	201 KAR 26:171		
Replaced		See 44 Ky.R.	Amended	1819	See 44 Ky.R.
907 KAR 23:020E	1935	3-31-2017	201 KAR 26:175		
Replaced		See 44 Ky.R.	Amended	1823	
-----			Reprint	2109	
ORDINARY ADMINISTRATIVE REGULATIONS:			Am Comments	2156	See 44 Ky.R.
4 KAR 1:010			201 KAR 26:180		
Amended	2176	See 44 Ky.R.	Amended	1826	
4 KAR 1:040			Am Comments	2158	See 44 Ky.R.
Amended	2178	See 44 Ky.R.	201 KAR 26:185		
4 KAR 1:050	2239	See 44 Ky.R.	Amended	1827	See 44 Ky.R.
16 KAR 2:020			201 KAR 26:190		
Amended	2005	See 44 Ky.R.	Amended	1829	See 44 Ky.R.
16 KAR 5:020			201 KAR 26:200		
Amended	2008	See 44 Ky.R.	Amended	1831	See 44 Ky.R.
16 KAR 6:020			201 KAR 26:210		
Amended	1627	7-7-2017	Amended	1833	See 44 Ky.R.
16 KAR 8:040			201 KAR 26:215		
Amended	2011	See 44 Ky.R.	Amended	1834	See 44 Ky.R.
30 KAR 2:010			201 KAR 26:225	1900	See 44 Ky.R.
Amended	2180	See 44 Ky.R.	201 KAR 26:250		
30 KAR 5:060			Amended	1836	See 44 Ky.R.
Amended	2182	See 44 Ky.R.	201 KAR 26:280		
40 KAR 2:145			Amended	1838	See 44 Ky.R.
Amended	2013	See 44 Ky.R.	201 KAR 26:290		
40 KAR 2:150			Amended	1840	See 44 Ky.R.
Amended	2015	See 44 Ky.R.	201 KAR 32:050		
200 KAR 5:080			Amended	1841	See 44 Ky.R.
Repealed	2240	9-1-2017	201 KAR 32:060		
200 KAR 5:081(r)	2240	9-1-2017	Amended	1843	See 44 Ky.R.
201 KAR 2:074			201 KAR 34:020		
Amended	1796	See 44 Ky.R.	Amended	2023	See 44 Ky.R.
201 KAR 2:076			201 KAR 34:030		
			Amended	2025	See 44 Ky.R.
			201 KAR 34:050		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date	Regulation Number	43 Ky.R. Page No.	Effective Date
Amended	2029	See 44 Ky.R.	401 KAR 49:011		
201 KAR 39:001			Amended	2202	See 44 Ky.R.
Amended	1636		401 KAR 49:040		
Am Comments	2160	See 44 Ky.R.	Repealed	2205	9-8-2017
201 KAR 39:030			401 KAR 49:080		
Amended	1639	See 44 Ky.R.	Amended	2205	9-8-2017
201 KAR 39:050			401 KAR 49:090		
Amended	1846	See 44 Ky.R.-	Repealed	2205	9-8-2017
201 KAR 39:070			401 KAR 49:091(r)	2241	9-8-2017
Amended	1640		401 KAR 49:210		
Am Comments	2162	See 44 Ky.R.	Repealed	2205	9-8-2017
201 KAR 44:090			401 KAR 100:010		
Amended	2031	See 44 Ky.R.	Repealed	1906	8-4-2017
201 KAR 46:035	2077	See 44 Ky.R.	401 KAR 100:011(r)	1906	8-4-2017
201 KAR 46:040			405 KAR 5:095		
Amended	1648		Amended	1869	See 44 Ky.R.
Am Comments	1987	See 44 Ky.R.	405 KAR 7:091		
201 KAR 46:060			Repealed	1907	8-4-2017
Amended	1651	7-17-2017	405 KAR 7:092		
201 KAR 46:070			Amended	1876	See 44 Ky.R.
Amended	1653	See 44 Ky.R.	405 KAR 7:093(r)	1907	8-4-2017
201 KAR 46:090			501 KAR 1:030		
Amended	1654	See 44 Ky.R.	Amended	2209	See 44 Ky.R.
301 KAR 2:075			501 KAR 6:040		
Amended	1848		Amended	1889	
As Amended	2127	7-6-2017	As Amended	2134	7-7-2017
301 KAR 2:083			501 KAR 6:140		
Amended	1850	7-6-2017	Amended	2212	See 44 Ky.R.
301 KAR 2:178			505 KAR 1:130		
Amended	1661		Amended	2214	See 44 Ky.R.
As Amended	2128	7-6-2017	601 KAR 1:018		
301 KAR 2:221			Amended	1890	7-7-2017
Amended	2032	7-6-2017	601 KAR 1:113		
301 KAR 2:222			Amended	2056	See 44 Ky.R.
Amended	2195	8-3-2017	601 KAR 2:030		
301 KAR 2:225			Amended	2216	
Amended	2199	8-3-2017	Withdrawn		11-15-2017
301 KAR 2:300		7-6-2017	725 KAR 2:060		
Amended	2034	See 44 Ky.R.	Amended	2060	
301 KAR 3:022			Withdrawn	**	6-5-2017
Amended	2038	See 44 Ky.R.	725 KAR 2:070		
400 KAR 1:001			Amended	2063	See 44 Ky.R.
Amended	1853	See 44 Ky.R.	787 KAR 1:070		
400 KAR 1:030			Amended	612	See 44 Ky.R.
Repealed	1901	8-4-2017	787 KAR 2:040		
400 KAR 1:031(r)	1901	8-4-2017	Amended	2065	See 44 Ky.R.
400 KAR 1:090			804 KAR 4:230		
Amended	1855		Amended	2222	See 44 Ky.R.
Am Comments	2164	See 44 Ky.R.	804 KAR 10:010		
400 KAR 1:100	1902	See 44 Ky.R.	Amended	2224	
401 KAR 8:010			As Amended		See 44 Ky.R.
Amended	2040	9-8-2017	806 KAR 17:575	2079	See 44 Ky.R.
401 KAR 8:011(r)	2078	9-8-2017	815 KAR 7:120		
401 KAR 8:020			Amended	2067	See 44 Ky.R.
Amended	2043	See 44 Ky.R.	900 KAR 6:125		
401 KAR 8:040			Amended	2225	See 44 Ky.R.
Amended	2047	9-8-2017	900 KAR 7:030		
401 KAR 8:070			Amended	2228	See 44 Ky.R.
Repealed	2078	9-8-2017	900 KAR 7:040		
401 KAR 8:075			Amended	2232	See 44 Ky.R.
Amended	2049	See 44 Ky.R.	900 KAR 10:041(r)	1908	6-21-2017
401 KAR 8:100			900 KAR 10:050		
Amended	2051	See 44 Ky.R.	Repealed	1908	6-21-2017
401 KAR 8:101			900 KAR 10:060		
Repealed	2078	9-8-2017	Repealed	1908	6-21-2017
401 KAR 8:250			901 KAR 5:060		
Amended	2055	9-8-2017	Repealed	2242	8-16-2017
401 KAR 8:550			901 KAR 5:061(r)	2242	8-16-2017
Repealed	2078	9-8-2017	901 KAR 5:120	2243	See 44 Ky.R.
401 KAR 8:600			902 KAR 2:060		
Repealed	2078	9-8-2017	Amended	1454	

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Regulation Number	43 Ky.R. Page No.	Effective Date	Regulation Number	43 Ky.R. Page No.	Effective Date
Am Comments	1989		906 KAR 1:091 (r)	2087	7-17-2017
As Amended	2143	See 44 Ky.R.	907 KAR 1:065		
902 KAR 20:053(r)	2082	7-17-2017	Amended	1485	
902 KAR 20:054			Am Comments	1997	
Repealed	2082	7-17-2017	As Amended	2149	7-7-2017
902 KAR 21:030	1910		907 KAR 23:001	2088	10-6-2017
As Amended	2148	6-21-2017	907 KAR 23:010	2091	See 44 Ky.R.
902 KAR 22:010			907 KAR 23:020	2096	See 44 Ky.R.
Repealed	2084	7-17-2017	910 KAR 1:210		
902 KAR 22:011(r)	2084	7-17-2017	Amended	2070	7-17-2017
902 KAR 22:030			-----		
Repealed	2084	7-17-2017	SYMBOL KEY:		
902 KAR 55:075			* Statement of Consideration not filed by deadline		
Repealed	2085	7-17-2017	** Withdrawn, not in effect within 1 year of publication		
902 KAR 55:076(r)	2085	7-17-2017	*** Withdrawn before being printed in Register		
902 KAR 55:100			‡ Withdrawn deferred more than twelve months (KRS		
Repealed	2085	7-17-2017	13A.300(2)(e) and 13A.315(1)(d))		
902 KAR 95:040			IJC Interim Joint Committee		
Amended	2234	See 44 Ky.R.	(r) Repealer regulation: KRS 13A.310(3)-on the effective date of		
906 KAR 1:080			an administrative regulation that repeals another, the		
Repealed	2086	7-17-2017	regulations compiler shall delete the repealed administrative		
906 KAR 1:081(r)	2086	7-17-2017	regulation and the repealing administrative regulation.		
906 KAR 1:090					
Repealed	2086	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					
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	16 KAR 2:010		
Replaced	902	12-1-2017	Amended	1584	
32 KAR 1:020E	496	8-15-2017	16 KAR 2:020		See 43 Ky.R.
32 KAR 1:045E	876	9-29-2017	Am Comments	225	
101 KAR 2:210E	725	9-15-2017	As Amended	505	10-6-2017
105 KAR 1:140E	1474	12-15-2017	16 KAR 5:020		See 43 Ky.R.
201 KAR 2:390E	498	8-15-2017	Am Comments	228	
201 KAR 2:400E	500	8-15-2017	As Amended	508	10-6-2017
201 KAR 12:082E	877	10-13-2017	16 KAR 5:030		
201 KAR 20:505E	727	9-12-2017	Amended	1589	
301 KAR 1:152E	4	5-26-2017	16 KAR 5:040		
Replaced	132	9-8-2017	Amended	1591	
501 KAR 1:030E	See 43 Ky.R.	4-17-2017	16 KAR 8:040		See 43 Ky.R.
Replaced	218	9-1-2017	Am Comments	231	10-6-2017
501 KAR 6:270E	183	6-28-2017	17 KAR 3:020		
Replaced	731	11-3-2017	Amended	548	
601 KAR 2:030E	1479	11-15-2017	As Amended	902	12-1-2017
803 KAR 2:425E	185	6-26-2017	30 KAR 2:010		See 43 Ky.R.
Replaced	337	11-3-2017	As Amended	213	9-1-2017
803 KAR 2:505E	1485	12-4-2017	30 KAR 5:060		See 43 Ky.R.
900 KAR 11:010E	187	6-29-2017	As Amended	214	9-1-2017
Replaced	956	11-15-2017	31 KAR 4:010		
902 KAR 20:360E	191	6-16-2017	Amended	112	
907 KAR 3:066E	6	6-14-2017	As Amended	510	10-6-2017
Replaced	152	10-6-2017	31 KAR 4:040		
907 KAR 23:010E	See 43 Ky.R.	3-31-2017	Amended	113	10-6-2017
Replaced		10-6-2017	31 KAR 6:020		
907 KAR 23:020E	See 43 Ky.R.	3-31-2017	Amended	114	10-6-2017
Replaced		10-6-2017	32 KAR 1:020		
921 KAR 2:040E	881	9-29-2017	Amended	550	
921 KAR 3:090E	883	9-29-2017	As Amended	1209	
922 KAR 1:140E	199	6-29-2017	32 KAR 1:045		
922 KAR 1:490E	203	6-29-2017	As Amended	1170	
922 KAR 1:550E	207	6-29-2017	As Amended	1493	
922 KAR 2:160E	886	9-29-2017	40 KAR 2:145		See 43 Ky.R.
922 KAR 2:260E	895	9-29-2017	As Amended	9	8-4-2017
922 KAR 2:280E	1487	12-14-2017	40 KAR 2:150		See 43 Ky.R.
			As Amended	10	8-4-2017
			45 KAR 1:030		
			Amended	258	11-3-2017
			45 KAR 1:040		
			Amended	260	11-3-2017
			45 KAR 1:050		
			Amended	262	11-3-2017
			As Amended	729	
			101 KAR 1:325		
			Amended	1374	
			101 KAR 2:210		
			Amended	769	
			102 KAR 1:070		
			Amended	264	
			As Amended	903	12-1-2017
			103 KAR 1:010		
			Amended	1595	
			103 KAR 1:120		
			As Amended	833	
			103 KAR 5:230		
			Amended	1209	
			103 KAR 15:050		
			Amended	1724	
			As Amended	1089	
			103 KAR 16:240		
			Amended	1493	
			103 KAR 16:360		
			Amended	1091	
			103 KAR 16:391(r)		
			Amended	1094	
			103 KAR 16:391(r)		
			Amended	835	
			103 KAR 17:151(r)		
			Amended	836	
			103 KAR 18:070		
			Amended	1096	
			103 KAR 26:110		
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			
Amended	1368				
13 KAR 2:120	443				
As Amended	899	12-1-2017			
13 KAR 2:130	445				
As Amended	900	12-1-2017			
13 KAR 3:050					
Amended	257				
As Amended	901	12-1-2017			
16 KAR 1:015	698				
Withdrawn	*	10-13-201			
16 KAR 1:016	1453				

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 2:400	701	
103 KAR 26:120			As Amended	1502	
Amended	1097		201 KAR 5:130		
As Amended	1494		Amended	1613	
103 KAR 27:180			201 KAR 9:260		
Amended	1100		Amended	265	
As Amended	1495		Am Comments	736	
103 KAR 28:051			As Amended	905	11-15-2017
Amended	1101		201 KAR 9:480	1725	
As Amended	1496		201 KAR 12:010		
103 KAR 28:150			Amended	1376	
Amended	772		201 KAR 12:030		
103 KAR 30:235			Amended	1615	
Amended	1103		201 KAR 12:041(r)	1726	
As Amended	1497		201 KAR 12:060		
103 KAR 31:030			Amended	1618	
Amended	1105		201 KAR 12:082		
As Amended	1498		Amended	1113	
103 KAR 31:050			As Amended	1502	
Amended	774		201 KAR 12:100		
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SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, not in effect within 1 year of publication
- *** Withdrawn before being printed in Register
- ‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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156.010	11 KAR 15:090		16 KAR 5:030
156.029	704 KAR 7:090		16 KAR 5:040
165.035	704 KAR 7:090	161.042	16 KAR 5:040
156.070	702 KAR 7:065	161.141	701 KAR 8:010
	704 KAR 3:540		701 KAR 8:020
156.160	704 KAR 3:540		701 KAR 8:040
156.557	704 KAR 3:370	161.600	102 KAR 1:070

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161.605	102 KAR 1:070	189A.400	601 KAR 2:030
161.640	102 KAR 1:070	189A.410	601 KAR 2:030
161.675	102 KAR 1:070	189A.420	601 KAR 2:030
161.740	704 KAR 3:370	189A.440	601 KAR 2:030
164.001	13 KAR 2:120	189A.500	601 KAR 2:030
	13 KAR 2:130	194A	922 KAR 5:111
164.002	11 KAR 15:090	194A.005	900 KAR 1:009
164.092	13 KAR 2:120		922 KAR 1:320
	13 KAR 2:130		922 KAR 1:330
164.0064	13 KAR 3:050		922 KAR 1:480
164.518	11 KAR 4:080		922 KAR 2:260
164.772	201 KAR 22:020	194A.025	907 KAR 17:005
	201 KAR 22:040		907 KAR 17:010
164.744	11 KAR 4:080		907 KAR 17:015
164.748	11 KAR 4:080		907 KAR 17:020
164.753	11 KAR 4:080		907 KAR 17:026
164.769	11 KAR 4:080		907 KAR 17:035
164.780	11 KAR 4:080	194A.030	922 KAR 1:320
164.785	11 KAR 4:080		922 KAR 2:260
164.7535	11 KAR 4:080	194A.050	900 KAR 10:031
164.7871	11 KAR 15:090	194A.060	922 KAR 2:160
164.7874	11 KAR 15:090		922 KAR 5:040
164.7877	11 KAR 15:090	194A.062	900 KAR 1:009
164.7879	11 KAR 15:090	194A.209	922 KAR 5:090
164.7881	11 KAR 15:090	194A.540	201 KAR 36:030
164.7885	11 KAR 15:090	194A.550	922 KAR 5:040
164.7889	11 KAR 15:090	196	501 KAR 6:110
164.7890	11 KAR 4:080		501 KAR 6:230
164.7894	11 KAR 4:080		501 KAR 6:270
171.250	725 KAR 2:070	196.035	501 KAR 6:280
171.260	725 KAR 2:070	197	501 KAR 6:110
171.270	725 KAR 2:070		501 KAR 6:230
174.504	602 KAR 15:030		501 KAR 6:270
183.011	602 KAR 15:030	197.020	501 KAR 6:280
186.010	601 KAR 2:030	198B.050	922 KAR 5:040
	601 KAR 23:020	198B.260	902 KAR 20:016
186.020	601 KAR 23:020	199.011	922 KAR 1:140
186.440	601 KAR 2:030		922 KAR 1:320
186.442	601 KAR 2:030		922 KAR 1:490
186.450	922 KAR 1:550		922 KAR 1:550
186.470	922 KAR 1:550		922 KAR 2:280
186.480	601 KAR 2:030	199.462	922 KAR 1:140
	922 KAR 1:550		922 KAR 1:490
186.531	601 KAR 2:030	199.466	922 KAR 1:470
186.560	601 KAR 2:030		922 KAR 2:280
186.570	601 KAR 2:030	199.555	907 KAR 17:005
186.590	922 KAR 1:550		922 KAR 1:140
186.650	106 KAR 1:350		922 KAR 1:320
186A.070	601 KAR 23:020	199.557	922 KAR 1:140
186A.073	601 KAR 23:020		922 KAR 1:320
186A.115	601 KAR 23:020	199.801	922 KAR 1:140
186A.170	601 KAR 23:020	199.892	922 KAR 2:160
189.010	106 KAR 1:350	199.894	922 KAR 2:160
189.150	902 KAR 100:180		922 KAR 2:280
189.231	603 KAR 5:025	199.896	922 KAR 1:470
189.340	603 KAR 5:025		922 KAR 2:160
189.910 – 189.950	202 KAR 7:560	199.898	922 KAR 2:160
189A.005	601 KAR 2:030	199.8982	922 KAR 1:470
189A.010	601 KAR 2:030		922 KAR 2:160
189A.040	601 KAR 2:030	199.899	922 KAR 2:160
189A.050	200 KAR 38:021	199.8994	922 KAR 2:160
189A.070	601 KAR 2:030	200.080 – 200.120	505 KAR 1:130
189A.085	601 KAR 2:030	202A	907 KAR 17:005
189A.090	601 KAR 2:030		907 KAR 17:020
189A.103	500 KAR 8:010	202A.011	922 KAR 1:330
	500 KAR 8:030	205.455	922 KAR 5:040
	601 KAR 2:030	205.510	907 KAR 3:005
189A.105	601 KAR 2:030	205.520	907 KAR 1:045
189A.107	601 KAR 2:030		907 KAR 1:047
189A.200	601 KAR 2:030		907 KAR 1:102
189A.240	601 KAR 2:030		907 KAR 1:104
189A.250	601 KAR 2:030		907 KAR 1:479
189A.340	601 KAR 2:030		907 KAR 3:005
189A.345	601 KAR 2:030		907 KAR 3:066

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	907 KAR 3:005	216B.140 – 216B.175	902 KAR 20:016
	907 KAR 3:010	216B.185	902 KAR 20:016
205.565	907 KAR 3:010	216B.190	902 KAR 20:016
205.593	907 KAR 17:015	216B.230 – 216B.239	902 KAR 20:016
205.622	907 KAR 1:047	216B.250	902 KAR 20:016
	907 KAR 1:102	216B.400 – 216B.402	902 KAR 20:016
	907 KAR 3:005	216B.990	900 KAR 6:090
205.624	907 KAR 17:010		900 KAR 6:130
205.646	907 KAR 17:035		902 KAR 20:016
205.712	601 KAR 2:030		902 KAR 20:145
205.2005	921 KAR 3:025		902 KAR 20:360
205.8451	907 KAR 1:045	216C.010	900 KAR 11:010
	907 KAR 1:047	216C.030	900 KAR 11:010
	907 KAR 1:102	216C.040	900 KAR 11:010
	907 KAR 3:005	216C.050	900 KAR 11:010
205.8451 – 205.8483	907 KAR 17:005	216C.060	900 KAR 11:010
209	902 KAR 20:016	216C.070	900 KAR 11:010
	922 KAR 5:090	216C.080	900 KAR 11:010
	922 KAR 5:111(r)	216C.090	900 KAR 11:010
209.020	922 KAR 1:320	216C.100	900 KAR 11:010
	922 KAR 5:040	216C.110	900 KAR 11:010
209.030	922 KAR 5:040	216C.120	900 KAR 11:010
209.140	922 KAR 5:040	216C.160	900 KAR 11:010
209A	922 KAR 5:040	216C.170	900 KAR 11:010
	922 KAR 5:111(r)	216C.180	900 KAR 11:010
209A.020	922 KAR 1:320	216C.200	900 KAR 11:010
	922 KAR 5:090	216C.210	900 KAR 11:010
210.366	201 KAR 28:200	216C.220	900 KAR 11:010
	201 KAR 36:030	216C.230	900 KAR 11:010
210.370 – 210.485	907 KAR 1:045	217.005 – 217.215	902 KAR 55:015
	907 KAR 1:047		902 KAR 55:041
	907 KAR 3:010	217.015	301 KAR 1:155
211.350 – 211.380	922 KAR 5:040	218A.010	902 KAR 55:015
211.680 – 211.686	922 KAR 1:421		902 KAR 55:110
211.684	922 KAR 1:330	218A.020	902 KAR 55:015
	922 KAR 1:490	218A.020 – 218A.130	902 KAR 55:040
211.842 – 211.852	902 KAR 20:016		902 KAR 55:041
211.842 – 211.990	902 KAR 100:180	218A.040	902 KAR 55:015
211.892	805 KAR 1:060	218A.060	902 KAR 55:015
211.893	805 KAR 1:060	218A.070	902 KAR 55:095
213.101	902 KAR 20:360	218A.080	902 KAR 55:015
214	902 KAR 20:016	218A.100	902 KAR 55:015
214.036	922 KAR 1:330	218A.120	902 KAR 55:015
	922 KAR 2:160	218A.175	902 KAR 20:145
216.510	902 KAR 55:095	218A.180	902 KAR 55:095
216.2970	902 KAR 20:016	218A.200	902 KAR 55:095
216B.010	900 KAR 6:130	218A.202	902 KAR 55:110
	902 KAR 20:016	218A.205	201 KAR 5:130
216B.010 – 216B.130	900 KAR 5:020		201 KAR 9:260
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	902 KAR 20:360	218A.205	201 KAR 25:090
216B.015	900 KAR 6:090	218.172	201 KAR 25:090
	900 KAR 6:130	218A.240	902 KAR 55:110
	902 KAR 20:016	219.011 – 219.081	902 KAR 20:016
216B.020	202 KAR 7:501	224	401 KAR 61:015
	202 KAR 7:565		902 KAR 100:180
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	900 KAR 6:130		401 KAR 32:002
216B.040	900 KAR 6:090		401 KAR 33:002
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	902 KAR 20:016		401 KAR 35:002
216B.042	902 KAR 20:016		401 KAR 36:002
	902 KAR 55:095		401 KAR 37:002
216B.045	902 KAR 20:016		401 KAR 38:002
216B.0425	902 KAR 20:016		401 KAR 39:005
216B.050	902 KAR 20:016		401 KAR 39:120
	902 KAR 100:180		401 KAR 43:002
216B.055	902 KAR 20:016		401 KAR 45:060
216B.062	900 KAR 6:090		401 KAR 48:005
216B.075	902 KAR 20:016		401 KAR 48:090
216B.085	902 KAR 20:016	224.10	401 KAR 31:002
216B.095	900 KAR 6:090		401 KAR 32:002
	900 KAR 6:130		401 KAR 33:002

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	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
224.10-100	401 KAR 59:015		401 KAR 36:002
224.40	402 KAR 3:030		401 KAR 37:002
	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	230.215	811 KAR 1:215
	401 KAR 48:005		811 KAR 1:220
	401 KAR 48:090	230.260	811 KAR 1:215
224.40-310	410 KAR 1:002		811 KAR 1:220
224.43	401 KAR 31:002	230.280	811 KAR 1:220
	401 KAR 34:002	230.290	811 KAR 1:220
	401 KAR 35:002	230.310	811 KAR 1:220
	401 KAR 36:002	230.398	811 KAR 1:220
	401 KAR 37:002	230.770	811 KAR 1:215
	401 KAR 38:002	230.802	811 KAR 1:215
	401 KAR 43:002	230.990	811 KAR 1:215
	401 KAR 44:002	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
224.43-815	410 KAR 1:002	235.080	301 KAR 6:005
224.46	401 KAR 31:002	236	815 KAR 15:010
	401 KAR 32:002		815 KAR 15:025
	401 KAR 33:002		815 KAR 15:027
	401 KAR 34:002		815 KAR 15:041
	401 KAR 35:002	236.010	815 KAR 15:026
	401 KAR 36:002	236.030	815 KAR 15:026
	401 KAR 37:002	236.110	815 KAR 15:026
	401 KAR 38:002	236.240	815 KAR 15:026
	401 KAR 39:005	236.250	815 KAR 15:026
	401 KAR 39:011	236.990	815 KAR 15:026
	401 KAR 39:060	241.020	804 KAR 6:020
	401 KAR 39:080	241.060	804 KAR 4:241
	401 KAR 39:090		804 KAR 4:400
	401 KAR 39:120		804 KAR 4:410
	401 KAR 43:002		804 KAR 6:011
	401 KAR 44:002		804 KAR 9:051
	401 KAR 45:060	241.065	804 KAR 9:051
224.46-505	410 KAR 1:002	243.090	804 KAR 4:390
224.46-510	410 KAR 1:002		804 KAR 4:400
224.46-520	410 KAR 1:002		804 KAR 6:020
224.46-810	410 KAR 1:002	243.200	804 KAR 8:050
224.46-820	410 KAR 1:002	243.240	804 KAR 9:051
224.46-825	410 KAR 1:002	243.250	804 KAR 9:051
224.46-830	410 KAR 1:002	243.380	804 KAR 4:400
224.46-840	410 KAR 1:002		804 KAR 4:410
224.46-850	410 KAR 1:002	243.390	804 KAR 4:400
224.46-860	410 KAR 1:002		804 KAR 4:410
224.46-870	410 KAR 1:002	243.630	804 KAR 4:400
224.50	401 KAR 34:002	244.080	804 KAR 5:070
	401 KAR 35:002	244.085	804 KAR 5:070

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244.090	804 KAR 5:070		201 KAR 35:070
244.440	804 KAR 4:241	309.0831	201 KAR 35:055
247	302 KAR 17:010		201 KAR 35:070
260.850 – 260.869	302 KAR 50:011	309.0832	201 KAR 35:070
	302 KAR 50:020	309.0833	201 KAR 35:070
	302 KAR 50:030	309.085	201 KAR 35:040
	302 KAR 50:040	309.331	201 KAR 45:110
	302 KAR 50:050		201 KAR 45:120
	302 KAR 50:060		201 KAR 45:170
	302 KAR 50:070	309.334	201 KAR 45:120
	302 KAR 50:080		201 KAR 45:170
275.015	202 KAR 3:030	309.335	201 KAR 45:071
278	807 KAR 5:026		201 KAR 45:120
	807 KAR 5:027		201 KAR 45:170
	807 KAR 5:081	309.336	201 KAR 45:170
278.485	807 KAR 5:022	309.0813	201 KAR 35:080
281.010	907 KAR 3:066	310	902 KAR 20:016
281.605	907 KAR 3:066	310.070	201 KAR 33:070
281.635	907 KAR 3:066	310.200	201 KAR 33:070
281.872	907 KAR 3:066	311.271	900 KAR 6:130
281.875	907 KAR 3:066	311.530 – 311.620	201 KAR 9:260
286.6-100	808 KAR 3:050	311.550	907 KAR 17:005
286.6-225	808 KAR 3:050	311.560	902 KAR 20:016
286.6-585	808 KAR 3:050	311.621 – 311.643	907 KAR 17:010
286.6-715	808 KAR 3:050	311.695	201 KAR 9:480
292.330	808 KAR 10:082	311.697	201 KAR 9:480
292.370	808 KAR 10:082	311.699	201 KAR 9:480
292.390	808 KAR 10:082	311.710 – 311.830	902 KAR 20:360
292.410	808 KAR 10:082	311.840	907 KAR 3:010
304.1-050	806 KAR 14:006	311.840 – 311.862	907 KAR 3:005
304.2-105	806 KAR 3:210	311.990	201 KAR 9:260
304.2-180	806 KAR:011	311.992	902 KAR 20:016
304.3-100	806 KAR:011	311A.030	202 KAR 7:501
304.3-240	806 KAR:011		202 KAR 7:545
304.4-010	806 KAR 14:006		202 KAR 7:550
304.5-010	806 KAR 5:031		202 KAR 7:555
304.5-080	806 KAR 5:031		202 KAR 7:560
304.7-340	806 KAR 7:011		202 KAR 7:565
304-9	806 KAR 9:051	311A.060	202 KAR 7:565
304.9-030	806 KAR 5:031	311A.170	201 KAR 20:400
304.9-390	806 KAR 9:051	311A.180	202 KAR 7:550
304.12-020	806 KAR 20:010		202 KAR 7:565
	806 KAR 20:021	311A.190	202 KAR 7:501
304.14-120	806 KAR 14:006		202 KAR 7:545
	806 KAR 20:010		202 KAR 7:550
	907 KAR 17:015		202 KAR 7:555
304.14-135	806 KAR 14:006		202 KAR 7:560
304.14-190	806 KAR 20:010		202 KAR 7:565
304.14-210	806 KAR 20:010		202 KAR 7:565
304.17-042	806 KAR 18:030	311B	902 KAR 20:016
304.17A-250	806 KAR 18:030	311B.020	201 KAR 46:010
304.17A-700 – 304.17A-730	907 KAR 17:015		201 KAR 46:081
304.18-032	806 KAR 18:030	311B.050	201 KAR 46:020
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304.18-130	806 KAR 18:011	311B.080	201 KAR 46:035
304.18-140	806 KAR 18:011	311B.100	201 KAR 46:020
304.18-150	806 KAR 18:011		201 KAR 46:081
304.18-160	806 KAR 18:011	311B.110	201 KAR 46:020
304.18-170	806 KAR 18:011		201 KAR 46:081
304.20-040	806 KAR 20:010	311B.120	201 KAR 46:020
	806 KAR 20:021		201 KAR 46:081
304.20-160	806 KAR 20:010	311B.130	201 KAR 46:020
304.20-300 – 304.20-350	806 KAR 20:010	311B.140	201 KAR 46:020
304.21-010	806 KAR 14:006	311B.150	201 KAR 46:081
304.22-020	806 KAR 14:006	311B.160	201 KAR 46:095
304.23-010	806 KAR 14:006	311B.170	201 KAR 46:095
304.24-410	806 KAR 24:022	311B.180	201 KAR 46:020
304.30-110	806 KAR 20:010		201 KAR 46:081
304.32-145	806 KAR 18:030	311B.190	201 KAR 46:020
304.32-158	806 KAR 18:011		201 KAR 46:081
304.38-185	806 KAR 18:030	314	902 KAR 20:058
304.38-197	806 KAR 18:011	314.011	201 KAR 20:057
304.39-060	806 KAR 39:030		201 KAR 20:065
309.0814	201 KAR 35:070		201 KAR 20:400
309.083	201 KAR 35:055		902 KAR 20:016

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	907 KAR 1:104		401 KAR 35:002
	907 KAR 3:005		401 KAR 39:005
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	922 KAR 2:160	322.340	405 KAR 8:010
314.021	201 KAR 20:400	322A.050	201 KAR 31:010
314.041	201 KAR 20:095	322A.060	201 KAR 31:010
314.042	201 KAR 20:057	322A.070	201 KAR 31:010
	201 KAR 20:065	326.020	201 KAR 13:040
	902 KAR 20:016		201 KAR 13:060
	902 KAR 20:360	326.035	201 KAR 13:040
314.051	201 KAR 20:095	326.040	201 KAR 13:040
314.091	201 KAR 20:400		201 KAR 13:060
314.175	201 KAR 20:505E	326.080	201 KAR 13:040
314.193	201 KAR 20:057	327.010	201 KAR 22:020
314.196	201 KAR 20:057		907 KAR 1:047
315.002	201 KAR 2:390	327.050	201 KAR 22:020
	201 KAR 2:400		201 KAR 22:040
315.005	201 KAR 2:390		201 KAR 22:070
	201 KAR 2:400	327.060	201 KAR 22:070
315.010	201 KAR 2:380	327.070	201 KAR 22:040
	201 KAR 2:400	327.075	201 KAR 22:020
315.191	201 KAR 2:380	327.080	201 KAR 22:020
	201 KAR 2:390	327.300	201 KAR 22:170
	201 KAR 2:400	327.310	201 KAR 22:020
315.340	201 KAR 2:400	333	902 KAR 20:360
315.342	201 KAR 2:400	333.030	902 KAR 20:016
315.400	201 KAR 2:390	334A.020	907 KAR 1:047
315.4102	201 KAR 2:390	335.080	902 KAR 20:058
315.4104	201 KAR 2:390	335.100	902 KAR 20:058
315.4106	201 KAR 2:390	335.330	902 KAR 20:058
315.4108	201 KAR 2:390	335.500	201 KAR 36:060
315.4110	201 KAR 2:390		201 KAR 36:065
316.010	201 KAR 15:110		201 KAR 36:070
316.030	201 KAR 15:050	335.500 – 335.599	201 KAR 36:030
	201 KAR 15:110	335.505	201 KAR 36:060
316.125	201 KAR 15:030		201 KAR 36:065
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316.127	201 KAR 15:110	335.525	201 KAR 36:060
316.130	201 KAR 15:030		201 KAR 36:065
316.132	201 KAR 15:030		201 KAR 36:070
316.140	201 KAR 15:030		902 KAR 20:058
317A.020	201 KAR 12:030	335.527	201 KAR 36:070
	201 KAR 12:082	335.540	201 KAR 36:050
317A.040	201 KAR 12:010	335.545	201 KAR 36:050
317A.050	201 KAR 12:030	335B.010	900 KAR 1:009
	201 KAR 12:082	335B.020	900 KAR 1:009
	201 KAR 12:260	336.165	803 KAR 6:011
317A.060	201 KAR 12:041	336.1661	803 KAR 3:051
	201 KAR 12:060	336.1662	803 KAR 3:051
317A.062	201 KAR 12:030	336.1663	803 KAR 3:051
	201 KAR 12:260	336.1664	803 KAR 3:051
317A.070	201 KAR 12:060	336.220	922 KAR 2:280
317A.100	201 KAR 12:030	337	780 KAR 3:072
317A.130	201 KAR 12:100		803 KAR 1:121
317A.140	201 KAR 12:060	337.275	922 KAR 2:160
317A.145	201 KAR 12:060	338.015	803 KAR 2:505
317B.020	201 KAR 12:060	339.210 – 339.450	803 KAR 1:100
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The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments entered since being published in the *2017 Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published to show the technical corrections in the *Administrative Register of Kentucky*. NOTE: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at <http://www.lrc.ky.gov/KAR/frntpage.htm>.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).

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