



ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, April 13, 2018.

MEETING NOTICES

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on May 8, 2018, at 1:00 p.m. in room 149 Capitol Annex.
ARRS Tentative Agenda - [2297](#)

The Education Assessment and Accountability Review Subcommittee is tentatively scheduled to meet on May 15, 2018, 1:00 p.m.

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

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VOLUME 44, NUMBER 11 – MAY 1, 2018

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[501 KAR 16:300](#). Execution procedures concerning attorneys representing the condemned, witnesses, visitors, and demonstrators. (Amended After Comments)

[501 KAR 16:310](#). Pre-execution medical actions. (Amended After Comments)

[501 KAR 16:330](#). Lethal injection protocols. (Amended After Comments)

[501 KAR 16:340](#). Electrocution protocol. (Amended After Comments)

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**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
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[922 KAR 2:100 & E](#). Certification of Family Child-Care Homes. ("E" Expires 8-14-2018) (Comments Received, SOC ext., due 5-15-2018)

[922 KAR 2:120 & E](#). Child-care center health and safety standards. ("E" Expires 9-14-2018) (Comments Received, SOC ext., due 5-15-2018)

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
31 KAR 4:100E

This emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, or welfare. Currently this administrative regulation does not require the county board of elections to submit the list of appointed precinct election officers to the State Board of Elections. This is being filed as an emergency administrative regulation in order to ensure that Kentuckians appointed to serve as precinct election officers are properly vetted prior to assisting Kentucky voters on Election Day. This emergency administrative regulation will be replaced by an ordinary administrative regulation to further strengthen the security of Kentucky's elections for at least one (1) year. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATT BEVIN, Governor
ALISON LUNDERGAN GRIMES, Secretary of State,
Chair of the State Board of Elections

STATE BOARD OF ELECTIONS
(Emergency Amendment)

31 KAR 4:100E. Evaluation of precinct election officers.

RELATES TO: KRS 117.045

STATUTORY AUTHORITY: KRS 117.045(1)

EFFECTIVE: March 19, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.045(1) requires the State Board of Elections to promulgate an administrative regulation establishing evaluation procedures which county boards of elections may use to qualify persons nominated to serve as precinct elections officers. This administrative regulation establishes those evaluation procedures.

Section 1. In evaluating if a person nominated to serve as a precinct election officer is qualified to serve in that capacity, a county board of elections may use the following evaluation procedures:

- (1) Determine if the person submitted a signed statement in accordance with KRS 117.045(2);
- (2) Determine if the person meets the qualifications set forth in KRS 117.045(9); and
- (3) Determine if the person has a history of refusing to follow election procedures or has demonstrated a complete lack of understanding of proper election procedures while serving as a precinct election officer in the past.

Section 2. A county board of elections shall refuse to appoint a person nominated to serve as a precinct election officer if it determines that the person is not qualified based on the evaluation procedures set forth in Section 1 of this administrative regulation.

Section 3. Once the county board of elections has appointed the precinct election officers, the full name, address, phone number, and Social Security number, if available, of each person appointed shall be submitted to the State Board of Elections the same day as the appointment.

Section 4. Incorporation by Reference. (1) "List for Appointment of Precinct Election Officers", SBE 22, (February 2007 edition), is incorporated by reference.

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

ALISON LUNDERGAN GRIMES, Secretary of State,
Chair of the State Board of Elections

APPROVED BY AGENCY: February 27, 2018

FILED WITH LRC: March 19, 2018 at 3 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lindsay Hughes Thurston

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for submitting a list of precinct election officers to the State Board of Elections by a certain date.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for submitting a list of precinct election officers to the State Board of Elections by a certain date.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the State Board of Elections to fulfill its duties under KRS 117.045(1), this administrative regulation is necessary to establish the procedure for submitting a list of precinct election officers to the State Board of Elections by a certain date.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for submitting a list of precinct election officers to the State Board of Elections by a certain date.

(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 outlines the requirement that the county board of elections submit the list of precinct election officers to the State Board of Elections by a certain date.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to outline the requirement that the county board of elections submit the list of precinct election officers to the State Board of Elections by a certain date.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute, KRS 117.045(1).

(d) How the amendment will assist in the effective administration of the statutes: This amendment outlines the requirement that the county board of elections submit the list of precinct election officers to the State Board of Elections by a certain date.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects the county boards of election.

(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 individuals identified in question (3) will have to familiarize themselves with this amended administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is unknown if individuals identified in question (3) will incur costs in order to comply.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No benefits will accrue to the entities identified in question (3).

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

(a) Initially: There will be no cost to implement this

administrative regulation for the first year.

(b) On a continuing basis: There is no cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source funding since there is no cost to implement this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the county boards of election.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 117.045(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 will not generate any additional revenue for state or local governments 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 administrative regulation will not generate any additional revenue for state or local governments during subsequent years of implementation.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY

31 KAR 4:120E

This emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, or welfare. Currently this administrative regulation does not require the county board of elections to submit the request for additional precinct officers by a certain date to the State Board of Elections. This is being filed as an emergency administrative regulation in order to ensure that Kentuckians appointed to serve as precinct election officers are properly vetted prior to assisting Kentucky voters on Election Day. This emergency administrative regulation will be replaced by an ordinary administrative regulation to further strengthen the security of Kentucky's elections for at least one (1)

year. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATT BEVIN, Governor

ALISON LUNDERGAN GRIMES, Secretary of State,
Chair of the State Board of Elections

STATE BOARD OF ELECTIONS (Emergency Amendment)

31 KAR 4:120E. Additional and emergency precinct officers.

RELATES TO: KRS 117.015, 117.045

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.045(6)

EFFECTIVE: March 19, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 117. KRS 117.045(6) requires the State Board of Elections to promulgate an administrative regulation establishing conditions under which additional precinct officers may be approved. This administrative regulation establishes the conditions under which additional precinct officers may be approved, and establishes the form of the list of emergency election officer appointments required by KRS 117.045(5).

Section 1. Request to Appoint Additional Precinct Officers. A county board of elections seeking permission to appoint additional precinct officers, pursuant to KRS 117.045(6), shall file with the State Board of Elections SBE 23, Additional Precinct Officer Request, that contains the following information:

(1) The precinct number of each precinct for which approval of additional officers is sought;

(2) For each designated precinct, the reasons additional precinct officers are necessary;

(3) For each designated precinct, whether one (1) or two (2) additional precinct officers are requested; and

(4) The election for which approval is sought, designating whether the election is a primary, general, or special election.

Section 2. Approval of Request. (1) The State Board of Elections may approve a request to appoint additional precinct officers if the request sets forth a reasonable explanation why voting may not be conducted safely and expediently unless additional precinct officers are appointed.

(2) The county board of elections must submit these requests to the State Board of Elections at least fourteen (14) days prior to Election Day. If the request for additional precinct officers is not received by the State Board of Election at least fourteen (14) days prior to Election Day, then the State Board of Elections will not approve the request.

(3) Approval of a request to appoint additional precinct officers shall be granted for one (1) election only.

(4) [(3)] Approval of a request to appoint additional precinct officers may authorize a county board of elections to appoint one (1) or two (2) additional precinct officers.

(5) [(4)] If a county board of elections requests and is approved to appoint two (2) additional precinct officers:

(a) The two (2) additional precinct officers shall not be of the same political party; and

(b) If it appears from the list of additional precinct officers submitted to the State Board of Elections pursuant to KRS 117.045(8) that the two (2) additional precinct officers are of the same political party, then the State Board of Elections shall revoke its approval of the request to appoint additional precinct officers and the appointments shall be invalid.

Section 3. Duties of Additional Precinct Officers. The duties of additional precinct officers shall be prescribed by the county board of elections.

Section 4. Request to Appoint Emergency Precinct Officers. A

county board of elections seeking permission to appoint emergency precinct officers pursuant to KRS 117.045(5) shall file with the State Board of Elections SBE 24, Emergency Precinct Officer Request, which contains the following information:

(1) The precinct number of each precinct for which approval of additional officers is sought;

(2) The name of the officer requested, the registered party of the officer, and the party the officer will be serving as for the specified election;

(3) The election for which approval is sought, designating whether the election is a primary, general, or special election; and

(4) A description of the efforts made to acquire precinct officers in the party, democrat or republican, which did not have enough workers as required by KRS 117.045(5).

(5) If a county board of elections requests and is approved to appoint emergency precinct officers:

(a) In the event more than one (1) emergency precinct officer is needed, the emergency precinct officers shall be of equal political party representation; and

(b) If it appears from the list of emergency precinct officers submitted to the State Board of Elections pursuant to KRS 117.045(8) that the emergency precinct officers submitted will result in an imbalance between the political parties represented by the State Board, then the State Board of Elections shall revoke its approval of the request to appoint emergency precinct officers and the appointments shall be invalid.

(c) In the event the State Board invalidates the list of emergency precinct workers as provided in subsection (b) above, the State Board shall have the authority to appoint properly trained officers from within or outside the affected county in order to restore the balance prescribed in KRS 117.045(4).

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Additional Precinct Officer Request", SBE 23, January 2015 edition; and

(b) "Emergency Precinct Officer Request", SBE 24, August 2007 edition.

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

ALISON LUNDERGAN GRIMES, Secretary of State,

Chair of the State Board of Elections

APPROVED BY AGENCY: February 27, 2018

FILED WITH LRC: March 19, 2018 at 3 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lindsay Hughes Thurston

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the conditions under which additional precinct officers may be approved by the county board of elections.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for approving additional precinct officers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the State Board of Elections to fulfill its duties under KRS 117.045(6), this administrative regulation is necessary to establish the procedure for approving additional precinct officers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for approving additional precinct officers.

(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 outlines the requirement that the county board of elections submit the list of additional precinct election officers to the State Board of Elections by a certain date. Additionally, this amendment provides some consistency in the conditions for appointment of additional precinct officers and emergency precinct officers.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to outline requirement that the county board of elections submit the list of additional precinct election officers to the State Board of Elections by a certain date. Additionally, this amendment is necessary to ensure consistency in the conditions for appointment of additional precinct officers and emergency precinct officers.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute, KRS 117.045(6).

(d) How the amendment will assist in the effective administration of the statutes: This amendment outlines the requirement that the county board of elections submit the list of additional precinct election officers to the State Board of Elections by a certain date. Additionally, this amendment provides some consistency in the conditions for appointment of additional precinct officers and emergency precinct officers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects the county boards of election.

(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 individuals identified in question (3) will have to familiarize themselves with this amended administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is unknown if individuals identified in question (3) will incur costs in order to comply.

(c) As a result of compliance, what benefits will accrue to the entities identified in question(3): No benefits will accrue to the entities identified in question (3).

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

(a) Initially: There will be no cost to implement this administrative regulation for the first year.

(b) On a continuing basis: There is no cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source funding since there is no cost to implement this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

regulation will impact the county boards of election.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 117.045(6).

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

(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 additional revenue for state or local governments 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 administrative regulation will not generate any additional revenue for state or local governments during subsequent years of implementation.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 201 KAR 12:082E

During its 2018 regular session, the General Assembly passed House Bill 260, which amended provisions of the statutory scheme that regulates cosmetology, nail technology, and esthetics. Specifically, House Bill 260 amended KRS 317A.050 to reduce the total required hours of instruction for nail technician and esthetician students to be eligible for licensure; from 600 to 450 hours for nail technicians, and from 1,000 to 750 hours for estheticians. Additionally, House Bill 260 reduced the required hours of instruction for an apprentice instructor license from 1,000 to 750 hours. Due to its emergency provision, House Bill 260 became effective upon my signature, March 30, 2018. This emergency amendment is required to amend 201 KAR 12:082 to conform to the newly amended KRS 317A.050 and KRS 317A.090. See KRS 13A.190(1)(a)(3). In its current form, 201 KAR 12:082 still requires licensed schools to offer curricula based on the higher amount of instructional hours. Licensed schools in Kentucky will begin enrolling students into programs based on the amended statutes but without any modified curricula in the corresponding administrative regulation. An emergency amendment to this administrative regulation will ensure that the regulatory scheme conforms to the current statutory provisions. It will also ensure that the accreditation of licensed schools is not jeopardized due to noncompliance with the current regulatory requirement, and will provide certainty to all licensed schools and prospective students. This emergency amendment to the administrative regulation shall be replaced by an ordinary amendment to be concurrently filed with the Regulations Compiler. The ordinary amendment is not identical to this emergency amendment. In addition to the reduction in instructional hours, the ordinary amendment also updates other aspects of course curriculum and eliminates unnecessary and duplicative language in the existing administrative regulation, consistent with the Red Tape Reduction Initiative. These matters fall outside the scope of an emergency amendment.

MATTHEW G. BEVIN, Governor
R. KAY SWANNER, Chair

GENERAL GOVERNMENT CABINET Kentucky Board of Cosmetology (Emergency Amendment)

201 KAR 12:082E. Education requirements and school administration.

RELATES TO: KRS 317A.020, 317A.050, 317A.090[, 317B.015, 317B.025]

STATUTORY AUTHORITY: KRS 317A.060, 317A.090[, 317B.020]

EFFECTIVE: April 13, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060(1)(h)[(2)(e)] requires the board to promulgate administrative regulations governing the hours and courses of instruction at schools of cosmetology, esthetics, and nail technology. 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 licensing[the] requirements for schools of cosmetology, esthetics, and nail technology. This administrative regulation establishes requirements for the hours and courses of instruction, reporting, education requirements, and administrative functions required for students and faculty for schools of cosmetology, esthetics, and nail technology.

Section 1. Subject Areas. The regular courses of instruction for cosmetology students shall contain courses relating to the 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:

(a) Principles of Hair Design;

(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.

Section 2. A school of cosmetology shall teach the students about the various supplies and equipment used in the usual salon practices.

Section 3. (1) A cosmetology student shall receive not less than 1,500 hours in clinical class work and scientific lectures with a

minimum of:

- (a) 375 lecture hours for science and theory;
 - (b) 1,085 clinic and practice hours; and
 - (c) Forty (40) hours on the subject of applicable Kentucky statutes and administrative regulations.
- (2) A cosmetology student shall not 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 be no more than eight (8) hours per day, forty (40) hours per week.

(2) 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.

Section 6. Nail Technician Curriculum. The nail technician course of instruction 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.

Section 7. Nail Technology Hours Required. (1) A nail technician student shall receive no less than 450[600] hours in clinical and theory class work with a minimum of:

- (a) 150[240] lecture hours for science and theory;
 - (b) Twenty-five (25) hours on the subject of applicable Kentucky statutes and administrative regulations; and
 - (c) 275[365]-clinic and practice hours.
- (2) A nail technician student shall have completed sixty (60)[eighty (80)] hours in clinical and related theory class before working on and providing services to the general public. Clinical practice shall be performed on other students or mannequins during the first sixty (60)[eighty (80)] hours.

Section 8. Apprentice[Cosmetology] Instructor Curriculum. The course of instruction for an apprentice[cosmetology] instructor shall include no less than 750[1,000] hours, 425 hours of which shall be in direct contact with students, in the following:

- (1) Orientation;
- (2) Psychology of student training;
- (3) Introduction to teaching;
- (4) Good grooming and professional development;
- (5) Course outlining and development;

- (6) Lesson planning;
- (7) Teaching techniques (methods);
- (8) Teaching aids, audio-visual techniques;
- (9) Demonstration techniques;
- (10) Examinations and analysis;
- (11) Classroom management;
- (12) Recordkeeping;
- (13) Teaching observation;
- (14) Teacher assistant; and
- (15) Pupil teaching (practice teaching).

Section 9. 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 10. Schools may enroll persons for a special brush-up course in any subject.

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. (1) An esthetician student shall receive no less than 750[1,000] hours in clinical and theory class work with a minimum of:

- (a) 250[365] lecture hours for science and theory;
 - (b) Thirty-five (35) hours on the subject of applicable Kentucky statutes and administrative regulations; and
 - (c) 465[600] clinic and practice hours.
- (2) An esthetician student shall have completed 115[450] 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 115[450] 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 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) Maintain a daily attendance record for all full-time students, part-time students, and apprentice instructors;
- (2) Keep a record of each student's practical work and work performed on clinic patrons;
- (3) Maintain a detailed record of all student enrollments, withdrawals, and dismissals for a period of five (5) years; and
- (4) 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 shall post his or her license as required in 201 KAR 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 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, 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. The school shall report a student's leave of absence to the board within ten (10) business days. The leave shall be reported:

- (1) In writing from the student to the school; and
- (2) 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. The board shall credit hours previously completed in a licensed school of cosmetology as follows:

(1) Full credit (hour for hour) for hours completed within five (5) years of the date of school enrollment; and

(2) No credit for hours completed five (5) or more years from the date of school enrollment.

Section 29. Incorporation by Reference. (1) "Certification of Student Extracurricular Event Hours", September 2017 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky[State] Board of Cosmetology[~~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: April 6, 2018

FILED WITH LRC: April 13, 2018 at 9 a.m.

CONTACT PERSON: Julie M. Campbell, Board Administrator, 111 St. James Ct. Ste A. Frankfort, Kentucky 40601, (502) 564-4262, email julie.campbell@ky.gov, fax: (502) 564-0481.

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 the hours and courses of instruction, reporting, education requirements, and administrative functions for licensed schools of cosmetology, esthetics, and nail technology in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure standardized cosmetology education that complies with authorizing state statutes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment conforms to the administrative regulation with a recent statutory amendment to KRS 317A.050 and KRS 317A.090 contained in House Bill 260. Those statutory amendments reduced the instructional hours required for nail technicians and estheticians to be licensed in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation outlines and defines education standards and the quantity of course hours required to meet the education standards necessary for licensing in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: The amendment will revise the current nail technician and esthetician curriculum to comport with the recent amendments to KRS 317A.050 and 317A.090 contained in House Bill 260, which took effect on March 30, 2018.

(b) The necessity of the amendment to this administrative regulation: This amendment is required to comply with House Bill 260, which amended KRS 317A.050 and 317A.090 to reduce the number of instructional hours necessary to be licensed as a nail technician or esthetician in Kentucky. This amendment will conform the administrative regulation to these newly amended statutes.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides educational curriculum guidelines based on the statutory amendments in House Bill 260 reducing the instructional hours for nail technicians and estheticians to be licensed in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide a regulatory scheme for licensed schools that complies with governing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 62 licensed schools and approximately 10,000 students 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 is necessary to ensure that licensed cosmetology schools are provided the regulatory guidance to develop curriculum that complies with current law. Additionally, this amendment assists schools in maintaining their current accreditation by national accrediting organizations.

(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 licensed schools because of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment enables licensed schools to enroll students into programs based upon the statutorily adjusted curriculum requirements of House Bill 260. Kentucky's regulatory scheme for licenses will fully comply with its authorizing statutes, and be more closely aligned with similar licensing schemes 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 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: All Kentucky Board of Cosmetology funding comes from fees collected from licensees and applicants. 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 change or increase in fees is anticipated as a result of 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 and students.

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 Cosmetology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A.050 and KRS 317A.060.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There is no anticipated effect upon state or local government agencies resulting from the 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 will be generated by this amendment 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? No revenue will be generated by this amendment in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost from this amendment in the first year. Existing costs for administering curriculum for licensed cosmetology schools are expected to remain the same.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost from this amendment. Existing costs for administering curriculum for licensed cosmetology schools are expected to remain the same.

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.

STATEMENT OF EMERGENCY 922 KAR 2:171E

This emergency repealer sunsets the former quality-based graduated early childhood rating system for child care, STARS for KIDS NOW. In accordance with KRS 13A.190(1)(a)2, this emergency repealer is necessary to comply with the purposes of the Child Care and Development Fund Block Grant, the state's major federal fund source for child care services, including the Child Care Assistance Program, specifically 42 U.S.C. 9857(a)(5) and (7), through its transition of the quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes to the Kentucky All STARS. The emergency repealer also preserves the health and safety of children in child care settings through its facilitation of enhanced quality programming and provider incentive in accordance with KRS 13A.190(1)(a)1. An ordinary administrative regulation would not allow the agency sufficient time to effect the transition and avoid federal noncompliance or disruption to service provision to children in child care settings. This emergency repealer will not be replaced by an ordinary administrative regulation, because this

emergency repealer will accomplish the task of permanently repealing the administrative regulations, 922 KAR 2:170 and 922 KAR 2:210.

MATTHEW G. BEVIN, Governor
SCOTT W. BRINKMAN, Acting Secretary

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

922 KAR 2:171E. Repeal of 922 KAR 2:170 and 922 KAR 2:210.

RELATES TO: KRS 199.011, 199.892-199.8996, 199.990, 45 C.F.R. Part 98, 42 U.S.C. 9857-9858q

STATUTORY AUTHORITY: KRS 194A.050(1), 199.8941(1), 199.8943(2)

EFFECTIVE: April 13, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth. KRS 199.8943(2) requires the Cabinet for Health and Family Services to promulgate an administrative regulation that implements a quality-based graduated child care rating system for public-funded child-care centers and certified family child-care homes; agency time frames for review of quality ratings; an appeals process under KRS Chapter 13B; and the ability of providers to request reevaluation for ratings. KRS 199.8941(1) requires the Early Childhood Advisory Council to develop a program of monetary incentives tied to participation in a quality rating system. This administrative regulation repeals 922 KAR 2:170 and 922 KAR 2:210 governing the STARS for KIDS NOW Program, which is being superseded by the Kentucky All STARS Program in accordance with 922 KAR 2:270.

Section 1. The following administrative regulations are hereby repealed:

(1) 922 KAR 2:170, STARS for KIDS NOW Program for type I licensed child-care centers; and

(2) 922 KAR 2:210, STARS for KIDS NOW Program for type II licensed and certified family child-care homes.

ADRIA JOHNSON, Commissioner
SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: April 3, 2018

FILED WITH LRC: April 13, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 21, 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 May 14, 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 May 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:

(a) What this administrative regulation does: This administrative regulation repeals 922 KAR 2:170 and 922 KAR 2:210.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal 922 KAR 2:170 and 922 KAR 2:210 in order to sunset the STARS for KIDS NOW Program concurrent with the establishment of the Kentucky All STARS Program, Kentucky's new quality rating and improvement system, in accordance with 922 KAR 2:270.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The only purpose of this administrative regulation is to repeal 922 KAR 2:170 and 922 KAR 2:210.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The only purpose of this administrative regulation is to repeal 922 KAR 2:170 and 922 KAR 2:210.

(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 not an amendment.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky was awarded Race to the Top-Early Learning Challenge Grant funds in late 2013 that facilitated the development and implementation of the Kentucky All STARS Program from 2014 through present day. All publicly funded licensed child-care centers and certified family child care homes are transitioned from the nearly sunset STARS for KIDS NOW Program to the new Kentucky All STARS Program.

(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: Publicly funded early care and education providers are mandated to participate in the quality-based graduated early childhood rating system in accordance with KRS 199.8943. For licensed child-care centers and certified family child-care homes, 922 KAR 2:270 will establish this program and supersede 922 KAR 2:170 and 922 KAR 2:210.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Child care providers can participate in the Kentucky All STARS Program by meeting licensure or certification requirements, minimum health and safety requirements to operate in the state. Providers choosing to participate at higher levels of the Kentucky All STARS Program will absorb the cost associated with complete application, environmental assessment, and the standards of quality. Federal Race to the Top-Early Learning Challenge Grant funds have been temporarily available to subsidize training materials, curriculum associated with high quality standards, and overall programmatic costs. Moving forward, providers participating in the Kentucky All STARS Program will have available technical assistance, support, and incentive awards under the program to offset the cost associated with providing high quality child care to Kentucky's children.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This repealer will benefit licensed child-care centers and certified family child-care homes by updating administrative regulations pertaining to Kentucky's child care quality rating and improvement system. The new Kentucky All STARS Program, including its incentive awards, has also been structured to support the state's compliance with the purposes of the Child Care and Development Fund Block Grant, the state's major federal funding source for child care services, including the Child Care Assistance Program, specifically 42 U.S.C. 9857(a)(5) and (7).

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

(a) Initially: Funds previously directed to the STARS for KIDS NOW Program will be redirected to the new Kentucky ALL STARS Program. There will be no new costs or cost avoidance associated with this repealer.

(b) On a continuing basis: There will be no new ongoing costs or cost avoidance associated with this repealer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no particular fund source associated with this repealer. Funds supporting the Kentucky All STARS Program are outlined in the attachments to 922 KAR 2:270.

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. Part 98, 42 U.S.C. 9857-9858q
2. State compliance standards. KRS 194A.050(1), 199.8941(1), 199.8943(2)
3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. Part 98, 42 U.S.C. 9857-9858q
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The only purpose of this administrative regulation is to repeal 922 KAR 2:170 and 922 KAR 2:210.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The only purpose of this administrative regulation is to repeal 922 KAR 2:170 and 922 KAR 2:210.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services is 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), 199.8941(1), 199.8943(2), 45 C.F.R. Part 98, 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 repealer will generate 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? This repealer will generate no revenue.

(c) How much will it cost to administer this program for the first year? This repealer creates no new cost in the initial year.

(d) How much will it cost to administer this program for subsequent years? This repealer creates no new cost in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 922 KAR 2:270E

In accordance with KRS 13A.190(1)(a)2, this emergency administrative regulation is necessary to comply with the purposes of the Child Care and Development Fund Block Grant, the state's major federal fund source for child care services, including the Child Care Assistance Program, specifically 42 U.S.C. 9857(a)(5) and (7), through its transition of the quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes to the Kentucky All STARS. The emergency administrative regulation preserves the health and safety of children in child care settings through enhanced quality programming and provider incentive in accordance with KRS 13A.190(1)(a)1. An ordinary administrative regulation would not allow the agency sufficient time to effect the transition and avoid federal noncompliance or disruption to service provision to children 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

SCOTT W. BRINKMAN, Acting Secretary

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

922 KAR 2:270E. Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes.

RELATED TO: KRS Chapter 13B, 158.030, 199.894, 199.8941, 199.8943, 199.896(4), 199.8982, 199.990, 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

STATUTORY AUTHORITY: KRS 194A.050(1), 199.8941(1), 199.8943(3)

EFFECTIVE: April 13, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth. KRS 199.8943(3) requires the Cabinet for Health and Family Services, in consultation with the Early Childhood Advisory Council, to promulgate administrative regulations that implement a quality-based graduated child care rating system for public-funded child care and certified family child-care homes; agency time frames of reviews for quality ratings; an appellate process under KRS Chapter 13B; and the ability of providers to request reevaluation for ratings. KRS 199.8941(1) requires the Early Childhood Advisory Council to develop a program of monetary incentives tied to participation in a quality rating system. This administrative

regulation establishes the Kentucky All STARS Program, a quality-based graduated early childhood rating system, and monetary incentive awards for licensed child-care centers and certified family child-care homes, to the extent funding is available.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.894(1).

(2) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families, who meet the eligibility requirements of 922 KAR 2:160, with the financial resources to find and afford quality child care.

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

(4) "Environment assessment" means one (1) of four (4) rating scales designed to assess quality in an early childhood or school-age care group, and consists of the following items to evaluate:

- (a) Physical environment;
- (b) Basic care;
- (c) Curriculum;
- (d) Interaction;
- (e) Schedule and program structure; and
- (f) Parent and staff education.

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

(6) "Infant" means an age group of children who are less than twelve (12) months of age.

(7) "Issue date" means the date the quality-rating certificate is issued by the cabinet or its designee.

(8) "Kentucky All STARS Program" or "STARS" means the quality-based graduated early childhood rating system in accordance with KRS 199.8943.

(9) "Preschool" means an age group of children who are older than a toddler and younger than school-age.

(10) "Provider" means the entity providing child care services, including:

- (a) A Type I child-care center;
- (b) A Type II child-care center; or
- (c) A certified family child-care home.
- (11) "Public funds" means local, state, or federal funding.

(12) "Rating visit" means a visit conducted by the cabinet or its designee using the environment assessment tool to inform a child care provider's quality-rating level.

(13) "Renewal month" means the month that a child care provider's license or certification is to be renewed with the Office of Inspector General, Division of Regulated Child Care.

(14) "School-age" means an age group of children who meet the age requirements of KRS 158.030 or who attend kindergarten, elementary, or secondary education.

(15) "Toddler" means an age group of children who are between the age of twelve (12) months and thirty-six (36) months.

(16) "Type I child-care center" means a child-care center licensed to regularly provide child care services for:

- (a) Four (4) or more children in a nonresidential setting; or
- (b) Thirteen (13) or more children in a residential setting with designated space separate from the primary residence of a licensee.

(17) "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. Provider Participation. (1) A provider receiving public funds shall participate in STARS upon preliminary licensure or certification.

(2) A provider with a preliminary license in accordance with 922 KAR 2:090 shall participate at a STARS Level 1.

(3) A provider with a regular license in accordance with 922 KAR 2:090 or certification in accordance with 922 KAR 2:100 shall participate in STARS:

- (a) At a Level 1; or
- (b) As a Level 2 through Level 5 for which the provider applies and qualifies in accordance with this administrative regulation.

(4) A provider not receiving public funds shall participate in STARS unless the provider waives participation by completing the DCC-433, Kentucky All STARS Opt-Out Request.

Section 3. Application for Levels 2 through 5. (1) If a provider seeks participation in STARS as a Level 2 through 5, the provider shall:

(a) Complete the DCC-432, Kentucky All STARS Standards of Quality Verification Checklist; and

(b) Submit evidence documentation supporting each of the provider's responses within the DCC-432 to the cabinet or its designee.

(2) The cabinet or its designee shall:

(a) Require an onsite STARS quality-rating visit to include an environment assessment for a provider seeking a Level 3 through 5.

1. An environment assessment for a licensed child-care center shall be completed during each onsite quality-rating visit for at least one-third (1/3) of the total number of classrooms, including at least one (1) classroom for each age group for which the child-care center provides care:

- a. Infant;
- b. Toddler;
- c. Preschool; and
- d. School age.

2. An environment assessment for a certified provider shall be completed during each onsite quality-rating visit by using the appropriate scale;

(b) Contact the provider within fourteen (14) calendar days from the receipt of the provider's application in accordance with subsection (1) of this section to schedule the onsite quality-rating visit for a provider seeking a Level 3 through 5; and

(c) Reach an agreement with the provider for a two (2) week time period during which the onsite quality-rating visit in accordance with paragraph (a) of this subsection shall occur.

(3)(a) The cabinet or its designee shall issue a determination on a provider's application in accordance with subsection (1) of this section within sixty (60) calendar days from the date of the application's submission or the onsite quality-rating visit, whichever is later.

(b) The determination issuance pursuant to paragraph (a) of this subsection shall include:

1. A letter identifying the STARS level for which the provider qualifies in accordance with this administrative regulation;

2. The DCC-430, Kentucky All STARS Quality Rating Summary Report, detailing points awarded and environment rating results for the provider; and

3. A non-transferable quality-rating certificate.

(4) If the provider continues to qualify for the STARS level in accordance with this administrative regulation, the provider's quality-rating certificate issued in accordance with subsection (3) of this section shall:

(a) Be valid for three (3) years; and

(b) Expire in the provider's renewal month that most approximates three (3) years from the issue date unless the provider renews the STARS certificate in accordance with Section 7 of this administrative regulation.

(5) For the purpose of re-determining a provider's quality-rating, a provider participating in STARS may submit a new application for advancement to a STARS Level 2 through 5:

(a) After three (3) months from the issue date of the provider's STARS certificate; and

(b) No more than two (2) times in a twelve (12) month period.

Section 4. All STARS Quality-Rating Level Requirements. (1)(a) The cabinet or its designee shall determine a provider's level using the following four (4) domains:

1. Family and community engagement, which may include professional development related to family engagement, implementation of family engagement initiatives, and partnership building with community agencies for a maximum of ten (10) points to the provider;

2. Classroom and instructional quality, which may include the use of developmental screenings, curriculum, and assessments for a maximum of twenty (20) points to the provider;

3. Staff qualifications and professional development, which

may include the hours of staff training, professional development plans for staff that align with state requirements, and staff credentials for a maximum of ten (10) points to the provider; and

4. Administrative and leadership practices, which may include time for lesson plan development, implementation of a continuous improvement plan, and provision of staff benefits, such as time off or health insurance, for a maximum of ten (10) points to the provider.

(b) The cabinet or its designee shall use the criteria in the DCC-431, Kentucky All STARS Standards of Quality, to determine points awarded in each domain.

(2) A provider in STARS holding a Level 1 quality-rating certificate shall meet regulatory requirements in accordance with 922 KAR Chapter 2.

(3) A provider in STARS holding a Level 2 quality-rating certificate shall meet the following requirements:

(a) Fifty (50) percent of the provider's teaching staff has participated in professional development activities concerning developmental screening:

1. At initial application; or

2. During the preceding certification period if the provider is renewing the provider's STARS certificate;

(b) The provider has completed an environment self-assessment using a valid and reliable tool appropriate for the ages or settings of children served;

(c) The provider or director for the provider has:

1. Received ten (10) hours of professional learning in curriculum, instructional practices, teaching, or learning:

a. At initial application; or

b. During the preceding certification period if the provider is renewing the provider's STARS certificate; or

2. An early childhood credential or degree; and

(d) Fifty (50) percent of teaching staff has:

1. Received ten (10) hours of professional learning in curriculum, instructional practices, teaching, or learning:

a. At initial application; or

b. During the preceding certification period if the provider is renewing the provider's STARS certificate; or

2. An early childhood credential or degree.

(4) A provider in STARS holding a Level 3 quality-rating certificate shall meet the following requirements:

(a) Level 2 requirements in accordance with subsection (3) of this section;

(b) Twenty-one (21) to thirty (30) points total in all four (4) domains with:

1. A minimum of two (2) points in each of the following domains:

a. Family and community engagement;

b. Staff qualifications and professional development; and

c. Administrative and leadership practices;

2. A minimum of eight (8) points in classroom and instructional quality; and

3. A minimum of seven (7) points of the provider's choice from any one (1) or more of the domains to the extent the points have not otherwise been taken into consideration in determining if the provider meets the requirements necessary to attain a STARS Level 3 quality-rating certificate; and

(c) Completion of an environment assessment conducted by the cabinet or its designee.

(5) A provider in STARS holding a Level 4 quality-rating certificate shall meet the following requirements:

(a) Level 2 requirements in accordance with subsection (3) of this section; and

(b) Thirty-one (31) to forty (40) points total in all four (4) domains with:

1. A minimum of two (2) points in each of the following domains:

a. Family and community engagement;

b. Staff qualifications and professional development; and

c. Administrative and leadership practices;

2. A minimum of eight (8) points in classroom and instructional quality; and

3. A minimum of seventeen (17) points of the provider's choice

from any two (2) or more of the domains to the extent the points have not otherwise been taken into consideration in determining if the provider meets the requirements necessary to attain a STARS Level 4 quality-rating certificate; and

(c) Completion of an environment assessment conducted by the cabinet or its designee with a minimum score of four (4) per classroom observed.

(6) A provider in STARS holding a Level 5 quality-rating certificate shall meet the following requirements:

(a) Level 2 requirements in accordance with subsection (3) of this section;

(b) Forty-one (41) to fifty (50) points total in all four (4) domains with:

1. A minimum of two (2) points in each of the following domains:

a. Family and community engagement;

b. Staff qualifications and professional development; and

c. Administrative and leadership practices;

2. A minimum of eight (8) points in classroom and instructional quality; and

3. A minimum of twenty-seven (27) points of the provider's choice from any two (2) or more of the domains to the extent the points have not otherwise been taken into consideration in determining if the provider meets the requirements necessary to attain a STARS Level 5 quality-rating certificate; and

(c) Completion of an environment assessment conducted by the cabinet or its designee with a minimum score of five (5) per classroom.

(7) A provider applying for a Level 2 through 5 shall:

(a) Not have an immediate closure, denial of re-licensure or recertification, directed plan of correction, suspension, or revocation action against the provider's license or certificate; and

(b) Pay in full any civil penalty levied against the child-care center if the:

1. Child-care center has waived the right to appeal a civil penalty; or

2. Civil penalty has been upheld on appeal.

Section 5. Kentucky All STARS Awards. (1) To the extent funds are available, the cabinet shall pay a qualified provider:

(a) An initial achievement award;

(b) An annual quality award; or

(c) A subsidy enrollment award.

(2) The cabinet shall initiate an achievement award payment within thirty (30) calendar days from determination of the provider's rating.

(3) The cabinet shall send a remittance statement to the child care provider detailing the provider's:

(a) Name;

(b) Location;

(c) License or certification number;

(d) STARS level;

(e) STARS certificate's expiration date;

(f) Award calculation; and

(g) Award issuance date.

(4) A STARS initial achievement award shall be awarded to a Type I child-care center the first time that the provider achieves a STARS level in accordance with the following chart:

Type I Child-Care Centers Initial Achievement Award	
KY All STARS Level	Amount
2	\$500
3	\$1,500
4	\$3,000
5	\$5,000

(5) A STARS initial achievement award shall be awarded to a Type II child-care center or certified family child-care home the first time the provider achieves a STARS level in accordance with the following chart:

Type II Child-Care Centers and Certified Family Child-Care Homes Initial Achievement Award	
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KY All STARS Level	Amount
2	\$250
3	\$750
4	\$1,500
5	\$2,500

(6) Upon verification of level from the quality review process pursuant to Section 6 of this administrative regulation, a Type I child-care center that continues to be a STARS Level 2, 3, 4, or 5 shall be eligible for an annual quality award during the renewal month in accordance with the following chart:

Type I Child-Care Centers Annual Quality Award	
KY All STARS Level	Amount
2	\$300
3	\$900
4	\$1,800
5	\$3,000

(7) Upon verification of level from the quality review process pursuant to Section 6 of this administrative regulation, a Type II child-care center or certified family child-care home that continues to be a STARS Level 2, 3, 4, or 5 provider shall be eligible for an annual quality award during the renewal month in accordance with the following chart:

Type II Child Care Center and Certified Family Child-Care Homes Annual Quality Award	
KY All STARS Level	Amount
2	\$150
3	\$450
4	\$900
5	\$1,500

(8) Subsidy Enrollment Award for a Type I Child-Care Center.

(a) A subsidy enrollment award shall be calculated and paid based on a Type I child-care center's STARS level and the average enrollment of CCAP-eligible children served by the child-care center.

(b) A Type I child-care center shall be eligible for a subsidy enrollment award if the center has a STARS Level 3 through 5.

(c) The cabinet shall determine the average monthly enrollment of CCAP-eligible children by dividing the cumulative total number of CCAP-eligible children served by the Type I child-care center each month by the months that the center was in operation following the center's last STARS issue date or renewal month, whichever is later, by the same number of months.

(d) The cabinet shall make a subsidy enrollment award to a Type I child-care center in accordance with the following chart:

Type I Child-Care Center Subsidy Enrollment Award		
Kentucky All STARS Level	Child Under 3 Years of Age	Child Age 3 Years and Over
	Amount Per CCAP Child Per Month Based on Average	
3	\$25	\$23
4	\$35	\$33
5	\$45	\$43

(e) The cabinet shall calculate and pay a subsidy enrollment award to a Type I child-care center annually.

(9) Subsidy Enrollment Award for a Type II Child-Care Center or Certified Family Child-Care Home.

(a) A subsidy enrollment award shall be calculated and paid based on a Type II child-care center or certified family child-care home STARS level and the average enrollment of CCAP-eligible children served by the Type II child-care center or certified family child-care home.

(b) A Type II child-care center or certified family child-care home shall be eligible for a subsidy enrollment award if the center has a STARS Level 3 through 5.

(c) The cabinet shall determine the average monthly enrollment of CCAP-eligible children by dividing the cumulative total number of CCAP-eligible children served by the Type II child-

care center or certified family child-care home each month by the months that the center was in operation following the center's last STARS issue date or renewal month, whichever is later, by the same number of months.

(d) The cabinet shall make a subsidy enrollment award to a Type II child-care center or certified family child-care home in accordance with the following chart:

Type II Child-Care Center and Certified Family Child-Care Home Subsidy Enrollment Award		
Kentucky All STARS Level	Child Under 3 Years of Age	Child Age 3 Years and Over
	Amount Per CCAP Child Per Month Based on Average	
3	\$20	\$18
4	\$30	\$28
5	\$40	\$38

(e) The cabinet shall calculate and pay a subsidy enrollment award to a Type II child-care center or certified family child-care home annually.

Section 6. Annual Quality Review for Level 2 through 5. (1) During the three (3) year STARS certification period, a child care provider shall annually verify the provider's STARS level during the provider's renewal month.

(2) A provider with a STARS Level 2 through 5 shall verify the provider's continued adherence to the level's standards pursuant to Sections 3 and 4 of this administrative regulation by completing the DCC-434, Kentucky All STARS Annual Quality Review.

(3) The cabinet shall utilize the cabinet-designated database maintained pursuant to 922 KAR 2:240 to verify continued compliance with professional development standards in accordance with Sections 3 and 4 of this administrative regulation.

(4) A provider that does not evidence sustained adherence to the standards pursuant to Sections 3 and 4 of this administrative regulation shall undergo a reevaluation of the provider's rating as detailed in Section 8 of this administrative regulation.

(5) The cabinet shall reduce the STARS level for a provider that fails to submit the DCC-434 in accordance with this section to a STARS Level 1.

Section 7. Renewal of a Quality Rating Certificate for Levels 2 through 5. (1) The cabinet or its designee shall notify a provider at least ninety (90) calendar days in advance of the expiration date for the provider's STARS certificate.

(2) A provider shall complete the application for Levels 2 through 5 as established in Section 3 of this administration regulation.

(3) The cabinet shall determine a provider's STARS level based upon the standards specified in Sections 3 and 4 of this administrative regulation.

Section 8. Reevaluation. (1) The cabinet or its designee shall reevaluate a provider's STARS level if the:

(a) Provider's location of child care services changes;
(b) Provider requests a reevaluation in accordance with Section 3(5) of this administrative regulation;

(c) Provider does not detail sustained adherence to the standards pursuant to Section 6 of this administrative regulation;

(d) Cabinet or its designee determines a need to reassess due to a report or finding indicating a reduction in the provider's quality of care and services, including:

1. Failure to make payment arrangements for a civil penalty within sixty (60) calendar days and comply with that arrangement if:

a. The child-care center waived the right to appeal the civil penalty; or
b. The civil penalty has been upheld on appeal;

2. Failure to comply with the requirements of 922 KAR 2:160; or

3. Two (2) or more civil penalties with the severity levels of Type A violation against the child-care center in a twelve (12) month period pursuant to 922 KAR 2:190; or

(e) Ownership of a participating provider changes.
(2) The cabinet shall notify the provider within thirty (30) calendar days of the need to undergo a reevaluation.

(3) A provider shall submit a DCC-432 and evidence documentation within thirty (30) calendar days of the cabinet notice provided in accordance with subsection (2) of this section.

(4) The cabinet or its designee shall conduct an environment assessment for Levels 3 through 5 pursuant to Section 3 of this administrative regulation.

(5) The cabinet shall:

(a) Issue results of its reevaluation in accordance with Section 3(3) of this administrative regulation; and

(b) Adjust awards made pursuant to Section 5 of this administrative regulation based upon the provider's STARS level resulting from the reevaluation in accordance with this section.

Section 9. Conditions Requiring Revocation. (1) The cabinet or its designee shall revoke a provider's STARS certificate if the provider is:

(a) Subject to immediate closure pursuant to KRS 13B.125 and 199.896(4);

(b) Subject to denial of:

1. Regular licensure or re-licensure in accordance with 922 KAR 2:090; or

2. Recertification in accordance with 922 KAR 2:100; or

(c) Pending suspension or revocation action.

(2) Upon revocation of a provider's STARS certificate, awards in accordance with Section 5 of this administrative regulation shall cease.

Section 10. Appeals. (1) If the cabinet or its designee determines that a provider does not meet the standards for the STARS level for which the provider is certified, a provider shall:

(a) Accept a lower rating level; or

(b) Request an administrative hearing in accordance with 922 KAR 2:260.

(2) Payment of an award in accordance with Section 5 of this administrative regulation shall be held in abeyance pending resolution of appeal of a rating level.

(3) The cabinet shall assign the provider the appropriate STARS level based on the resolution of the appeal.

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

(a) "DCC-430, Kentucky All STARS Quality Rating Summary Report", 4/18;

(b) "DCC-431, Kentucky All STARS Standards of Quality", 4/18;

(c) "DCC-432, Kentucky All STARS Standards of Quality Verification Checklist", 4/18;

(d) "DCC-433, Kentucky All STARS Opt-Out Request", 4/18; and

(e) "DCC-434, Kentucky All STARS Annual Quality Review", 4/18.

(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

SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: April 5, 2018

FILED WITH LRC: April 13, 2018 at 10 a.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.

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 new administrative regulation establishes the Kentucky All STARS Program, a quality-based graduated early childhood rating system, and monetary incentive awards for licensed child-care centers and certified family child-care homes, to the extent funding is available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Kentucky All STARS Program, a quality-based graduated early childhood rating system, and monetary incentive awards for licensed child-care centers and certified family child-care homes, contingent upon available funding.

(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 the Kentucky All STARS Program, a quality-based graduated early childhood rating system, and monetary incentive awards for licensed child-care centers and certified family child-care homes, to the extent funding is available.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation will assist in the effective administration of the statutes through its establishment of the Kentucky All STARS Program, a quality-based graduated early childhood rating system, and monetary incentive awards for licensed child-care centers and certified family child-care homes, to the extent funding is available.

(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: As of March 14, 2018, there were 1,930 licensed child-care centers and 260 certified family child-care homes eligible to participate in the Kentucky All STARS Program. Forty-five (45) percent of participating providers were participating at high quality levels. In accordance with the No-Cost Extension for the Race To the Top-Early Learning Challenge Grant, the state's goal is 45% participation of licensed and certified early care providers at high quality levels by December 21, 2018.

(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 receiving public funds are mandated to participate in Kentucky All STARS pursuant to KRS 199.8943. Providers may participate at STARS Level 1 by meeting licensure or certification requirements and can participate at STARS Levels 2-5 through an application and an environment assessment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Child care providers can participate in Kentucky All STARS by meeting licensure or certification requirements and minimum health and safety requirements to operate in the state. Providers choosing to participate at higher levels of Kentucky All STARS will absorb the cost associated with completed application, environment assessment, and the standards of quality. Federal Race to the Top-Early Learning Challenge Grant funds have been temporarily available to subsidize training materials, curriculum associated with high quality standards, and overall programmatic costs. Moving forward, providers participating in the Kentucky All STARS will have available technical assistance, support, and incentive awards under the program to offset the cost associated with providing high quality child care to Kentucky's children.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensed child-care centers' and certified family child-care homes' efforts to effect high quality child care environment will be supported and incentivized, thereby improving early care and education for Kentucky's children. The program, including its incentive awards, has also been structured to support the state's compliance with the purposes of the Child Care and Development Fund Block Grant, the state's major federal fund source for child care services, including the Child Care Assistance Program, specifically 42 U.S.C. 9857(a)(5) and (7).

(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 and support to child care providers. The grant totaled upwards of \$36 million over a four-year period for these efforts.

(b) On a continuing basis: The department will absorb costs associated with implementation of the Kentucky All STARS Program within agency appropriations. Upon repeal of 922 KAR 2:170 and 922 KAR 2:210 governing the current voluntary STARS for KIDS NOW Program, funding currently used for the STARS for KIDS NOW Program will be directed to the Kentucky All STARS Program. In accordance with 42 U.S.C. 9858e, the state must reserve and use a percentage of the federal Child Care and Development Fund Block Grant for activities relating to the quality of child care. Ongoing costs are projected to be \$7 million annually.

(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. Tobacco dollars, the federal Child Care and Development Fund Block Grant, and state and 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. Implementation and enforcement of this administrative regulation will be within agency appropriations. The program's incentive awards are contingent upon available funding.

(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 or increase any fees.

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

2. State compliance standards. KRS 194A.050(1), 199.8941(1), 199.8943(3)

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

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, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or 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 entities, local governments, and school districts operating or funding a licensed child-care center will be impacted by this administrative regulation. The Kentucky Department of Education may be indirectly impacted by this administrative regulation due to the application of KRS 199.8943 to public preschool. The Governor's Office of Early Childhood will be impacted due to its statutory roles pertaining to early care and education.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 199.8941, 199.8943, 45 C.F.R. 98, 42 U.S.C. 601-619, 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.

(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 directly generate any new revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? The administration of this program is projected to fall within available federal and state appropriations and to cost \$7 million annually.

(d) How much will it cost to administer this program for subsequent years? The administration of this program is projected to fall within available federal and state appropriations and to cost \$7 million annually.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

KENTUCKY STATE BOARD OF ELECTIONS
(As Amended at ARRS, April 12, 2018)

31 KAR 3:010. Current address of Kentucky registered voters and distribution of voter registration lists.

RELATES TO: KRS 116.085, 116.155, 117.025, 117.225

STATUTORY AUTHORITY: KRS 117.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015 authorizes the Kentucky State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. This administrative regulation establishes the procedures for election officials and voters to follow to correct and maintain voter registration records and establishes standards for the State Board of Elections to follow when reviewing a request for a voter registration list.

Section 1. Definitions. (1) "Advertisement" means any attempt by publication, dissemination, solicitation, or circulation to induce any person to enter into any obligation, or acquire any title or interest in any good or service.

(2) "Alphabetical labels" means labels of registered voters within the precinct with one (1) name per label and sorted in alphabetical order.

(3) "Alphabetical lists" means lists of registered voters generated from the statewide voter registration database and sorted in alphabetical order by last name within a precinct that have the name, address, age code, party, gender, zip code, and five (5) year voting history of every voter in the precinct.

(4) "Duly qualified candidate" means any person who has filed:

(a) A letter of intent with the Kentucky Registry of Election Finance;~~or~~

(b) Nomination papers with the Office of the Secretary of State or county clerk.~~["CD-R" means a compact computer disc with read-only memory containing the voter's name and address, county code, precinct code, gender, party, zip code, date of birth, date of registration, and five (5) year voting history generated from the statewide voter registration database.]~~

(5) "Household labels by street order" means labels that are generated from the statewide voter registration database and sorted by street address within the precinct with as many as four (4) names per label of the voters whose last name and address are an identical match.

(6) "Household labels by zip code order" means labels that are generated from the statewide voter registration database and sorted by zip code within the county with as many as four (4) names per label of the voters whose last name and address are an identical match.

(7) "Sale" means any sale, rental, distribution, offer for sale, rental, or distribution, or attempt to sell, rent, or distribute any good or service to another.

(8) "Statewide voter registration database" means a complete roster of all qualified voters within the state by county and precinct that the State Board of Elections is required to maintain pursuant to KRS 117.025(3)(a).

(9) "Street order lists" means lists of registered voters generated from the statewide voter registration database sorted in street order within a precinct and contain the name, address, age code, party, gender, zip code, and a five (5) year voting history of every registered voter in the precinct.

(10) "Voter registration list" means a list of registered voters generated from the statewide voter registration database in any format in any given election precinct in the Commonwealth of Kentucky that the State Board of Elections is required to furnish pursuant to KRS 117.025(3)(h).

Section 2. Correction of Voter Registration Records. (1) Each

county clerk shall instruct the precinct election officers of the necessity for informing each voter that he~~or she~~ shall correct any error existing in his~~or her~~ address as it appears upon the precinct signature roster.

(2) Each precinct election officer shall instruct each voter to correct any error existing in his~~or her~~ address as it appears upon the precinct signature roster.

(3) Each voter shall, when he~~or she~~ signs the precinct signature roster, correct any error existing in his~~or her~~ address as it appears upon the precinct signature roster.

(4) Each county clerk shall take all steps necessary to correct and update each voter's address upon the statewide voter registration database.

Section 3. Interpretation of Commercial Use. Commercial use, as that term is used in KRS 117.025(3)(h), shall be interpreted by the Board of Elections to mean:

(1) The use by the requester of the voter registration list, or any part thereof, in any form, for profit, the solicitation of donations, or for the sale or advertisement of any good or service; or

(2) The transfer of a voter registration list by the requester for a profit to any other person whom the requester knew or should have known intended to use the voter registration list, or any part thereof, in any form, for profit, the solicitation of donations, or for the sale or advertisement of a good or service.

Section 4. Exceptions to Commercial Use Interpretation. Commercial use shall not include use of a voter registration list, or any part thereof, for the following purposes:

(1) Use for scholarly, journalistic, political (including political fund raising), or governmental purposes;

(2) Use for publication, broadcast, or related use by a newspaper, magazine, radio station, television station, or other news medium in its news or other publications or broadcasts; or

(3) Use in a publication provided or sold to duly qualified candidates~~;~~^[;] political party committees~~;~~^[;] or officials thereof~~;~~^[;] or any committee that advocates or opposes an amendment or public question.

Section 5. Requests for Voter Registration Lists. A request for voter registration lists shall be made by submitting a completed Request for Voter Registration Data, form SBE-84, to the State Board of Elections with payment of costs as follows:

(1) The minimum charge for lists and label orders shall be ten (10) dollars.

(2) The charge for alphabetical lists shall be four (4) dollars per precinct.

(3) The charge for street order lists shall be four (4) dollars per precinct.

(4) The charge for alphabetical labels shall be ten (10) dollars per thousand labels.

(5) The charge for household labels by street order shall be ten (10) dollars per thousand labels.

(6) The charge for household labels by zip code order shall be ten (10) dollars per thousand labels.

(7) Upon request, any of the above lists may be made available in a password-protected electronic format at like charge.~~(The minimum charge for CD-R shall be twenty-five (25) dollars.)~~

(8) ~~The charge for CD-R shall be one (1) dollar per 1,000 records up to 100,000 records; fifty (50) cents per thousand records over 100,000 records; \$450 statewide.]~~

Section 6. Incorporation by Reference. (1) "Request for Voter Registration Data", SBE 84, October 2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained,

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subject to applicable copyright law, at the State Board of Elections, 140 West Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ALISON LUNDERGAN GRIMES, Secretary of State,
Chair of the State Board of Elections

APPROVED BY AGENCY: November 21, 2017

FILED WITH LRC: January 23, 2018 at 4 p.m.

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

PUBLIC PROTECTION CABINET Kentucky Claims Commission (As Amended at ARRS, April 12, 2018)

107 KAR 2:011. Repeal of 107 KAR 2:010.

RELATES TO: KRS ~~[216B.050, 216B.400, 314.142,]~~ 49.260, 49.280, 49.300 – 49.340, 49.370, 49.390, 49.410, 49.460, 49.470, ~~216B.050, 216B.400, 314.142,~~ 403.707, 510.010

STATUTORY AUTHORITY: KRS 49.010, 49.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 49.020(5) authorizes the Kentucky Claims Commission to promulgate, amend, and repeal suitable administrative regulations to carry out the provisions and purposes of the commission's statutory authority. This administrative regulation repeals 107 KAR 2:010. Pursuant to the renumbering and repeal of KRS 346.010 et. seq. and enactment of KRS Chapter 49, the programmatic functions of the former Crime Victims Compensation Board have been absorbed into the Kentucky Claims Commission. The subject matter of this administrative regulation regarding payments for sexual assault examinations is being concurrently updated and repromulgated as part of KAR Title 802.

Section 1. 107 KAR 2:010. Payment schedule for sexual assault examinations, is hereby repealed.

MARCUS CAREY, Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: February 14, 2018

FILED WITH LRC: February 15, 2018 at 10 a.m.

CONTACT PERSON: G. Mitchell Mattingly, Kentucky Claims Commission Attorney, 130 Brighton Park Blvd, Frankfort, Kentucky 40601, phone (502) 782-8255, fax (502) 573-4817 email mitchell.mattingly@ky.gov.

PUBLIC PROTECTION CABINET Kentucky Claims Commission (As Amended at ARRS, April 12, 2018)

108 KAR 1:011. Repeal of 108 KAR 1:010, 108 KAR 1:030, and 108 KAR 1:040.

RELATES TO: KRS 49.030, 49.040, 49.080, 49.100, 49.120, 49.130, 49.140, 49.150, 49.160

STATUTORY AUTHORITY: KRS 49.010, 49.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 49.020(5) authorizes the Kentucky Claims Commission to promulgate, amend, and repeal suitable administrative regulations to carry out the provisions and purposes of the commission's statutory authority. This administrative regulation repeals 108 KAR 1:010, 108 KAR 1:030, and 108 KAR 1:040. Pursuant to the renumbering and repeal of KRS ~~44.070[346.010]~~ et. seq. and enactment of KRS Chapter 49, the programmatic functions of the former Board of Claims have been absorbed into the Kentucky Claims Commission. The subject matter of this administrative regulation is being concurrently updated and repromulgated as part of KAR Title 802.

Section 1. The following administrative regulations are hereby repealed:

- (1) 108 KAR 1:010, Board operation and claim procedure;
- (2) 108 KAR 1:030, Filing of claims, original signature of claimant required; and
- (3) 108 KAR 1:040, Payment of awards, proof of payment required.

MARCUS CAREY, Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: February 14, 2018

FILED WITH LRC: February 15, 2018 at 10 a.m.

CONTACT PERSON: G. Mitchell Mattingly, Kentucky Claims Commission Attorney, 130 Brighton Park Blvd, Frankfort, Kentucky 40601, phone (502) 782-8255, fax (502) 573-4817 email mitchell.mattingly@ky.gov.

GENERAL GOVERNMENT CABINET Board of Nursing (As Amended at ARRS, April 12, 2018)

201 KAR 20:501. Repeal of 201 KAR 20:500.

RELATES TO: KRS 314.470

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131 authorizes the Board of Nursing to promulgate administrative regulations. 201 KAR 20:500 is being repealed because the previous Nurse Licensure Compact, KRS 314.470, has been replaced by a new Nurse Licensure Compact, KRS 314.475, with new rules, and as established in 201 KAR 20:506.

Section 1. 201 KAR 20:500, Nurse Licensure Compact, is hereby repealed.

LEWIS PERKINS, President

APPROVED BY AGENCY: January 18, 2018

FILED WITH LRC: January 25, 2018 at 4 p.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 Nursing (As Amended at ARRS, April 12, 2018)

201 KAR 20:506. Nurse licensure compact.

RELATES TO: KRS 314.475

STATUTORY AUTHORITY: KRS 314.131, 314.475

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.475, Article I(c)2 requires the Board of Nursing to review[file] any rule adopted by the Interstate Commission of Nurse Licensure Compact Administrators pursuant to Article VIII of KRS 314.475 within sixty (60) days of adoption for the purpose of filing the rule as an emergency regulation pursuant to KRS 13A.190 and for filing the rule[shall be filed] as an accompanying ordinary administrative regulation pursuant to KRS Chapter 13A. This administrative regulation incorporates by reference the rules adopted by the Interstate Commission of Nurse Licensure Compact Administrators on December 12, 2017 and bylaws adopted on August 3, 2017[implements that provisions by promulgating the adopted Rules pursuant to KRS Chapter 13A].

Section 1. The Kentucky Board of Nursing shall comply with all bylaws, rules, and administrative regulations of the Interstate Commission of Nurse Licensure Compact Administrators, which includes The Interstate Commission of Nurse Licensure Compact Administrators, Final Rules as of

December 12, 2017, and Bylaws as of August 3, 2017, and as amended August 15, 2017.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "The Interstate Commission of Nurse Licensure Compact Administrators, Final Rules", December 2017; and

(b) "The Interstate Commission of Nurse Licensure Compact Administrators, Bylaws", August 2017.

(2)(a) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, KY 40222, Monday through Friday, 8 am to 4:30 p.m.; or

(b) This material may also be obtained on the Kentucky Board of Nursing's Web site at <https://kbn.ky.gov>.

(3) This material may also be obtained at:

(a) The Interstate Commission of Nurse Licensure Compact Administrators, 111 East Wacker Drive, Suite 2900, Chicago, IL 60601; or

(b) <https://www.ncsbn.org/enhanced-nlc-implementation.htm>. [Definitions (1) "Commission" means the Interstate Commission of Nurse Licensure Compact Administrators.

(2) "Compact" means the Nurse Licensure Compact that became effective on July 20, 2017 and implemented on January 19, 2018.

(3) "Convert" means to change a multistate license to a single-state license if a nurse changes primary state of residence by moving from a party state to a non-party state; or to change a single-state license to a multistate license once any disqualifying events are eliminated.

(4) "Deactivate" means to change the status of a multistate license or privilege to practice.

(5) "Director" means the individual referred to in Article IV of the Interstate Commission of Nurse Licensure Compact Administrators Bylaws.

(6) "Disqualifying event" means an incident, which results in a person becoming disqualified or ineligible to retain or renew a multistate license. These include the following: any adverse action resulting in an encumbrance, current participation in an alternative program, a misdemeanor offense related to the practice of nursing (which includes an agreed disposition), or a felony offense (which includes an agreed disposition).

(7) "Independent credentials review agency" means a non-governmental evaluation agency that verifies and certifies that foreign nurse graduates have graduated from nursing programs that are academically equivalent to nursing programs in the United States.

(8) "Licensure" includes the authority to practice nursing granted through the process of examination, endorsement, renewal, reinstatement or reactivation.

(9) "Prior Compact" means the Nurse Licensure Compact that was in effect until January 19, 2018.

(10) "Unencumbered license" means a license that authorizes a nurse to engage in the full and unrestricted practice of nursing.

Section 2. Uniform Data Set and Levels of Access. (1) The compact administrator of each party state shall furnish uniform data to the Coordinated Licensure Information System, which shall consist of the following:

- (a) The nurse's name;
- (b) Jurisdiction of licensure;
- (c) License expiration date;
- (d) Licensure classification, license number and status;
- (e) Public emergency and final disciplinary actions, as defined by the contributing state authority;
- (f) A change in the status of a disciplinary action or licensure encumbrance;
- (g) Status of multistate licensure privileges;
- (h) Current participation by the nurse in an alternative program;
- (i) Information that is required to be expunged by the laws

of a party state;

(j) The applicant or nurse's United States Social Security number;

(k) Current significant investigative information; and

(l) A correction to a licensee's data.

(2) The public shall have access to items (1)(a) through (g) and information about a licensee's participation in an alternative program to the extent allowed by state law.

(3) In the event a nurse asserts that any Coordinated Licensure Information System data is inaccurate, the burden of proof shall be upon the nurse to provide evidence in a manner determined by the party state that substantiates such claim.

(4) A party state shall report the items in the uniform data set to the Coordinated Licensure Information System within fifteen (15) calendar days of the date on which the action is taken.

Section 3. Querying the Coordinated Licensure Information System. (1) Upon application for multistate licensure, with the exception of renewal by a nurse, a party state shall query the Coordinated Licensure Information System to determine the applicant's current licensure status, previous disciplinary action(s), current participation in an alternative program, and any current significant investigative information.

(2) Upon discovery that an applicant is under investigation in another party state, the party state in receipt of the nurse licensure application shall contact the investigating party state and may request investigative documents and information.

Section 4. Implementation Date. The compact shall be implemented on January 19, 2018.

Section 5. Transition. (1)(a) A nurse who holds a multistate license on the compact effective date of July 20, 2017, and whose multistate license remains unencumbered on the January 19, 2018 implementation date and who maintains and renews a multistate license is not required to meet the new requirements for a multistate license under the compact.

(b) A nurse who retained a multistate license pursuant to subsection (a) of this section and subsequently incurs a disqualifying event shall have the multistate license revoked or deactivated pursuant to the laws of the home state.

(c) A nurse whose multistate license is revoked or deactivated may be eligible for a single state license in accordance with the laws of the party state.

(2) A nurse who applies for a multistate license after July 20, 2017, shall be required to meet the requirements of Article III (c) of the compact.

(3) During the transition period, a licensee who holds a single state license in a Compact state that was not a member of the prior compact and who also holds a multistate license in a party state, may retain the single state license until it lapses, expires or becomes inactive.

(4) After the implementation date, party states shall not renew or reinstate a single state license if the nurse has a multistate license in another party state.

Section 6. Recognition of new party states after January 19, 2018. (1) All party states shall be notified by the commission within fifteen (15) calendar days when a new party state enacts the compact.

(2) The new party state shall establish an implementation date six (6) months from enactment or as specified in the enabling language and shall notify the Director of the date.

(3) Upon implementation, a new state licensee who holds a single state license in a compact state that was not a member of the prior compact and holds a multistate license in a party state, may retain the single state license until it lapses, expires or becomes inactive.

(4) At least ninety (90) calendar days prior to the implementation date, all other party states shall notify any active single state licensee with an address in the new party state that the licensee may only hold one (1) multistate license

~~in the primary state of residence. The licensee shall be advised to obtain or maintain a multistate license only from the primary state of residence.~~

~~(5) Each party state shall deactivate a multistate license when a new home state issues a multistate license.~~

~~Section 7. Party State Responsibilities. (1) On all application forms for multistate licensure, a party state shall require, at a minimum:~~

~~(a) A declaration of a primary state of residence; and
(b) Whether the applicant is a current participant in an alternative program.~~

~~(2)(a) An applicant for licensure who is determined to be ineligible for a multistate license shall be notified by the home state of the qualifications not met.~~

~~(b) The home state may issue a single state license pursuant to its laws.~~

~~(3) A party state shall not issue a single state license to a nurse who holds a multistate license in another party state.~~

~~Section 8. Applicant Responsibilities. (1) On all application forms for multistate licensure in a party state, an applicant shall declare a primary state of residence.~~

~~(2) A nurse who changes primary state of residence to another party state shall apply for a license in the new party state when the nurse declares to be a resident of the state and obtains privileges not ordinarily extended to nonresidents of the state, including those listed in subsection (4)(a) – (e) of this section.~~

~~(3) A nurse shall not apply for a single state license in a party state while the nurse holds a multistate license in another party state.~~

~~(4) A party state may require an applicant to provide evidence of residence in the declared primary state of residence. This evidence may include a current:~~

~~(a) Driver's license with a home address;
(b) Voter registration card with a home address;
(c) Federal income tax return with a primary state of residence declaration;
(d) Military form no. 2058 (state of legal residence certificate); or
(e) W2 form from the United States government or any bureau, division, or agency thereof, indicating residence.~~

~~(5) An applicant who is a citizen of a foreign country, and who is lawfully present in the United States and is applying for multistate licensure in a party state may declare either the applicant's country of origin or the party state where they are living as the primary state of residence. If the applicant declares the foreign country as the primary state of residence, the party state shall not issue a multistate license, but may issue a single state license if the applicant meets the party state's licensure requirements.~~

~~(6) An applicant shall disclose current participation in an alternative program to any party state, whether upon initial application or within ten (10) calendar days of enrollment in the program.~~

~~Section 9. Change in Primary State of Residence. (1) A nurse who changes his or her primary state of residence from one party state to another party state may continue to practice under the existing multistate license while the nurse's application is processed and a multistate license is issued in the new primary state of residence.~~

~~(2) Upon issuance of a new multistate license, the former primary state of residence shall deactivate its multistate license held by the nurse and provide notice to the nurse.~~

~~(3) If a party state verifies that a licensee who holds a multistate license changes primary state of residence to a non-party state, the party state shall convert the multistate license to a single state license within fifteen (15) calendar days, and report this conversion to the Coordinated Licensure Information System.~~

~~Section 10. Temporary Permits and Licenses. A temporary permit, license, or similar temporary authorization to practice issued by a party state to an applicant for licensure shall not grant multistate licensure privileges.~~

~~Section 11. Identification of Licenses. A license issued by a party state shall be clearly identified as either a single state license or a multistate license.~~

~~Section 12. Credentialing and English Proficiency for Foreign Nurse Graduates. (1) A party state shall verify that an independent credentials review agency evaluated the credentials of graduates as set forth in Article III (c)(2)ii.~~

~~(2) The party state shall verify successful completion of an English proficiency examination for graduates as set forth in Article III (c)(3).~~

~~Section 13. Deactivation, Discipline and Revocation. A party state shall determine whether a disqualifying event will result in adverse action or deactivation of a multistate license or privilege. Upon deactivation due to a disqualifying event, the home state may issue a single state license.~~

~~Section 14. Dues Assessment. (1) The commission shall determine the annual assessment to be paid by party states. The assessment formula is a flat fee per party state. The commission shall provide public notice of any proposed revision to the annual assessment fee at least ninety (90) calendar days prior to the Commission meeting to consider the proposed revision.~~

~~(2) The annual assessment shall be due within the commission's first fiscal year after the implementation date and annually thereafter.]~~

LEWIS PERKINS, President

APPROVED BY AGENCY: January 18, 2018

FILED WITH LRC: January 25, 2018 at 4 p.m.

CONTACT PERSON: Nathan Goldman, General Counsel,
Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300,
Louisville, Kentucky 40222. phone (502) 429-330, fax (502) 564-4251, email nathan.goldman@ky.gov.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure and Certification for
Dietitians and Nutritionists
(As Amended at ARRS, April 12, 2018)

201 KAR 33:080, Scope of practice.

RELATES TO: KRS 310.005, 310.021, 310.031, 310.041

STATUTORY AUTHORITY: KRS 310.041

NECESSITY, FUNCTION AND CONFORMITY: KRS 310.041 requires the board to promulgate administrative regulations to implement KRS 310.005, 310.021[310.012], 310.031, 310.040, 310.041, 310.042, 310.050, 310.070, and 310.990. This administrative regulation establishes the scope of practice for a licensed dietitian or certified nutritionist.

Section 1. Scope of Practice. A licensed dietitian or certified nutritionist shall practice dietetics or nutrition consistent with the skills and procedures in the Academy of Nutrition and Dietetics: Revised 2017 Standards of Practice in Nutrition Care and Standards of Professional Performance for Registered Dietitian Nutritionists.

Section 2. Incorporation by Reference. (1) "Academy of Nutrition and Dietetics: Revised 2017 Standards of Practice in Nutrition Care and Standards of Professional Performance for Registered Dietitian Nutritionists", revised 2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure and

Certification for Dietitians and Nutritionists, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

LORA ARNOLD PARKS, Chairperson

APPROVED BY AGENCY: February 9, 2018

FILED WITH LRC: February 9, 2018 at 4 p.m.

CONTACT PERSON: Matt James, Board Counsel, 700 Capitol Ave., Ste. 118, Frankfort, Kentucky 40601; phone (502) 696-5300; fax (502) 564-2894; email matt.james@ky.gov.

**GENERAL GOVERNMENT CABINET
Board of Licensed Diabetes Educators
(As Amended at ARRS, April 12, 2018)**

201 KAR 45:001. Definitions for 201 KAR Chapter 45.

RELATES TO: KRS 309.335

STATUTORY AUTHORITY: KRS 309.331, 309.335

NECESSITY, FUNCTION AND CONFORMITY: KRS 309.331 requires the board to promulgate administrative regulations for the administration and enforcement of KRS ~~309.325 to 309.330 through~~ 309.339. This administrative regulation establishes the definitions for terms ~~to be~~ used in 201 KAR Chapter 45 ~~these administrative regulations~~.

Section 1. Definitions. (1) "Apprentice diabetes educator" is defined by KRS 309.325(5).

(2) "Board" is defined by KRS 309.325(1).

(3) "Diabetes education" is defined by KRS 309.325(2).

(4) "Diabetes educator" means:

(a) A "licensed diabetes educator" as defined by KRS 309.325(3);

(b) A "master licensed diabetes educator" as defined by KRS 309.325 ~~(6)~~ (4); or

(c) An "apprentice diabetes educator" as defined in KRS 309.325(5).

(5) "Licensed diabetes educator" is defined by KRS 309.325(3).

(6) "Master licensed diabetes educator" is defined by KRS 309.325 ~~(6)~~ (4).

(7) "Supervisor" means a licensed diabetes educator as defined by KRS 309.325(3) in good standing, or a master licensed diabetes educator as defined by KRS 309.325 ~~(6)~~ (4) in good standing.

(8) "Work experience":

(a)1. Means the hours spent performing the services, ~~and~~ tasks, ~~and~~ drafting documentation, and reports necessary for providing diabetes education to a person with diabetes or the caregiver of someone with diabetes; ~~and~~

2. Means the hours spent interacting with a supervisor; ~~and~~ **(b) May: "Work experience" can** include up to fifteen (15) hours of continuing education units as established in **201 KAR 45:130/201 KAR 1:030** per renewal period.

KIM DeCOSTE, Chairperson

APPROVED BY AGENCY: February 14, 2018

FILED WITH LRC: February 14, 2018 at noon

CONTACT PERSON: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380, matt.james@ky.gov.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, April 12, 2018)**

301 KAR 2:178. Deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas.

RELATES TO: KRS 150.010, 150.170, 150.340, 150.370(1), 150.990

STATUTORY AUTHORITY: 148.029(5), 150.025(1), 150.390(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.029(5) authorizes the Department of Parks, in cooperation with the Department of Fish and Wildlife Resources, to implement wildlife management plans on state parks. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits, and to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of deer in any manner contrary to any provisions of KRS Chapter 150 or KAR Title 301. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands it has acquired for public recreation. This administrative regulation establishes deer hunting seasons, application procedures, and other matters pertaining to deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas that differ from statewide requirements.

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

(2) "Bait" means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that may lure, entice, or attract wildlife.

(3) "Centerfire" means a type of gun that detonates a cartridge by the firing pin striking a primer in the middle of the end of the cartridge casing.

(4) "Ground blind" means a structure consisting of a frame and a top that is placed on the ground to completely enclose a hunter while hunting deer.

(5) "In-line muzzleloader" means a gun:

(a) Capable of being loaded only from the discharging end of the barrel or cylinder; and

(b) That is equipped with an enclosed ignition system located directly behind the powder charge.

(6) "Mentor hunt" means a quota youth hunt in which the adult who accompanies a youth may legally take a deer.

(7) "Mobility-impaired" means an individual who meets the requirements of 301 KAR 3:026, Section 2(1).

(8) "Modern gun" means an air gun, rifle, handgun, or shotgun that is loaded from the rear of the barrel.

(9) "Modern gun season" means the ten (10) or sixteen (16) consecutive day period beginning the second Saturday in November during which a modern gun may be used to take deer pursuant to 301 KAR 2:172.

(10) "Muzzleloader" means a rifle, shotgun, or handgun that is loaded from the discharging end of the barrel or discharging end of the cylinder.

(11) "Quota hunt" means a hunt in which a participant is selected by a random drawing.

(12) "Quota youth hunt" means a quota hunt in which a youth is the only person who can legally take a deer.

(13) "Statewide requirements" mean the season dates, zone descriptions, and other requirements for deer hunting as established in 301 KAR 2:172.

(14) "Wildlife management area" or "WMA" means a tract of land:

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

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

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

(16) "Youth gun seasons" means the October youth gun season and the December free youth weekend, as established in 301 KAR 2:172.

Section 2. General WMA Requirements. (1) Unless established in this administrative regulation, statewide requirements shall apply.

(2) Except as established in Section 6 of this administrative regulation, if a WMA is in two (2) or more deer hunting zones, as established in 301 KAR 2:172, then the WMA shall be regulated by the most liberal zone requirements of the zones in which it lies.

(3) Deer hunting on WMAs listed in Section 6 of this administrative regulation shall be permitted only as established in this administrative regulation, except archery and crossbow hunting shall be allowed pursuant to the statewide requirements established in 301 KAR 2:172, unless otherwise noted.

(4) If a WMA is:

(a) Listed in Section 6 of this administrative regulation, then gun hunting shall be prohibited, unless otherwise noted; and

(b) Not listed in Section 6 of this administrative regulation, then statewide deer hunting requirements shall apply.

(5) An antlerless deer shall not count against a person's statewide or zone bag limit if harvested during:

(a) The Grayson Lake WMA open youth hunt; or

(b) Any WMA or state park either-sex quota hunt.

(6) An open gun deer hunt, beginning on the Wednesday following the third Monday in January for ten (10) consecutive days, shall:

(a) Be limited to members of the United States Armed Forces and the National Guard and reserve component who:

1. Are residents of Kentucky or nonresidents stationed in Kentucky; and

2. Were deployed out-of-country during any portion of the most recent regular statewide deer season;

(b) Only be on a WMA designated as open for this special hunt; and

(c) Be pursuant to statewide requirements established in 301 KAR 2:172.

(7) On all WMAs and Otter Creek Outdoor Recreation Area, a person:

(a) Attaching a tree stand or climbing a tree shall not use a:

1. Nail;

2. Spike;

3. Screw-in device;

4. Wire; or

5. Tree climber;

(b) May use a portable stand or climbing device;

(c) Shall:

1. Not place a portable stand in a tree more than two (2) weeks before opening day; and

2. Remove a portable stand within one (1) week following the last day of each hunting period;

(d) Shall plainly mark the portable stand with the hunter's name and address;

(e) Shall not use an existing permanent tree stand;

(f) Shall not place, distribute, or hunt over bait; and

(g) Shall not hunt in a ground blind, if gun deer hunting is allowed, without first attaching a hat or vest made of solid, unbroken hunter orange material to the blind so that it is visible from all sides.

(8) A person without a valid quota hunt confirmation number shall not enter a WMA during a quota hunt on that area except:

(a) To travel through a WMA on an established road or to use an area designated open by a sign;

(b) To accompany a youth who is hunting in a youth or mentor quota hunt;

(c) That one (1) assistant, who shall not be required to have applied for the quota hunt, may accompany a hunter who was drawn to hunt, but shall check in and out as established in Section 5 of this administrative regulation; or

(d) To participate in small game hunting or the October shotgun segment of the fall turkey season during the archery and crossbow quota hunt on Big Rivers WMA.

(9) Except for waterfowl or dove hunting, or legal hunting at night, a person who is hunting any species, or a person who is accompanying a hunter, shall wear hunter orange clothing pursuant to 301 KAR 2:172 while:

(a) On a WMA or state park if gun deer hunting is allowed;

(b) Hunting within the sixteen (16) county elk zone when a firearms elk season is open, pursuant to 301 KAR 2:132; or

(c) Hunting within the bear zone during a bear firearms season, pursuant to 301 KAR 2:300.

Section 3. General Quota Hunt Procedures. (1) A quota hunt

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

(2) If selected for a quota hunt, a person shall lose all accumulated preference points.

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

(4) A person shall forfeit all accumulated preference points if, in a given year, the person does not apply for or is ineligible to apply for:

(a) A deer quota hunt; and

(b) The no-hunt option.

(5) A person who applies for the no-hunt option shall:

(a) Not be drawn for a quota hunt; and

(b) Be given one (1) preference point for each year the no-hunt option is selected.

(6) If applying as a party:

(a) Each applicant's preference points shall be used to calculate an average point total for the party~~be independent of each other~~; and

(b) A party with a higher preference point average will be randomly selected before a party with a lower preference point average~~The entire party shall be selected if one (1) member of the party is selected~~.

(7) There shall be a maximum of ten (10) percent of nonresidents drawn in each quota hunt pool.

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

(9)~~(8)~~ A hunter may take up to two (2) deer on a quota hunt in Zones 2, 3, and 4, only one (1) of which may be an antlered deer, except as established in Section 6 of this administrative regulation.

(10)~~(9)~~ If a hunter has purchased the appropriate permits, a hunter may take unlimited antlerless deer in:

(a) The West Kentucky WMA gun hunt;

(b) WMA quota hunts in Zone 1; and

(c) State Park quota hunts in Zone 1, except as established in Section 8 of this administrative regulation.

(11)~~(10)~~ One (1) person shall be drawn from the eligible quota hunt applicants who were not selected in the original drawing, and shall receive one (1) deer permit that carries with it all the privileges of the Special Commission Permit established in 301 KAR 3:100.

Section 4. Quota Hunt Application Process. A person applying for a quota hunt shall:

(1) Complete the quota hunt application process on the department's Web site~~Call the toll free number listed in the current fall hunting and trapping guide or apply online~~ at fw.ky.gov ~~[by completing the Quota Hunt Application: Deer Quota Hunt Form,]~~ between September 1 and September 30;

(2) ~~[Enter each applicant's Social Security number;~~

~~{3}] Select:~~

(a) A first and second choice of hunts; or

(b) The no-hunt option;

~~{3}[(4)]~~ Pay a nonrefundable three (3) dollar application fee for each applicant~~, prior to the draw by:~~

~~(a) Electronic funds transfer;~~

~~(b) Visa Card;~~

~~(c) Master Card; or~~

~~(d) Discover Card;~~

~~{4}[(5)]~~ Not apply more than one (1) time; and

~~{5}[(6)]~~ Not apply as a group of more than five (5) persons.

Section 5. Quota Hunt Participant Requirements. Except as otherwise established in this administrative regulation, a person selected to participate in a quota hunt shall:

(1) Possess, unless exempted pursuant to KRS 150.170:

(a) A valid annual Kentucky hunting license; and

(b) A deer permit that authorizes the taking of deer with the equipment being used and in accordance with the zone restrictions where the hunt will occur;

(2) Hunt on the assigned dates and in assigned areas selected by a random drawing of applicants if applicable;

(3) Comply with hunting equipment restrictions specified by the type of hunt;

(4) Check in at the designated check station prior to hunting:

(a) Either:

1. On the day before the hunt, between noon and 8 p.m. local time; or

2. On the day of the hunt, between 5:30 a.m. and 8 p.m. Eastern time; and

(b) With documentation of the participant's:

1. Proof of identification~~[Social Security number]~~ or draw confirmation number; and

2. Purchase of a current license or permit which allows or includes statewide deer hunting privileges;

(5) Check out at the designated check station:

(a) If finished hunting;

(b) If the hunter's bag limit is reached; or

(c) By 8 p.m. Eastern time on the final day of the hunt;

(6) Take a harvested deer to the designated check station by 8 p.m. Eastern time the day the deer was harvested;

(7) Be declared ineligible to apply for the next year's drawing if the hunter or the hunter's assistant fails to check out properly; and

(8) Comply with all species quota hunt requirements or be ineligible to apply for any quota hunt or no-hunt option for these species the following year.

Section 6. Wildlife Management Area Requirements. (1) Dr. Norman and Martha Adair WMA.

(2) Ballard WMA.

(a) On the main tract, the quota hunt shall be for two (2) consecutive days beginning on the first Saturday in November.

(b) On the main tract, the archery, crossbow, and October youth gun seasons shall be open pursuant to statewide requirements through October 14, except that the two (2) mile driving loop marked by signs shall be closed to all hunting.

(c) The archery, crossbow, modern gun, youth gun, and muzzleloader seasons shall be open pursuant to statewide requirements only on the 400-acre tract south of Sallie Crice Road.

(d) A quota hunt participant shall be given one (1) preference point for each female deer checked in, up to a maximum of four (4) points.

(3) Barren River WMA. The area shall be open pursuant to statewide requirements except that on the Peninsula Unit, including Narrows, Goose, and Grass Islands, a person shall not hunt deer with a modern gun.

(4) Beaver Creek WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(b) The limit shall be one (1) antlered deer during the quota hunt.

(c) The youth gun seasons shall be open pursuant to statewide requirements.

(5) Big Rivers WMA.

(a) The youth gun seasons shall be open pursuant to statewide requirements.

(b) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in November.

(c) The archery and crossbow quota hunt shall begin the Monday following the second Saturday in October and continue through November 30, except that it shall be closed during the two (2) day quota hunt as established in paragraph (b) of this subsection.

(d) Pursuant to 301 KAR 2:172, any deer taken in the quota hunt established in paragraph (c) of this subsection shall be:

1. Telechecked; or

2. Checked in on the department's Web site at fw.ky.gov.

(6) Boatwright WMA. The area shall be open pursuant to statewide requirements, except that on the Swan Lake Unit the:

(a) Archery, October youth gun, and crossbow seasons shall only be open through October 14; and

(b) December free youth weekend shall be closed.

(7) Cedar Creek Lake WMA.

(8) Clay WMA.

(a) On the main tract, muzzleloader and youth gun seasons shall

be open pursuant to statewide requirements, except archery hunting shall be prohibited during the quota fox hunting field trials as established in 301 KAR 2:049.

(b) The remainder of the WMA shall be open pursuant to statewide requirements for the archery, crossbow, muzzleloader, and youth gun seasons, except during the quota deer hunt.

(c) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(d) A quota hunt participant shall be given one (1) preference point for each female deer checked-in, up to a maximum of four (4) points.

(e) Hunters drawn for the quota hunt may harvest up to four (4) deer, only one (1) of which may be antlered.

(9) Dewey Lake WMA.

(a) The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(b) Guns shall be prohibited for deer hunting on the:

1. Western side of the lake, north of the Terry Boat Ramp; and

2. Eastern side of the lake, north of the ridge that begins across the lake from the Terry Boat Ramp, and extends eastward to the WMA boundary.

(c) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in ~~November~~[December].

(d) There shall be a one (1) deer limit during the quota hunt.

(10) Dix River WMA. The youth gun and muzzleloader seasons shall be open pursuant to statewide requirements.

(11) Fishtrap Lake WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning on the Saturday before Thanksgiving.

(b) The limit for the quota hunt shall be one (1) deer.

(c) The youth gun and December muzzleloader seasons shall be open pursuant to statewide requirements.

(12) Grayson Lake WMA.

(a) An open youth hunt shall:

1. Be the first Saturday in November for two (2) consecutive days; and

2. Have a two (2) deer bag limit, only one (1) of which may be an antlered deer.

(b) A person who has not checked in shall not enter the Grayson Lake WMA during the open youth hunt, except to:

1. Travel through the WMA on an established public road; or

2. Use an area designated as open by signs.

(c) The property of Camp Webb shall be open for a mobility-impaired deer hunting event during the first weekend of October.

(d) The crossbow season shall be from the first Saturday in September through the third Monday in January, except that the archery and crossbow seasons shall be closed during the November open youth hunt.

(e) The youth gun seasons shall be open pursuant to statewide requirements.

(f) The December muzzleloader season shall be open pursuant to statewide requirements.

(13) Green River Lake WMA and Dennis-Gray WMA.

(a) The youth gun seasons shall be open pursuant to statewide requirements.

(b) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(c) Fifteen (15) openings shall be reserved in the quota hunt for mobility-impaired persons.

(d) The Green River Lake and Dennis-Gray WMAs shall be considered to be located in the Eastern Time Zone.

(14) Griffith Woods WMA. The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(15) Higginson-Henry WMA. The youth gun seasons shall be open pursuant to statewide requirements.

(16) J.C. Williams WMA. The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(17) Kentucky River WMA.

(a) The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(b) There shall be a quota hunt for two (2) consecutive days beginning on the first Saturday in November.

(18) Kleber WMA.

(a) The quota hunts shall be for:

1. Two (2) consecutive days beginning the first Saturday in November; and

2. Two (2) consecutive days beginning the first Saturday in December.

(b) The youth gun and December muzzleloader seasons shall be open pursuant to statewide requirements.

(19) Knobs State Forest WMA. The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(20) Lake Barkley WMA shall be open pursuant to statewide requirements except:

(a) The North Refuge shall be closed from November 1 to February 15; and

(b) Duck Island shall be closed from October 15 to March 15, except that it shall be open for the October muzzleloader season, pursuant to statewide requirements.

(21) Livingston County WMA. The youth gun, muzzleloader, and modern gun seasons shall be open pursuant to statewide requirements, except a person shall not hunt deer with a modern gun during the modern gun deer season.

(22) Curtis Gates Lloyd WMA. The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(23) Mill Creek WMA.

(a) The youth gun seasons shall be open pursuant to statewide requirements.

(b) The modern gun season shall be open pursuant to statewide requirements for two (2) consecutive days beginning the second Saturday in November.

(24) Miller-Welch Central Kentucky WMA. The archery and crossbow seasons shall be open pursuant to statewide requirements:

(a) On Monday through Thursday, from the first Saturday in September through December 17, except during scheduled field trials as posted on the area bulletin board; and

(b) December 18 through the third Monday in January.

(25) Mud Camp Creek WMA. The youth gun and muzzleloader seasons shall be open pursuant to statewide requirements.

(26) Mullins WMA. The youth gun and December muzzleloader seasons shall be open pursuant to statewide [deer] requirements.

(27) Ohio River Islands WMA, Stewart Island Unit.

(a) The muzzleloader season shall be for two (2) consecutive days beginning the third Saturday in October.

(b) The archery season shall be from the first Saturday in September through October 14.

(c) The crossbow season shall be from October 1 through October 14.

(d) The October youth gun season shall be open pursuant to statewide requirements.

(e) The remainder of the WMA shall be open pursuant to statewide requirements.

(28) Paintsville Lake WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(b) The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(c) A person shall not use a gun for deer hunting on:

1. The area extending eastward from the drainage of Glade Branch, along the north edge of the lake, to the No Hunting Area surrounding Rocky Knob Recreation Area and enclosing all property from the WMA boundary downslope to the lake edge; and

2. The islands to the south and that portion of the area extending eastward along the south edge of the lake from the drainage of Shoal Branch to the No Hunting Area surrounding the dam and ranger station, and extending downslope to the edge of the lake.

(29) Peabody WMA.

(a) The youth gun and muzzleloader seasons shall be open pursuant to statewide requirements.

(b) The modern gun season shall be open pursuant to statewide requirements for ten (10) consecutive days beginning the second Saturday in November.

(30) Pennyryle State Forest-Tradewater WMA. The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(31) Ping-Sinking Valley WMA. The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(32) Pioneer Weapons WMA. Statewide requirements shall apply except that a person:

(a) Shall not use a modern gun;

(b) Shall not use an in-line muzzleloader;

(c) Shall not use a scope;

(d) May use a crossbow during the entire archery season; and

(e) Shall use only open or iron sights on any weapon.

(33) Redbird WMA.

(a) The youth gun seasons shall be open pursuant to statewide requirements.

(b) The modern gun season shall be open pursuant to statewide requirements for two (2) consecutive days beginning the second Saturday in November.

(34) Dr. James R. Rich WMA.

(a) There shall be a quota hunt for two (2) consecutive days beginning on the first Saturday in:

1. November; and

2. December; and

(b) The youth gun and December muzzleloader seasons shall be open pursuant to statewide requirements.

(35) Robinson Forest WMA.

(a) A person shall not hunt deer on the main block of Robinson Forest.

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

(36) Rockcastle River WMA.

(a) The youth gun seasons shall be open pursuant to statewide requirements.

(b) The modern gun season shall be open pursuant to statewide requirements for two (2) consecutive days beginning the second Saturday in November.

(37) Sloughs WMA.

(a) On the Sauerheber Unit, the archery, crossbow, muzzleloader, and youth gun seasons shall be open pursuant to statewide requirements through October 31, except that the Crenshaw and Duncan II Tracts shall be open pursuant to statewide requirements through the end of modern gun season.

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

(38) South Shore WMA.

(a) The youth gun, October muzzleloader, and modern gun seasons shall be open pursuant to statewide requirements through November 14, except that the use of centerfire rifles and handguns shall be prohibited.

(b) The archery and crossbow seasons shall be open pursuant to statewide requirements, except that the area shall be closed November 15 through January 15.

(c) The December free youth weekend and December muzzleloader season shall be closed.

(39) T.N. Sullivan WMA. The youth gun and December muzzleloader seasons shall be open pursuant to statewide requirements.

(40) R.F. Tarter WMA. The youth gun and muzzleloader seasons shall be open pursuant to statewide requirements.

(41) Taylorsville Lake WMA.

(a) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in:

1. November; and

2. December.

(b) Seven (7) openings shall be reserved in each quota hunt for mobility-impaired persons.

(c) The youth gun and December muzzleloader seasons shall be open pursuant to statewide requirements.

(42) Twin Eagle WMA. The youth gun and December muzzleloader seasons shall be open pursuant to statewide requirements.

(43) Paul Van Booven WMA.

(44) Veteran's Memorial WMA.

(a) The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(b) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in:

1. November; and
2. December for antlerless deer.

(c) A participant in the December antlerless-only quota hunt shall be given one (1) preference point for each female deer checked in, up to a maximum of four (4) points.

(45) West Kentucky WMA.

(a) All tracts shall be open pursuant to statewide requirements for the archery and crossbow seasons, except that the statewide archery and crossbow seasons shall be closed during department administered quota, mentor, and gun deer hunts.

(b) Tracts 1-6 shall be open to shotgun and muzzleloader hunters participating in the quota and open gun deer hunts.

(c) Tract 7 and "A" tracts shall not be open for department administered quota or gun deer hunts, except as established in paragraph (d) of this subsection.

(d) The "A" tracts shall be open to shotgun hunters participating in the mentor hunt.

(e) The quota hunt shall be for four (4) consecutive days beginning the third Saturday in December~~[prior to Thanksgiving]~~.

(f) There shall be a mentor hunt for four (4) consecutive days beginning the third Saturday in December~~[prior to Thanksgiving]~~ in which:

1. There shall be no more than two (2) youths per adult;
2. There shall be no more than one (1) adult per youth; and
3. The adult may take a deer.

(g) The gun hunt shall:

1. Be for three (3) consecutive days beginning the Saturday preceding the third Monday in January;

2. Require a hunter to check-in at a designated check station from 4 p.m. to 8 p.m. Central ~~time~~Time on the day before the hunt or between 4:30 a.m. and 7 p.m. Central time on hunt days;

3. Require a hunter to check out at the designated check station:

- a. When finished hunting; or
- b. By 7 p.m. Central time on the final day of the hunt;

4. Have an unlimited bag limit, only one (1) of which may be an antlered deer; and

5. Require every person to check in during the gun hunt, except for:

- a. A person traveling on an established public road; or
- b. A person in an area designated as open by signs.

(h) Gun hunters shall not use centerfire rifles or handguns.

(i) All persons shall check in daily at the designated check-in locations before entering the "A" tracts.

(j) A participant in the quota hunt, mentor hunt, or open gun hunt shall:

1. Sign in for the hunting tract of his or her choice at check-in prior to each day's hunt; and

2. ~~[Except after noon,]~~ Not hunt outside of that tract, except after noon.

(46) Yatesville WMA.

(a) The youth gun and muzzleloader seasons shall be open pursuant to statewide requirements.

(b) The modern gun season shall be open pursuant to statewide requirements for ten (10) consecutive days beginning the second Saturday in November.

(47) Yellowbank WMA. The December muzzleloader and youth gun deer seasons shall be open pursuant to statewide requirements.

Section 7. State Park Deer Seasons. (1) A state park may allow archery and crossbow hunting from the first Saturday in September through the third Monday in January for antlered or antlerless deer.

(2) A state park may allow up to sixteen (16) days of modern gun hunting and up to eleven (11) days of muzzleloader hunting from the first Saturday in September through the third Monday in January for antlered or antlerless deer.

(3) A state park shall be open to deer hunting as established in this subsection and Section 8 of this administrative regulation.

(a) Lake Barkley State Resort Park. Deer hunting shall be

allowed beginning on the second Tuesday of January for two (2) consecutive days.

(b) Greenbo Lake State Resort Park. Deer hunting shall be allowed beginning on the:

1. First Friday of November for three (3) consecutive days;
2. Second Friday of November for three (3) consecutive days;

and

3. Second Tuesday of January for two (2) consecutive days.

(c) Green River Lake State Park.

1. Archery and crossbow deer hunting shall be allowed beginning on the first Thursday of December for four (4) consecutive days.

2. Archery and crossbow deer hunting shall be allowed beginning on the second Thursday of December for four (4) consecutive days.

(d) Dale Hollow Lake State Resort Park.

1. Youth deer hunting shall be allowed beginning on the second Saturday of December for two (2) consecutive days.

2. Deer hunting shall be allowed beginning on the first Saturday of January for two (2) consecutive days.

(e) Kenlake State Resort Park. Archery and crossbow deer hunting shall be allowed beginning on the second Thursday of November for four (4) consecutive days.

(f) Kincaid Lake State Park.

1. Archery and crossbow hunting shall be allowed beginning on the second Thursday of December for four (4) consecutive days.

2. Archery and crossbow deer hunting shall be allowed beginning on the third Thursday of December for four (4) consecutive days.

(g) Yatesville Lake State Park. Muzzleloader, archery, and crossbow deer hunting shall be allowed pursuant to statewide ~~[deer]~~ requirements on the second Monday of December for three (3) consecutive days.

(h) Jenny Wiley State Resort Park.

1. Deer hunting shall be allowed beginning on the first Saturday of January for two (2) consecutive days.

2. The bag limit shall be two (2) deer, only one (1) of which may be antlered.

3. The hunt shall be open to the first fifteen (15) mobility-impaired persons who check in at the park on the day before the hunt.

4. A person who participates in the hunt shall comply with the requirements established in 301 KAR 3:026.

Section 8. State Park Deer Hunt Requirements. (1) A person shall not hunt on a state park unless:

(a) Selected by a random drawing as established in Section 3 of this administrative regulation;

(b) The person is a member of a successful applicant's quota hunt party;

(c) The person is participating in a deer hunt established in Section 7 of this administrative regulation; or

(d) The person successfully registers on a first-come, first-served basis as part of a process administered by the Department of Parks, at an area established in subparagraphs 1. through 5. of this paragraph:

1. Blue Licks Battlefield State Resort Park;
2. Carter Caves State Resort Park;
3. John James Audubon State Park;
4. My Old Kentucky Home State Park; and
5. Taylorsville Lake State Park.

(2) A person participating in a state park quota hunt, except for the quota hunts at Green River Lake State Park and the Yatesville Lake State Park open deer hunt, shall:

(a) Check in and check out as required in Section 5 of this administrative regulation;

(b) Furnish at check-in a driver's license or other form of government-issued identification;

(c) Check in:

1. Between noon and 8 p.m. Eastern ~~time~~Time the day before the hunt at the state park campground if hunting in the Yatesville Lake State Park open deer hunt; or

2. At the park the day before the hunt if hunting in the Jenny Wiley State Resort Park deer hunt; and

(d) Not be eligible to apply for a quota hunt the following year if the person does not check out as required in Section 5 of this administrative regulation.

(3) A person participating in a state park deer hunt shall:

(a) Comply with the requirements established in 301 KAR 2:172; and

(b) Check a harvested deer by completing the telecheck or online check-in process as established in 301 KAR 2:172.

(4) A person participating in a state park deer hunt shall not:

(a) Take more than one (1) antlered deer;

(b) Hunt over bait;

(c) Use:

1. A tree stand except a portable stand;

2. Climbing devices that nail or screw to the tree; or

3. Climbing spikes;

(d) Leave a deer stand unattended for more than twenty-four (24) hours;

(e) Discharge a gun within 100 yards of a maintained road or building; or

(f) Hunt:

1. In an area posted as closed by signs;

2. Outside park boundaries; or

3. From a ground blind, if gun deer hunting is allowed, unless first attaching a hat or vest made of solid, unbroken hunter orange material to the blind so that it is visible from all sides.

(5) A person participating in a state park deer hunt, other than the open hunts at Jenny Wiley State Resort Park and Yatesville Lake State Park and any department-administered state park quota hunt, may take up to two (2) bonus deer per hunt that shall not count toward the statewide limit if the person:

(a) Takes no more than one (1) bonus antlered deer per license year; and

(b) Obtains the valid bonus deer tag from the state park hunt administrators.

(6) A person participating in a state park deer hunt or in possession of harvested wildlife on state park property shall comply with all posted state park rules and regulations concerning the possession, storage, or disposal of harvested wildlife.

Section 9. Other Public Lands. (1) On Daniel Boone National Forest, Jefferson National Forest, and Land Between the Lakes, a person shall not use bait[, feed, minerals, or other attractants].

(2) The areas established in paragraphs (a) through (g) of this subsection may schedule a gun, crossbow, or archery deer hunting season between September 1 and January 31:

(a) Big South Fork National River and Recreation Area;

(b) Clark's River National Wildlife Refuge;

(c) Daniel Boone National Forest;

(d) Jefferson National Forest;

(e) Land Between the Lakes National Recreation Area;

(f) Ohio River Islands National Wildlife Refuge; and

(g) Reelfoot National Wildlife Refuge.

(3) An area listed in subsection (2) of this section may issue a bonus permit for antlered or antlerless deer, which shall:

(a) Not count against a hunter's statewide bag limit; and

(b) Only be issued for a hunt that is open to the general public.

(4) At Land Between the Lakes, a person:

(a) Shall not take more than:

1. Two (2) deer during archery hunts; and

2. One (1) deer during quota hunts;

(b) Who is a quota deer hunter shall:

1. Apply in advance at Land Between the Lakes; and

2. Only hunt from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset; and

(c) Who harvests a deer shall:

1. Check in the carcass pursuant to U.S. Forest Service requirements; and

2. Affix a game check card pursuant to U.S. Forest Service requirements.

(5) At Reelfoot National Wildlife Refuge:

(a) Zone 1 bag limits shall apply during the open archery season;

(b) A person shall not take more than two (2) deer by gun, only one (1) of which shall be antlered;

(c) A quota hunt participant shall:

1. Tag deer with a tag issued by the Refuge; and

2. Comply with the Refuge check-in requirements; and

(d) A person who is archery hunting shall:

1. Only take deer using the appropriate statewide or additional deer permit; and

2. Check harvested deer through the department's telephone or online check-in systems.

(6) At Otter Creek Outdoor Recreation Area:

(a) The archery and crossbow seasons shall be open pursuant to statewide requirements; and

(b) There shall be a quota hunt for two (2) consecutive days beginning the second Saturday in December.

(7) At Twin Knobs Campground, the area shall be closed to all statewide seasons, except that there shall be a quota hunt on the second Saturday in December during odd-numbered years for mobility-impaired persons.

(8) At Zilpo Campground, the area shall be closed to all statewide seasons, except that there shall be a quota hunt on the second Saturday in December during even-numbered years for mobility-impaired persons.

Section 10. Special Areas under Federal Control. (1) The areas established in paragraphs (a) through (e) of this subsection may schedule a gun, archery, or crossbow deer hunting season between September 1 and January 31:

(a) Bluegrass Army Depot;

(b) Fort Campbell;

(c) Fort Knox;

(d) Hidden Valley Training Center; and

(e) Wendell Ford Regional Training Center.

(2) An area listed in subsection (1) of this section may issue a bonus permit for antlered or antlerless deer, which shall:

(a) Not count against a hunter's statewide bag limit; and

(b) Only be issued for a hunt that is open to the general public.

(3) Except on the Hidden Valley Training area, on the areas listed in subsection (1) of this section, a deer hunter shall:

(a) Obtain a permit from the area before hunting;

(b) Only hunt on assigned dates;

(c) Remain in assigned areas;

(d) Tag deer with tags issued on the area, unless otherwise established in this section;

(e) Keep the area tag attached to the deer until the carcass is processed; and

(f) Check deer at a designated check station before leaving the area.

(4) At Bluegrass Army Depot, a person shall not take an antlered deer whose outside antler spread is less than fifteen (15) inches.

(5) At Fort Knox, a person shall:

(a) Not take an antlered deer whose outside antler spread is less than twelve (12) inches;

(b) Not use bait; and

(c) Record harvested deer on a Fort Knox harvest log and check harvested deer pursuant to area requirements and as established in 301 KAR 2:172.

(6) At Hidden Valley Training Area, a person shall not use a gun to hunt deer. ~~Section 11. Incorporation by Reference. (1) "Quota Hunt Application: Deer Quota Hunt Form", March 2014, is incorporated by reference.~~

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

GREGORY K. JOHNSON, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: February 7, 2018

FILED WITH LRC: February 14, 2018 at 1 p.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.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, April 12, 2018)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640, 532.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1) "Department of Corrections Policies and Procedures ~~[,], April 12/March 14/January 12], 2018~~~~[April 11, 2017]~~, are incorporated by reference. Department of Corrections Policies and Procedures include:

- 1.2 News Media (Amended 6/10/14)
- 1.4 The Monitoring and Operation of Private Prisons (Amended 5/15/08)
- 2.1 Inmate Canteen (Amended 2/26/16)
- 2.12 Abandoned Inmate Funds (Amended 4/12/18~~[3/14/18]~~~~[2/26/16]~~)
- 3.1 Code of Ethics (Amended 12/10/13)
- 3.5 Sexual Harassment and Anti-Harassment (Amended 12/10/13)
- 3.9 Student Intern Placement Procedure (Amended 11/7/16)
- 3.10 Appearance and Dress for Nonuniformed Staff (Amended 1/12/18~~[9/13/10]~~)
- 3.11 Drug Free Workplace Employee Drug Testing (Amended 12/10/13)
- 3.14 Employee Time and Attendance Requirements (Amended 6/14/16)
- 3.17 Uniformed Employee Dress Code (Amended 1/12/18~~[4/11/17]~~)
- 3.22 Staff Sexual Offenses (Amended 12/10/13)
- 3.23 Internal Affairs Investigation (Added 8/25/09)
- 5.1 Research, Surveys and Data Requests ~~[Survey Projects]~~ (Amended 3/14/18~~[12/10/13]~~)
- 5.3 Program Evaluation and Measurement (Amended 6/9/15)
- 6.1 Open Records Law (Amended 5/14/07)
- 6.2 Inmate Record (Added 11/7/16)
- 8.2 Fire Safety (Amended 3/14/14)
- 8.7 Notification of Extraordinary Occurrence (Amended 3/14/14)
- 9.4 Transportation of Inmates to Funerals or Bedside Visits (Amended 6/9/15)
- 9.6 Contraband (Amended 2/26/16)
- 9.8 Search Policy (Amended 3/14/18~~[5/13/14]~~)
- 9.13 Transport to Court - Civil Action (Amended 07/09/07)
- 9.18 Informants (Amended 9/13/10)
- 9.19 Found Lost or Abandoned Property (Amended 10/14/05)
- 10.2 Special Management Inmates (Amended 4/11/17)
- 10.3 Safekeepers and Contract Prisoners (Amended 1/12/18~~[9/15/04]~~)
- 11.2 Dietary Procedures and Compliance (Amended 1/12/17)
- 11.4 Alternative Dietary Patterns (Amended 1/12/17)
- 13.1 Pharmacy Policy and Formulary (Amended 1/15/15)
- 13.2 Health Maintenance Services (Amended 2/26/16)
- 13.3 Medical Alert System (Amended 3/14/14)
- 13.5 Advance Healthcare Directives (Amended 6/14/16)
- 13.6 Sex Offender Treatment Program (Amended 11/7/16)
- 13.7 Involuntary Psychotropic Medication (Amended 10/14/05)
- 13.8 Substance Abuse Program (Amended 10/12/12)
- 13.9 Dental Services (Amended 10/14/05)
- 13.10 Serious Infectious Disease (Amended 3/14/14)

- 13.11 Do Not Resuscitate Order (Amended 8/9/05)
- 13.12 Suicide Prevention and Intervention Program (Added 8/25/09)
- 13.13 Behavioral Health Services (Amended 11/7/16)
- 13.15 Inmate Observer Program (Added 8/12/16)
- 14.1 Investigation of Missing Inmate Property (Amended 10/14/05)
- 14.2 Personal Hygiene Items (Amended 8/20/13)
- 14.3 Marriage of Inmates (Amended 1/12/17)
- 14.4 Legal Services Program (Amended 3/14/14)
- 14.5 ~~[Board of]~~ Claims Commission (Amended 4/12/18~~[1/12/18]~~~~[10/14/05]~~)
- 14.6 Inmate Grievance Procedure (Amended 3/14/18~~[4/11/17]~~)
- 14.7 Sexual Abuse Prevention and Intervention Programs (Amended 4/12/18~~[3/14/18]~~~~[6/14/16]~~)
- 14.8 Lesbian, Gay, Bisexual, Transgender, and Intersex Offenders (Amended 1/12/18~~[Added 4/11/17]~~)
- 15.1 Hair, Grooming and ID Card Standards (Amended 1/12/18~~[8/12/16]~~)
- 15.2 Rule Violations and Penalties (Amended 8/12/16)
- 15.3 Meritorious Good Time (Amended 11/7/16)
- 15.4 Program Credit (Amended 6/12/12)
- 15.5 Restoration of Forfeited Good Time (Amended 2/26/16)
- 15.6 Adjustment Procedures and Programs (Amended 3/14/18~~[11/7/16]~~)
- 15.7 Inmate Accounts (Amended 1/12/18~~[4/11/17]~~)
- 15.8 Possession or Use of Unauthorized Substance and Substance Abuse Testing (Amended 4/12/18~~[1/12/18]~~~~[4/12/17]~~)
- 16.1 Inmate Visits (Amended 4/11/17)
- 16.2 Inmate Correspondence (Amended 11/7/16)
- 16.3 Inmate Access to Telephones (Amended 10/12/12)
- 16.4 Inmate Packages (Amended 8/12/16)
- 16.5 Video Visitation (Added 8/12/16)
- 17.1 Inmate Personal Property (Amended 3/14/18~~[6/14/16]~~)
- 17.2 Assessment Center Operations (Amended 6/9/15)
- 17.3 Controlled Intake of Inmates (Amended 3/14/14)
- 17.4 Administrative Remedies: Sentence Calculations (Amended 8/12/16)
- 18.1 Classification of the Inmate (Amended 3/14/18~~[1/15/15]~~)
- 18.2 Central Office Classification Committee (Amended 1/12/18~~[8/20/13]~~)
- 18.3 Confinement of Youthful Offenders (Added 6/9/15)
- 18.5 Custody Level and Security Guidelines (Amended 4/12/18~~[3/14/18]~~~~[6/14/16]~~)
- 18.7 Transfers (Amended 5/13/16)
- 18.9 Out-of-state Transfers (Amended 2/26/16)
- 18.11 Placement for Mental Health Treatment in CPTU or PCU (Amended 6/14/16)
- 18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill (Amended 2/15/06)
- 18.13 Population Categories (Amended 4/12/18~~[3/14/18]~~~~[2/26/16]~~)
- 18.15 Protective Custody (Amended 1/12/18~~[2/26/16]~~)
- 18.16 Information to the Parole Board (Amended 1/12/18~~[3/14/14]~~)
- 18.17 Interstate Agreement on Detainers (Amended 07/09/07)
- 18.18 International Transfer of Inmates (Amended 5/14/07)
- 19.1 Governmental Services Program (Amended 10/12/12)
- 19.2 Sentence Credit for Work (Amended 2/26/16)
- 19.3 Inmate Wage/Time Credit Program (Amended 4/12/18~~[3/14/18]~~~~[1/15/15]~~)
- 19.4 Work Release for State Inmates in Jails (Added 4/12/18~~[3/14/18]~~)**
- 20.1 Educational Programs and Educational Good Time (Amended 8/25/09)
- 21.1 Library Services (Added 3/14/14)
- 22.1 Privilege Trips (Amended 10/14/05)
- 22.2 Recreation and Inmate Activities (Added 3/14/14)
- 23.1 Religious Programs (Amended 3/14/18~~[8/12/16]~~)
- 25.2 Public Official Notification of Release of an Inmate (Amended 10/14/05)
- 25.3 Prerelease Program (Effective 11/15/06)

25.4 Inmate Furloughs (Added 4/12/18[3/14/18])

- 25.6 Community Service Center Program and Jail Placement (Amended 3/14/18[11/7/16])
 25.10 Administrative Release of Inmates (Amended 8/12/16)
 25.11 Victim Services Notification (Amended 8/25/09)
 25.12 Home Incarceration Program (Added 8/12/16)
 26.1 Citizen Involvement and Volunteer Service Program (Amended 1/12/18[10/12/12])

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections website in the policies and procedures area at <https://corrections.ky.gov/Pages/default.aspx>.

JAMES ERWIN, Acting Commissioner

APPROVED BY AGENCY: March 13, 2018

FILED WITH LRC: March 14, 2018 at noon

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Justice.RegContact@ky.gov.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
 Kentucky Board of Education
 Department of Education
 (As Amended at ARRS, April 12, 2018)**

701 KAR 5:110. Use of local monies to reduce unmet technology need.

RELATES TO: KRS 156.670, 157.650, 157.655, 157.660, 157.665, 160.160

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 (1)(c)[(b)] requires the Kentucky Board of Education to promulgate administrative regulations governing the acquisition and use of educational equipment for the schools. KRS 156.670(1) requires the development of the master plan for education technology to outline Commonwealth activities related to the purchase, development, and use of technology. The master plan requires a district to submit a plan and report describing[which describes] its educational initiatives that have technology components and their unmet technology need. KRS 157.655 authorizes[stipulates that] a local public school district to[may] participate in the education technology funding program based on the unmet technology need described in the local district plan and approved by the Kentucky Board of Education. Based on review of the unmet technology need, it has been determined that full implementation of the Kentucky Education Technology System (KETS) cannot be funded based solely on offers of assistance from the Education Technology Trust Fund. This administrative regulation establishes the requirements governing the use of local monies to reduce unmet technology need to ensure that all school district technology procurements, in categories for which KETS standards for unmet need have been established, will reduce the unmet technology need regardless of source of funds.

Section 1. Definitions. (1) "Department" means the Kentucky Department of Education.

(2) "District education technology plan" means the plan developed by the local school district to address the unmet technology need of the district.

(3) "Kentucky Education Technology System" or "KETS" means the statewide system established[set forth] in the technology master plan issued by the Kentucky Board of Education and approved by the Legislative Research Commission.

(4) "Master plan" means the long-range plan for the implementation of the Kentucky Education Technology System approved by the Kentucky Board of Education and the Legislative

Research Commission.

(5) "Unmet technology need" means the total cost of technology, meeting or exceeding the criteria established in the master plan, needed to achieve the capabilities outlined in the approved district education technology plan of the local school district.

Section 2. Determination of Unmet Need. A local school district shall determine its unmet technology need as part of the education technology planning process. Unmet technology need shall be audited by the department and subject to the approval of the Kentucky Board of Education as part of the state review and assistance calculation process in accordance with[, as provided by] the master plan.

Section 3. Reducing Unmet Need. (1) In categories of unmet technology need, as established[provided] in the 2018-2024[2013-2018] KETS Master Plan, a district shall limit procurements to those that[which] will reduce unmet technology need until the district's unmet technology need no longer exists.

(2) The department shall assist districts in selecting equipment, software, and services that[which] will reduce the unmet technology need.

Section 4. Alternative Technology. For technology components having no established[for which] KETS standards~~[have not been established]~~, a local school district may propose alternative technologies (waivers) in the local district education technology plan, particularly if the technology is proposed to achieve innovation. The department shall respond to the waiver within a three (3) week time period. If denied, the local school district may appeal to the Commissioner of Education.

Section 5. Incorporation by Reference. (1) The 2018-2024 [2013-2018] KETS Master Plan, dated February 2018[November 2012], is hereby incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Office of Education Technology, 5th floor, 300 Sower Boulevard, [Knowledge, Information and Data Services, 15 Fountain Place,] 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., Commissioner

MARY GWEN WHEELER, Chairperson

APPROVED BY AGENCY: February 14, 2018

FILED WITH LRC: February 14, 2018 at 2 p.m.

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.

**PUBLIC PROTECTION CABINET
 Kentucky Claims Commission
 (As Amended at ARRS, April 12, 2018)**

802 KAR 1:010. Tax appeal procedures[Hearing procedures].

RELATES TO: KRS Chapter 13B, 49.220, 49.230, 49.240, 49.250 [131.340, 131.355, 131.365, 131.370, 133.130(10)]

STATUTORY AUTHORITY: KRS~~[13B.170,]~~ 49.020, 49.220(1) [131.340(1)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 49.020(5) [13B.170] authorizes the commission[Board of Tax Appeals] to promulgate administrative regulations that are necessary to carry out the provisions and purposes of the

commission's statutory authority[of KRS Chapter 13B to establish procedures for appeals to the Kentucky Board of Tax Appeals]. KRS 49.220(1) authorizes the commission, with exclusive jurisdiction, to hear and determine appeals from final rulings, orders, and determinations of any agency of state or county government affecting revenue and taxation. This administrative regulation establishes the procedures governing tax appeals[supplements the provisions of KRS 131.310 through 131.370, 133.120(10) and Chapter 13B].

Section 1. Rules Applicable to All Filings. (1) Filings. All documents shall be filed by mail, electronic mail to taxappeals@ky.gov, or in person. Documents filed by electronic mail shall be considered received when sent if properly addressed.

(2) Service. Any party who files a document with the commission or hearing officer shall serve to all other parties to the appeal a copy of the document filed. A filed document shall be accompanied by a certification stating:

- (a) That a copy has been served on each party; and
- (b) The method of service used.

Section 2. Rules for Filing Tax Appeals with the Commission. (1) Initiation of tax appeal. A party wishing to appeal a final ruling, order, or determination of any agency of state or county government affecting revenue or taxation shall file a petition of appeal with the commission.

(2) Timing. The initial petition of appeal shall be received by the commission within thirty (30) days of the date of mailing of the final ruling, order, or determination of the agency of state or county government that is the subject of the appeal.

(a) An untimely appeal shall be dismissed.

(b) If the appeal is timely filed, the commission or hearing officer shall notify the petitioner of deficiencies and allow fifteen (15) days to amend the petition.

(3) Format and content. A petition of appeal shall be legibly written, typed, or printed and contain the following:

(a) A statement of all relevant issues of fact and law;

(b) A statement certifying that the information contained in the petition of appeal is true and correct to the best of the petitioner's knowledge;

(c) The signature of the petitioner;

(d) The petitioner's mailing address, telephone number, and **email[e-mail]** address;

(e) If represented by an attorney, the petitioner's attorney's name, mailing address, telephone number, and **email[e-mail]** address; and

(f) A copy of the final ruling, order, or determination to be reviewed.

(4) Upon receiving a petition of appeal, the commission shall **provide notice to the**

(a) **[Provide notice to the]** Appellee that an action has been filed; and

(b) **[Provide notice to the]** Petitioner that the petition of appeal has been received. [Definition: "Board" means Kentucky Board of Tax Appeals.

Section 2. Formal Administrative Hearings.

In accordance with KRS131.340 and Chapter 13B, an aggrieved party may petition the board for a formal hearing in accordance with KRS Chapter 13B.

(1) A petition shall:

(a) Be in writing;

(b) Be signed by the petitioner;

(c) Be styled "Petition of Appeal";

(d) Be filed in person or mailed by certified mail, return receipt requested, to the Kentucky Board of Tax Appeals and received by the board within thirty (30) days of the date of issuance of the final ruling, order, or determination of the agency of state or county government that is the subject of the appeal; and

(e) Contain a statement of all relevant issues of fact and law.

(2) Filing by facsimile or other electronic means shall not be accepted.

(3) The appealing party shall file:

(a) An original and four (4) copies of the Petition of Appeal; and
(b) Five (5) copies of the county board of assessment's final ruling, order, or determination.

(3) If a party who appeals fails to comply with any part of subsections (1), (2), (3), or (4) of this section, the board or the hearing officer shall:

(a) Dismiss the appeal for failure to comply; or

(b) If the appeal is timely filed, notify the appealing party of deficiencies and allow the appealing party fifteen (15) days to amend the petition.

(5) Upon receiving a petition of appeal, the Kentucky Board of Tax Appeals shall provide notice to the appellee that a Petition of Appeal has been filed. The appellee or his attorney shall file an entry of appearance within thirty (30) days of the date of the notice.]

Section 3. Representation in Proceedings before the Commission[Board]. (1) The appellee or the appellee's attorney shall file an entry of appearance within thirty (30) days of the date of the notice of appeal provided by the commission. The entry of appearance shall contain the mailing address, telephone number, and email address of the appellee and the appellee's attorney, if any[If the appeal is by an individual, the individual whose tax liability is at issue shall appear and represent himself of herself or engage legal counsel to provide representation].

(2) An individual who is not an attorney shall not [be permitted to] represent any entity or other individual[or legal entity] who is a party to an appeal. [(3) In accordance with Supreme Court Rule 3.020, if the appealing party is a corporation, joint venture, partnership, LLC, estate, or any entity other than an individual as identified in Section 3(1) of this administrative regulation, the entity shall be represented by an attorney on all matters before the board, including the filing of the Petition of Appeal.

(4) An attorney admitted to practice in another state, but not in the Commonwealth of Kentucky, shall be permitted to represent a party before the board if the attorney complies with Supreme Court Rule 3.030(2).]

Section 4. Discovery. (1) Discovery may be obtained without prior order of the commission[board] or hearing officer pursuant to the Kentucky Rules of Civil Procedure[30, 31, 33, 34, and 36, as amended].

(2) The commission[board] or hearing officer may deny, limit, or require discovery.

(3)[Sanctions.] If a party fails to comply with[obey] an order regarding discovery, the commission[board] or hearing officer may order that the:

(a) Matters that the requesting party was seeking to establish through discovery shall be taken as having been established for the purposes of the hearing;

(b) Noncomplying party shall be prohibited from introducing related documents or testimony at the hearing[;or]

(c) Appeal be dismissed or relief be granted as requested by the opposing party;

(d) Appeal be stayed until the order is obeyed; or

(e) Noncomplying party, the advising attorney, or both pay the reasonable costs, including attorney's fees, caused by the failure to comply.

(4) A response to discovery under subsection (1) of this section shall not be filed with the commission[board] unless required by[an] order or used as evidence[of the board or hearing officer].

Section 5.[Subpoenas. Upon good cause shown, the board or hearing officer shall issue a subpoena to any party upon request, provided that the request for subpoena shall be received by the board or hearing officer at least sixty (60) days prior to the hearing.

Section 6.] Prehearing Filings. At least thirty (30) days prior to the hearing, a party shall file with the commission[board] or hearing officer a[the following]:

(1)[A] Prehearing summary that contains a[the following]:

(a)[A] Summary of the party's position on any issue of fact in dispute;

(b)[A] Summary of the party's position on any issue of law raised by the appeal; and

(c)[A] Written statement of facts to which the party agrees and any facts that[which] a party does not dispute;

(2)(d)-A] List of the names, addresses, and phone numbers (if known) of all witnesses [who][which] the party expects to call to testify as a witness at the hearing; and

(3)(e)-A] Copy of all exhibits that[which] the party intends to introduce at the hearing.;

(2) Proposed findings of fact and conclusions of law; and

(3) A proposed final order if the appeal is heard by the board, or a proposed recommended order if the appeal is heard by a hearing officer.

Section 7. Briefs. (1) A party shall file with the board or hearing officer any brief required by order of the board or hearing officer. If the board or hearing officer has not issued an order pertaining to briefs, then a party may file an original and four (4) copies of a brief.

(2) The board or hearing officer may require a party to file a post-hearing brief or to supplement at any time a brief already filed, to assist in adjudicating the hearing.

(3) A brief shall be typewritten or hand-printed. A photocopy shall be accepted. A copy of a brief shall be clearly legible and double spaced, except for quotations, on paper eight and one-half (8 1/2) inches wide and eleven (11) inches long, with margins of not less than one (1) inch and a font size of not less than twelve (12) point. A brief shall include a copy of any legal authority relied upon in the brief, unless this requirement is specifically waived by the board or hearing officer.]

Section 6. Motion Practice. (1)[Section 8. Motions, Responsive Pleadings, and Time Computation. (1) A party shall file an original and four (4) copies of all pleadings or motions with the board or hearing officer.(2)] Any[other] party affected by a motion or pleading may file[an original and four (4) copies of] a response to the motion or pleading within fifteen (15) days from the date on which the motion or pleading was originally served[upon all parties to the appeal].

(2)(3)] A moving party may file[an original and four (4) copies of] a reply to another party's response. The reply shall be filed within fifteen (15) days from the date the response was served.[No] Other replies or responses shall not be filed, unless prior approval is granted by the commission[board] or hearing officer. [Section 9. Notice of Motions and Pleadings. Any party who files a motion or pleading shall serve all other parties to the appeal a copy of the motion or pleading. A motion or pleading shall be accompanied by a certification that a copy has been served on each interested party.]

Section 7.[Section 10.] Summary Disposition. At any time after an appeal[a proceeding] has begun, a party may move for a summary disposition of the whole or a part of the appeal[proceeding], in which event the[following] procedure established in subsections (1) through (4) of this section shall apply. (1) The moving party shall file a motion that:

(a) Asserts[Assert] that there are no disputed material facts as to one (1) or more of the issues before the commission[board] or hearing officer.[-]

(b)[The moving party shall] Includes[in its motion] a statement specifying which material facts are undisputed. A material undisputed fact may be submitted to the commission[board] or hearing officer through affidavits, discovery responses, or deposition testimony;

(c) States[or responses made by another party to any discovery request, including answers to interrogatories, admissions, and depositions. Facts stated in the original petition or appeal, as well as any documents or exhibits attached to the petition, may be relied upon as undisputed material facts by the appellee.

(2) The moving party shall state] that any issue before the commission[board] or hearing officer for which summary disposition is sought is a matter of legal, and not factual,

interpretation; and

(d) Attaches [~~The moving party shall submit~~] a copy of any legal authority that[which] supports the moving party's position on any legal issue before the commission[board] or hearing officer.

(2)(a)(3)] Within twenty (20) days after a party moves for summary disposition[and complies with the requirements set forth in Section 9 of this administrative regulation], any other party shall:

1.[may] Submit [to the board or hearing officer (a)] an acknowledgment that there are no disputed material facts;

2. Submit a response stating that a material fact is in dispute, along with[or] any affidavit, discovery response, or deposition testimony[or response to discovery] that shows the material fact[facts to be] in dispute. Facts stated in the petition of appeal and any document or exhibit attached thereto may be relied upon as undisputed material facts by the appellee; and

3. Attach[(b)] all legal authorities that[which] support the opposing party's position on any legal issue.

(b)(4)] Failure of a nonmoving party to respond within twenty (20) days to the motion for summary disposition or to request additional time to respond to the motion may[shall] result in the commission[board] or hearing officer finding[assuming] there are no disputed factual issues[before it] to be considered in deciding the legal issues.

(3) If the nonmoving party files a response to the motion for summary disposition, the moving party[part] shall have ten (10) days to file a reply to the response.

(4)(5)] The commission[board] or hearing officer may grant a motion for summary disposition in whole or in part. If the commission[board] or hearing officer grants a summary disposition as to one (1) or more issues, but not all issues, then the remaining issues shall be heard by the commission[board] or hearing officer in accordance with this administrative regulation and KRS Chapter 13B.

Section 8. Other. Except as otherwise stated in KRS Chapter 49 or this administrative regulation, the conduct of hearings shall be governed by the procedures established in KRS Chapter 13B[Section 11. Time. KRS 446.030 shall apply to computation of time under this administrative regulation].

MARCUS CAREY, Chair

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: February 14, 2018

FILED WITH LRC: February 15, 2018 at 10 a.m.

CONTACT PERSON: Patrick Flannery, Kentucky Claims Commission, 130 Brighton Park Blvd, Frankfort, Kentucky 40601, phone (502) 782-8255, fax (502) 573-4817 email Patrick.Flannery@ky.gov.

**PUBLIC PROTECTION CABINET
Kentucky Claims Commission
(As Amended at ARRS, April 12, 2018)**

802 KAR 2:010. Negligence claims before the Kentucky Claims Commission.

RELATES TO: KRS 49.020, 49.040, 49.090, 49.120

STATUTORY AUTHORITY: KRS 49.020(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 49.020(5) authorizes[requires] the commission to promulgate administrative regulations to carry out the provisions and purposes of the commission. This administrative regulation establishes requirements and procedures for filing and adjudicating negligence claims under the jurisdiction of the commission and the method of pleading and practice before the commission.

Section 1. Filing Claims. (1) A claim shall:

(a) Be legibly written, typed, or printed;

(b) Contain:

1. The name, address, telephone number, and email[e-mail] address of the claimant;

2. The amount of the claim; and

3. A statement of the facts that:
a. Shows that the claimant may be entitled to relief pursuant to KRS 49.010 through 49.180; and

b. Enables the respondent agency to investigate the claim and prepare its defense; and

~~(c)[c.]~~ Be filed by mail, electronic mail at negligenceclaims@ky.gov, or delivered in person to the commission's office.

(2) An attorney representing a claimant before the commission shall enter an appearance at the time the complaint is filed or as soon thereafter as possible.

(3) Any orders related to the claim and copies shall be served on the opposing party and the hearing officer presiding over the claim.

(4) An individual who is not an attorney shall not represent any other individual or an entity party to a claim.

Section 2. Response to Claims. (1) The commission shall submit a copy of each claim to the head of the agency against which the claim is filed.

(2) The agency against which a claim has been filed shall answer the claim or file a responsive motion in writing to the commission and the claimant within thirty (30) days.

(3) The commission shall consider the claim at its next regular or special meeting if:

(a) The response filed by the affected agency admits liability; or

(b) The respondent agency fails to respond to the commission concerning its investigation within thirty (30) days.

(4) If the agency denies negligence in a claim requiring a hearing pursuant to KRS 49.090(3), a hearing officer shall be assigned, and the commission shall notify the claimant and the head of the affected agency of the assignment.

(5) The commission may grant an extension of time to file the answer or response to the claim upon:

(a) Agreement of the parties; or

(b) A showing of good cause demonstrating that the purpose of the request is not just to delay proceedings.

Section 3. Prehearing or Status Conference and Hearing Schedule. (1) The hearing officer shall schedule a telephonic prehearing or status conference:

(a) Within thirty (30) days of the assignment of the claim; and

(b) Upon reasonable notice to all parties, which consists of prior notice of not less than five (5) days, unless agreed to otherwise by the parties.

(2) The hearing officer may convene the telephonic prehearing or status conference or order the affected state agency to convene the conference.

(3) A prehearing or status conference may be used to discuss jurisdictional matters, settlement possibilities, discovery, preparation of stipulations, clarification of issues, rulings on witnesses, taking of evidence, issuance of subpoenas, mediation, and other matters that will promote the orderly and prompt conduct of the hearing.

(4) The hearing officer and the parties shall set an agreed date for the hearing at the prehearing or status conference. If the hearing officer and parties cannot agree upon a hearing date, the hearing officer shall set the matter for hearing no later than six (6) months from the date of the conference, unless the parties have otherwise agreed.

(5) Upon conclusion of the prehearing or status conference, the hearing officer shall issue an order including all matters determined at the prehearing or status conference.

(6) The hearing officer shall notify the commission of the date and time for the hearing. The executive director, or his or her designee, shall:

(a) Reserve a place within the proper venue to conduct the hearing;

(b) Select a court reporter to be present at the hearing to record the proceedings; and

(c) Notify the parties and the court reporter of the date, time, and place of the hearing.

Section 4. Conduct of Hearing. Except as otherwise established in KRS Chapter 49 or this administrative regulation, the conduct of hearings shall be governed by the procedures established in KRS Chapter 13B.

MARCUS CAREY, Chair

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: February 14, 2018

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CONTACT PERSON: G. Mitchell Mattingly, Kentucky Claims Commission Attorney, 130 Brighton Park Blvd, Frankfort, Kentucky 40601, phone (502) 782-8255, fax (502) 573-4817, email mitchell.mattingly@ky.gov.

**PUBLIC PROTECTION CABINET
Kentucky Claims Commission
(As Amended at ARRS, April 12, 2018)**

802 KAR 3:010. Crime victims compensation.

RELATES TO: KRS 49.260 - 49.490, 216B.015, 216B.400

STATUTORY AUTHORITY: KRS 49.020, 49.300(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 49.300(1) authorizes[requires] the commission to promulgate administrative regulations that are necessary to carry out the provisions of KRS 49.270 through 49.490. This administrative regulation establishes procedures for crime victims to file claims for compensation.

Section 1. Filing Claims. (1) A claim shall be:

(a) Legibly written, typed, or printed on the Crime Victim Compensation **[Claim]** Form;

(b) Signed by the claimant; and

(c) Filed by mail, electronic mail to crimevictims@ky.gov, or delivered in person to the commission.

(2) If applying for lost wages or loss of support, a claim shall be supplemented by:

(a) A notarized Employment Verification form; and

(b) If requested by commission staff:

1. A Physician Statement form; or

2. A Mental Health **Counselor's Report[Counselor]** form.

Section 2. Kentucky Medical Assistance Program. (1) The commission shall cross-reference every claim with those claims that appear in the Kentucky Medical Assistance Program (KMAP) database maintained by the Cabinet for Health and Family Services.

(2) If a crime victim is covered by Medicare or Medicaid, the commission's staff will provide the commission a list of:

(a) All itemized medical charges for which that victim seeks compensation; and

(b) The victim's services covered by medical assistance as reported in KMAP.

(3) Upon making an award to a Medicaid-eligible crime victim, the commission shall not consider any medical bills submitted by or on behalf of the victim for any KMAP-covered services.

(4) If the commission makes an award to a victim who received medical assistance for a KMAP-covered service, the KMAP as final payor shall not be responsible for the payment of any portion of that claim awarded by the commission.

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

(a) "Crime Victim Compensation Form", February 2018;

(b) "**[Crime Victim]**Employment Verification", February 2018;

(c) "**[Crime—Victim]**Physician Statement", February 2018; and

(d) "**[Crime—Victim]**Mental Health Counselor's Report", February 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Claims Commission, 130 Brighton Park Boulevard, Frankfort, Kentucky

40601, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://cvcb.ky.gov/Pages/default.aspx>.

MARCUS CAREY, Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: February 14, 2018

FILED WITH LRC: February 15, 2018 at 10 a.m.

CONTACT PERSON: G. Mitchell Mattingly, Kentucky Claims Commission Attorney, 130 Brighton Park Blvd, Frankfort, Kentucky 40601, phone (502) 782-8255, fax (502) 573-4817 email mitchell.mattingly@ky.gov.

**PUBLIC PROTECTION CABINET
Kentucky Claims Commission
(As Amended at ARRS, April 12, 2018)**

802 KAR 3:020. Payment schedule for sexual assault examinations.

RELATES TO: KRS 49.020, 49.490, 216B.015, 216B.400, 403.707

STATUTORY AUTHORITY: KRS 49.020, 49.300(1), 49.490, 216B.400(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 49.020(5) authorizes[requires] the commission to promulgate administrative regulations to carry out the provisions and purposes of the commission. KRS 49.490 and 216B.400(8) require[requires] the commission to administer the sexual assault victim assistance fund and pay the cost of a sexual assault examination. This administrative regulation establishes the reimbursement schedule for performing a sexual assault forensic medical examination.

Section 1. Sexual Assault Examination Program. (1) Reimbursement for performing a sexual assault forensic-medical examination pursuant to 502 KAR 12:010 shall be for the actual amount billed and shall not exceed:

(a) \$200 for a physician, sexual assault nurse examiner, or other qualified medical professional performing the examination;

(b) \$250 for an examination facility for use of an emergency or examination room;

(c) \$100 for an examination facility or laboratory that performed diagnostic laboratory testing; and

(d) \$100 for an examination facility where administered medications and pharmaceuticals were prescribed as a result of the examination and as part of basic treatment.

(2) Reimbursement for additional services related to a sexual assault forensic-medical examination requiring HIV post-exposure prophylaxis shall be for the actual amount billed and shall not exceed the following limitations:

(a) \$150 for three (3) follow-up examinations, not to exceed a total of fifty (50) dollars per examination;

(b) Laboratory testing:

1. \$150 for initial testing conducted during the sexual assault examination in the examination facility; and

2. \$215 for follow-up testing conducted during the three (3) follow-up examinations, not to exceed:

a. Fifty (50) dollars for testing conducted during day five (5) to day seven (7) of prophylactic treatment;

b. Ninety (90) dollars for testing conducted after day twelve (12) of prophylactic treatment; and

c. Seventy-five (75) dollars for testing conducted near or at the end of prophylactic treatment; and

(c) Medications:

1. \$800 for a twenty-eight (28) day supply of HIV prophylaxis medication, not to exceed:

a. \$200 for the first seven (7) day supply; and

b. \$600 for the remaining twenty-one (21) day supply; and

2. Thirty (30) dollars for a twenty-eight (28) day supply of anti-nausea medication.

MARCUS CAREY, Chair

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: February 14, 2018

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CONTACT PERSON: G. Mitchell Mattingly, Kentucky Claims Commission Attorney, 130 Brighton Park Blvd, Frankfort, Kentucky 40601, phone (502) 782-8255, fax (502) 573-4817, email mitchell.mattingly@ky.gov.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
(As Amended at ARRS, April 12, 2018)**

907 KAR 17:020. Managed care organization service and service coverage requirements and policies.

RELATES TO: KRS 194A.025(3), Chapters 202A, 645, 42 U.S.C. 1396n(c), 42 C.F.R. 422.113(c), 431.51(a)(4), 431.52, Part 438, 447.500-447.522, 42 U.S.C. 1396b(m)(2)(A)(xiii), 1396d(r), 1396u-2(b)(2)(A)(i), (ii) 17

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396n(b), 42 C.F.R. Part 438

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care. This administrative regulation establishes the Medicaid managed care organization service and service coverage requirements and policies.

~~Section 1.[MCO Service Areas. An MCO's service areas shall be as established in the MCO Service Areas.~~

~~Section 2.] Covered Services. (1) Except as established in subsection (2) of this section, an MCO shall be responsible for the provision of a covered health service:~~

~~(a) That[Which] is established in Title 907 of the Kentucky Administrative Regulations;~~

~~(b) That[Which] shall be in the amount, duration, and scope that the services are covered for recipients pursuant to the department's administrative regulations located in Title 907 of the Kentucky Administrative Regulations; and~~

~~(c) Beginning on the date of enrollment of a recipient into the MCO.~~

~~(2) Other than a nursing facility cost referenced in subsection (3)(i) of this section, an MCO shall be responsible for the cost of a non-nursing facility covered service provided to an enrollee during the first thirty (30) days of a nursing facility admission in accordance with this administrative regulation.~~

~~(3) An MCO shall not be responsible for the provision or costs of the following:~~

~~(a) A service provided to a recipient in an intermediate care facility for individuals with an intellectual disability;~~

~~(b) A service provided to a recipient in a 1915(c) home and community based waiver program;~~

~~(c) A hospice service provided to a recipient in an institution;~~

~~(d) A nonemergency medical transportation service provided in accordance with 907 KAR 3:066;~~

~~(e) Except as established in Section 5[6] of this administration regulation, a school-based health service;~~

~~(f) A service not covered by the Kentucky Medicaid Program;~~

~~(g) A health access nurturing development service pursuant to 907 KAR 3:140;~~

~~(h) An early intervention program service pursuant to 907 KAR 1:720; or~~

~~(i) A nursing facility service for an enrollee during the first thirty (30) days of a nursing facility admission.~~

~~(4) The following covered services provided by an MCO shall be accessible to an enrollee without a referral from the enrollee's~~

primary care provider:

- (a) A primary care vision service;
- (b) A primary dental or oral surgery service;
- (c) An evaluation by an orthodontist or a prosthodontist;
- (d) A service provided by a women's health specialist;
- (e) A family planning service;
- (f) An emergency service;
- (g) Maternity care for an enrollee under age eighteen (18);
- (h) An immunization for an enrollee under twenty-one (21);
- (i) A screening, evaluation, or treatment service for a sexually transmitted disease or tuberculosis;
- (j) Testing for HIV, HIV-related condition, or other communicable disease;~~[and]~~
- (k) A chiropractic service;
- (l) A behavioral health service; and**
- (m) A substance use disorder service.**

(5) An MCO shall:

- (a) Not require the use of a network provider for a family planning service;
- (b) In accordance with 42 C.F.R. 431.51(a)(4)(b), reimburse for a family planning service provided within or outside of the MCO's provider network;
- (c) Cover an emergency service:
 - 1. In accordance with 42 U.S.C. 1396u-2(b)(2)(A)(i);
 - 2. Provided within or outside of the MCO's provider network; and~~[or]~~

3. ~~If provided~~ out-of-state, in accordance with 42 C.F.R. 431.52;

(d) Comply with 42 U.S.C. 1396u-2(b)(2)(A)(ii); and

(e) Be responsible for the provision and reimbursement of a covered service as described in this section beginning on or after the beginning date of enrollment of a recipient with an MCO as established in 907 KAR 17:010.

(6)(a) If an enrollee is receiving a medically necessary covered service the day before enrollment with an MCO, the MCO shall be responsible for the reimbursement of continuation of the medically necessary covered service without prior approval and without regard to whether services are provided within or outside the MCO's network until the MCO can reasonably transfer the enrollee to a network provider.

(b) An MCO shall comply with paragraph (a) of this subsection without impeding service delivery or jeopardizing the enrollee's health.

(7) To determine if a service is medically necessary and clinically appropriate, the MCO shall:

(a) Comply with 907 KAR 3:130; and

(b) Make utilization decisions as follows:

1. Until the commissioner of the Department of Insurance issues a final order pursuant to 2018 Ky. Act ch. 69, Section 10(1)(b)2., in accordance with nationally recognized criteria as approved by the department; and

2. Once the commissioner of the Department of Insurance issues a final order pursuant to 2018 Ky. Acts ch. 69, Section 10(1)(b)2., by complying with 2018 Ky. Acts ch. 69, Section 5(Except as provided in subparagraphs 2. and 3. of this paragraph, by using Interqual, unless Interqual criteria does not specifically address a particular service or a particular population in which case the MCO shall submit its proposed medical necessity criteria for the particular service or population to the department for approval;

2. For substance use, by using the American Society of Addiction Medicine (ASAM); and

3. For behavioral health services not covered by Interqual, by using the following standardized tools:

a. For adults, the Level of Care Utilization System (LOCUS);

b. For children, the Child and Adolescent Service Intensity Instrument (CASII) or the Child and Adolescent Needs and Strengths Scale (CANS); and

c. For young children, the Early Childhood Service Intensity Instrument (ECSII)(using Interqual, unless otherwise negotiated in the MCO contract).

Section 2[3]. Early and Periodic Screening,

~~Diagnosis~~[Diagnostic], and Treatment (EPSDT) Services. (1) An MCO shall provide an enrollee under the age of twenty-one (21) years with EPSDT services in compliance with:

(a) 907 KAR 11:034; and

(b) 42 U.S.C. 1396d(r).

(2) A provider of an EPSDT service shall meet the requirements established in 907 KAR 11:034.

Section 3[4]. Emergency Care, Urgent Care, and Post-stabilization Care. (1) An MCO shall provide to an enrollee:

(a) Emergency care twenty-four (24) hours a day, seven (7) days a week; and

(b) Urgent care within forty-eight (48) hours.

(2) Post-stabilization services shall be provided and reimbursed in accordance with 42 C.F.R. 422.113(c) and 438.114(e).

(3)(a) Prior authorization shall not be required for a physical emergency service or a behavioral health emergency service.

(b) In order to be covered, an emergency service shall be:

1. Medically necessary; and

2. ~~Authorized after being provided if the service was not prior authorized; and~~

3. Covered in accordance with Section 1(5)(c) of this administrative regulation.

Section 4[5]. Maternity Care. An MCO shall:

(1) Have procedures to assure:

(a) Prompt initiation of prenatal care; or

(b) Continuation of prenatal care without interruption for a woman who is pregnant at the time of enrollment;

(2) Provide maternity care that includes:

(a) Prenatal;

(b) Delivery;

(c) Postpartum care; and

(d) Care for a condition that complicates a pregnancy; and

(3) Perform all the newborn screenings referenced in 902 KAR 4:030.

Section 5[6]. Pediatric Interface. (1) An MCO shall:

(a) Have procedures to coordinate care for a child receiving a school-based health service or an early intervention service; and

(b) Monitor the continuity and coordination of care for the child receiving a service referenced in paragraph (a) of this subsection as part of its quality assessment and performance improvement (QAPI) program~~[established in 907 KAR 17:025].~~

(2) Except when a child's course of treatment is interrupted by a school break, after-school hours, or summer break, an MCO shall not be responsible for a service referenced in subsection (1)(a) of this section.

(3) A school-based health service provided by a school district shall not be covered by an MCO.

(4) A school-based health service provided by a local health department shall be covered by an MCO.

Section 6[7]. Pediatric Sexual Abuse Examination. (1) An MCO shall enroll at least one (1) provider in its network who has the capacity to perform a forensic pediatric sexual abuse examination.

(2) A forensic pediatric sexual abuse examination shall be conducted for an enrollee at the request of the DCBS.

Section 8.] Lock-in Program. (1) An MCO shall have a program to control utilization of:

(a) Drugs and other pharmacy benefits; and

(b) Non-emergency care provided in an emergency setting.

(2)(a) The program referenced in subsection (1) of this section shall be approved by the department.

(b) An MCO shall not be required to use the criteria established in 907 KAR 1:677 for placing an enrollee in the MCO's lock-in program if:

1. The MCO provides notice to the enrollee, in accordance with the adverse action notice requirements established in 907 KAR 17:010, of being placed in the MCO's lock-in program; and

2. The enrollee is granted the opportunity to appeal being

placed in a lock-in program in accordance with the:

- a. MCO internal appeal process requirements established in 907 KAR 17:010; and
- b. The department's state fair hearing requirements established in 907 KAR 17:010.

Section 7[9]. Pharmacy Benefit Program. (1) The pharmacy benefit program shall be in compliance with the applicable federal and state law, including 42 U.S.C. 1396b(m)(2)(A)(xiii)[,] and 42 C.F.R. 447.500 through 447.522[, and the negotiated terms of the contract between the MCO and the department].

(2)[An MCO shall:

(a) Have a pharmacy benefit program that shall have:

1. A point-of-sale claims processing service;
2. Prospective drug utilization review;
3. An accounts receivable process;
4. Retrospective utilization review services;
5. Formulary and non-formulary drugs;
6. A prior authorization process for drugs;
7. Pharmacy provider relations;
8. A toll-free call center that shall respond to a pharmacy or a physician prescriber twenty-four (24) hours a day, seven (7) days a week; and

9. ~~A seamless interface with the department's management information system;~~

(b) ~~Maintain a preferred drug list (PDL);~~

(c) ~~Provide the following to an enrollee or a provider:~~

1. ~~PDL information; and~~
2. ~~Pharmacy cost sharing information; and~~

(d) ~~Have a Pharmacy and Therapeutics Committee (P&T Committee), which shall:~~

1. ~~Meet periodically throughout the calendar year as necessary; and~~
2. ~~Make recommendations to the MCO for changes to the drug formulary.~~

(2)(a) ~~The department shall comply with the drug rebate collection requirement established in 42 U.S.C. 1396b(m)(2)(A)(xiii).~~

(b) ~~An MCO shall:~~

1. ~~Cooperate with the department in complying with 42 U.S.C. 1396b(m)(2)(A)(xiii);~~
2. ~~Assist the department in resolving a drug rebate dispute with a manufacturer; and~~
3. ~~Be responsible for drug rebate administration in a non-pharmacy setting.~~

(3) ~~An MCO's P&T committee shall meet and make recommendations to the MCO for changes to the drug formulary.~~

(4) ~~If a prescription for an enrollee is for a non-preferred drug and the pharmacist cannot reach the enrollee's primary care provider or the MCO for approval and the pharmacist determines it necessary to provide the prescribed drug, the pharmacist shall:~~

- (a) ~~Provide a seventy-two (72) hour supply of the prescribed drug; or~~
- (b) ~~Provide less than a seventy-two (72) hour supply of the prescribed drug, if the request is for less than a seventy-two (72) hour supply.~~

(3)[(5)] ~~Cost sharing imposed by an MCO shall not exceed the cost sharing limits established in 907 KAR 1:604.~~

Section 8[10]. MCO Interface with the Department Regarding Behavioral Health. An MCO shall:

(1) ~~Meet with the department monthly to discuss:~~

- (a) ~~Serious mental illness and serious emotional disturbance operating definitions;~~
 - (b) ~~Priority populations;~~
 - (c) ~~Targeted case management and peer support provider certification training and processes;~~
 - (d) ~~IMPACT Plus program operations;~~
 - (e) ~~Satisfaction survey requirements;~~
 - (f) ~~Priority training topics;~~
 - (g) ~~Behavioral health services hotline; or~~
 - (h) ~~Behavioral health crisis services;~~
- (2) ~~Coordinate:~~

(a) ~~An IMPACT Plus covered service provided to an enrollee in accordance with 907 KAR 3:030;~~

(b) ~~With the department:~~

1. ~~An enrollee education process for:~~

- a. ~~Individuals with a serious mental illness; and~~
- b. ~~Children or youth with a serious emotional disturbance; and~~
2. ~~On establishing a collaborative agreement with a:~~
 - a. ~~State-operated or stated-contracted psychiatric hospital; and~~
 - b. ~~Facility that provides a service to an individual with a co-occurring behavioral health and developmental and intellectual disabilities; and~~

(c) ~~With the department and community mental health centers a process for integrating a behavioral health service hotline; and~~

(3) ~~Provide the department with proposed materials and protocols for the enrollee education referenced in subsection (2)(b) of this section.~~

Section 14.] Behavioral Health Services. (1) An MCO shall:

(a) Provide a medically necessary behavioral health service to an enrollee in accordance with the access standards established in 907 KAR 17:015, Section 2;

(b) Use the DSM-IV multi-axial classification system to assess an enrollee for a behavioral service;

(c) Have an emergency or crisis behavioral health toll-free hotline staffed by trained personnel twenty-four (24) hours a day, seven (7) days a week;

(d) Not operate one (1) hotline to handle both an emergency or crisis call and a routine enrollee call; and

(e) Not impose a maximum call duration limit.

(2) Staff of a hotline referenced in subsection (1)(c) of this section shall:

(a) Communicate in a culturally competent and linguistically accessible manner to an enrollee; and

(b) Include or have access to a qualified behavioral health professional to assess and triage a behavioral health emergency.

(3) A face-to-face emergency service shall be available:

- (a) Twenty-four (24) hours a day; and
- (b) Seven (7) days a week.

Section 9[12]. Coordination Between a Behavioral Health Provider and a Primary Care Provider. (1) An MCO shall:

(a) ~~Require a PCP to have a screening and evaluation procedure for the detection and treatment of, or referral for, a known or suspected behavioral health problem or disorder;~~

(b) ~~Provide training to a PCP in its network on:~~

1. ~~Screening and evaluating a behavioral health disorder;~~
2. ~~The MCO's referral process for a behavioral health service;~~
3. ~~Coordination requirements for a behavioral health service; and~~

4. ~~Quality of care standards;~~

(c) ~~Have policies and procedures that shall be approved by the department regarding clinical coordination between a behavioral health service provider and a PCP;~~

(d) ~~Establish guidelines and procedures to ensure accessibility, availability, referral, and triage to physical and behavioral health care;~~

(e) ~~Facilitate the exchange of information among providers to reduce inappropriate or excessive use of psychopharmacological medications and adverse drug reactions;~~

(f) ~~Identify a method to evaluate continuity and coordination of care; and~~

(g) ~~Include the monitoring and evaluation of the MCO's compliance with the requirements established in paragraphs (a) to (f) of this subsection in the MCO's quality improvement plan.~~

(2) ~~With consent from an enrollee or the enrollee's legal guardian, an MCO shall require a behavioral health service provider to:~~

(a) ~~Refer an enrollee with a known or suspected and untreated physical health problem or disorder to their PCP for examination and treatment; and~~

(b) ~~Send an initial and quarterly summary report of an enrollee's behavioral health status to the enrollee's PCP.~~

~~Section 13.]~~ Court-Ordered Psychiatric Services. (1) An MCO shall:

(a) Provide an inpatient psychiatric service to an enrollee under the age of twenty-one (21) or over the age of sixty-five (65) who has been ordered to receive the service by a court of competent jurisdiction under the provisions of KRS Chapters 202A or 645;

(b) Not deny, reduce, or negate the medical necessity of an inpatient psychiatric service provided pursuant to a court-ordered commitment for an enrollee under the age of twenty-one (21) or over the age of sixty-five (65);

(c) Coordinate with a provider of a behavioral health service the treatment objectives and projected length of stay for an enrollee committed by a court of law to a state psychiatric hospital; and

(d) Enter into a collaborative agreement with the state-operated or state-contracted psychiatric hospital assigned to the enrollee's ~~district~~[~~region~~] in accordance with 908 KAR ~~2:040~~[~~3:040~~] and in accordance with the Olmstead decision.

(2) An MCO shall present a modification or termination of a service referenced in subsection (1)(b) of this section to the court with jurisdiction over the matter for determination.

(3)(a) An MCO behavioral health service provider shall:

1. Participate in a quarterly continuity of care meeting with a state-operated or state-contracted psychiatric hospital;

2. Assign a case manager prior to or on the date of discharge of an enrollee from a state-operated or state-contracted psychiatric hospital; and

3. Provide case management services to an enrollee with a severe mental illness and co-occurring developmental disability who is discharged from a:

a. State-operated or state-contracted psychiatric hospital; or

b. State-operated nursing facility for individuals with severe mental illness.

(b) A case manager and a behavioral health service provider shall participate in discharge planning to ensure compliance with the Olmstead decision.

Section ~~10~~[~~14~~]. Centers for Medicare and Medicaid Services Approval and Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies or does not provide federal financial participation for the policy; or

(2) Disapproves the policy. [~~Section 15. Incorporation by Reference. (1) "MCO Service Areas", November 2012 edition, is incorporated by reference.~~

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

(3) ~~It may also be obtained online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.~~

STEPHEN P. MILLER, Commissioner

SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: February 14, 2018

FILED WITH LRC: February 15, 2018 at 11 a.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.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Child Care

(As Amended at ARRS, April 12, 2018)

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. 9857-9858g

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) ~~and~~ [.] 199.8982(1)(f) ~~authorize~~ and 199.8994(6) ~~requires~~[~~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).

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

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

(4) [(5)] "Child care staff member" is defined by 45 C.F.R. 98.43(a)(2)(ii).

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

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

(7) [(8)] "Rap back system" is defined by KRS 199.011 [(14)] [(13)].

(8) [(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 ~~April~~[~~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 **April[January]** 1, 2018; or

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

Background Submission and Fingerprinting Month	Check and Fingerprinting Month	Renewal Month of the Child Care Provider's License, Certification, or Registration
March 2018		June, July
April 2018		August
May 2018		September or October
June 2018		November or December
July or August 2018		January, February, or March
September 2018		April or May
[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. **A** drug-related felony, and five (5) years has not elapsed since the person was fully discharged from imprisonment, probation, or parole;

b. **A** 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. **The** 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

VOLUME 44, NUMBER 11 – MAY 1, 2018

Community Based Services, 275 East Main Street, Frankfort,
Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ADRIA JOHNSON, Commissioner

SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: 14, 2018

FILED WITH LRC: March 15, 2018 at 10 a.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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amended After Comments)

501 KAR 16:290. Preliminary and post-execution procedures concerning condemned person.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213 – 431.270, 532.130 – 532.140

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.218, 431.220, 431.224, 431.240, 431.250, 431.260, 431.270, 532.130, 532.135, 532.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes preliminary and post execution procedures concerning the condemned person.

Section 1. Initial Steps After Receipt of Execution Order. (1) After the warden receives the execution order, the warden shall:

- (a) Read the execution order to the condemned person; and
- (b) If the condemned person received his death sentence prior to March 31, 1998, ask the condemned person to designate in writing his choice of the method of execution pursuant to KRS 431.220(1).

(2) For a warrant from the Governor, if the condemned person has not been tried or retried on or after July 13, 1990 in his capital case:

- (a) The warrant shall be reviewed to determine whether it reflects that the condemned person has:
 1. Been determined not to be an offender with a serious intellectual disability as defined in KRS 532.130(2); or
 2. Procedurally defaulted or waived the determination of whether he is an offender with a serious intellectual disability.

(b) If the warrant does not reflect one (1) of the items indicated in paragraph (a) of this subsection, then the department shall notify in writing the Attorney General or his designee, the condemned person's counsel, and the condemned person that the condemned person is not subject to execution if determined to be an offender with a serious intellectual disability as defined in KRS 532.130(2). The notice shall state that a court order is required for the execution to be suspended.

(3) For a mandate from a court, if the condemned person has not been tried or retried on or after July 13, 1990 in his capital case, then the department shall notify in writing the Attorney General or his designee, the condemned person's counsel, and the condemned person that the condemned person is not subject to execution if determined to be an offender with a serious intellectual disability as defined in KRS 532.130(2). The notice shall state that a court order is required for the execution to be suspended.

(4) For any designation required to be made in writing in this administrative regulation, if the condemned person cannot see, read, or write sufficiently to complete his designation, then a staff person at the penitentiary shall:

- (a) Ask the condemned person to state his designation;
- (b) Write the designation stated by the condemned person;
- (c) Read the designation as written to the condemned person; and
- (d) Ask the condemned person to sign or make his mark on the document.

(3) If the condemned person requests information about the handling of the body after execution, the warden shall inform him of the requirements of KRS 72.025(5) for a post mortem exam of the body and that the body is transferred to the Office of the State Medical Examiner for the post mortem exam before being returned to the coroner.

(4) The time for the execution set by the warden pursuant

to KRS 431.240(1) shall be prevailing local time for the Kentucky State Penitentiary.

Section 2. Condemned Person's Designation of Witnesses. (1) The warden shall ask the condemned person to designate in writing his clergy witness and the three (3) other individuals who may witness the execution pursuant to KRS 431.250.

(2) The condemned person shall comply with subsection (1) of this section at least ten (10) days before the date scheduled for the execution. If the timing of the receipt of the execution order does not allow for ten (10) days, then the condemned person shall comply immediately when the warden reads the execution order.

(3) The warden may allow the condemned person additional time to comply with subsection (1) of this section or to change a previous designation, if a request is made by the condemned person.

Section 3. Condemned Person's Designation Concerning Property, Funeral, and Disposition of Body. (1) The warden shall ask the condemned person to designate in writing the person who may:

- (a) Collect the condemned person's personal property after his death;
- (b) Take charge of the condemned person's body; and
- (c) Make necessary funeral arrangements.

(2) The condemned person shall comply with subsection (1) of this section at least ten (10) days before the date scheduled for the execution. If the timing of the receipt of the execution order does not allow for ten (10) days, then the condemned person shall comply at least forty-eight (48) hours prior to the time scheduled for the execution.

(3) The warden may allow the condemned person additional time to comply with subsection (1) of this section or to change a previous designation, if a request is made by the condemned person. **[(4) If the condemned person fails or refuses to designate a person to take charge of his body, burial shall be in accordance with KRS 431.270.]**

Section 4. Visitation Designation. (1) After an execution order has been issued, the warden shall ask the condemned person to designate in writing his minister of record.

(2) The condemned person shall comply with subsection (1) of this section at least ten (10) days before the date scheduled for the execution. If the timing of the receipt of the execution order does not allow for ten (10) days, then the condemned person shall comply immediately when the warden reads the execution order.

(3) The warden may allow the condemned person additional time to comply with subsection (1) of this section or to change a previous designation, if a request is made by the condemned person.

Section 5. Limitations on Condemned Person's Clothing, State-issued Items, and Personal Property. **(1) Notwithstanding 501 KAR 6:020, CPP 17.1, CPP 14.2, 501 KAR 6:040, KSP 17-01-01, 17-01-03 and 17-01-04, the warden may limit the condemned person's clothing, state-issued items, and personal property to the following:**

- (a) [(1)] One (1) mattress;**
 - (b) [(2)] Two (2) sheets;**
 - (c) [(3)] One (1) pillow;**
 - (d) [(4)] One (1) pillow case;**
 - (e) [(5)] One (1) pair of scrub-type pants;**
 - (f) [(6)] One (1) scrub-type shirt;**
 - (g) [(7)] One (1) pair of underwear;**
 - (h) [(8)] One (1) pair of socks;**
 - (i) [(9)] One (1) toothbrush;**
 - (j) [(10)] One (1) tube of toothpaste;**
 - (k) [(11)] One (1) bar of soap;**
 - (l) [(12)] One (1) bath towel; and**
 - (m) [(13)] One (1) wash cloth.**
- (2) If the warden limits clothing and linen in the manner**

described in subsection (1) of this section:

(a) 1. Clothing shall be exchanged for clean every other day; and

2. Linen shall be exchanged weekly; or

(b) Clothing and linen shall be exchanged on the same schedule used in other restricted housing units if the warden determines that better suits the needs of the penitentiary.

Section 6. Limitations on Condemned Person's Clothing, State-issued Items, and Personal Property for Females. (1) Notwithstanding 501 KAR 6:020, CPP 17.1, CPP 14.2, 501 KAR 6:040, KSP 17-01-01, 17-01-03 and 17-01-04, the warden may limit the condemned person's clothing, state-issued items, and personal property for a female to the items in Section 5 of this administrative regulation and the following:

(a) One **(1)** bra;

(b) Sanitary napkins; and

(c) Tampons.

(2) The bra shall be white and if it contains stays or underwire, they shall be plastic.

(3) If the warden limits clothing in the manner described in Section 5 of this administrative regulation, the bra shall be exchanged for clean at least:

(a) Every other day; or

(b) On the same schedule for clothing exchange used in other restricted housing units if the warden determines that better suits the needs of the penitentiary.

(4) The supply of sanitary napkins and tampons shall be in a sufficient quantity to allow the individual to maintain an acceptable level of personal hygiene.

Section 7. Transfer of Female Condemned Person. If the condemned person is female, she shall be transferred to the penitentiary for execution. The date of the transfer shall be determined by the warden.

Section 8. Securing Condemned Person's Personal Property Prior to Execution. (1) The warden shall inventory and secure any personal property of the condemned person prior to the execution.

(2) The warden shall set the time for the removal of all personal property.

Section 9. Post-execution Steps. (1) The return on the judgment shall be made in accordance with KRS 431.260 within seven (7) days of the execution.

(2) If the condemned person does not make other arrangements, the department shall make arrangements for the delivery or burial of the body pursuant to KRS 431.270.

(3) **Within three (3) days of the execution,** the penitentiary shall call the person designated by the condemned person to pick up his personal property **[within three (3) days of the execution]**. If the person cannot be reached by phone, notice may be mailed to the person.

JAMES ERWIN, Acting Commissioner

APPROVED BY AGENCY: April 10, 2018

FILED WITH LRC: April 13, 2018 at 9 a.m.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the procedures to be carried out in preparation for an execution including the designation of witnesses, disposition of the condemned person's property, and preparation of the condemned for execution. It also establishes the procedures to be carried out after the execution including arrangements for delivery or burial of the body.

(b) The necessity of this administrative regulation: KRS Chapter 431 establishes the execution of death penalties and 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet, for the government and discipline of penitentiaries, and for official conduct of all officials connected with the penitentiary. This administrative regulation is necessary to establish the Department's procedures before and after an execution.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation, authorized by KRS 196.035 and 197.020, establishes the procedures before and after an execution.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes procedures to be performed by Department of Corrections personnel before and after a legal execution.

(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 language concerning processes in offices outside the department and notices involving serious intellectual disability.

(b) The necessity of the amendment to this administrative regulation: This amendment addresses changes in case law and issues in pending litigation.

(c) How the amendment conforms to the content of the authorizing statutes: Statutes authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet. The Department of Corrections is responsible for the execution of death penalties. This amendment addresses that responsibility.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides additional notice to the condemned person and counsel of potential issues for an offender with a serious intellectual disability.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation establishes procedures that are primarily applicable only to personnel of the Department of Corrections. However, all executions are performed at the Kentucky State Penitentiary in Eddyville and other individuals and state and local government agencies are affected. There are currently thirty-two inmates on Kentucky's death row who may be affected by this administrative regulation. There are approximately 600 persons employed by the Department of Corrections who will be affected. There are approximately 15 witnesses from the news media, victim's family, inmate's family, and sheriff's department of the county of conviction that will be affected. Additionally, the following agencies and some of their employees will be affected: Office of the Kentucky State Medical Examiner, Kentucky Department of Public Advocacy, the Lyon County Coroner, Attorney General's Office, and the Lyon County Ambulance Service.

(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: Except for the Department of Corrections personnel, none of the entities listed above are mandated to take any action to comply with this administrative regulation. Department of Corrections employees will be trained to comply with it.

(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 is primarily applicable only to personnel of the Department of Corrections. However, other individuals and state and local government agencies are affected

by the execution process. In the event that an execution is carried out, it is estimated that the cost will be the following approximate figures:

Department of Corrections, \$35,840;
Office of the Kentucky State Medical Examiner, \$2,000;
Kentucky Department of Public Advocacy, \$34,463;
Lyon County Ambulance Service, \$1200;

Office of Criminal Appeals within the Attorney General's Office handles all felony appeals within the existing budget of the office.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will assist in placing the Department of Corrections in compliance with the decision of the Supreme Court of Kentucky in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009). Further, it will assist personnel of the Department of Corrections in the administration of their duties before and after an execution. The death row inmates and the public have information provided to them through the regulation.

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

(a) Initially: This administrative regulation is promulgated in compliance with the Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009). The execution process has been in effect for many years, so this process will not be newly implemented. See approximate costs to conduct an execution in 4(b).

(b) On a continuing basis: See approximate costs to conduct an execution in 4(b).

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Biennial budget funds designated to the state agencies listed in 4(b) above. For the Lyon County Sheriff's Office and Lyon County Ambulance Service, funds designated to them by the county.

(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 regulation impacts how the Kentucky Department of Corrections and other entities listed in 4(b) above operate, but should not necessitate an increase in funding. No fees are involved.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will primarily impact the Kentucky Department of Corrections and the Kentucky State Penitentiary. However, the Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiner's Office, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, Kuttawa Fire Department, Office of the Commonwealth's Attorney for Lyon County, Lyon County Ambulance Service, Office of the Attorney General, and Kentucky Department of Public Advocacy will also be impacted during the execution process.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, 431.213-431.270. Further, this administrative regulation is authorized pursuant to the Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009).

(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 the entities listed in #1 above.

(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.

(c) How much will it cost to administer this program for the first year? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The promulgation of this administrative regulation should not increase costs. The other entities listed in the response to Question #1 above should also not see any increase in costs. Executions are infrequently performed. In the event that an execution is carried out, it is estimated that the cost will be the following approximate figures:

Department of Corrections, \$35,840;
Office of the Kentucky State Medical Examiner, \$2,000;
Kentucky Department of Public Advocacy, \$34,463;
Lyon County Ambulance Service, \$1200;
Office of Criminal Appeals within the Attorney General's Office handles all felony appeals within the existing budget of the office.

(d) How much will it cost to administer this program for subsequent years? The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The other entities listed in the response to 3(c) above should also not see any increase in costs. Executions are infrequently performed. In the event that an execution is carried out, it is estimated that the costs for each entity involved will be that set out in 3(c).

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

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

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amended After Comments)

501 KAR 16:300. Execution procedures concerning attorneys representing the condemned, witnesses, visitors, and demonstrators.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213-431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.220, 431.224, 431.240, 431.250, 431.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. KRS 431.250 establishes persons who may attend the execution. This administrative regulation establishes preliminary and post execution procedures concerning witnesses, visitors, and demonstrators.

Section 1. Designation of Victim's Family to Witness Execution.

(1) The commissioner shall mail a letter to any of the victim's family described in KRS 431.250 for whom the commissioner has received an address.

(2) The letter sent to the victim's family shall:

- (a) State the scheduled execution date; and
- (b) Request the victim's family member contact the

commissioner to notify him in writing if he wants to be considered for designation as a witness to the execution.

(3) The commissioner may seek an address for the victim's family by:

- (a) Review of the condemned person's file; or
- (b) Request made to the Commonwealth's Attorney who maintains information concerning the victims of the crime committed by the condemned person.

(4) The commissioner shall designate pursuant to KRS 431.250 the three (3) members of the victim's family who may witness the execution. **If the commissioner receives more than three (3) requests from members of the victim's family to witness the execution, the commissioner shall:**

- (a) Give first preference to a victim's spouse;**
- (b) Give second preference to a victim's adult child; and**
- (c) Hold a drawing to select a witness if the requests exceed three (3) after consideration of the preferences or if the requests within a preference exceed three (3).**

(5) A letter stating the commissioner's designation shall be mailed to each member of the victim's family who is designated to witness the execution.

Section 2. Additional Notifications Concerning Execution. (1) The department shall mail a letter that states:

- (a) The time that the person shall arrive to witness the execution; and
 - (b) The location where the person shall go.
- (2) The letter shall be mailed to the:
- (a) Designated victim's family;
 - (b) Condemned person's clergy witness and his other three (3) designated witnesses;
 - (c) Media representatives selected pursuant to section 3 of this administrative regulation;
 - (d) Coroner of the county where the execution is to be conducted; and
 - (e) Sheriff of the county where the condemned person was convicted.

Section 3. Media Representative Procedures. (1) The department shall send notice to the three (3) news organizations specifically identified in KRS 431.250 as being allowed to have one (1) representative. The notice shall request the identity of the representative who the news organization will designate to attend and witness the execution. The three (3) news organizations shall send the names of the representatives in writing at least fourteen (14) days prior to the execution, unless notice from the department indicates a different time to send the names of the representatives. The notice may request additional information about the representative as needed for security or management.

(2) The Kentucky Press Association may select by lottery three (3) representatives for the newspapers within the state as authorized by KRS 431.250. The Kentucky Press Association shall send the names of the representatives in writing at least fourteen (14) days prior to the execution, unless notice from the department indicates a different time to send the names of the representatives. The department may request additional information about the representatives as needed for security or management.

(3) Selection of the three (3) representatives for broadcast media identified in KRS 431.250 shall be made in the following manner:

(a) The Central Office Public Information Officer shall send a press release advising broadcast media that they may nominate a representative of their organization to attend and serve as an official media witness to the execution. The nomination shall be sent to the commissioner's office in writing at least fourteen (14) days prior to the execution unless notice from the department indicates a different time to send the names for nomination.

(b) A drawing shall be held to select the three (3) representatives for broadcast media in the office of the commissioner.

(4) After media representatives to the execution are separated from other media in preparation for transfer to the witness room, media representatives shall not be permitted to use:

- (a) Any item at the execution other than a pen or pencil and paper which shall be provided by the department; and
- (b) Audio or video recording devices.

Section 4. Visitors. (1) Notwithstanding 501 KAR 6:020, CPP 16.1 and 501 KAR 6:040, KSP 16-01-01, visits to the condemned person after receipt of the execution order shall be governed by this administrative regulation.

(2) The visitor shall call the Kentucky State Penitentiary in advance of the requested visit to schedule the visit.

(3) The warden shall designate the location of the visit.

(4) For any visit allowed in this administrative regulation on the day of execution, the condemned person shall not have more than one (1) visitor at a time.

(5) The condemned person may refuse any visitor.

(6) The warden may approve a request from the condemned person for a visitor that is not on the visitation list.

(7) A pat down search may be performed on all visitors before and after the visit.

(8) Media visitors.

(a) Prior to the day of the execution, a member of the media:

- 1. Shall not bring any item into the penitentiary, unless prior approval is given by the warden;
- 2. Shall make any request to bring items into the penitentiary when calling to request an appointment to visit; and
- 3. May request daily visits on weekdays.

(b) On the day of the execution:

- 1. The department may establish a media:
 - a. Staging area where media shall be directed to gather before entering into the penitentiary; and
 - b. Assembly room where scheduled press briefings may be held prior to the execution. Reporters may submit written questions at each press briefing for response at a subsequent briefing, except for the final briefing; and
- 2. Media shall not be allowed visits.

(c) Seven (7) days prior to the execution, the department communication director may issue a press advisory stating the date and approximate time of the pending execution.

(9) Clergy visitors and minister of record visits.

(a) A member of the clergy or the minister of record may request to bring religious items into the penitentiary by making the request to the penitentiary chaplain. The chaplain shall notify the warden of the request. The warden shall:

- 1. Give due consideration to any request to bring religious items into the penitentiary; and
- 2. Not deny a religious item needed for an end-of-life ceremony unless it poses a significant operational problem or security risk.

(b) Prior to the day of execution, a member of the clergy or the minister of record may request daily visits.

(c) On the day of the execution:

- 1. Clergy visits shall not be allowed, except for the minister of record;
- 2. The minister of record shall call for an appointment for the visit prior to the day of execution;
- 3. The minister of record may visit for thirty (30) minutes up to two (2) hours before the execution;
- 4. The visit shall not be a contact visit, unless a religious ceremony, sacrament, or rite accepted by the religion being practiced by the condemned person requires contact to be accomplished; and

5. If a contact visit is necessary pursuant to subparagraph 4 of this paragraph, then the need for a contact visit shall be stated in the call for the appointment.

(10) Personal visitors.

(a) Prior to the day of execution:

- 1. A personal visitor who is listed on the condemned person's visitation list may request daily visits; and
- 2. Personal visitors shall be limited to four (4) at a time.

(b) A personal visitor shall not bring any item into the penitentiary.

(c) On the day of execution, a personal visitor shall not be allowed a visit.

(11) Attorneys defending the condemned person and staff

employed by the office of an attorney defending the condemned person.

(a) An attorney defending the condemned person or staff employed by the office of an attorney defending the condemned person may bring into the penitentiary:

1. Pens;
2. Pads of paper without metal; and
3. Legal documents for a visit with the condemned person. The legal documents and other items shall be searched, but shall not be read by staff performing the search.

(b) Prior to the day of execution, an attorney defending the condemned person or staff employed by the office of an attorney defending the condemned person:

1. Shall be allowed a visit daily between 7:30 a.m. and 2:30 p.m.; and

2. May request additional visits.

(c) On the day of execution:

1. an attorney defending the condemned person:

a. Shall be allowed a visit between 7:30 a.m. and 2:30 p.m.;

b. May request additional visits until three (3) hours prior to the execution; and

c. Visits shall be noncontact, unless there is a need for the condemned person to sign a document. If a document needs to be signed, the attorney shall be allowed to obtain the signature of the condemned person in a location designated by the warden; and

2. One (1) attorney representing the condemned person may request phone contact with the condemned person at or near two (2) hours prior to the execution. The call shall be allowed when a break in the execution preparations can be taken without delaying the execution at or near two (2) hours prior to the execution.

3. One (1) attorney representing the condemned person shall be allowed to have phone contact with the condemned person at or near one hour prior to the execution, if requested[, if required for matters concerning a stay]. The call shall be allowed when a break in the execution preparations can be taken without delaying the execution at or near one hour prior to the execution.

(d) The warden shall notify the condemned person of all requests from an attorney defending the condemned person or staff employed by the office of an attorney defending the condemned person for a phone call from the condemned person.

Section 5. (1) An attorney representing the condemned person shall be allowed a space designated by the warden on the day of the execution at the Kentucky State Penitentiary. The space shall include access to a phone and restroom. The attorney shall be escorted to food and drink if needed.

(2) One (1) attorney representing the condemned person shall be allowed to have phone contact with the condemned person, if requested, during a temporary stay that delays the start of the execution if it is within the physical and technological capability of the Kentucky State Penitentiary.

Section 6[5]. Security and Management Issues. (1) Witnesses may be staged at the discretion of the warden.

(2) The warden may deny entrance to the Kentucky State Penitentiary to any person, including a witness, media representative, or visitor, who is determined to be a security risk or who becomes disruptive while at the penitentiary.

(3) The warden may limit the:

(a) Items brought onto the grounds of the penitentiary;

(b) Areas where persons may enter or remain at the penitentiary; and

(c) Time allowed in an area or on the grounds of the penitentiary.

(4) The warden may in his discretion make an exception to the limitations on visitors in Section 4 of this administrative regulation.

Section 7[6]. Demonstrator Procedures. (1) The warden may designate an area for demonstrators.

(2) A press advisory shall be issued to identify the locations for demonstrators and the time allowed for demonstrations.

Section 8[7]. Notice of Stay. (1) Prior to the day of execution, an attorney defending the condemned person or staff employed by the office of an attorney defending the condemned person shall give notice of a stay of execution by providing a copy of the stay to the warden.

(2) On the day of execution, an attorney defending the condemned person or staff employed by the office of an attorney defending the condemned person shall give notice of a stay of execution by calling the penitentiary at its main number unless a different phone number is designated by the warden.

(3) If the warden designates a different number, he shall give notice of the designated phone number to the individual at the phone number provided by an attorney defending the condemned person.

(4) An attorney defending the condemned person shall designate an individual to whom the notice in paragraph (3) of this section shall be provided by calling the penitentiary and providing the information to the warden's secretary at least three (3) days prior to the day of execution.

Section 9[8]. Obtaining Medical Records. (1) If an attorney defending the condemned person or staff employed by the office of an attorney defending the condemned person provides an appropriate authorization signed by the condemned person to release medical and mental health records to them, the warden shall make the record available for inspection within twenty-four (24) hours.

(2) After an execution order is signed, a request for inspection or copies of the condemned person's medical or mental health records shall be made in writing to the warden.

JAMES ERWIN, Acting Commissioner

APPROVED BY AGENCY: April 10, 2018

FILED WITH LRC: April 13, 2018 at 9 a.m.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the procedures for the designation of witnesses to an execution, allowance of visitors to the condemned person, and designation of an area for demonstrators.

(b) The necessity of this administrative regulation: KRS Chapter 431 establishes the execution of death penalties and 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet and the government and discipline of penitentiaries and official conduct of all officials connected with the penitentiary. This administrative regulation is necessary for the Department to establish procedures for the designation of witnesses to the execution, visitors to the condemned person, attorney access to the condemned person, and the demonstration area.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the procedures for the designation of witnesses to the execution, visitors to the condemned person, attorney access to the condemned person, and the demonstration area, the promulgation of which is authorized by KRS 196.035 and 197.020.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedures to be used by Department of Corrections personnel for the designation of witnesses to the execution, visitors to the condemned person, attorney access to the condemned person, and the demonstration area.

(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 telephone access for the condemned and his attorney approximately one hour prior to the time scheduled for execution. Provision is made for a designated space for the attorney for the condemned person at the Penitentiary and access to a telephone.

(b) The necessity of the amendment to this administrative regulation: This amendment addresses issues raised when this regulation was previously filed.

(c) How the amendment conforms to the content of the authorizing statutes: Statutes authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet. The Department of Corrections is responsible for the execution of a death penalty. This amendment addresses that responsibility.

(d) How the amendment will assist in the effective administration of the statutes: This amendment addresses issues raised when this regulation was previously filed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation establishes procedures that are primarily applicable only to personnel of the Department of Corrections. However, all executions are performed at the Kentucky State Penitentiary in Eddyville and other individuals and state and local government agencies are affected. There are currently thirty-two inmates on Kentucky's death row who may be affected by this administrative regulation. There are approximately 600 persons employed by the Department of Corrections who will be affected. There are approximately 15 witnesses from the news media, victim's family, inmate's family, and sheriff's department of the county of conviction that will be affected. Additionally, the following agencies and some of their employees will be affected: Kentucky State Police, Office of the Kentucky State Medical Examiner, Department of Public Advocacy, Attorney General's Office, Lyon County Sheriff's Office, the Kuttawa Fire Department, the Kentucky Department of Fish and Wildlife, Kentucky National Guard, Eddyville Fire Department, the Lyon County Coroner, and the Lyon County Ambulance Service.

(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: Except for the Department of Corrections personnel, none of the entities listed above will have to take any action to comply with this administrative regulation. Department of Corrections personnel will do the preparation for and carrying out of the execution, as well as the post-execution procedures.

(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 is primarily applicable only to personnel of the Department of Corrections. However, other individuals and state and local government agencies are affected by the execution process. In the event that an execution is carried out, it is estimated that the cost will be the following approximate figures:

Department of Corrections, \$35,840;
 Kentucky State Police, \$3,625;
 Office of the Kentucky State Medical Examiner, \$2,000;
 Kentucky Department of Public Advocacy, \$34,463;
 Kentucky Department of Fish and Wildlife, \$450;
 Kentucky National Guard, \$18,975;
 Lyon County Sheriff's Office, \$900;
 Kuttawa Fire Department, volunteer agency with no fiscal impact;
 Eddyville Fire Department, volunteer agency with no fiscal impact;
 Lyon County Ambulance Service, \$1200;
 Office of Criminal Appeals within the Attorney General's Office

handles all felony appeals within the existing budget of the Office.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will assist in placing the Department of Corrections in compliance with the decision of the Supreme Court of Kentucky in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009). Further, it will assist the entities listed above in the proper administration of their duties during the execution process.

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

(a) Initially: This administrative regulation is promulgated in compliance with the Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009). The execution process has been in effect for many years, so this process will not be newly implemented. See approximate costs to conduct an execution in 4(b).

(b) On a continuing basis: See approximate costs to conduct an execution in 4(b).

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Biennial budget funds designated to the state agencies listed in 4(b) above. For the Lyon County Sheriff's Office and Lyon County Ambulance Service, funds designated to them by the county.

(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 regulation impacts how the Kentucky Department of Corrections and other entities listed in 4(b) above operate, but should not necessitate an increase in funding. No fees are involved.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will primarily impact the Kentucky Department of Corrections and Kentucky State Penitentiary. However, the Kentucky State Police, Office of the Kentucky State Medical Examiner, Kentucky Department of Public Advocacy, Office of the Attorney General, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, Kuttawa Fire Department, and Lyon County Ambulance Service will also be impacted during the execution process.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, 431.213-431.270. Further, this administrative regulation is authorized under the Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009).

(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 the entities listed in #1 above.

(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.

(c) How much will it cost to administer this program for the first year? No new programs are created. The promulgation of this

administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The promulgation of this administrative regulation should not increase costs. The other entities listed in the response to Question #1 above should also not see any increase in costs. Executions are infrequently performed. In the event that an execution is carried out, it is estimated that the cost will be the following approximate figures:

Department of Corrections, \$35,840;
 Kentucky State Police, \$3,625;
 Office of the Kentucky State Medical Examiner, \$2,000;
 Kentucky Department of Public Advocacy, \$34,463;
 Kentucky Department of Fish and Wildlife, \$450;
 Kentucky National Guard, \$18,975;
 Lyon County Sheriff's Office, \$900;
 Kuttawa Fire Department, volunteer agency with no fiscal impact;
 Eddyville Fire Department, volunteer agency with no fiscal impact;

Lyon County Ambulance Service, \$1,200;
 Office of Criminal Appeals within the Attorney General's Office handles all felony appeals within the existing budget of the Office.

(d) How much will it cost to administer this program for subsequent years? The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The other entities listed in the response to 3(c) above should also not see any increase in costs. Executions are infrequently performed. In the event that an execution is carried out, it is estimated that the costs for each entity involved will be that set out in 3(c).

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

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

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amended After Comments)

501 KAR 16:310. Pre-execution medical actions.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213-431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 314.011, 431.218, 431.220, 431.224, 431.240, 431.250, 431.260, 431.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes medical actions to be performed after receipt of the execution order and prior to the execution.

Section 1. Pre-execution Medical Actions after Receipt of Execution Order. (1) For the fourteen (14) days prior to an execution, or for the remaining days if an execution order is received less than fourteen (14) days prior to an execution:

(a) All medical documentation shall be made in special notes in the condemned person's medical record.

(b) The department shall arrange for nurse visits ~~for~~and checks on the condemned person during each shift daily. The contacts and observations from these nurse visits~~and checks~~ shall be recorded in the special notes of the medical record referenced in paragraph (a) of this subsection. The nurse notes shall state the presence or absence of signs of physical or emotional distress observed.

(c) A licensed psychologist shall:

1. Personally observe and evaluate the condemned person five (5) days per week on Monday through Friday;~~and~~

2. Document his observations and evaluations in the condemned person's medical record immediately after personal contact with the condemned person;~~and~~[-]

3. Review the department medical records for the condemned person for:

a. A diagnosis of an intellectual disability as:

(i) Indicated by the criteria in the Diagnostic and Statistical Manual (DSM); or

(ii) Defined by the American Association on Intellectual and Developmental Disabilities (AAIDD); or

b. An IQ test score of seventy-five (75) or lower; and

4. If any record is located that meets the criteria in subparagraph 3 of this paragraph, the psychologist shall notify the warden~~any validated psychological testing report that contains a diagnosis of an intellectual disability as indicated by the criteria in the current Diagnostic and Statistical Manual (DSM). If any testing results are located that meets this criteria, the psychologist shall notify the warden~~.

(d) The designated medical professional shall review and sign the nursing documentation referenced in paragraph (b) of this subsection daily.

(e) A psychiatrist shall review the nursing documentation referenced in paragraph (b) of this subsection and any other mental health or medical documentation weekly.

(2) For the seven (7) days prior to an execution, or for the remaining days if an execution order is received less than seven (7) days prior to an execution:

(a) A doctor or advanced practice registered nurse shall:

1. Complete a physical examination; and

2. Place the documentation of the physical in the condemned person's medical record upon completion of the documentation.

(b) A psychiatric interview and evaluation to assess for signs of insanity shall be:

1. Completed by a licensed psychiatrist or a licensed advanced practice registered nurse (APRN) certified in a psychiatric mental health population focus;

2. Placed in the condemned person's medical record; and

3. Sent to the warden.

(3) The designated medical professional shall:

(a) Personally observe and evaluate the condemned person's medical condition at least twice on nonconsecutive days; and

(b) Document his observations and evaluations in the special notes of the condemned person's medical record immediately after personal contact with the condemned person.

(4) All Kentucky State Penitentiary medical and mental health staff shall be instructed to immediately notify the warden and the designated professionals of any change in the condemned person's medical or psychiatric condition.

Section 2. Pregnancy Testing for Female Condemned Persons. (1) If the condemned person is female, a pregnancy test shall be administered.

(2) ~~A~~If the execution order is received at least fourteen (14) days prior to the scheduled date of execution, a pregnancy test shall be administered at least:

~~(a) fourteen (14) days prior to the scheduled date of execution; and~~

~~(b) seven (7) days prior to the scheduled date of execution, unless the execution order is received less than seven days prior to the scheduled date of execution.~~

(3) If the execution order is received less than seven (7)~~fourteen (14)~~ days prior to the scheduled date of execution, a pregnancy test shall be administered as soon as practicable.~~[A physician shall determine if a second pregnancy test is feasible given the date the execution order is received and when the initial pregnancy test is taken.]~~

(4) If a pregnancy test is positive, then:

(a) The department shall give notice to the Attorney General or his designee, the condemned person's counsel, the condemned person, and the Governor's Office or court issuing the mandate

that the condemned person is pregnant; and

(b) Suspend the execution pursuant to KRS 431.240(2).

Section 3. Insanity Issues. (1) If the warden receives information from medical or mental health staff that the condemned person exhibits signs or symptoms indicating that he may be insane as defined in KRS 431.213(2), the warden shall inform the designated medical professional.

(2) If the designated medical professional receives information from the warden or department medical or mental health staff, he shall determine ~~if the information is~~:

(a) The source of the information; and ~~opinion of the department psychiatrist; or~~

(b) If the information is not from the department psychiatrist, whether it is sufficient to indicate that an additional ~~department~~ psychiatric evaluation needs to be performed on the condemned person.

(3) The designated medical professional shall order ~~a~~ ~~department~~ psychiatric evaluation if he determines one is needed.

(4) If a department psychiatric evaluation determines that the condemned person may be insane as defined in KRS 431.213(2), the department shall:

(a) Give notice to the Attorney General or his designee, the condemned person's counsel, the condemned person, and the Governor's Office or court issuing the mandate that the condemned person appears to be insane; and

(b) Suspend the execution pursuant to KRS 431.240(2) to allow procedures consistent with KRS 431.2135.

Section 4. Serious Intellectual Disability. (1) If the warden is notified by the psychologist described in Section 1(1)(c) ~~(3)~~ concerning [a testing report that contains] a diagnosis of an intellectual disability or an IQ test score of seventy-five (75) or less for the condemned person, the:

(a) Warden shall notify the commissioner; and

(b) Commissioner shall notify in writing the Attorney General or his designee, the condemned person's counsel, and the condemned person of the ~~record~~ information located. The notice shall state that a court order is required for the execution to be suspended.

Section 5. Execution Substances. The warden shall:

(1) Notify medical staff and the ambulance service of the substances that may be used for the execution so that planning can be done in case of suspension of the execution after the drugs have been administered; and

(2) Direct medical staff to review the medications of the condemned person for a potential adverse reaction to the substances.

JAMES ERWIN, Acting Commissioner

APPROVED BY AGENCY: April 10, 2018

FILED WITH LRC: April 13, 2018 at 9 a.m.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the procedures for medical and psychological examination and evaluation prior to execution.

(b) The necessity of this administrative regulation: KRS Chapter 431 establishes the execution of death penalties and 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet, for the government and discipline of penitentiaries, and for official conduct

of all officials connected with the penitentiary. This administrative regulation is necessary to establish Department procedures for examination and evaluation of the condemned person's medical and mental status prior to an execution.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation, authorized by KRS 196.035 and 197.020, establishes the procedures for examination and evaluation of the condemned person's medical and mental status prior to an execution.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes procedures to assist Department of Corrections personnel in examining and evaluating a condemned person prior to execution.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds a review for DOC records indicating a serious intellectual disability for the condemned person and notice if located. Language is changed to require a review for signs of insanity by a psychiatrist or an APRN with a mental health population focus. The language concerning pregnancy tests is revised to require at least one pregnancy test prior to execution depending on when the execution order is received.

(b) The necessity of the amendment to this administrative regulation: This amendment revises processes and moves the review for intellectual disability to a more appropriate regulation in the chapter and addresses issues raised in previous filings of the regulation and in pending litigation.

(c) How the amendment conforms to the content of the authorizing statutes: Statutes authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet. The Department of Corrections is responsible for the execution of death penalties. This amendment addresses that responsibility.

(d) How the amendment will assist in the effective administration of the statutes: The amendment adds language to make the review for a diagnosis of an intellectual disability part of the medical and mental health review prior to execution. It clarifies the purpose of the psychiatric evaluation and who may perform it and reduces the pregnancy tests to one prior to execution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation establishes procedures that are primarily applicable only to personnel of the Department of Corrections. However, all executions are performed at the Kentucky State Penitentiary in Eddyville and other individuals and state and local government agencies are affected. There are currently thirty-two inmates on Kentucky's death row who may be affected by this administrative regulation. There are approximately 600 persons employed by the Department of Corrections who will be affected. Additionally, the following agencies and some of their employees will be affected: Attorney General's Office and Department for Public Advocacy.

(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: Except for the Department of Corrections personnel, none of the entities listed above are mandated to take any action to comply with this administrative regulation. Department of Corrections employees will be trained to comply with it.

(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 is primarily applicable only to personnel of the Department of Corrections. However, other individuals and state and local government agencies are affected by the Execution process. In the event that an execution is carried out, it is estimated that the cost will be the following approximate

figures:

Department of Corrections, \$35,840;

Kentucky Department of Public Advocacy, \$34,463;

Office of Criminal Appeals within the Attorney General's Office handles all felony appeals within the existing budget of the Office.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will assist in placing the Department of Corrections in compliance with the decision of the Supreme Court of Kentucky in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009). Further, it will assist personnel of the Department of Corrections in the administration of their duties during an execution.

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

(a) Initially: This administrative regulation is promulgated in compliance with the Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009). The execution process has been in effect for many years, so this process will not be newly implemented. See approximate costs to conduct an execution in 4(b).

(b) On a continuing basis: See approximate costs to conduct an execution in 4(b).

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Biennial budget funds designated to the state agencies listed in 4(b) above.

(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 regulation impacts how the Kentucky Department of Corrections and other entities listed in 4(b) above operate, but should not necessitate an increase in funding. No fees are involved.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will primarily impact the Kentucky Department of Corrections and Kentucky State Penitentiary. However, the Kentucky State Police, Office of the Kentucky State Medical Examiner, Kentucky Department of Public Advocacy, Office of the Attorney General, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, Kuttawa Fire Department, Office of the Commonwealth's Attorney for Lyon County, and Lyon County Ambulance Service will also be impacted during the execution process.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020. Further, this administrative regulation is authorized under the Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment does not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment does not generate any revenue.

(c) How much will it cost to administer this program for the first year? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The promulgation of this administrative regulation should not increase costs. The other entities listed in the response to Question #1 above should also not see any increase in costs. Executions are very infrequently performed. In the event that an execution is carried out, it is estimated that the cost will be the following approximate figures:

Department of Corrections, \$35,840;

Kentucky Department of Public Advocacy, \$34,463;

Office of Criminal Appeals within the Attorney General's Office handles all felony appeals within the existing budget of the Office.

(d) How much will it cost to administer this program for subsequent years? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The other entities listed in the response to 3(c) above should also not see any increase in costs. Executions are infrequently performed. In the event that an execution is carried out, it is estimated that the costs for each entity involved will be that set out in 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET

Department of Corrections

(Amended After Comments)

501 KAR 16:330. Lethal injection protocols.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213 – 431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.218, 431.220, 431.224, 431.240, 431.250, 431.260, 431.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the Cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes the protocols for execution by lethal injection.

Section 1. Procurement, Storage, and Accountability of Execution Substances. (1) Upon receipt of an execution order, the warden shall check the supply of substances and their expiration dates. If a substance is~~additional substances are~~ needed, the warden shall place an order to obtain the necessary substance~~substances~~ for the lethal injection protocol~~protocols~~ listed in Section 3 of this administrative regulation.

(2) The substance~~substances~~ shall be stored according to any~~the~~ manufacturer's instructions~~, if applicable,~~ and placed in a secured area of the penitentiary in a locked container~~containers~~. The warden shall maintain control of the keys to the secured areas and container~~containers~~.

(3) A log shall be maintained in the storage container~~containers~~ which shall record: (a) New supply~~supplies~~ of a substance~~substances~~ received and added to inventory;

(b) Substance~~Substances~~ removed for use;

(c) Disposal of substance~~substances~~ due to expiration; and

(d) Any other reason that a substance is removed or deducted from inventory.

Section 2. Preliminary Steps. (1) The condemned person shall be executed by using the One Drug Protocol in Section 3(2) of

this administrative regulation. ~~[If the necessary substance or quantity of the substance for the One Drug Protocol is not in the warden's possession by seven (7) days prior to the execution, the condemned person shall be executed by using the Two Drug Protocol in Section 3(3) of this administrative regulation. The commissioner shall notify the condemned person at least seven (7) days prior to the execution of the protocol to be used.]~~

(2) The penitentiary shall have a minimum of three (3)~~two (2)~~ phones that may be used simultaneously~~[phone lines]~~ available for communication with the courts and counsel on the day of execution. The warden shall determine if necessary ~~phones shall be checked to determine if they are~~ operational prior to the execution.

(3) If the condemned person is to be executed by lethal injection:

(a) If male, his chest shall be shaved by a designated member of the execution team for heart monitor leads on the day of execution; and

(b) The IV team shall complete an examination of the condemned person's veins within twenty-four (24) hours prior to the execution to determine possible locations of the IV sites.

(4) On the day of execution the warden shall provide to the IV team a sufficient amount~~[amounts]~~ of one of the substances~~[each substance]~~ listed in Section 3(1) of this administrative regulation to prepare primary and backup~~two (2)~~ syringes for the substance~~[drug protocol selected]~~ to be used.~~[One (1) syringe shall serve as the primary syringe. The other syringe shall be a back-up.]~~

(5) At the execution building, the~~each~~ substance and saline shall be prepared in accordance with the manufacturer's instructions, if applicable, and drawn into the primary and backup~~two (2)~~ syringes by one (1) member of the IV team designated by the warden in accordance with Section 3 of this administrative regulation. The other member of the IV team shall observe preparation of the substance~~[substances]~~ and verify that the instructions and procedures have been carried out correctly.

(6) Any syringe that is~~[syringes that are]~~ loaded with a substance~~[lethal injection substances]~~ that is~~[are]~~ not used during the execution shall be destroyed and documented in the log maintained in accordance with Section 1(3) of this administrative regulation.

(7) Any unused substance that was~~[substances that were]~~ not prepared for the execution~~[lethal injection]~~ shall be:

(a) Returned to the warden;

(b) Locked in the storage container; and

(c) Documented in the log maintained in accordance with Section 1(3) of this administrative regulation.

(8) A member of the IV team shall determine the appropriate size needle based on the examination of the condemned person's veins within the five (5) hours prior to the execution.

(9) The warden shall order the condemned person escorted to the execution chamber and strapped to the gurney.

(10) The IV team shall run the IV lines to the condemned person by selecting a site and inserting the following:

(a)~~[Site and insert]~~ One (1) primary intravenous (IV) catheter~~[line]~~; and

(b)~~[Site and insert]~~ One (1) backup IV catheter~~[line]~~.

(11) Location of the IV catheters.

(a) The location of the IV catheters~~[sites]~~ on the body of the condemned person shall be determined by the IV team members. The insertion site of preference shall be the following order:

1. (a) Arms;

2. (b) Hands;

3. (c) Ankles; or

4. (d) Feet.

(b) The neck shall not be used for an IV catheter.

(12) To best ensure that a catheter~~[needle]~~ is inserted properly into a vein, the IV team members shall look for the presence of blood in the hub~~[valve]~~ of the catheter~~[sited needle]~~.

(13) If the IV team cannot secure two (2) IV catheters~~[sites]~~ within a reasonable time, not to exceed two (2)~~three (3)~~ hours~~[one (1) hour]~~, the Commissioner shall notify the Governor's Office that the execution has been suspended until a new execution order is received~~[contact the Governor's Office and~~

request that the execution be scheduled for a later date].

(14) If the IV team is able to establish the two IV catheters with IV tubing~~[lines]~~. The team shall start a saline flow as it establishes a catheter with IV tubing. A member of the execution (IV) team shall observe the IV to ensure that the flow is uninterrupted.

(15) The execution team shall:

(a) Securely connect the electrodes of the cardiac monitor to the condemned person; and

(b) Ensure the equipment is functioning.

(16) Counsel assigned by the cabinet and counsel assigned by the office of the Attorney General shall be asked whether any stays, orders, pardons, or commutations of sentence have been received.

(17) The viewing curtain shall be opened.

(18) The warden shall announce the execution to the witnesses.

(19) The warden shall ask the condemned person if he wants to make a final statement and provide a brief opportunity of not less than two (2) minutes for him to do so. The warden may impose reasonable restrictions on the content and length of the statement. The warden may also terminate a statement that he or she believes is intentionally offensive to the witnesses. The witnesses shall be allowed to hear the condemned person's statement.

(20) The warden shall order the execution to proceed.

Section 3. Protocol~~[Protocols and Sequence of Substances]~~.

(1) One (1) of the following substances under whatever name it may be known or sold by, including generic, trade, brand, or other name, may be used:

(a) Pentobarbital; or

(b) Thiopental sodium.

(2) For the substance being used for the execution, the following syringes shall be prepared for both the primary and backup IVs:

(a) For pentobarbital:

1. Sufficient syringes shall be prepared for a total of five (5) grams of pentobarbital;

2. The five (5) grams may consist of two (2) syringes prepared with two and five-tenths (2.5) grams of Pentobarbital for a total of five (5) grams/100 milliliters of solution; and

3. A separate syringe shall be prepared with saline to flush the line; or

(b) For thiopental sodium:

1. Sufficient syringes shall be prepared for a total of five (5) grams of thiopental sodium;

2. The five (5) grams may consist of four (4) syringes prepared with 1.25 grams/50 milliliters; and

3. A separate syringe shall be prepared with saline to flush the line.

(3) The flow of saline through the IV to be used shall be discontinued.

(4) The five (5) grams of the selected substance and saline shall be administered.

(5) A stopwatch shall be started after the injection of the final syringe.

(6) During the injection the warden and deputy warden shall watch the primary IV for failure, leakage, the catheter coming out of a vein, or any other problem. If the IV fails or leaks, the catheter comes out of the vein, or any other significant problem arises, the execution team shall be instructed to switch to the backup IV. The lethal injection protocols shall be as follows:

(2) One Drug Protocol:

(a) A designated execution team member shall inject via IV three (3) gm of Sodium Thiopental (60 ml of a 50mg/ml solution) or five (5) gm of Pentobarbital (100 ml of a 50 mg/ml solution) under whatever generic or trade names they may be known or sold.

(b) If it appears to the warden based on his visual inspection that the condemned person is not unconscious within sixty (60) seconds of his command to proceed, the warden shall stop the flow of the Sodium Thiopental or Pentobarbital in the primary site and order that the backup IV be used with a new flow of the

substance.

~~(c) A designated execution team member shall start a stopwatch once the lethal injection is complete.]~~

~~(7)[(d)] A designated execution team member shall:~~

- ~~1. Observe the heart monitor; and~~
- ~~2. Advise the coroner and physician when electrical activity of the heart has ceased as indicated by a flat line on the heart monitor.~~

~~(8)[(e)] The viewing curtain shall be drawn before the:~~

- ~~1. Coroner enters the chamber to declare death; and~~
- ~~2. Physician enters the chamber to certify the cause of death.~~

(9) If the heart monitor does not show a cessation of electrical activity of the heart after twenty (20) minutes of all injections through the primary IV, then the Warden shall order the injection of the substance and saline contained in the backup syringes be administered through the backup IV in accordance with this section.

(10) If death does not occur within a sufficient time after all injections through the backup IV, the Commissioner shall notify the Governor's Office that the execution has been suspended until a new execution order is received. The medical staff on site shall attempt to stabilize the condemned person with the equipment and personnel listed in subsection (1) of section 5.~~(f) An additional injection of the substance in the same dose and concentration listed in paragraph (a) of this subsection shall be used if the:~~

- ~~1. Heart monitor does not indicate a flat line after ten (10) minutes;~~
- ~~2. Coroner is not able to declare death; and~~
- ~~3. Physician is unable to certify the cause of death after the ten (10) minute period.~~

~~(g) The injections shall continue until death has occurred.~~

~~(h) During the execution by lethal injection the warden and deputy warden shall watch the primary IV site for failure, leakage, the catheter coming out of a vein, or any other problem. If an IV fails or leaks, the catheter comes out of the vein, or any other problem arises, the execution team shall be instructed to switch to the backup IV.~~

~~(3) Two Drug Protocol.~~

~~(a) A designated execution team member shall inject via IV ten (10) mg of midazolam (5mg/ml concentration) and 40 mg of hydromorphone (10 mg/ml concentration) under whatever generic or trade names they may be known or sold.~~

~~(b) If it appears to the warden based on his visual inspection that the condemned person is not unconscious within sixty (60) seconds of his command to proceed, the warden shall stop the flow of midazolam and hydromorphone in the primary site and order that the backup IV be used with a new flow of the substances listed for this protocol in paragraph (a) of this subsection.~~

~~(c) A designated execution team member shall start a stopwatch once the lethal injection is complete.~~

~~(d) A designated execution team member shall:~~

- ~~1. Observe the heart monitor; and~~
- ~~2. Advise the coroner and physician when electrical activity of the heart has ceased as indicated by a flat line on the heart monitor.~~

~~(e) The viewing curtain shall be drawn before the:~~

- ~~1. Coroner enters the chamber to declare death; and~~
- ~~2. Physician enters the chamber to certify the cause of death.~~

~~(f) Except as described in paragraph (g) of this subsection, an additional injection of the [lethal] substances in the same doses and concentrations listed in paragraph (a) of this subsection shall be used if the:~~

- ~~1. Heart monitor does not indicate a flat line after ten (10) minutes;~~
- ~~2. Coroner is not able to declare death; and~~
- ~~3. Physician is unable to certify the cause of death after the ten (10) minute period.~~

~~(g) Any additional injections after the initial and second injections shall be sixty (60) mg of hydromorphone (10 mg/ml concentration). The injections shall continue until death has occurred.~~

~~(h) During the execution by lethal injection the warden and~~

~~deputy warden shall watch the primary IV site for failure, leakage, the catheter coming out of a vein, or any other problem. If an IV fails or leaks, the catheter comes out of the vein, or any other problem arises, the execution team shall be instructed to switch to the backup IV.]~~

Section 4. Post Lethal Injection Steps. (1) If the Coroner declares death, the warden shall announce the completion of the execution to the witnesses. The viewing curtain shall be open during the warden's announcement.

(2) The witnesses shall be escorted out of the witness room.

Section 5. Stabilization Procedure. (1) Before an execution commences:

(a) The warden shall arrange for an ambulance and staff to be present on penitentiary property during the execution; and

(b) A medical crash cart and defibrillator shall be located in the execution building in close proximity to the execution chamber.

(2) If at any time during the execution process the Governor grants a pardon or commutes the sentence of the condemned person or if a court of competent jurisdiction issues a stay after an execution has commenced:

(a) The execution team shall stop the execution; and

(b) The medical staff on site shall attempt to stabilize the condemned person with the equipment and personnel listed in subsection (1) of this section.

Section 6. Volunteer. (1) If a condemned person, who is a volunteer, tells department staff that he does not wish to continue with the execution process, the staff shall tell the warden.

(2) If the execution is in process:

(a) The execution team shall stop the execution; and

(b) If any of the substances have been injected, the medical staff on site shall attempt to stabilize the condemned person with the equipment and personnel listed in Section 5(1) of this administrative regulation.

(3) The warden shall allow the condemned person to contact his attorney.

(4) The warden shall notify the commissioner.

(5) The commissioner shall notify the Governor's Office or court issuing the mandate.

JAMES ERWIN, Acting Commissioner

APPROVED BY AGENCY: April 10, 2018

FILED WITH LRC: April 13, 2018 at 9 a.m.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the protocols for conducting an execution by lethal injection.

(b) The necessity of this administrative regulation: KRS Chapter 431.220 establishes lethal injection as one of the methods of carrying out the death penalty. KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet, for the government and discipline of penitentiaries, and for official conduct of all officials connected with the penitentiary. This administrative regulation is necessary for the Department to establish the process for carrying out an execution by lethal injection.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the lethal injection process, the promulgation of which is authorized by KRS 196.035 and 197.020.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This

administrative regulation establishes a procedure for execution by lethal injection in this Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: The amendment revises the protocol for execution by lethal injection and reduces the number of drugs that staff may handle by in an execution by deleting the two drug protocol. Language is revised to allow for singular rather than plural. The language concerning phones is changed to remove "line" to allow for various types of phones. Terminology concerning intravenous preparation for execution is clarified. Language concerning notice to the Governor's Office is changed to indicate the execution is suspended until a new execution order is received.

(b) The necessity of the amendment to this administrative regulation: This amendment address issues in pending litigation and developments in case law.

(c) How the amendment conforms to the content of the authorizing statutes: Statutes authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet. The Department of Corrections is responsible for the execution of death penalties. This amendment addresses that responsibility.

(d) How the amendment will assist in the effective administration of the statutes: The amendment revises the protocols for execution by lethal injection and reduces the number of drugs that may need to be handled by staff in an execution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation establishes procedures that are primarily applicable only to personnel of the Department of Corrections. However, all executions are performed at the Kentucky State Penitentiary in Eddyville and other individuals and state and local government agencies are affected. There are currently thirty-two inmates on Kentucky's death row who may be affected by this administrative regulation. There are approximately 600 persons employed by the Department of Corrections who will be affected. There are approximately 15 witnesses from the news media, victim's family, inmate's family, and sheriff's department of the county of conviction that will be affected. Additionally, the following agencies and some of their employees will be affected: Kentucky State Police, Office of the Kentucky State Medical Examiner, Department of Public Advocacy, Attorney General's Office, Lyon County Sheriff's Office, the Kuttawa Fire Department, the Kentucky Department of Fish and Wildlife, Kentucky National Guard, Eddyville Fire Department, the Lyon County Coroner, and the Lyon County Ambulance Service.

(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: Except for the Department of Corrections personnel, none of the entities listed above are mandated to take any action to comply with this administrative regulation. Department of Corrections employees will be trained to comply with it.

(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 is primarily applicable only to personnel of the Department of Corrections. However, other individuals and state and local government agencies are affected by the Execution process. In the event that an execution is carried out, it is estimated that the cost will be the following approximate figures:

Department of Corrections, \$35,840;
Kentucky State Police, \$3,625;
Office of the Kentucky State Medical Examiner, \$2,000;
Kentucky Department of Public Advocacy, \$34,463;
Kentucky Department of Fish and Wildlife, \$450;
Kentucky National Guard, \$18,975;

Lyon County Sheriff's Office, \$900;

Kuttawa Fire Department, volunteer agency with no fiscal impact;

Eddyville Fire Department, volunteer agency with no fiscal impact;

Lyon County Ambulance Service, \$1200;

Office of Criminal Appeals within the Attorney General's Office handles all felony appeals within the existing budget of the Office.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will assist in placing the Department of Corrections in compliance with the decision of the Supreme Court of Kentucky in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009). Further, it will assist personnel of the Department of Corrections in the administration of their duties during an execution.

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

(a) Initially: This administrative regulation is promulgated in compliance with the Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009). The execution process has been in effect for many years, so this process will not be newly implemented. See approximate costs to conduct an execution in 4(b).

(b) On a continuing basis: See approximate costs to conduct an execution in 4(b).

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Biennial budget funds designated to the state agencies listed in 4(b) above. For the Lyon County Sheriff's Office and Lyon County Ambulance Service, funds designated to them by the county.

(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 regulation impacts how the Kentucky Department of Corrections and other entities listed in 4(b) above operate, but should not necessitate an increase in funding. No fees are involved.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will primarily impact the Kentucky Department of Corrections and Kentucky State Penitentiary. However, the Kentucky State Police, Office of the Kentucky State Medical Examiner, Kentucky Department of Public Advocacy, Office of the Attorney General, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, Kuttawa Fire Department, and Lyon County Ambulance Service will also be impacted during the execution process.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020. Further, this administrative regulation is authorized under the Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment does not generate any revenue.

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment does not generate any revenue.

(c) How much will it cost to administer this program for the first year? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The promulgation of this administrative regulation should not increase costs. The other entities listed in the response to Question #1 above should also not see any increase in costs. Executions are infrequently performed. In the event that an execution is carried out, it is estimated that the cost will be the following approximate figures:

Department of Corrections, \$35,840;
Kentucky State Police, \$3,625;
Office of the Kentucky State Medical Examiner, \$2,000;
Kentucky Department of Public Advocacy, \$34,463;
Kentucky Department of Fish and Wildlife, \$450;
Kentucky National Guard, \$18,975;
Lyon County Sheriff's Office, \$900;
Kuttawa Fire Department, volunteer agency with no fiscal impact;

Edyville Fire Department, volunteer agency with no fiscal impact;

Lyon County Ambulance Service, \$1200;

Office of Criminal Appeals within the Attorney General's Office handles all felony appeals within the existing budget of the Office.

(d) How much will it cost to administer this program for subsequent years? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The other entities listed in the response to 3(c) above should also not see any increase in costs. Executions are infrequently performed. In the event that an execution is carried out, it is estimated that the costs for each entity involved will be that set out in 3(c).

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

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

JUSTICE AND PUBLIC SAFETY CABINET

Department of Corrections (Amended After Comments)

501 KAR 16:340. Electrocutation protocol.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213-431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.218, 431.220, 431.224, 431.240, 431.250, 431.260, 431.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes the protocol for execution by electrocution.

Section 1. Preliminary Steps. (1) The penitentiary shall have a minimum of three (3) ~~two (2)~~ phones that may be used ~~simultaneously~~ ~~[phone lines]~~ available for communication with the courts and counsel on the day of execution. The warden shall determine if necessary ~~phones~~ ~~[phone lines]~~ are operational prior to the execution.

(2) The electrocution equipment shall be designed to deliver approximately five (5) to ten (10) amps depending upon the condemned person's physique at the designed voltage.

(3) The electrocution equipment shall be checked and tested in accordance with 501 KAR 16:320, Section 3(3), within forty-eight (48) hours of the time scheduled for an execution by electrocution.

(4) A sodium chloride solution shall be made by a member of the execution team within five (5) hours prior to the time scheduled for an execution by electrocution by the following:

(a) Approximately five (5) gallons of water at room temperature shall be placed in a container; and

(b) Up to 128 ounces of iodized table salt shall be slowly added to the water while continuously mixing until the water will not visibly absorb salt. Sufficient absorption is observed when the salt will not dissolve in the water and visibly collects at the bottom of the container.

(5) Natural sea sponges for the head and leg electrodes shall be prepared by soaking them in the sodium chloride solution until they are saturated.

(6) If the penitentiary does not have power when the execution is scheduled to commence, the generator for the execution building shall be started.

(7) The condemned person's head and one (1) leg shall be shaved on the day of execution.

(8) The warden shall order the condemned person escorted to the execution chamber and strapped in the chair.

(9) The warden shall order the viewing curtain opened.

(10) The warden shall announce the execution to the witnesses.

(11) The warden shall ask the condemned person if he wants to make a final statement. If a statement is made by the condemned person, it shall be limited to two (2) minutes. The witnesses shall be allowed to hear the condemned person's statement.

(12) The warden shall announce the final preparations for the execution to the witnesses.

(13) The viewing curtain shall be closed.

(14) The execution team members shall:

(a) Attach the chin strap to the condemned person;

(b) Attach the head gear to the condemned person;

(c) Attach the leg band to the condemned person;

(d) Adjust the back board;

(e) Attach the cables from the electrocution equipment to the head and leg electrodes with the nuts sufficiently tightened to ensure a firm connection;

(f) Wipe any salt water released from the sponges from condemned person's head and leg; and

(g) Secure the condemned person's leather face covering.

(15) The warden shall make a visual check of connections and straps.

(16) The execution team shall exit the execution chamber.

(17) The viewing curtain shall be opened.

(18) The warden shall:

(a) Announce the execution of the condemned person to the witnesses; and

(b) Pull the face covering over the condemned person's face.

(19) All persons except the condemned person shall exit the execution chamber.

(20) Counsel assigned by the cabinet, and counsel assigned by the Attorney General shall be asked whether any stays, orders, pardons, or commutations of sentence have been received.

Section 2. Execution. (1) The warden shall order the execution to proceed.

(2) The execution equipment shall be activated for a two (2) minute cycle. The cycle shall consist of:

(a) Approximately 2,400 volts for a period of fifteen (15) seconds; and

(b) Approximately 240 volts for the remainder of the two (2) minute cycle.

(3) If the warden sees evidence of a malfunction, he shall press the stop button on the electrocution equipment to end the cycle.

(4) At the end of the two (2) minute cycle:

(a) The viewing curtain shall be closed; and

(b) The warden shall observe the condemned person for signs

of life for five minutes, which at a minimum shall include pulse and respiration.

(5) If the warden observes signs of life during the five (5) minute observation period:

(a) The viewing curtain shall be opened; and

(b) The warden shall order the execution cycle stated in subsection (2) of this section be repeated.

(6) If the warden observes signs of life again, the execution shall be stopped. The commissioner shall contact the Governor's Office and request that the execution be suspended.

(7) If the warden does not observe signs of life:

(a) The coroner shall check the condemned person to declare death, which at a minimum, shall include pulse and pupils; and

(b) The physician shall certify the cause of death.

Section 3. Post Execution Steps. (1) The warden shall announce the completion of the execution to the witnesses. The viewing curtain shall be open during the warden's announcement.

(2) The witnesses shall be escorted out of the witness room.

Section 4. Stabilization Procedure. (1) Before an execution commences:

(a) The warden shall arrange for an ambulance and staff to be present on penitentiary property during the execution; and

(b) A medical crash cart and defibrillator shall be located in the execution building in close proximity to the execution chamber.

(2) If at any time during the execution process the Governor grants a pardon or commutes the sentence of the condemned person or if a court of competent jurisdiction issues a stay after an execution has commenced:

(a) The execution team shall stop the execution; and

(b) The medical staff on site shall attempt to stabilize the condemned person with the equipment and personnel listed in subsection (1) of this section.

Section 5. Volunteer. (1) If a condemned person, who is a volunteer, tells department staff that he does not wish to continue with the execution process, the staff shall tell the warden.

(2) If the execution is in process:

(a) The execution team shall stop the execution; and

(b) The medical staff on site shall attempt to stabilize the condemned person with the equipment and personnel listed in Section 4(1) of this administrative regulation.

(3) The warden shall allow the condemned person to contact his attorney.

(4) The warden shall notify the commissioner.

(5) The commissioner shall contact the Governor's Office and request that the execution be suspended.

JAMES ERWIN, Acting Commissioner

APPROVED BY AGENCY: April 10, 2018

FILED WITH LRC: April 13, 2018 at 9 a.m.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the protocol for conducting an execution by electrocution.

(b) The necessity of this administrative regulation: KRS Chapter 431.220 establishes electrocution as one of the methods of carrying out the death penalty. KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet and the government and discipline of penitentiaries and official conduct of all officials connected with the penitentiary. This administrative regulation is necessary for the Department to establish the process for carrying out an execution

by electrocution.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the process for execution by electrocution, the promulgation of which is authorized by KRS 196.035 and 197.020.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a procedure for execution by electrocution in this Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes language about phones to match language changed in the lethal injection protocol.

(b) The necessity of the amendment to this administrative regulation: It maintains similar language for similar procedures in both protocols.

(c) How the amendment conforms to the content of the authorizing statutes: Statutes authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet. The Department of Corrections is responsible for the execution of death penalties. This amendment addresses that responsibility.

(d) How the amendment will assist in the effective administration of the statutes: It maintains similar language for similar procedures in both protocols.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation establishes procedures that are primarily applicable only to personnel of the Department of Corrections. However, all executions are performed at the Kentucky State Penitentiary in Eddyville and other individuals and state and local government agencies are affected. There are currently thirty-five inmates on Kentucky's death row who may be affected by this administrative regulation. There are approximately 600 persons employed by the Department of Corrections who will be affected. There are approximately 15 witnesses from the news media, victim's family, inmate's family, and sheriff's department of the county of conviction that will be affected. Additionally, the following agencies and some of their employees will be affected: Kentucky State Police, Office of the Kentucky State Medical Examiner, Department of Public Advocacy, Attorney General's Office, Lyon County Sheriff's Office, the Kuttawa Fire Department, the Kentucky Department of Fish and Wildlife, Kentucky National Guard, Eddyville Fire Department, the Lyon County Coroner, and the Lyon County Ambulance Service.

(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: Except for the Department of Corrections personnel, none of the entities listed above will have to take any action to comply with this administrative regulation. Department of Corrections employees will be trained to comply with it.

(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 is primarily applicable only to personnel of the Department of Corrections. However, other individuals and state and local government agencies are affected by the Execution process. In the event that an execution is carried out, it is estimated that the cost will be the following approximate figures:

Department of Corrections, \$35,840;
Kentucky State Police, \$3,625;
Office of the Kentucky State Medical Examiner, \$2,000;
Kentucky Department of Public Advocacy, \$34,463;
Kentucky Department of Fish and Wildlife, \$450;
Kentucky National Guard, \$18,975;
Lyon County Sheriff's Office, \$900;

Kuttawa Fire Department, volunteer agency with no fiscal impact;

Eddyville Fire Department, volunteer agency with no fiscal impact;

Lyon County Ambulance Service, \$1200;

Office of Criminal Appeals within the Attorney General's Office handles all felony appeals within the existing budget of the Office.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will assist in placing the Department of Corrections in compliance with the decision of the Supreme Court of Kentucky in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009). Further, it will assist personnel of the Department of Corrections in the administration of their duties during an execution.

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

(a) Initially: This administrative regulation is promulgated in compliance with the Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009). The execution process has been in effect for many years, so this process will not be newly implemented. See approximate costs to conduct an execution in 4(b).

(b) On a continuing basis: See approximate costs to conduct an execution in 4(b).

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Biennial budget funds designated to the state agencies listed in 4(b) above. For the Lyon County Sheriff's Office and Lyon County Ambulance Service, funds designated to them by the county.

(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 regulation impacts how the Kentucky Department of Corrections and other entities listed in 4(b) above operate, but should not necessitate an increase in funding. No fees are involved.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will primarily impact the Kentucky Department of Corrections and Kentucky State Penitentiary. However, the Kentucky State Police, Office of the Kentucky State Medical Examiner, Kentucky Department of Public Advocacy, Office of the Attorney General, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, Kuttawa Fire Department, and Lyon County Ambulance Service will also be impacted during the execution process.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020. Further, this administrative regulation is authorized under the Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment does not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for subsequent years? The amendment does not generate any revenue.

(c) How much will it cost to administer this program for the first year? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The promulgation of this administrative regulation should not increase costs. The other entities listed in the response to Question #1 above should also not see any increase in costs. Executions are infrequently performed. In the event that an execution is carried out, it is estimated that the cost will be the following approximate figures:

Department of Corrections, \$35,840;

Kentucky State Police, \$3,625;

Office of the Kentucky State Medical Examiner, \$2,000;

Kentucky Department of Public Advocacy, \$34,463;

Kentucky Department of Fish and Wildlife, \$450;

Kentucky National Guard, \$18,975;

Lyon County Sheriff's Office, \$900;

Kuttawa Fire Department, volunteer agency with no fiscal impact;

Eddyville Fire Department, volunteer agency with no fiscal impact;

Lyon County Ambulance Service, \$1200;

Office of Criminal Appeals within the Attorney General's Office handles all felony appeals within the existing budget of the Office.

(d) How much will it cost to administer this program for subsequent years? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The other entities listed in the response to 3(c) above should also not see any increase in costs. Executions are infrequently performed. In the event that an execution is carried out, it is estimated that the costs for each entity involved will be that set out in 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(Amended After Comments)

703 KAR 5:280. School Improvement Procedures.

RELATES TO: KRS 158.6453, 158.6455, 158.782, 160.346, 20 U.S.C. 6301

STATUTORY AUTHORITY: KRS 156.029(7), 156.070(5), 158.6453, 158.6455, 160.346, 20 U.S.C. 6301

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.029(7) indicates the primary function of the Kentucky Board of Education (KBE) is to adopt policies and administrative regulations by which the Kentucky Department of Education (department) shall be governed in planning and operating programs within its jurisdiction. KRS 156.070(5) requires the KBE, upon the recommendation of the Commissioner of Education, to establish policy or act on all programs, services, and other matters which are within the administrative responsibility of the department. KRS 158.6453(3)(a) vests in the KBE the responsibility to create an assessment system that measures achievement of the state learning goals, ensures compliance with Title I of the federal Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. sec. 6301, et seq., as amended by the Every Student Succeeds Act (2015) or its successor, and ensures school accountability. KRS 158.6455 requires the KBE to create an accountability system to classify schools and LEAs, and to

establish appropriate consequences for schools failing to meet their accountability measures. KRS 158.782 requires the KBE to promulgate administrative regulations establishing the process for monitoring and periodic review of a school's turnaround for schools identified for comprehensive support and improvement under KRS 160.346. KRS 160.346 defines comprehensive and targeted support and improvement and establishes the process for the required audit and turnaround efforts for schools identified for comprehensive support and improvement. Additionally, KRS 160.346 requires the creation of state-wide exit criteria for identified schools, additional action to support schools continuously not meeting improvement goals, and additional supports for LEAs with a significant number of schools identified for comprehensive and targeted support and improvement. Section 1111(c) of Title I of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, (20 U.S.C. 6311(c) and (d)) requires the KBE to identify the state's lowest achieving schools as schools identified for comprehensive support and improvement and for those schools to follow the requirements of 20 U.S.C. 6311(c) and (d) regarding school improvement. This administrative regulation establishes the process and procedures for school improvement efforts.

Section 1. Definitions. (1) "Adequate performance progress" means:

- (a) Meeting the exit criteria outlined in KRS 160.346(2)(b); and
- (b) Meeting the exit criteria outlined in KRS 160.346(2)(a).
- (2) "Advisory leadership team" means the team established in KRS 160.346(7)(g);
- (3) "Annual improvement" means a school reaches annual goals, established by the department, in the areas that led to identification for comprehensive support and improvement;
- (4) "Audit" means the process outlined in KRS 160.346(5) and (6);
- (5) "Audit team" means the team selected by the LEA pursuant to KRS 160.346(5) to complete a school and district audit;
- (6) "Charter school" means a "public charter school" as defined in KRS 160.1590(12);
- (7) "Charter school board of directors" or "governing board" has the same meaning as in KRS 160.1590(6);
- (8) "Comprehensive Support and Improvement" means the process for schools identified pursuant to KRS 160.346(3);
- (9) "District" or "school district" means the local school district governed by a local board of education;
- (10) "District audit" means an audit that:
 - (a) Reviews the functioning of the district and the district's ability to manage an intervention in a school identified for comprehensive support and improvement; and
 - (b) Meets the requirements of KRS 160.346(6);
- (11) "Evidence based interventions" has the same meaning as in the Elementary and Secondary Education Act, as reauthorized by the Every Student Succeeds Act (2015), 20 U.S.C.A § 7801;
- (12) "Local education agency" or "LEA" means a local school district as provided in KRS 160.010 and KRS 160.020 or a charter school board of directors as provided in KRS 160.1590;
- (13) "Minority" has the same meaning as in KRS 160.345(1)(a);
- (14) "School audit" means an audit that:
 - (a) Reviews the functioning of a school;
 - (b) Assesses principal capacity for leadership of school turnaround; and
 - (c) Meets the requirements of KRS 160.346(6);
- (15) "School improvement assistance" means a program designed by the department to support improved teaching and learning;
- (16) "School improvement plan" means the plan created by schools identified for targeted support and improvement pursuant to KRS 160.346(4) and is embedded in the comprehensive school improvement plan required pursuant to 703 KAR 5:225;
- (17) "Targeted Support and Improvement" means the process for schools identified pursuant to KRS 160.346(2);
- (18) "Turnaround plan" means the plan created pursuant to KRS 160.346(1)(e) and is embedded in the comprehensive school

improvement plan required under 703 KAR 5:225; and

(19) "Turnaround team" means the team selected pursuant to KRS 160.346(1)(f).

Section 2. Notification of Status for Comprehensive Support and Improvement. (1) Following notification of a school's identification for comprehensive support and improvement, an LEA shall, within thirty (30) days:

- (a) Declare intent to either utilize the department for the audit team or another option available under KRS 160.346(5); and
- (b) Declare intent to either utilize the department for the turnaround team or another option available under KRS 160.346(7).
- (2) If the LEA declares intent to use any option other than the department for the audit team, the LEA shall provide the following information:
 - (a) The name(s) and address(es) of all persons included on the audit team;
 - (b) The role(s) and responsibilities of all persons included on the audit team;
 - (c) The occupations and any vendor affiliations of all persons included in the audit team; and
 - (d) The persons' or entity's documented expertise in diagnosing the causes of an organization's low performance and providing advice and strategies resulting in effective turnaround leadership.
- (3) If the LEA declares intent to use any other option other than the department for the audit team, the LEA shall ensure that all audit team members report potential conflicts of interest. The LEA shall report these to the department and provide information regarding the LEAs work to remedy the conflicts of interest.
- (4) If the LEA declares intent to use any option other than the department for the turnaround team, the LEA shall provide the following information:
 - (a) The name(s) and address(es) of the persons or entity fulfilling the status of turnaround team;
 - (b) The role(s) and responsibilities of the persons or entity fulfilling the status of turnaround team; and
 - (c) The evidence-based interventions that shall be utilized by the persons or entity fulfilling the status of turnaround team.
- (5) Should the LEA utilize a private entity as the turnaround team for a school, the LEA shall submit to the department evidence of the private entity's documented success at turnaround diagnosis, training, and improved performance of organizations.
- (6) Upon receipt of the notification and appropriate information from the LEA, within fifteen (15) days the department shall review the proposals for non-department audit teams and turnaround teams and either accept or deny the proposal. Denied proposals shall be returned to the LEA and the department shall advise the LEA to remedy the proposal.
- (7) The LEA shall provide the information required in this Section utilizing the "LEA Notification of Non-Department Audit or Turnaround Team" form incorporated by reference in this regulation.

Section 3. Audit Team Membership. (1) For audit teams not directed by the department:

- (a) Members of the audit team shall be selected by the LEA from qualified applicants;
- (b) The team members shall complete department approved training in any areas needed to effectively perform their duties;
- (c) Members shall hold appropriate certification or qualifications for the position being represented;
- (d) The team shall not include any members currently employed by or otherwise affiliated with the LEA or school under review;
- (e) The audit team shall include the following representation:
 - 1. The chairperson, who shall be designated by the LEA, and shall be:
 - i. A certified administrator; or
 - ii. A similarly qualified professional approved by the department.
 - 2. A teacher who is actively teaching or has taught within the

last three (3) years;

3. A principal who is currently serving or has served as a principal within the last three (3) years;

4. An LEA administrator who is currently serving or has served in an LEA administrative position within the last three (3) years;

5. A parent or legal guardian who has or has had a school-aged child; and

6. A university representative who is currently serving or has served in that capacity within the last three (3) years;

(f) The chair may serve in addition to the five (5) members outlined in subsection (1)(e) of this section, or may be selected from those six (6) members who also meet the qualifications of subsection (1) of this section.

(2) For audit teams directed by the department:

(a) Members shall be selected from qualified applicants by the department, and approved by the Commissioner of Education, or designee;

(b) Members shall complete department-provided or approved training in any areas needed to effectively perform their duties;

(c) Members shall hold appropriate certification or qualifications for the position being represented;

(d) The team shall not include any members currently employed by or otherwise affiliated with the LEA or school under review;

(e) The team shall include the following representation:

1. The chairperson, who shall be designated by the department or its designee, and shall be:

i. A certified administrator approved by the department to provide school improvement assistance;

ii. A certified administrator member of the review team; or

iii. A similarly qualified professional approved by the department;

2. An individual approved by the department to provide school improvement assistance;

3. A teacher who is actively teaching or has taught within the last three (3) years;

4. A principal who is currently serving or has served as a principal within the last three (3) years;

5. A LEA administrator who is currently serving or has served in a LEA administrative position within the last three (3) years;

6. A parent or legal guardian who has or has had a school-aged child; and

7. A university representative who is currently serving or has served in that capacity within the last three (3) years.

(f) The chair may serve in addition to the six (6) members outlined in subsection (2)(e) of this section, or may be selected from those six (6) members who also meet the qualifications of subsection (2) of this section.

Section 4. School Audit. (1) Within forty-five (45) days of a school's identification for comprehensive support and improvement, a school audit shall be scheduled.

(2) A school audit shall consist of and incorporate the following into the report, in addition to the requirements of KRS 160.346(6):

(a) Analysis of state and local education data;

(b) An analysis and recommendation regarding the principal's capacity to lead turnaround in a school identified for comprehensive support and improvement and whether or not the principal should be replaced;

(c) Review of comprehensive school improvement plans and other planning documents;

(d) Interviews with students, parents, all school council members, if applicable, school and LEA personnel, and community members;

(e) Direct observation;

(f) Administration of teacher and principal working conditions surveys and student satisfaction surveys;

(g) Review of school council minutes and agendas, if applicable; and

(h) Other information deemed necessary by the Commissioner of Education, or designee.

(3) Where the audit team is directed by the department, the recommendation of the principal's ability to lead the intervention in

the school shall be based upon an assessment of whether:

(a) The principal demonstrates maintenance and communication of a visionary purpose and direction committed to high expectations for learning as well as shared values and beliefs about teaching and learning;

(b) The principal leads and operates the school under a governance and leadership style that promotes and supports student performance and system effectiveness;

(c) The principal establishes a data-driven system for curriculum, instructional design, and delivery, ensuring both teacher effectiveness and student achievement;

(d) The principal ensures that systems are in place for accurate collection and use of data;

(e) The principal ensures that systems are in place to allocate human and fiscal resources to support improvement and ensure success for all students; and

(f) The principal ensures that the school implements a comprehensive assessment system that generates a range of data about student learning and system effectiveness and uses the results to guide continuous improvement.

(4) An audit team not directed by the department may utilize the criteria in subsection (3) of this Section for the recommendation of principal capacity. An audit team not directed by the department shall include a recommendation as to the principal's capacity to serve as a leader in school intervention and turnaround at a school identified for comprehensive support and improvement. If that audit team chooses not to use the criteria in subsection (3) of this Section, they shall provide notification to the department as well as the framework to be used in the analysis of principal capacity and submit the criteria that shall be utilized to the department for approval.

(5) Upon identification as a school in need of comprehensive support and improvement, the authority of the school council shall be suspended.

(6) Pursuant to KRS 160.346, the authority of the school council **may[shall]** be restored if the school is not classified under comprehensive support and improvement status for two (2) consecutive years.

(7) Charter schools shall be subject to a school audit which shall include an addendum providing a determination regarding the governing board's capacity to provide support for turnaround. Each addendum shall include:

(a) Analysis of state and local education data;

(b) A review of the governing board's level of functioning and recommendation to the Commissioner of Education as to whether the governing board has the capacity to manage the intervention in the charter school;

(c) Interviews with governing board members, students, parents, school personnel, authorizer, and community members.

(d) Direct observations;

(e) Administration of teacher and principal working conditions surveys and student satisfaction surveys;

(f) Review of charter school governing board minutes and agendas; and

(g) Other information deemed necessary by the Commissioner of Education, or designee, to assess the functionality of the governing board to support school improvement.

(8) If the audit team chooses not to use the criteria in subsection (7) of this Section, they shall provide notification to the department as well as the framework to be used in the analysis of the governing board's capacity and submit the criteria that shall be utilized to the department for approval.

Section 5. District Audit. (1) A district shall be subject to a district audit upon identification of a school within the district for comprehensive support and improvement.

(2) Within forty-five (45) days of identification by the department of a district containing a school identified for comprehensive support and improvement, an audit shall be scheduled to review the functioning of the district's administration and its specific leadership capacity related to each school identified for comprehensive support and improvement.

(3) Each district audit shall include:

- (a) Analysis of state and local education data;
 - (b) A review of the district's level of functioning and recommendation to the Commissioner of Education as to whether the district has the capacity to manage the intervention in each identified school;
 - (c) Review of comprehensive district improvement plan and other planning documents;
 - (d) Interviews with local board members, students, parents, school and district personnel, and community members;
 - (e) Direct observation;
 - (f) Administration of teacher and principal working conditions surveys and student satisfaction surveys;
 - (g) Review of school board minutes and agendas; and
 - (h) Other information deemed necessary by the Commissioner of Education, or designee, to assess the functionality of the district to support school improvement.
- (4) Where the audit team is directed by the department, the determination of the district's level of functioning and ability to manage the intervention in the school identified for comprehensive support and improvement shall be based upon an assessment of capacity in the following areas:
- (a) The district demonstrates maintenance and communication of a visionary purpose and direction committed to high expectations for learning as well as shared values and beliefs about teaching and learning;
 - (b) The district leads and operates under a governance and leadership style that promotes and supports student performance and system effectiveness;
 - (c) The district establishes a data-driven system for curriculum, instructional design, and delivery, ensuring both teacher effectiveness and student achievement;
 - (d) The district ensures that systems are in place for accurate collection and use of data;
 - (e) The district ensures that systems are in place to allocate human and fiscal resources to support improvement and ensure success for all students; and
 - (f) The district ensures that a comprehensive assessment system, which generates a range of data about student learning and system effectiveness and uses the results to guide continuous improvement, is implemented.
- (5) An audit team not directed by the department may utilize the criteria in subsection (3) of this Section for recommendation to the Commissioner of Education of the district's level of functioning and ability to manage the intervention in the school identified for comprehensive support and improvement, pursuant to KRS 160.346. An audit team not directed by the department shall include a recommendation as to district functioning and capacity to manage the interventions at a school identified for comprehensive support and improvement. If that audit team chooses not to use the criteria in subsection (3) of this Section, they shall provide notification to the department as well as the framework to be used in the analysis of district functioning and capacity to manage the intervention in each identified school to the department for approval.
- (6) There shall be only one (1) district audit per district, per year, regardless of the number of schools identified for comprehensive support and improvement located in the district.

Section 6. Notification to Schools and LEAs of Audit Findings.

- (1) Following any school audit, the audit team shall submit all findings and the principal capacity recommendation to the Commissioner of Education.
- (2) Following any charter school or district audit, the district or governing board audit findings and capacity recommendations shall be submitted to Commissioner of Education who shall make a determination regarding the district or governing board's level of functioning and whether the district or governing board has the capacity to manage the intervention in each identified school.
- (3) After completion of the initial school or district audits and within thirty (30) days of receiving the audit findings, the Commissioner of Education shall notify in writing the school, district, or charter governing board and the charter authorizer of the audit findings and recommendation regarding principal or school leader's leadership capacity and authority and a determination

regarding district or governing board's leadership capacity and authority. The superintendent shall then make any necessary determination regarding the principal or other certified staff pursuant to KRS 160.346(7)(c)-(e).

Section 7. Turnaround Team and Development of Turnaround Plan for School Identified for Comprehensive Support and Improvement. (1)(a) Within thirty (30) days after the audit findings are released, the turnaround team shall develop a turnaround plan pursuant to KRS 160.346(7)(h). The turnaround team shall be selected pursuant to the requirements of KRS 160.346(7)(a):

(b) Should the LEA utilize a private entity to serve as the turnaround team, pursuant to KRS 160.356(7)(a)(1), the LEA shall ensure compliance with Section 2 of this regulation and provide ongoing oversight of the private entity's work, functioning, and accomplishments as the turnaround team. **[The LEA shall provide this information to the department quarterly.]**

(c) Should the LEA utilize the local staff and community partners to serve as the turnaround team, pursuant to KRS 160.346(7)(a)(2), the LEA shall ensure the following:

- 1. Schools having eight (8) percent or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member serving on the turnaround team; and
- 2. At least one (1) parent of a student in the identified school is selected as a member of the turnaround team.

(d) Should the LEA utilize the department to serve as the turnaround team, the turnaround team shall be comprised of team members selected and approved by the Commissioner of Education, or designee, to provide school improvement assistance.

(3) The turnaround plan shall include:

- (a) Evidence-based interventions to be utilized to increase student performance and address the critical needs identified in the school audit;
- (b) A comprehensive list of persons and entities involved in the turnaround efforts and the specific roles each shall play in the school's turnaround; and
- (c) A review of resource inequities which shall include an analysis of school level budgeting to ensure resources are adequately channeled towards school improvement.

(4) The turnaround team shall, no later than thirty (30) days after the turnaround team is on site, present the turnaround plan to the LEA, which shall give final approval, provide the necessary support and resources for the turnaround plan, and submit the turnaround plan to the Commissioner of Education for approval.

(5)(a) Following receipt of the turnaround plan specified in this paragraph and before the beginning of the school year following the audit, the Commissioner of Education in consultation with the advisory leadership team, superintendent, and local board of education, shall determine the sufficiency of the school's turnaround plan to meet the needs of the school's turnaround effort.

(b) If the Commissioner of Education finds that the plan is not sufficient to meet the needs of the school turnaround effort for a school identified for comprehensive support and improvement, the department shall provide feedback detailing the deficiencies and advise the LEA and school to make changes to the plan.

Section 8. Advisory Leadership Team. (1) In establishing the advisory leadership team, the principal or charter school leader shall ensure that schools having eight (8) percent or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member serving on the advisory leadership team.

(2) Meetings of the advisory leadership team shall be open to be public;

(3) Duties of the advisory leadership team shall include:

- (a) Providing support for systems that seek to build capacity in school leadership;
- (b) Promoting positive school climate and culture; and
- (c) Supporting the continual use of data-driven decision-making to support school improvement.

Section 9. Monitoring and Periodic Review of Plan

Implementation. (1) Pursuant to the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act, 20 U.S.C.A § 6301, all schools identified for comprehensive support and improvement shall be subject to monitoring and periodic review by the department.

(2) Monitoring shall include:

(a) Onsite support by department staff when the department is chosen by the LEA to serve as the turnaround team pursuant to KRS 160.346 or when more rigorous intervention by the department is warranted as described in Section 10 of this administrative regulation;

(b) Annual review of school and LEA state accountability data;

(c) Review of indicators of school quality; and

(d) Other measures deemed necessary by the department to ensure compliance with the Every Student Succeeds Act, or its successor.

(3) Periodic review of the turnaround plan shall include:

(a) Periodic site visits;

(b) Direct observation; and

(c) Interviews with students, parents, all school council members, if applicable, school and LEA personnel, and community members~~Periodic review of the turnaround plan shall include quarterly reporting on the implementation and results of the turnaround plan. Quarterly reporting shall be submitted to the department].~~

Section 10. More Rigorous Intervention. (1) Schools identified for comprehensive support and improvement that do not exit that status after three (3) years shall be subject to intervention by the department including but not limited to:

(a) A school audit conducted by the department;

(b) Onsite assistance by department staff; and

(c) Evaluation and modification of the school turnaround plan.

(2) Schools identified for comprehensive support and improvement that do not exit after three (3) years shall be subject to an audit by the department every two (2) years, or as deemed necessary by the Commissioner of Education.

(3) Schools identified for comprehensive support and improvement that do not make annual improvement for two (2) consecutive years shall be subject to intervention by the department, as described in subsections (1) and (2) in this Section, after the second year;

(4) Districts serving any number of schools identified for comprehensive support and improvement that do not exit after three (3) years, or two (2) years as described in subsection (2) of this Section, shall be subject to a district audit. Additional district audits for districts serving schools identified for comprehensive support and improvement that do not exit that status shall occur every two (2) years, or as deemed necessary by the Commissioner of Education. No district, regardless of the number of schools identified for comprehensive support and improvement that fail to exit that status, shall have more than one (1) district audit every two (2) years.

Section 11. Targeted Support and Improvement. (1) Upon identification as a school for targeted support and improvement, the identified school shall comply with the requirements of KRS 160.346(4). The school improvement plan shall be embedded in the comprehensive school improvement plan required pursuant to 703 KAR 5:225;

(2) LEAs with schools identified for targeted support and improvement shall monitor and provide support to the school so as to ensure the successful implementation of the school improvement plan.

Section 12. Significant Number of Schools: (1) In addition to providing notification to LEAs as to the identification of schools for comprehensive support and improvement or targeted support and improvement, the department shall notify LEAs as to whether or not they shall be considered a LEA supporting a significant number of schools identified for either comprehensive support and improvement or targeted support and improvement.

(2) To determine whether a LEA meets this designation, the

department shall calculate, based on the total number of A1 schools, as defined in 703 KAR 5:240, in the LEA, the LEA's percentage of schools identified for comprehensive support and improvement and the LEA's percentage of schools identified for targeted support and improvement. Any LEA containing two (2) or more schools identified for comprehensive support and improvement or targeted support and improvement and whose percentage of identified schools exceeds ten (10) percent for either comprehensive support and improvement or targeted support and improvement schools shall be designated a LEA supporting a significant number of schools identified for either comprehensive support and improvement or targeted support and improvement.

Section 13: Technical Assistance for LEAs Supporting a Significant Number of Schools Identified for Comprehensive Support and Improvement. (1) LEAs supporting a significant number of schools identified for comprehensive support and improvement and shall receive the following technical assistance:

(a) A district audit, or school audit if a charter school, conducted by the department; and

(b) Onsite support from department staff.

(2) The district audit, or school audit if a charter school, completed by the department under subsection (1)(a) of this Section shall take the place of any district or school audit conducted under Sections 4 and 5 of this regulation.

(3) Department staff shall:

(a) Coordinate with the LEA to ensure direct support of schools identified for comprehensive support and improvement;

(b) Review, via the district or school audit, if a charter school, resources and allocations to determine if they are being used effectively for school improvement;

(c) Work with the LEA to address any identified resource inequities that negatively impact schools and students; and

(d) Work with the LEA to develop sustainable systems to support school improvement.

Section 14. Technical Assistance for LEAs Supporting a Significant Number of Schools Identified for Targeted Support and Improvement. (1) LEAs supporting a significant number of schools identified for targeted support and improvement shall receive the following technical assistance:

(a) Periodic site visits; and

(b) Onsite support by department staff.

(2) Department staff shall:

(a) Review LEA resources and allocations to determine if they are being used effectively for school improvement;

(b) Provide technical assistance to the LEA regarding resource allocation to support school improvement; and

(c) Connect LEAs with professional development opportunities to build capacity for school improvement efforts.

Section 15. Exit Criteria. (1) Schools identified for comprehensive support and improvement shall exit that status when:

(a) They no longer meet the criteria for their identification; and

(b) They demonstrate continued progress on the data that were the basis for the identification.

(2) Schools identified for comprehensive support and improvement as a result of more than one (1) criteria shall exit when all relevant exit criteria are met.

(3) Schools identified for targeted support and improvement under KRS 160.346(2)(a) shall exit that status when the identified subgroup(s) is no longer below the performance of all students in the bottom five (5) percent of Title I schools or non-Title I schools within that range of Title I schools and demonstrate continued progress on the data that served as the basis for identification.

(4) Schools identified for targeted support and improvement under KRS 160.346(2)(b) shall exit that status when the identified subgroup(s) is no longer below the performance of all students in the bottom ten (10) percent of Title I schools or non-Title I schools within that range. LEAs may include additional exit criteria at their discretion.

Section 16. Incorporation by Reference. (1) "LEA Notification of Non-Department Audit or Turnaround Team Form", February 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, Office of Continuous Improvement and Support, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

STEPHEN L. PRUITT, Ph.D., Commissioner of Education

MARY GWEN WHEELER, Chairperson

APPROVED BY AGENCY: April 11, 2018

FILED WITH LRC: April 12, 2018 at 11 a.m.

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: The Elementary and Secondary Education Act (ESEA), as reauthorized by the Every Student Succeeds Act (ESSA), 20 U.S.C. 6301, requires states receiving Title I Part A funding to adopt a system of accountability and support for low-achieving schools. The state is required to identify schools for comprehensive and targeted support and improvement based on state adopted criteria (that meet federal guidelines) and provide turnaround support for those schools by working with school and district leaders. SB 1 (2017) also requires the Kentucky Board of Education (KBE) to promulgate administrative regulations for the identification of schools for comprehensive and targeted support and improvement, as well as assistance and intervention. This regulation establishes that system of support and ongoing accountability in compliance with ESSA and SB 1 (2017).

(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 Title I Part A, as reauthorized under the ESSA.

(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 KRS 156.070. It also aligns with the requirements under the ESEA, 20 U.S.C. 6301, as reauthorized by the ESSA.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: ESSA requires states to identify schools for comprehensive and targeted support and improvement based on state adopted criteria (that meet federal guidelines) and provide turnaround support for those schools by working with school and district leaders. This regulation establishes that system of support and ongoing accountability in compliance with ESSA.

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

(a) How the amendment will change this existing administrative regulation: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statute: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: Those affected by this regulation include: all public schools, school districts, and the KDE as it is tasked with providing guidance, support, technical assistance, and monitoring and periodic review of school improvement plans under ESSA.

(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 already receive similar support as under No Child Left Behind (NCLB), ESSA's predecessor, and the Kentucky NCLB Waiver. This regulation reflects federal requirements and districts have been part of the transition process since the federal legislation was passed in December of 2015. Schools and local education agencies that are identified will need to develop and implement improvement plans that address the issues that led to their identification. KDE as it is tasked with providing guidance, support, technical assistance, and monitoring and periodic review of school improvement plans under ESSA.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): KDE provides the supports indicated in the regulation through the use of state and federal funding. The school and district level supports come at no charge to schools and districts if conducted by the department. However, SB 1 (2017) created flexibility for school districts and allows them to select audit teams and turnaround teams not associated with the department. The districts must bear the cost of audit and turnaround teams if they select an entity other than KDE for these services. SB 1 (2017) does provide for some reimbursement for this cost, but it is no more than what the department has budgeted for such costs. KDE has requested for the 2018-2020 biennial budget to include \$500,000 for this reimbursement allowance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The supports provided in this regulation will lead struggling schools and districts to sustainable turnaround through the implementation of systems that build capacity in school leadership, establish positive school climate and culture, and support continual use of data-driven decision-making to support school improvement.

(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 ESSA to provide support, monitoring and technical assistance to schools and districts with low-performing schools. This requirement existed prior to the ESSA reauthorization. As a result, there is no initial cost for monitoring and support. Federal funding is utilized for this work. KDE submitted an ABR for the 2018-2020 biennial budget to include \$500,000 for the reimbursement allowance provided for in SB 1 (2017) which allows districts who do not utilize the department for the required audit or turnaround team to seek some reimbursement for those services. The reimbursable amount for those districts is subject to available funds.

(b) On a continuing basis: As a result of the continuing obligation in ESSA to provide support, monitoring and technical assistance to schools and districts, KDE incurs an ongoing cost of staff and resources. State and federal funding is utilized for this work. KDE submitted an ABR for the 2018-2020 biennial budget to include \$500,000 for the reimbursement allowance provided for in SB 1 (2017) which allows districts who do not utilize the department for the required audit or turnaround team to seek some reimbursement for those services. The reimbursable amount for those districts is subject to available funds.

(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 Part A and state funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: At this point it is unclear as to whether the number of identified schools will increase as a result of the changes in the state accountability system. An increase could result in the need for additional funding

or, if none exists, differentiated support.

(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 fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and local education agencies.

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.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.029(7), 156.070(5), 158.6453, 158.6455, 160.346, 20 U.S.C. 6301

(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. With regards to supports offered by the department, this should not have a significant impact as state and federal funding is utilized for this work. Additionally, the supports provided in this regulation are the same as those provided previously under NCLB and the Kentucky Waiver. With regards to the reimbursement available under SB 1 (2017), KDE submitted a request for the 2018-2020 biennial budget to include \$500,000 for the reimbursement allowance provided for in SB 1 (2017) which allows districts who do not utilize the department for the required audit or turnaround team to seek some reimbursement for those services. The reimbursable amount for those districts is subject to available funds.

(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 KDE is required by ESSA to provide support, monitoring and technical assistance to schools and districts with low-performing schools. This requirement existed prior to the ESSA reauthorization. As a result, there is no initial cost. Federal funding is utilized for this work. However, with regards to the reimbursement available under SB 1 (2017), KDE submitted a request for the 2018-2020 biennial budget to include \$500,000 for the reimbursement allowance provided for in SB 1 (2017) which allows districts who do not utilize the department for the required audit or turnaround team to seek some reimbursement for those services. The reimbursable amount for those districts is subject to available funds.

(d) How much will it cost to administer this program for subsequent years? As a result of the continuing obligation in ESSA to provide support, monitoring and technical assistance to schools and districts, KDE incurs an ongoing cost of staff and resources. Federal and state funding is utilized for this work. However, with regards to the reimbursement available under SB 1 (2017), KDE submitted a request for the 2018-2020 biennial budget to include \$500,000 for the reimbursement allowance provided for in SB 1 (2017) which allows districts who do not utilize the department for the required audit or turnaround team to seek some reimbursement for those services. The reimbursable amount for those districts is subject to available funds.

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

STATE BOARD OF ELECTIONS
(Amendment)

31 KAR 4:100. Evaluation of precinct election officers.

RELATES TO: KRS 117.045

STATUTORY AUTHORITY: KRS 117.045(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.045(1) requires the State Board of Elections to promulgate an administrative regulation establishing evaluation procedures which county boards of elections may use to qualify persons nominated to serve as precinct elections officers. This administrative regulation establishes those evaluation procedures.

Section 1. In evaluating if a person nominated to serve as a precinct election officer is qualified to serve in that capacity, a county board of elections may use the following evaluation procedures:

(1) Determine if the person submitted a signed statement in accordance with KRS 117.045(2);

(2) Determine if the person meets the qualifications set forth in KRS 117.045(9); and

(3) Determine if the person has a history of refusing to follow election procedures or has demonstrated a complete lack of understanding of proper election procedures while serving as a precinct election officer in the past.

Section 2. A county board of elections shall refuse to appoint a person nominated to serve as a precinct election officer if it determines that the person is not qualified based on the evaluation procedures set forth in Section 1 of this administrative regulation.

Section 3. Once the county board of elections has appointed the precinct election officers, the full name, address, phone number, and Social Security number, if available, of each person appointed shall be submitted to the State Board of Elections the same day as the appointment.

Section 4. Incorporation by Reference. (1) "List for Appointment of Precinct Election Officers", SBE 22, (February 2007 edition), is incorporated by reference.

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

ALISON LUNDERGAN GRIMES, Secretary of State,
Chair of the State Board of Elections

APPROVED BY AGENCY: February 27, 2018

FILED WITH LRC: March 19, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2018, at 9:00 a.m. EST, at Office of the Secretary of State. 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 May 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: Lindsay Hughes Thurston, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email Lindsay.thurston@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lindsay Hughes Thurston

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for submitting a list of precinct election officers to the State Board of Elections by a certain date.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for submitting a list of precinct election officers to the State Board of Elections by a certain date.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the State Board of Elections to fulfill its duties under KRS 117.045(1), this administrative regulation is necessary to establish the procedure for submitting a list of precinct election officers to the State Board of Elections by a certain date.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for submitting a list of precinct election officers to the State Board of Elections by a certain date.

(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 outlines the requirement that the county board of elections submit the list of precinct election officers to the State Board of Elections by a certain date.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to outline the requirement that the county board of elections submit the list of precinct election officers to the State Board of Elections by a certain date.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute, KRS 117.045(1).

(d) How the amendment will assist in the effective administration of the statutes: This amendment outlines the requirement that the county board of elections submit the list of precinct election officers to the State Board of Elections by a certain date.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects the county boards of election.

(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 individuals identified in question (3) will have to familiarize themselves with this amended administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is unknown if individuals identified in question (3) will incur costs in order to comply.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No benefits will accrue to the entities identified in question (3).

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

(a) Initially: There will be no cost to implement this administrative regulation for the first year.

(b) On a continuing basis: There is no cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source funding since there is no cost to implement this

administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the county boards of election.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 117.045(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 will not generate any additional revenue for state or local governments 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 administrative regulation will not generate any additional revenue for state or local governments during subsequent years of implementation.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATE BOARD OF ELECTIONS (Amendment)

31 KAR 4:120. Additional and emergency precinct officers.

RELATES TO: KRS 117.015, 117.045

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.045(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 117. KRS 117.045(6) requires the State Board of Elections to promulgate an administrative regulation establishing conditions under which additional precinct officers may be approved. This administrative regulation establishes the conditions under which additional precinct officers may be approved, and establishes the form of the list of emergency election officer appointments required by KRS 117.045(5).

Section 1. Request to Appoint Additional Precinct Officers. A county board of elections seeking permission to appoint additional

precinct officers, pursuant to KRS 117.045(6), shall file with the State Board of Elections SBE 23, Additional Precinct Officer Request, that contains the following information:

(1) The precinct number of each precinct for which approval of additional officers is sought;

(2) For each designated precinct, the reasons additional precinct officers are necessary;

(3) For each designated precinct, whether one (1) or two (2) additional precinct officers are requested; and

(4) The election for which approval is sought, designating whether the election is a primary, general, or special election.

Section 2. Approval of Request. (1) The State Board of Elections may approve a request to appoint additional precinct officers if the request sets forth a reasonable explanation why voting may not be conducted safely and expediently unless additional precinct officers are appointed.

(2) The county board of elections must submit these requests to the State Board of Elections at least fourteen (14) days prior to Election Day. If the request for additional precinct officers is not received by the State Board of Election at least fourteen (14) days prior to Election Day, then the State Board of Elections will not approve the request.

(3) Approval of a request to appoint additional precinct officers shall be granted for one (1) election only.

(4) [(3)] Approval of a request to appoint additional precinct officers may authorize a county board of elections to appoint one (1) or two (2) additional precinct officers.

(5) [(4)] If a county board of elections requests and is approved to appoint two (2) additional precinct officers:

(a) The two (2) additional precinct officers shall not be of the same political party; and

(b) If it appears from the list of additional precinct officers submitted to the State Board of Elections pursuant to KRS 117.045(8) that the two (2) additional precinct officers are of the same political party, then the State Board of Elections shall revoke its approval of the request to appoint additional precinct officers and the appointments shall be invalid.

Section 3. Duties of Additional Precinct Officers. The duties of additional precinct officers shall be prescribed by the county board of elections.

Section 4. Request to Appoint Emergency Precinct Officers. A county board of elections seeking permission to appoint emergency precinct officers pursuant to KRS 117.045(5) shall file with the State Board of Elections SBE 24, Emergency Precinct Officer Request, which contains the following information:

(1) The precinct number of each precinct for which approval of additional officers is sought;

(2) The name of the officer requested, the registered party of the officer, and the party the officer will be serving as for the specified election;

(3) The election for which approval is sought, designating whether the election is a primary, general, or special election; and

(4) A description of the efforts made to acquire precinct officers in the party, democrat or republican, which did not have enough workers as required by KRS 117.045(5).

(5) If a county board of elections requests and is approved to appoint emergency precinct officers:

(a) In the event more than one (1) emergency precinct officer is needed, the emergency precinct officers shall be of equal political party representation; and

(b) If it appears from the list of emergency precinct officers submitted to the State Board of Elections pursuant to KRS 117.045(8) that the emergency precinct officers submitted will result in an imbalance between the political parties represented by the State Board, then the State Board of Elections shall revoke its approval of the request to appoint emergency precinct officers and the appointments shall be invalid.

(c) In the event the State Board invalidates the list of emergency precinct workers as provided in subsection (b) above, the State Board shall have the authority to appoint properly trained

officers from within or outside the affected county in order to restore the balance prescribed in KRS 117.045(4).

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Additional Precinct Officer Request", SBE 23, January 2015 edition; and

(b) "Emergency Precinct Officer Request", SBE 24, August 2007 edition.

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

ALISON LUNDERGAN GRIMES, Secretary of State,
Chair of the State Board of Elections

APPROVED BY AGENCY: February 27, 2018

FILED WITH LRC: March 19, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2018, at 9:00 a.m. EST, at Office of the Secretary of State. 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 May 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: Lindsay Hughes Thurston, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email Lindsay.thurston@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lindsay Hughes Thurston

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the conditions under which additional precinct officers may be approved by the county board of elections.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for approving additional precinct officers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the State Board of Elections to fulfill its duties under KRS 117.045(6), this administrative regulation is necessary to establish the procedure for approving additional precinct officers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for approving additional precinct officers.

(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 outlines the requirement that the county board of elections submit the list of additional precinct election officers to the State Board of Elections by a certain date. Additionally, this amendment provides some consistency in the conditions for appointment of additional precinct officers and emergency precinct officers.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to outline requirement that the county board of elections submit the list of additional precinct election officers to the State Board of Elections by a certain date. Additionally, this amendment is necessary to ensure consistency in the conditions for appointment of additional precinct officers and emergency precinct officers.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute, KRS 117.045(6).

(d) How the amendment will assist in the effective administration of the statutes: This amendment outlines the requirement that the county board of elections submit the list of additional precinct election officers to the State Board of Elections by a certain date. Additionally, this amendment provides some consistency in the conditions for appointment of additional precinct officers and emergency precinct officers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects the county boards of election.

(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 individuals identified in question (3) will have to familiarize themselves with this amended administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is unknown if individuals identified in question (3) will incur costs in order to comply.

(c) As a result of compliance, what benefits will accrue to the entities identified in question(3): No benefits will accrue to the entities identified in question (3).

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

(a) Initially: There will be no cost to implement this administrative regulation for the first year.

(b) On a continuing basis: There is no cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source funding since there is no cost to implement this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the county boards of election.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 117.045(6).

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

(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 additional revenue for state or local governments 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 administrative regulation will not generate any additional revenue for state or local governments during subsequent years of implementation.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Amendment)**

201 KAR 9:021. Medical and osteopathic schools approved by the board; denial or withdrawal of approval; application of KRS 311.271; postgraduate training requirements; approved programs; recognition of degrees.

RELATES TO: KRS 311.271, 311.550, 311.560, 311.571

STATUTORY AUTHORITY: KRS 311.565(1)(b), 311.571(1)(d), (2)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(b) authorizes require the board to promulgate administrative regulations to establish requirements for a regular license to practice medicine or osteopathy in the Commonwealth of Kentucky. This administrative regulation establishes the requirements for board approval of medical or osteopathic schools~~[school]~~.

Section 1. (1) Except as provided by subsection (2) of this section:

(a) A license or permit shall not be issued by the board or retained by a licensee if an applicant or licensee has failed to provide the board proof that he is a graduate of a medical or osteopathic school, college, or university that has been approved by the board; and

(b) The requirement for board approval of an educational institution shall not be waived.

(2) An applicant for limited licensure-institutional practice pursuant to KRS 311.571(4) shall be granted a license without prior approval by the board of the medical or osteopathic school, college, or university from which he graduated if he has submitted proof:

(a) Of the educational institution's existence; and

(b) That he is a graduate thereof.

Section 2. Except as provided by Section 4 of this administrative regulation:

(1) A medical or osteopathic school, college, or university located in the United States, its territories or protectorates, or Canada shall be considered approved by the board; and

(2) A license or permit granted by a medical or osteopathic school, college, or university located in the United States, its territories or protectorates, or Canada shall be recognized if written proof is submitted that the educational institution is located in:

(a) The United States, its territories or protectorates, and accredited by the:

1. Liaison Committee on Medical Education; or

2. American Osteopathic Association Commission on Osteopathic College Accreditation; or

(b) Canada and approved or accredited by the Canadian Medical Association.

Section 3. Except as provided by Section 4 of this administrative regulation, a medical or osteopathic school, college, or university located outside the United States, its territories or protectorates, or Canada in which an applicant originally enrolled in any academic year through and concluding with academic year 2008-2009 shall be considered approved by the board, and a license or permit issued by a medical or osteopathic school, college, or university located outside the United States, its territories or protectorates, or Canada shall be recognized, if the educational institution:

(1) Is officially recognized in good standing by the country in which it is located;

(2) Is registered as a medical school, college, or university in the:

(a) World Health Organization directory; or

(b) World Directory of Medical Schools; and

(3) Possesses a basic course of clinical and classroom medical instruction that is:

(a) Not less than thirty-two (32) months in length; and

(b) Under the educational institution's direct authority.

Section 4. Except as provided by Section 5 of this administrative regulation, a medical or osteopathic school, college, or university located outside the United States, its territories, or Canada in which an applicant originally enrolled in academic year 2009 - 2010 or any academic year thereafter shall be considered approved by the board, and a license or permit issued by a medical or osteopathic school, college, or university located outside the United States, its territories or protectorates, or Canada shall be recognized, if the educational institution:

(1) Is officially recognized in good standing by the country in which it is located;

(2) Is registered as a medical school, college, or university in the International Medical Educational Directory;

(3) Requires that all courses be completed by physical on-site attendance in the country in which the school is chartered; and

(4) Possesses a basic course of clinical and classroom medical instruction that is:

(a) Not less than thirty-two (32) months in length; and

(b) Under the educational institution's direct authority.

Section 5. (1) The board shall deny or revoke its approval of a medical or osteopathic school, college, or university that has failed to meet the requirements for approval established by this administrative regulation.

(2) If the board denies or withdraws its approval of a medical or osteopathic school, college, or university, it shall issue an order stating the grounds upon which the denial or approval was based.

Section 6. (1)(a) Except as provided by subsection (2) of this section, the degree of an applicant shall not be recognized unless an applicant has met the requirements established by this section.

(b) Except as provided by subsection (2) of this section, clinical clerkships that a medical school located outside the United States, its territories or protectorates, or Canada permits a student to perform in order to satisfy its curriculum's clinical requirements shall be approved if an applicant has established that:

1. The clinical clerkships he performed were equal in quality and character to the clinical training performed in the United States by students in American medical and osteopathic schools; and

2. The clinical clerkships he performed had been evaluated and approved by the foreign medical school:

a. Prior to commencement; and

b. As required by the foreign school's established standards for approval of clerkships performed in the United States.

(2) The board shall waive the requirements established by subsection (1) of this section, if an applicant:

(a) Commenced a clerkship prior to February 12, 1985; and

(b) Has verified that he has:

1. Satisfactorily completed an approved three (3) year post graduate training program at one (1) hospital or institution; or

2. Been accepted into, or is currently enrolled, in the second or third year of a postgraduate training program approved by the

board.

Section 7. The executive director shall recommend for approval by the board the equivalency of premedical or preosteopathic units of study credited by a college or university located outside the United States or Canada on an individual basis.

Section 8. Amount of Postgraduate Training Required. An applicant for licensure shall provide written proof of having completed the postgraduate training required by this administrative regulation. (1) Pursuant to KRS 311.571(1)(d), an applicant for a regular license shall have satisfactorily completed:

(a) At least two (2) years of prescribed courses of postgraduate training in accordance with this administrative regulation; or

(b) At least one (1) year of prescribed courses of postgraduate training in accordance with this administrative regulation and an Oral and Maxillofacial Surgery program approved by the Commission on Dental Accreditation.

(2) Resident training license.

(a) Except as provided in paragraph (c) of this subsection, a resident in a Kentucky postgraduate training program accredited by the Accreditation Council for ~~American College of~~ Graduate Medical Education or the American Osteopathic Association shall receive a resident training license if the applicant has:

1. Completed one (1) year of postgraduate training in accordance with this administrative regulation;

2. Successfully completed:

a. One (1) of the examinations approved under 201 KAR 9:031, Section 2; or

b. One (1) of the combinations of examinations approved under 201 KAR 9:031, Section 1; and

3. Paid to the board a seventy-five (75) dollar fee.

(b) The resident training license shall permit its holder to practice medicine within the institution or in a setting approved by the postgraduate training program.

(c) The resident training license shall not be issued to a second-year resident without a recommendation by the director of the postgraduate training program and the approval of the board.

Section 9. Postgraduate Training Programs Approved by the Board. The following postgraduate training programs shall meet the postgraduate training requirement for licensure:

(1) All postgraduate training programs in hospitals and institutions located in the United States and approved by the Accreditation Council for Graduate Medical Education;

(2) All postgraduate training programs in hospitals and institutions located in Canada; and

(3) All postgraduate training programs in hospitals and institutions located in the United States or Canada and approved by the American Osteopathic Association.

Section 10. Fellowship Training in the United States or Canada. The board shall consider on an individual basis written proof of satisfactory completion of fellowship training recognized by the board to be of satisfactory quality as substitution for the second year of required postgraduate training approved by the board pursuant to this administrative regulation.

RUSSELL L. TRAVIS, M.D., President

APPROVED: April 11, 2018

FILED WITH LRC: April 12, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 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 May 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 May 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 requirements for board approval of medical or osteopathic schools.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for board approval of medical or osteopathic schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the requirements for board approval of medical or osteopathic schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specially to establish the requirements for board approval of medical or osteopathic schools.

(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 corrects citations to osteopathic organizations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correct citations to osteopathic organizations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment acts specifically to correct citations to osteopathic organizations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment acts specifically to correct citations to osteopathic organizations.

(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 physicians who may obtain a license to practice medicine or osteopathy 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: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Will correct citations to osteopathic organizations.

(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/licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Will not increase any 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 311.565(1)(a), (b), 311.601(1), (2)

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

201 KAR 9:031. Examinations.

RELATES TO: KRS 311.565(13), (16), (18), (22)

STATUTORY AUTHORITY: KRS 311.565(13), (16), (18), (22)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565 authorizes the board to promulgate administrative regulations governing examinations. This administrative regulation establishes standards and requirements relating to examinations.

Section 1. Basic Requirement; Passing Score. (1) An applicant for a license or permit issued by the board shall provide written proof that he or she has received a score:

(a) Of seventy-five (75), on each step, part, or component or its numerical equivalent; or

(b) A FLEX weighted average (FWA) of seventy-five (75) in a single sitting.

(2) A passing score for an applicant who has taken Component I and Component II of the Federation Licensing Examination (FLEX) shall be a score of seventy-five (75) on each component.

(3) The board shall recognize a passing score on the above examinations provided the applicant obtains a passing score within four (4) attempts for each step, component, part, or level.

(4) A passing score for an applicant who takes Step 1, 2, and 3 of the United States Medical Licensing Examination (USMLE) shall be a score of seventy-five (75) or its numerical equivalent. A passing score for an applicant who takes Levels 1, 2, and 3 of the Comprehensive Osteopathic Medical Licensing Examination (COMLEX-USA [COMPLEX-USA]) shall be a score of seventy-five (75) or its numerical equivalent.

(5) For an applicant who takes Parts 1 and 2 of the Medical

Council of Canada Qualifying Examination, scores on each component deemed to be a "pass score" by the Medical Council of Canada in the year the examination was taken.

(6) The board shall recognize the following combinations of examinations only if completed prior to the year 2000:

(a) NBME Part I or USMLE Step 1, plus NBME Part II or USMLE Step 2, plus NBME Part III or USMLE Step 3; or

(b) FLEX Component I plus USMLE Step 3; or

(c) NBME Part I or USMLE Step 1, plus NBME Part II or USMLE Step 2, plus FLEX Component 2.

Section 2. Examinations Approved by the Board. The following examinations are approved by the board in regard to the fulfillment of the examination requirement for licensure:

(1) Examinations administered prior to 1972 by the licensure authority of another state, United States territory or Canadian province upon sufficient proof that the examination consisted of comprehensive testing in the basic and clinical sciences;

(2) The examination administered by the Federation of State Medical Boards, (FLEX);

(3) The examination administered by the National Board of Medical Examiners (NBME);

(4) The examination administered by the National Board of Osteopathic Medical Examiners (NBOME) or Comprehensive Osteopathic Medical Licensing Examination (COMLEX-USA[COMPLEX-USA]);

(5) The examination administered jointly by the Federation of State Medical Boards and National Board of Medical Examiners entitled United States Medical Licensing Examination (USMLE); and[-]

(6) The Medical Council of Canada Qualifying Examination administered by the Medical Council of Canada, if both Parts 1 and 2 have been successfully completed.

Section 3. The board may deny a license or permit when in the board's opinion the examination by which the applicant is seeking to fulfill the examination requirement inadequately tested the applicant's knowledge, education, training and competency.

RUSSELL L. TRAVIS, M.D., President

APPROVED BY AGENCY: April 11, 2018

FILED WITH LRC: April 12, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 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 May 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 May 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 standards and requirements relating to examinations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards and requirements relating to examinations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish standards and requirements related to examinations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specially to establish the standards and requirements related to examinations.

(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 corrects citations to the osteopathic medical licensing examination and includes the Medical Council of Canada Qualifying Examination, parts 1 and 2.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correct citations to the osteopathic medical licensing examination and includes the Medical Council of Canada Qualifying Examination, parts 1 and 2.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment acts specifically to correct citations to the osteopathic medical licensing examination and includes the Medical Council of Canada Qualifying Examination, parts 1 and 2.

(d) How the amendment will assist in the effective administration of the statutes: This amendment acts specifically to correct citations to the osteopathic medical licensing examination and includes the Medical Council of Canada Qualifying Examination, parts 1 and 2.

(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 physicians or osteopaths 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: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Will correct citations to the osteopathic medical licensing examination and includes the Medical Council of Canada Qualifying Examination, parts 1 and 2.

(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/licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Will not increase any 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 311.565(1)(a), (b), 311.601(1), (2)

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

201 KAR 12:082. Education requirements and school administration.

RELATES TO: KRS 317A.020, 317A.050, 317A.090[; 317B.045, 317B.025]

STATUTORY AUTHORITY: KRS 317A.060, 317A.090[; 317B.020]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060(1)(h)[(2)(e)] requires the board to promulgate administrative regulations governing the hours and courses of instruction at schools of cosmetology, esthetics, and nail technology[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 licensing[the] requirements for schools of cosmetology, esthetics, and nail technology. This administrative regulation establishes requirements for the hours and courses of instruction, reporting, education requirements, and administrative functions required for students and faculty for schools of cosmetology, esthetics, and nail technology.

Section 1. Subject Areas. The regular courses of instruction for cosmetology students shall contain courses relating to the 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:

(a) Principles of Hair Design;

(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.

Section 2. A school of cosmetology shall teach the students about the various supplies and equipment used in the usual salon practices.

Section 3. Instructional Hours. (1) A cosmetology student shall receive not less than 1,500 hours in clinical class work and scientific lectures with a minimum of:

- (a) 375 lecture hours for science and theory;
- (b) 1,085 clinic and practice hours; and
- (c) Forty (40) hours on the subject of applicable Kentucky statutes and administrative regulations.

(2) A cosmetology student shall not 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 be no more than eight (8) hours per day, forty (40) hours per week.

(2) 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. (1) 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.

(2) Schools of cosmetology, esthetics, and nail technology, shall provide a copy of KRS Chapter 317A and 201 KAR Chapter 12 to each student upon enrollment.

Section 6. Nail Technician Curriculum. The nail technician course of instruction 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.

Section 7. Nail Technology Hours Required. (1) A nail technician student shall receive no less than ~~450~~600 hours in clinical and theory class work with a minimum of:

- (a) ~~150~~240 lecture hours for science and theory;
 - (b) Twenty-five (25) hours on the subject of applicable Kentucky statutes and administrative regulations; and
 - (c) ~~275~~365 clinic and practice hours.
- (2) A nail technician student shall have completed sixty (60)~~eighty (80)~~ hours~~[in clinical and related theory class]~~ before ~~[working on and]~~ providing services to the general public. Clinical practice shall be performed on other students or mannequins during the first sixty (60)~~eighty (80)~~ hours.

Section 8. Apprentice[Cosmetology] Instructor Curriculum. The course of instruction for an apprentice~~[cosmetology]~~ instructor shall include no less than 750~~1,000~~ hours, 425 hours of which shall be in direct contact with students, in the following:

- (1) Orientation;
- (2) Psychology of student training;
- (3) Introduction to teaching;
- (4) Good grooming and professional development;
- (5) Course outlining and development;
- (6) Lesson planning;
- (7) Teaching techniques (methods);
- (8) Teaching aids, audio-visual techniques;
- (9) Demonstration techniques;
- (10) Examinations and analysis;
- (11) Classroom management;
- (12) Recordkeeping;
- (13) Teaching observation;
- (14) Teacher assistant; and
- (15) Pupil teaching (practice teaching).

Section 9. Supervision. 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 10. Additional Coursework. Apprentice Esthetics and Nail Technology Instructors shall also complete an additional fifty (50) hours of advanced course work in that field within a two (2) year period prior to the instructor examination.

Section 11. Schools may enroll persons for a special brush-up course in any subject.

Section 12~~[14]~~. 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 13[42]. Esthetician Hours Required. (1) An esthetician student shall receive no less than 750[1,000] hours in clinical and theory class work with a minimum of:

- (a) 250[365] lecture hours for science and theory;
 - (b) Thirty-five (35) hours on the subject of applicable Kentucky statutes and administrative regulations; and
 - (c) 465[600] clinic and practice hours.
- (2) An esthetician student shall have completed 115[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 115[150] hours.

Section 14[43]. 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 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 15[44]. Student Records. Each school shall:

- (1) Maintain a daily attendance record for all full-time students, part-time students, and apprentice instructors;
- (2) Keep a record of each student's practical work and work performed on clinic patrons;
- (3) Maintain a detailed record of all student enrollments, withdrawals, and dismissals for a period of five (5) years; and
- (4) Make records required by this Section available to the board and its employees upon request.

Section 16[45]. 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 licensed[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 17[46]. No Additional Fees. Schools shall not charge students additional fees beyond the contracted amount.

Section 18[47]. Instructor Licensing and Responsibilities. (1) A person employed by a cosmetology, nail technology, or esthetic practices school for the purpose of teaching or instruction shall be licensed by the board as an[a cosmetologist] instructor and shall post his or her license as required by[in] 201 KAR 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) Licensed[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

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 licensed school [of cosmetology].

(7) A properly qualified, licensed individual may demonstrate a new process, preparation, or appliance in a licensed school if [in the presence of] a licensed instructor is present [in a licensed school].

(8) Licensed schools of cosmetology, esthetics, and nail technology shall, at all times, maintain a minimum faculty to student ratio of one (1) instructor for every twenty (20) students enrolled and supervised.

(9) Licensed schools of cosmetology, esthetics, and nail technology shall, at all times, maintain a minimum ratio of one (1) instructor for every two (2) apprentice instructors enrolled and supervised.

(10) Within ten (10) business days of the termination, employment, and other change in school faculty personnel, a licensed school shall notify the board of the change.

Section 19[48]. School Patrons. (1) All services rendered in a licensed[cosmetology] school to the public shall be performed by students. Instructors may teach and aid the students in performing the various services.

(2) A licensed school shall not guarantee a student's work.

(3) A licensed school shall display in the reception room, clinic room, or any other area in which the public receives services a sign to read: "Work Done by Students Only." The letters shall be a minimum of one (1) inch in height.

Section 20[49]. 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 licensed school [of cosmetology] who desires to transfer hours from an out of state [cosmetology] school shall, prior to enrollment, provide to the board certification of the hours to be transferred 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 21[20]. Certificate of Enrollment. (1) 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, within ten (10) business days of enrollment.

(2) All student identification information on the school's digital enrollment must exactly match a state or federal government-issued identification card to take the examination. If corrections must be made, the school shall submit the Enrollment Correction form and the fee in 201 KAR 12:260 within ten (10) days of the erroneous submission. Students with incorrect enrollment information will not be registered for an examination.

Section 22[24]. Student Compensation. (1) Schools shall not pay a student a salary or commission while the student is enrolled at the school.

(2) Licensed schools shall not guarantee future employment to students.

(3) Licensed schools shall not use deceptive statements and false promises to induce student enrollment.

Section 23[22]. Transfer. A student desiring to transfer to

another ~~licensed~~[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 24[23]. Refund Policy. A school shall include the school's refund policy in school-student contracts.

Section 25[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 12:190[060].

Section 26[25]. Student Leave of Absence. The school shall report a student's leave of absence to the board within ten (10) business days. The leave shall be reported:

(1) In writing from the student to the school; and

(2) Clearly denote the beginning and end dates for the leave of absence.

Section 27[26]. Student Withdrawal. Within ten (10) business days from a student's withdrawal, a ~~licensed~~[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. The board shall credit hours previously completed in a licensed school~~[of cosmetology]~~ as follows:

(1) Full credit (hour for hour) for hours completed within five (5) years of the date of school enrollment; and

(2) No credit for hours completed five (5) or more years from the date of school enrollment.

Section 29. Incorporation by Reference. ~~The following material is incorporated by reference: (1)(a)(4)] "Certification of Student Extracurricular Event Hours", February 2018; and [September 2017.]~~

~~(b) "Enrollment Correction Form", April 2018[is incorporated by reference].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at ~~the~~ Kentucky[State] Board of Cosmetology~~[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: April 6, 2018

FILED WITH LRC: April 13, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2018, at 9:00 a.m., at Kentucky Board of Cosmetology. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on May 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, (502) 564-4262, email julie.campbell@ky.gov, fax: (502) 564-0481.

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 the hours and courses of instruction, reporting, education requirements, and administrative functions for licensed schools of cosmetology, esthetics, and nail technology in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure standardized education that complies with state statutes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment conforms to the administrative regulation with recent statutory amendments to KRS 317A.050 and 317A.090 contained in House Bill 260. Those statutory amendments reduced the instructional hours required for nail technicians and estheticians to be licensed in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment outlines and defines education standards and the quantity of course hours required for licensed schools and students seeking Kentucky licensure as cosmetologists, estheticians, and nail technicians.

(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 revise the current nail technician and esthetician curriculum to comport with the recent amendments to KRS 317A.050 and 317A.090 contained in House Bill 260, which took effect on April __, 2018. In addition to the reduction in instructional hours, this amendment also updates other aspects of course curriculum in the existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is required to comply with House Bill 260, which amended KRS 317A.050 and 317A.090 to reduce the number of instructional hours necessary to be licensed as a nail technician or esthetician in Kentucky. This amendment will conform to the administrative regulation to these newly amended statutes.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides curriculum guidelines for education based on the statutory amendments in House Bill 260 reducing the instructional hours for nail technicians and estheticians to be licensed in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide a regulatory scheme for licensed schools that complies with the governing statute.

(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 and approximately 10,000 students 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 is necessary to ensure that licensed cosmetology schools are provided the necessary regulatory guidance and may maintain their current accreditation by national accrediting organizations. As a result of this amendment, licensed schools will provide students a course curriculum that is consistent with the statutes and the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated cost to licensed schools because of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment enables licensed schools to enroll students into programs based upon the statutorily adjusted curriculum requirements of House Bill 260. Kentucky's regulatory scheme for licenses will fully comply with its authorizing statutes, and be more closely aligned with similar licensing schemes 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 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: All Kentucky Board of Cosmetology funding comes from fees collected from licensees and applicants. 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 are anticipated as a result of 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 administrative regulation apply equally to all licensed schools and students.

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 Cosmetology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A.050 and KRS 317A.060.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There is no anticipated effect on state or local government agency revenue 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 additional revenue is anticipated as a result of this amendment.

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

(c) How much will it cost to administer this program for the first year? No additional cost is anticipated 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.

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 Cosmetology (Amendment)

201 KAR 12:260. Fees.

RELATES TO: KRS 317A.050, 317A.062[, 317B.020, 317B.025, 317B.030, 317B.040]

STATUTORY AUTHORITY: KRS 317A.062[, 317B.020]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.062 [and 317B.020] requires[require] the board to promulgate administrative regulations establishing a reasonable schedule of fees and charges for examinations[, and the issuance,

renewal, and restoration of licenses and permits[, and renewal of licenses]. This administrative regulation establishes a fee schedule for applications, permits, and licenses issued by the board[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 - fifty (50) dollars[twenty-five (25) dollars];
- (2) [(3)] Nail technician - fifty (50) dollars[twenty-five (25) dollars];
- (3) [(4)] Esthetician - fifty (50) dollars[seventy-five (75) dollars];
- (5) Apprentice instructor - thirty-five (35) dollars;
- (4) [(6)] Cosmetology instructor - fifty (50) dollars;
- (5) [(7)] Esthetic instructor - fifty (50) dollars[\$100];
- (6) Nail Technology instructor - fifty (50) dollars;
- (7) [(8)] Beauty salon - \$100[thirty-five (35) dollars];
- (8) [(9)] Nail salon - \$100[thirty-five (35) dollars];
- (9) [(10)] Esthetic salon - \$100[\$125];
- (11) Esthetic independent contractor - \$125;
- (10) [(12)] Cosmetology School - \$1,500; [(13)] Student enrollment permits - fifteen (15) dollars;
- (11) [(14)] School [of cosmetology,] transfer of ownership - \$1,500;
- (12) [(15)] Salon transfer of ownership - \$100[School manager change - \$250];
- (13) [(16)] Limited[Threading] facility permit - \$100[twenty-five (25) dollars];
- (14) [(17)] Threading permit - fifty (50) dollars[twenty (20) dollars]; [and]
- (15) Lash Extension Permit - fifty (50) dollars; and
- (16) Makeup Artistry Permit - fifty (50) dollars [(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 - fifty (50) dollars[twenty (20) dollars];
- (2) [(3)] Nail technician - fifty (50) dollars[twenty (20) dollars];
- (3) [(4)] Esthetician - fifty (50) dollars;
- (5) Apprentice instructor - twenty-five (25) dollars;
- (4) [(6)] Cosmetology instructor - fifty (50) dollars[thirty-five (35) dollars];
- (5) [(7)] Esthetic instructor - fifty (50) dollars[seventy-five (75) dollars];
- (6) Nail technology instructor - fifty (50) dollars;
- (7) [(8)] Beauty salon - \$100[twenty-five (25) dollars];
- (8) [(9)] Nail salon - \$100[twenty-five (25) dollars];
- (9) [(10)] Esthetic salon - \$100[seventy-five (75) dollars];
- (11) Esthetic independent contractor - seventy-five (75) dollars;
- (10) [(12)] [Cosmetology] School - \$250[\$150];
- (11) [(13)] Limited[Threading] facility permit - \$100[twenty-five (25) dollars]; [and]
- (12) [(14)] Threading permit - fifty (50) dollars[twenty (20) dollars];
- (13) Lash Extension Permit - fifty (50) dollars; and
- (14) Makeup Artistry Permit - fifty (50) dollars.

Section 3. Applications for examination including retake applications[required by KRS Chapter 317A] shall be accompanied by a[an examination] fee as follows:

- (1)[Apprentice cosmetologist - seventy-five (75) dollars;
- (2) Cosmetologist - seventy-five (75) dollars;
- (2) [(3)] Nail technician - seventy-five (75) dollars;
- (3) [(4)] Esthetician - seventy-five (75) dollars[\$125]; and
- (4) [(5)] Cosmetology Instructor - seventy-five (75) dollars[\$100]; [(6) Esthetic instructor - \$125;
- (7) Out-of-state cosmetologist - \$120;
- (8) Out-of-state esthetician - \$175;
- (9) 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) Cosmetology instructor – fifty (50) dollars;
- (6) Esthetic instructor – \$125;
- (7) Out-of-state cosmetologist – sixty (60) dollars;
- (8) Out-of-state esthetician – \$175;
- (9) 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) Beauty salon – seventy-five (75) dollars;
- (6) Nail salon – seventy-five (75) dollars;
- (7) Esthetic salon – \$150;
- (8) Esthetic independent contractor – \$150;
- (9) Cosmetology school – \$750;
- (10) Apprentice instructor – seventy-five (75) dollars;
- (11) Cosmetology instructor – \$100; and
- (12) Esthetic instructor – \$150.]

Section 4[6]. Miscellaneous fees shall be as follows:

- (1) Demonstration permit - fifty (50) dollars;
- (2) Certification of a license or school hours - twenty (20) dollars;
- (3) Duplicate license - twenty-five (25) dollars;
- (4) [Beauty or nail] Salon[owner,] manager[, or location] change - fifty (50) dollars[thirty-five (35) dollars];[and]
- (5) [Esthetics salon owner, manager, or location change – \$125;] School manager change - \$125;
- (6) Enrollment correction fee - fifteen (15) dollars;
- (7) Out of state endorsement application fee - \$100;
- (8) Apprentice instructor - fifty (50) dollars;
- (9) Student enrollment permit - twenty-five (25) dollars;
- (10) Individual license restoration Fee - fifty (50) dollars;
- (11) Salon license or limited facility permit restoration fee - \$100; and
- (12) School license restoration fee - \$500.

R. KAY SWANNER, Board Chair

APPROVED BY AGENCY: April 6, 2018

FILED WITH LRC: April 13, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2018, at 10:30 a.m., at the Kentucky Board of Cosmetology. 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 May 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 a fee schedule for all applications, permits, and licenses issued by the Kentucky Board of Cosmetology (KBC).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set out a fee schedule for all persons and entities seeking a permit or license from the KBC.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment adjusts the existing fees for those permits and licenses set forth in KRS Chapter 317A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment adjusts existing fees for the issuance, renewal, and restoration of licenses and permits, board exams, and other miscellaneous fees of the KBC.

(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 KBC is entirely self-funded through fees it collects for the various applications, permits, and licenses it offers to the public. As these fees have not been changed in 14 years, they no longer are commensurate with the expenses the KBC incurs to provide these services. Additionally, implementation of national testing, recently authorized by the passage of House Bill 260, necessitates a reasonable fee increase.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to fund implementation of national testing and the KBC's anticipated operating cost increase. The adjusted fees in this amendment represent a midpoint compared to fee schedules in surrounding states.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment sets forth all KBC fees based on the current statutory requirements in KRS Chapters 317A.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides a single administrative regulation setting out all applicable fees for applications, permits, and licenses issued by the KBC.

(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, permittees, and students 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 does not change any existing requirement, or create a new requirement. Rather, it amends the previous fee schedule contained in the existing administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An adjustment to fees is necessary to implement national testing and to properly fund the KBC's operating costs in anticipation of new licensing procedures brought about by the passage of House Bill 260. The existing fees have not been changed in 14 years and this amendment represents approximately a 2.5% per annum increase when calculated over 14 years. These adjusted fees represent a midpoint when compared to fees in the surrounding states.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Prospective and current licensees will benefit from national exams being offered at multiple sites throughout the state. Agency funds will be used to implement online licensing and renewals, which will result in faster processing times for the public.

(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: The KBC is entirely self-funded through fees it collects for permits and licenses. There are no funds necessary to implement this amendment as it updates a fee schedule for applications, permits, and licenses.

(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 funding needed, as this amendment and the existing administrative regulation do not implement any action or requirement.

(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 found in KRS Chapters 317A. This amendment does establish new fees for new licenses and permits created by the passage of House Bill 260. There are also increases to existing fees for certain applications, permits, and licenses already issued by the KBC.

(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 Cosmetology (KBC).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A.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? The KBC is a self-funded agency, deriving its funding solely from the fees it collects for permits and licenses. This amendment modifies the fee schedule in the existing administrative regulation. It is expected to result in an increase in revenue during the first year. Increased revenue is necessary to fund national testing and to implement new permits and licenses brought about by the passage of House Bill 260. Finally, increased funding is necessary for new initiatives such as offering fully online applications and renewals.

(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 is expected to result in increased revenue in subsequent years, which will be used to fund new initiatives.

(c) How much will it cost to administer this program for the first year? No additional cost is anticipated during the first year.

(d) How much will it cost to administer this program for subsequent years? No additional cost is anticipated 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 (+/-): Increase.

Expenditures (+/-): No impact.

Other Explanation: This amendment updates fees and does not involve any expenditures. As explained above, the fee adjustments in this amendment are anticipated to result in increased revenue. The amount of increased revenue is dependent on the number of applicants for examinations, permits, and licenses. As some of the permits and licenses are newly established by House Bill 260, the expected amount of increased revenue for those new permits and licenses is currently unknown.

Taking into account additional expenditures incurred from new licenses, permits, and national testing, it is anticipated that the increase in fees for existing examinations, permits, and licenses will result in an approximate 10-20% increase in revenue.

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

301 KAR 2:172. Deer hunting seasons, zones, and requirements.

RELATES TO: KRS 150.010, 150.177, 150.180, 150.411(3), 150.990, 237.110

STATUTORY AUTHORITY: KRS 150.025(1), 150.170, 150.175, 150.390(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.170 authorizes exemptions for certain people from hunting license and permit requirements. KRS 150.175 authorizes the kinds of licenses and permits to be issued by the department. KRS 150.390(1) prohibits the taking of deer in any manner contrary to any provisions of KRS Chapter 150 or Title 301 KAR. This administrative regulation establishes deer hunting seasons and zones, legal methods of taking, and checking and recording requirements for deer hunting.

Section 1. Definitions. (1) ~~"Additional deer permit" means a permit that allows the holder to take up to two (2) additional deer beyond those allowed by the statewide permit in the following combinations:~~

~~(a) One (1) antlered deer and one (1) antlerless deer; or~~

~~(b) Two (2) antlerless deer.~~

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

(2) [(3)] "Air gun" means a pneumatic gun fired by a charge of compressed air.

(3) [(4)] "Antlered deer" means a male or female deer, excluding male fawns, with a visible antler protruding above the hairline.

(4) [(5)] "Antlerless deer" means a male or female deer with no visible antler protruding above the hairline.

(5) [(6)] "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(6) [(7)] "Arrow" means the projectile fired from a bow or crossbow.

(7) [(8)] "Centerfire" means a type of gun that detonates a cartridge by the firing pin striking a primer in the middle of the end of the cartridge casing.

(8) [(9)] "Crossbow" means a bow with a string designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(9) [(40)] "Deer" means a member of the species *Odocoileus virginianus*.

(10) "Deer management permit" means a permit that allows the holder to take up to fifteen (15) additional deer beyond those allowed by the statewide permit in the following combinations:

(a) One (1) antlered deer and no more than fourteen (14) antlerless deer; or

(b) No more than fifteen (15) antlerless deer.

(11) "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.

(12) "License year" means the period from March 1 through the [following] last day of February.

(13) "Modern gun" means an air gun, rifle, handgun, or shotgun that is loaded from the rear of the barrel.

(14) "Muzzle-loading gun" means a rifle, shotgun, or handgun that is loaded from the discharging end of the barrel or discharging end of the cylinder.

(15) "Novice deer hunter" means a person who has not harvested more than two (2) deer in Kentucky in the last ten (10) years.

(16) "Special deer hunt" means a department-sponsored one (1) or two (2) day deer hunt on private land that allows novice deer hunters to use a modern gun outside of modern gun deer season.

(17)[(16)] "Statewide deer hunting requirements" means the season dates, zone descriptions, bag limits, and other requirements for deer hunting established in this administrative regulation.

(18) "Statewide deer permit" means a permit, which, in conjunction with appropriate licenses, seasons, and methods, allows the holder to take:

(a) One (1) antlered deer and no more than three (3)[one (1)] antlerless deer; or

(b) No more than four (4)[Two (2)] antlerless deer.

(19)[(17)] "Youth" means a person under the age of sixteen (16) by the date of the hunt.

(20) "Youth deer permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to take:

(a) One (1) antlered deer and no more than three (3) antlerless deer; or

(b) No more than four (4) antlerless deer.

(21)[(18)] "Zone" means an area consisting of counties designated by the department within which deer hunting season dates and limits are set for the management and conservation of deer in Kentucky.

Section 2. License and Deer Permit Requirements. (1) Unless license exempt, as established in [exempted by] KRS 150.170, a person shall carry proof of purchase of a valid Kentucky hunting license and valid deer permit while hunting.

(2) A [In lieu of a statewide deer permit or a license or permit that grants statewide deer hunting privileges, a person possessing a valid junior statewide hunting license shall not use more than two (2) junior deer hunting permits.

(3) An additional deer management permit shall not be valid unless accompanied by a valid Kentucky hunting license and a statewide deer permit or a license or permit that grants statewide deer hunting privileges.

(3) Unless license exempt, as established in KRS 150.170, a youth shall carry proof of purchase of a valid Kentucky youth hunting license and a valid youth deer permit while hunting.

Section 3. Hunter Restrictions. (1) A deer hunter shall not:

(a) Take a deer except during daylight hours;

(b) Use dogs, except leashed tracking dogs to recover a wounded deer;

(c) Take a deer that is swimming;

(d) From a vehicle, boat, or on horseback, take a deer, except that a hunter with a disabled hunting exemption permit issued by the department may use a stationary vehicle as a hunting platform; and

(e) Possess or use a decoy or call powered by electricity from any source.

(2) A person shall only use the equipment established in paragraphs (a) through (e) of this subsection to take a deer:

(a) A crossbow or archery equipment loaded with a broadhead of seven-eighths (7/8) inch or wider upon expansion;

(b) A firearm:

1. With an action that fires a single round of ammunition upon each manipulation of the trigger; and

2. Loaded with centerfire, single projectile ammunition designed to expand upon impact;

(c) A muzzle-loading gun;

(d) A shotgun loaded with a shell containing single projectile ammunition designed to expand upon impact; or

(e) An air gun:

1. Of .35 caliber or larger;

2. Charged by an external tank; and

3. Loaded with single projectile ammunition designed to expand upon impact.

(3) A person shall only use a weapon that complies with the appropriate season established in Section 5 of this administrative regulation to take a deer.

(4) A crossbow shall contain a working safety device.

(5) A person shall not use a magazine capable of holding more than ten (10) rounds to take a deer.

Section 4. Hunter Orange Clothing Requirements. (1) During the modern gun deer season, muzzle-loader season, and any youth gun season, a person hunting any species during daylight hours and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest except while hunting waterfowl.

(2) During an elk firearm season, as established in 301 KAR 2:132, a person hunting any species and any person accompanying a hunter within the elk restoration zone, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest, except while hunting waterfowl.

(3) The hunter orange portions of a garment worn to fulfill the requirements of this section:

(a) May display a small section of another color; and

(b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.

(4) A camouflage-pattern hunter orange garment worn without additional solid hunter orange on the head, back, and chest shall not meet the requirements of this section.

Section 5. Statewide Season Dates. (1) A deer hunter may use archery equipment to hunt deer statewide from the first Saturday in September through the third Monday in January.

(2) A deer hunter may take deer with a modern gun statewide beginning the second Saturday in November for:

(a) sixteen (16) consecutive days [in Zones 1 and 2; and

(b) Ten (10) consecutive days in Zones 3 and 4].

(3) A deer hunter may use a muzzle-loading gun to hunt deer statewide:

(a) For two (2) consecutive days beginning the third Saturday in October;

(b) For nine (9) consecutive days beginning the second Saturday in December; and

(c) During any season in which a modern gun may be used to take deer.

(4) A deer hunter may use a crossbow to hunt deer statewide:

(a) From October 1 through the end of the third full weekend in October;

(b) From the second Saturday in November through December 31; and

(c) During any season in which a gun may be used to take deer.

(5) A legal resident hunter sixty-five (65) years or older may hunt with a crossbow from the first Saturday in September through the third Monday in January.

(6) There shall be a youth gun season[.] for two (2) consecutive days beginning on the second Saturday in October, in which a youth deer hunter[.]

(a) May take antlered or antlerless deer and shall use a legal method to do so; and

(b) shall comply with this administrative regulation and all other statewide deer hunting requirements.

(7) There shall be a free youth weekend for two (2) consecutive days beginning on the Saturday after Christmas during which a youth:

(a) Shall not be required to have a hunting license or deer permit; and

(b) [May take antlered or antlerless deer and shall use a legal method to do so; and

(c) shall comply with this administrative regulation and all other statewide deer hunting requirements.

(8) A deer hunter may take antlerless deer with a modern gun in Zone 1 counties for two (2) consecutive days beginning on the last Saturday in September.

Section 6. Zones. (1) Zone 1 shall consist of Anderson, Ballard, Boone, Bracken, Bullitt, Caldwell, Calloway, Campbell,

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Carlisle, Carroll, Christian, Crittenden, Franklin, Fulton, Gallatin, Grant, Graves, Green, Hardin, Harrison, Hart, Henderson, Henry, Hickman, Hopkins, Jefferson, Kenton, Larue, Livingston, Lyon, Marshall, Mason, McClean, McCracken, Mercer, Muhlenberg, Nelson, Oldham, Owen, Pendleton, Robertson, Scott, Shelby, Spencer, Todd, Trigg, Trimble, Union, Washington, Webster, and Woodford Counties.

(2) Zone 2 shall consist of Adair, Allen, Barren, Bath, Bourbon, Boyd, Boyle, Breckinridge, Butler, Carter, Casey, Clark, Daviess, Edmonson, Fayette, Fleming, Grayson, Greenup, Hancock[Hart, Henderson], Jessamine, Lawrence, Lewis, Lincoln, Logan, Madison, Marion, Meade, Metcalf, Monroe, Montgomery[Mason, McLean, Mercer, Muhlenberg], Nicholas, Ohio, Taylor[Todd], and Warren[Union] Counties.

(3) Zone 3 shall consist of [Adair, Allen, Barren, Bath, Boyle, Breckinridge, Butler, Casey, Clark,] Cumberland, [Daviess, Edmondson,] Elliott, Estill, Garrard[Hancock], Johnson, Laurel[Lincoln, Madison, Meade, Metcalf, Monroe, Montgomery], Morgan, Powell, Pulaski, Rowan, Simpson, Wayne[Taylor, Warren], and Wolfe Counties.

(4) Zone 4 shall consist of Bell, Breathitt, Clay, Clinton, Floyd, [Garrard,] Harlan, Jackson, Knott, Knox, [Laurel,] Lee, Leslie, Letcher, Magoffin, Martin, McCreary, Menifee, Owsley, Perry, Pike, [Pulaski,] Rockcastle, Russell, [Wayne,] and Whitley Counties.

Section 7. Season and Zone Limits. (1) A person shall not take more deer than what each zone allows, as established in this Section.

(2)[than four (4) deer statewide in a license year except:

(a) As authorized in 301 KAR 2:111, 2:176, 2:178, and 3:100; and

(b) A person may take an unlimited number of antlerless deer in Zone 1 [if the person has purchased the appropriate additional deer permits.]

(3)[(2)] A person shall not take more than one (1) antlered deer per license year, regardless of the permit type used, except as established in 301 KAR 2:111, 2:178, and 3:100.

(4) A person may take a total of four (4) deer in Zone 2.

(5)[(3)] In Zone 3, a person may take up to a total of four (4)[two (2)] deer, except that a firearm or air gun shall not be used to take a total of more than one (1) antlerless deer[with a gun].

(6)[(4)] In Zone 4, a person may take one antlerless deer, but only during:

(a) Archery season;

(b) Crossbow season;

(c) Any youth weekend; or

(d) The last three (3) days of the December muzzleloader season.

(7) A person shall purchase a deer management permit in order to harvest more than four (4) deer[Only two (2) deer with a gun; and

(b) Only antlered deer during:

1. Modern gun season;

2. Early muzzleloader season; and

3. The first six (6) days of the December muzzleloader season.

(5) The aggregate bag limit for Zones, 2, 3, and 4 shall be four (4) deer per hunter.

Section 8. Supervision of Youth Gun Deer Hunters. (1) An adult shall:

(a) Accompany a person under sixteen (16) years old; and

(b) Remain in a position to take immediate control of the youth's gun.

(2) An adult accompanying a youth hunter shall not be required to possess a hunting license or deer permit if the adult is not hunting.

Section 9. Harvest Recording. (1) Immediately after taking a deer, and prior to moving the carcass, a person shall record, in writing:

(a) The species taken;

(b) The date taken;

(c) The county where taken; and

(d) The sex of the deer taken on one (1) of the following:

1. The hunter's log section on the reverse side of a license or permit;

2. The hunter's log produced in a hunting guide;

3. A hunter's log printed from the Internet;

4. A hunter's log available from any KDSS agent; or

5. An index or similar card.

(2) The person shall retain and possess the completed hunter's log while the person is in the field during the current hunting season.

Section 10. Checking a Deer. (1) A person shall check a harvested deer before 11:59 p.m. on the day the deer is recovered by:

(a) Calling (800) 245-4263 and providing the requested information; or

(b) Completing the online check-in process at fw.ky.gov.

(2) A person who has checked in a deer shall record the confirmation number on a hunter's log.

(3) If a hunter removes the hide or head of a harvested deer before the deer is checked in, then the hunter shall retain the deer parts established in paragraphs (a) and (b) of this subsection:

(a) For antlered deer, the:

1. Head with antlers; or

2. Testicles, scrotum, or penis attached to the carcass; or

(b) For antlerless deer, the:

1. Head; or

2. Udder or vulva attached to the carcass.

(4) If a hunter transfers possession of a harvested deer, the hunter shall attach to the carcass a hand-made tag that contains the following information:

(a) The confirmation number;

(b) The hunter's name; and

(c) The hunter's telephone number.

(5) A person shall not provide false information while:

(a) Completing the hunter's log;

(b) Checking a deer; or

(c) Creating a carcass tag.

Section 11. Transporting and Processing Deer. (1) A person shall:

(a) Not transport an unchecked deer out of Kentucky;

(b) Have proof that a deer or parts of deer brought into Kentucky were legally taken; or

(c) Not sell deer hides except to a licensed:

1. Fur buyer;

2. Fur processor; or

3. Taxidermist.

(2) A taxidermist or an individual who commercially butchers deer shall not accept a deer carcass or any part of a deer without a valid disposal permit issued by the department pursuant to KRS 150.411(3) or a proper carcass tag as established in Section 10 of this administrative regulation.

(3) An individual who commercially butchers deer shall keep accurate records of the hunter's name, address, confirmation number, and date received for each deer in possession and retain the records for a period of one (1) year.

Section 12. Special Deer Hunt Program. (1) A special deer hunt shall:

(a) Consist of a minimum of ten (10) novice deer hunters selected on a first-come, first-served basis;

(b) Take place on private land with the permission of the landowner;

(c) Be overseen and sponsored by department employees; and

(d) Take place during the archery deer season.

(2) A special deer hunt participant shall possess a valid hunting license and deer permit, except if the participant is license-exempt, as established in KRS 150.170.

Section 13. Antler Traps. A person shall not use a device that is designed to entangle or trap the antlers of a deer.

KAREN WALDROP, Deputy Commissioner
For FRANK JEMLEY, Acting Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: April 11, 2018

FILED WITH LRC: April 12, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2018 at 11 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through May 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 deer hunting seasons and zones, methods of take, bag limits, harvest recording procedures, and checking requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to properly manage Kentucky's deer population while providing reasonable and ample recreational opportunity for deer hunters.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.170 exempts certain people from hunting license and permit requirements. KRS 150.175 authorizes the kinds of licenses and permits that are issued by the department. KRS 150.390 prohibits the taking of deer in any manner contrary to any provisions of Chapter 150 and KAR Title 301.

(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 establishing the seasons, zones, limits, and other requirements authorized by the statutes.

(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 establishes the process for a special deer hunt for novice hunters that allows modern guns to be used outside of the modern gun deer season, modifies the antlerless deer harvest opportunities statewide, modifies many of the county zone designations, modifies the number of deer that are allowed to be taken in the harvest zones, expands hunting opportunities days, prohibits the construction and deployment of antler traps and gives hunters an additional number of deer they can harvest on their hunting permits.

(b) The necessity of the amendment to this administrative regulation: See 1 (b) above.

(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: For the 2017-18 deer season, there were approximately 257,898 resident and 27,435 non-resident Kentucky deer hunters.

(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: Deer hunters will be required to comply with the change in county zones and the modification of the bag limits in those zones. In addition, it shall now be prohibited for people to deploy or construct a device that entangles deer antlers, commonly referred to as antler traps.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not change any costs to the entities identified in question 3.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will benefit hunters by allowing them to harvest more deer under the current permit system, allow for additional days of deer hunting and ultimately provide better consistency on harvest strategies across the state. It also benefits novice hunters who may be interested in participating in a department-sponsored special deer hunt.

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

(a) Initially: There will not be an additional cost to the agency to implement this administrative regulation initially.

(b) On a continuing basis: There will not be an additional cost to the agency on a continuing basis.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase a fee 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 nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering is not applied because all deer hunters are subject to the same seasons, bag limits, zone requirements, and equipment restrictions.

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 Fish and Wildlife Resources' Divisions of Wildlife and Law Enforcement will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1), 150.170, 150.175, and 150.390(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? Direct revenue from the sale of deer permits for the first year is estimated to be between \$3.5 and \$4.0 million based on recent years' sales.

(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? Revenue during subsequent years is dependent on the number of permits sold, which has been stable to slightly decreasing in recent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 2:221. Waterfowl seasons and limits.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.990

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

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

Section 1. Definitions. (1) "Dark goose" means a Canada goose, cackling goose, white-fronted goose, or brant.

(2) "Light Goose" means a snow goose or Ross's goose.

(3) "Light Goose Conservation Order" is defined by 50 C.F.R. 21.60.

(4) "Waterfowl" is defined by KRS 150.010(40).

Section 2. (1) Except as established in 301 KAR 2:222, 2:225, or 2:226, a person shall not hunt waterfowl except during the seasons established in this administrative regulation.

(2) Hunting zones, special hunt areas and reporting areas are established in 301 KAR 2:224.

Section 3. Season Dates. (1) The duck, coot, and merganser season shall:

(a) Begin on Thanksgiving Day for four (4) consecutive days; and

(b) Be for fifty-six (56) consecutive days ending on the last Sunday in January of the following year.

(2) ~~The dark goose season~~[Canada goose-

~~(a) In the Eastern, Pennyriile, and Western Goose Zones, the season shall be from Thanksgiving Day through February 15-~~

~~(b) In the Northeast Goose Zone, the season shall be from the third Saturday in December through January 31-~~

~~(3) The white-fronted goose and brant season~~ shall be from Thanksgiving Day through February 15.

~~(3) [(4)]~~ The light goose season shall be from Thanksgiving Day through February 15.

~~(4) [(5)]~~ The Light Goose Conservation Order season shall be from February 16 through March 31.

~~(5) [(6)]~~ A person shall not hunt a light or dark goose in:

(a) The areas of Laurel River Lake as posted by sign; or

(b) Cave Run Lake and the public land inside the boundary formed by Highways 801, 1274, 36, 211, US 60, and Highway 826.

Section 4. Ballard Zone. (1) In the Ballard Zone, ~~as that is~~ established in 301 KAR 2:224, a person hunting waterfowl shall:

~~(a) [Hunt from a blind unless hunting in flooded, standing timber;~~

~~(b)] Not hunt [from] or establish a blind:~~

1. Within 100 yards of another blind; or

2. Within fifty (50) yards of a property line; and

~~(b)] [(e)]~~ Not possess more than one (1) shotgun while in a blind.

(2) The requirements of subsection (1) of this section shall not apply if the Light Goose Conservation Order, as established in Section 3 of this administrative regulation~~[301 KAR 2:224]~~, is the only waterfowl season open, excluding falconry seasons.

Section 5. Bag and Possession Limits. (1) Ducks. The daily limit shall be six (6), which shall not include more than:

(a) Four (4) mallards;

(b) Two (2) hen mallards;

(c) Three (3) wood ducks;

(d) Two (2) black ducks;

(e) Two (2) redheads;

~~(f) Two (2) pintails~~[One (1) pintail];

(g) Three (3) scaup;

(h) One (1) mottled duck; or

(i) Two (2) canvasbacks~~[canvasback]~~.

(2) Coot. The daily limit shall be fifteen (15).

(3) Merganser. The daily limit shall be five (5), which shall not include more than two (2) hooded mergansers.

(4) Dark goose. The daily limit shall be five (5), which shall not include more than:

(a) Three (3) Canada geese or cackling geese, in combination;

(b) Two (2) white-fronted geese; or

(c) One (1) brant.

(5) Light goose. The daily limit shall be twenty (20), except that there shall not be a limit during the Light Goose Conservation Order season.

(6) The possession limit shall be triple the daily limit, except that there shall not be a light goose possession limit.

Section 6. Shooting Hours. A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:

(1) Sunset, except as established in 301 KAR 2:222; or

(2) One-half (1/2) hour after sunset if hunting light geese~~[goose]~~ during the Light Goose Conservation Order season.

Section 7. Falconry Waterfowl Season and Limits. (1) The light goose season shall be from Thanksgiving Day through February 15.

(2) The Light Goose Conservation Order season shall be from February 16 through March 31.

(3) The season for all other waterfowl shall be from Thanksgiving Day through February 15.

(4) The daily limit shall be three (3) waterfowl, except that there shall not be a limit on light geese~~[goose]~~ during the Light Goose Conservation Order season.

(5) The possession limit shall be nine (9) waterfowl, except that there shall not be a possession limit on light geese~~[goose]~~ during the Light Goose Conservation Order season.

Section 8. Permit for the Light Goose Conservation Order season. (1) A person hunting light geese~~[goose]~~ during the Light Goose Conservation Order season shall first obtain a free permit by completing the online Snow Goose Conservation Order Permit process on the department's Web site at fw.ky.gov.

(2) A person hunting light geese~~[goose]~~ during the Light Goose Conservation Order season shall submit a Snow Goose Conservation Order Permit Survey to the department by April 10.

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

(a) "Snow Goose Conservation Order Permit", January 2014; and

(b) "Snow Goose Conservation Order Permit Survey", January 2014.

(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 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

FRANK JEMLEY, Interim Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: April 11, 2018

FILED WITH LRC: April 12, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 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 May 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 the administrative regulation does: This administrative regulation establishes waterfowl seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS).

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2018-2019 waterfowl hunting seasons in accordance with the USFWS.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing hunting season and bag limit requirements and providing reasonable hunting opportunity consistent with state, national, and international management requirements.

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

(a) How the amendment will change the existing administrative regulation: This amendment will change the daily bag limit for pintails from one to two birds. This amendment adds cackling geese to the definition of dark geese. The American Ornithologist Union recently separated cackling geese from Canada geese and the USFWS has added cackling geese to their definition of dark goose. The reduced season length for the Northeast goose zone is removed. This amendment also removes the requirement to hunt waterfowl from a blind in the Ballard Zone.

(b) The necessity of the amendment to this administrative regulation: Waterfowl seasons and limits are set on an annual basis following the establishment of federal frameworks by the USFWS each year. It is the Department's responsibility to allow quality hunting opportunity within these federal frameworks. The changes in bag limit for these species represent the maximum allowed in federal frameworks.

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

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

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The current changes in season dates and/or bag limits will be published in the fall waterfowl hunting guide and on the department's website. Hunters will need to follow all applicable amendments to the hunting bag limits.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be an increased opportunity to hunt pintails in the state and the removal of the Northeast goose zone simplifies regulations for goose hunters. The removal of the requirement to hunt from a blind allows hunters and land managers on private and public lands within the zone greater flexibility in the Ballard zone.

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

(a) Initially: There will not be an 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 funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish fund.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Wildlife Division and Law Enforcement Division.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land.

(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 revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first

year? There will be no additional costs to administer this program for the first year.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 2:222. Waterfowl hunting requirements on public lands.

RELATES TO: KRS 150.010(40), 150.305(1), 150.330, 150.340(1), (3), 150.990

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

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

Section 1. Definitions. (1) "Blind" means a:

(a) Concealed enclosure;

(b) Pit; or

(c) Boat.

(2) "Department blind" means a permanently fixed blind structure built by the department.

(3) "Hunt site" means a specific location where waterfowl hunting is allowed, as approved by the department or the U.S. Army Corps of Engineers.

(4) "Layout blind" means a portable blind that when fully deployed allows one (1) person to be concealed above the surface of the ground.

(5) "Party" means:

(a) A person hunting alone; or

(b) Two (2) to four (4) people who share a department blind or hunt site.

(6) "Permanent blind" means a blind left in place by a waterfowl hunter longer than twenty-four (24) hours.

(7) "Regular waterfowl season" means the open waterfowl season that does not include the Light Goose Conservation Order or the September wood duck, teal, and Canada goose seasons as established in 301 KAR 2:221 and 2:225.

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

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

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

Section 2. Shot Requirements. A person hunting waterfowl shall not use or possess a shotgun shell:

(1) Longer than three and one-half (3 1/2) inches; or

(2) Containing:

(a) Lead shot;

(b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or

(c) Shot larger than size "T".

Section 3. (1) Except as established in this section or in Section 4 of this administrative regulation, on a Wildlife Management Area:

(a) A person hunting waterfowl shall not:

1. Establish or hunt from a permanent waterfowl blind; or

2. Hunt within 200 yards of:

a. Another occupied hunt site;

b. Another legal waterfowl hunting party; or

c. An area closed to waterfowl hunting;

(b) A person shall not hunt in a designated recreation area or access point;

(c) More than four (4) persons shall not occupy a waterfowl blind or hunt site; and

(d) A hunter shall remove decoys and personal items daily, except that a hunter drawn for a multiday hunt may choose to leave decoys in place for the duration of the hunt.

(2) In order to establish or use a permanent waterfowl blind or hunt site on Lake Barkley, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake, Sloughs, or Doug Travis Wildlife Management Areas, a person:

(a) Shall first obtain a waterfowl blind permit from the U.S. Army Corps of Engineers or the department;

(b) May designate one (1) other person as a partner; and

(c) Shall not hold more than one (1) permit per area.

(3) A person who participates in a drawing for a hunt site permit shall:

(a) Be at least eighteen (18) years of age; and

(b) Possess:

1. A valid Kentucky hunting license;

2. A Kentucky migratory game bird and waterfowl permit; and

3. A federal duck stamp.

(4) The holder of a hunt site permit shall:

(a) Construct or establish the blind or hunt site before November 20 or forfeit the permit;

(b) Not lock a waterfowl blind; and

(c) Remove the blind and blind materials within thirty (30) days after the close of the regular waterfowl season or be ineligible for a permit the following year, unless an extension of time is granted by the department due to weather or water level conflicts.

(5) A permanent blind, department blind, or blind site not occupied by the permit holder one (1) hour before sunrise shall be available to another hunter on a first-come, first-served basis.

(6) A waterfowl blind restriction established in this section shall not apply to a falconer if a gun or archery season is not open.

Section 4. Wildlife Management Area Requirements. (1) The regular waterfowl season provisions shall apply, as established in 301 KAR 2:221, except as established in this section.

(2) The provisions of this section shall not apply to a waterfowl hunting season that opens prior to October 15, as established in 301 KAR 2:225.

(3) A person shall not:

(a) Hunt on an area marked by a sign as closed to hunting;

(b) Enter an area marked by signs as closed to public access;

or

(c) Hunt a species on an area marked by signs as closed to hunting for that species.

(4) On Wildlife Management Areas in Ballard County:

(a) The shotgun shell possession limit shall be fifteen (15), except that the shotgun shell possession limit shall be twenty-five (25) if:

1. The daily bag limit for ducks is greater than three (3); and

2. The daily bag limit for Canada goose is greater than or equal to two (2); and

(b) At least one (1) person~~[in a waterfowl blind]~~ shall be eighteen (18) years of age or older if hunting in a department waterfowl blind or hunt site.

(5) At Ballard WMA:

(a) The duck, coot, merganser, and goose season shall be the first Wednesday in December through the last Sunday in January;

(b) Youth waterfowl season shall be the first full weekend in February;

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(c) A person hunting waterfowl shall not hunt on Monday, Tuesday, Christmas Eve, Christmas Day, or New Year's Day; and

(d) A person hunting waterfowl shall:

1. Apply for the waterfowl quota hunt as established in Section 5 of this administrative regulation;

2. Not hunt waterfowl on the Ohio River from fifty (50) yards upstream of Dam 53 to fifty (50) yards downstream from the southern border of Ballard ~~WMA~~Wildlife Management Area from October 15 through March 15;~~and]~~

3. Stop hunting and exit the hunting area by 2 p.m. during the regular waterfowl season, except as authorized by the department; and

4. Check out of the area by accurately completing the Daily Post-Hunt Survey provided by the department and submitting the survey at the department-designated drop point by 3 p.m. the day of the hunt, or be declared ineligible to hunt at Ballard WMA for the remainder of the current and following waterfowl season.

(6) At Boatwright WMA, including the Olmsted, Peal, and Swan Lake units:

(a) A party shall:

1. Not hunt on Monday, Tuesday, Christmas Eve, Christmas Day, or New Year's Day;

2. Obtain a daily check-in card by 8 a.m. before entering the area from the first Wednesday in December through the last Sunday in January; and

3. Check out the same day by:

a. Visiting the designated Check station prior to 8 a.m.; or

b. Depositing the check-in card at a department-designated drop point after 8 a.m.;

(b) Duck season shall be open one-half (1/2) hour before sunrise to sunset beginning Thanksgiving Day for four (4) consecutive days on areas of Boatwright WMA that are open to hunting;

(c) A department blind or hunt site shall be assigned through a daily drawing through the last Sunday in January;

(d) A department blind or hunt site shall be offered to another hunter on a first-come, first-served basis, if the blind or hunt site has not been assigned during the daily drawing;

(e) Waterfowl hunters shall exit the area by 2 p.m. during the regular waterfowl season;

(f) A boat blind shall not be permitted in flooded timber, except:

1. During periods of flood if no other access is possible; or

2. A mobility-impaired hunter may hunt from a boat; and

(g) A party shall only hunt waterfowl:

1. From a department blind; or

2. From layout blinds set so that all layout blinds in the party lie within a twenty-five (25) foot radius from the center of the party, and within 200 yards of a hunt site during the regular waterfowl season.

(7) On the Peal unit of Boatwright WMA:

(a) More than seven (7) parties shall not hunt at the same time on Buck Lake or Flat Lake;

(b) More than four (4) parties shall not hunt at the same time on Fish Lake;

(c) More than three (3) parties shall not hunt at the same time on First Lake or Second Lake; and

(d) A party shall not hunt waterfowl except within twenty-five (25) feet of a hunt site during the regular waterfowl season.

(8) On the Swan Lake Unit of Boatwright WMA:

(a) A person shall not hunt waterfowl from Thanksgiving Day through the first Tuesday in December;

(b) The area open to hunting during the regular waterfowl season shall be open for the Light Goose Conservation Order season as established in 301 KAR 2:221; and

(c) Blind restrictions shall not apply to the Light Goose Conservation Order season.

(9) Lake Barkley WMA.

(a) A permanent blind shall only be established within ten (10) yards of a blind site.

(b) Waterfowl refuge areas shall be:

1. The area west of the Cumberland River channel, as marked by buoys, between river mile 51, at Hayes Landing Light, south to the Tennessee Valley Authority's power transmission lines at river

mile 55.5, shall be closed from November 1 through February 15; and

2. The area within Honker Bay and Fulton Bay, as marked by buoys and signs, which shall be closed from November 1 through March 15.

(c) A person shall not hunt from October 15 through March 15:

1. On Duck Island; or

2. Within 200 yards of Duck Island.

(10) Barren River Lake WMA. A person hunting waterfowl:

(a) May use a breech-loading shotgun along the shoreline of the Peninsula Unit; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(11) Big Rivers WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(12) Cedar Creek WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(13) Miller Welch-Central Kentucky WMA. A person shall not hunt waterfowl from October 15 through January 14.

(14) Lake Cumberland WMA. The following sections shall be closed to the public from October 15 through March 15:

(a) The Wesley Bend area, bounded by Fishing Creek, Beech Grove Road, and Fishing Creek Road; and

(b) The Yellowhole area, bounded by Fishing Creek Road and Hickory Nut Road.

(15) Dix River WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(16) Doug Travis WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) A person hunting waterfowl shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.

(d) On Black Lake, Fish Lake, Forked Lake, Indian Camp Lake, Number Four Lake, Town Creek Moist Soil Unit, and Upper Goose Lake, all waterfowl hunting after November 1 shall be:

1. From hunt sites assigned by a random preseason drawing; and

2. Within ten (10) yards of a hunt site, including periods of Mississippi River flooding.

(17) Grayson Lake WMA. A person shall not hunt waterfowl:

(a) Within the no-wake zone at the dam site marina;

(b) From the shore of Camp Webb;

(c) On Deer Creek Fork; or

(d) Within three-quarters (3/4) of a mile from the dam.

(18) Green River Lake WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(19) Kaler Bottoms WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(20) Kentucky River WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(21) Land Between the Lakes National Recreation Area.

(a) The following portions shall be closed to the public from November 1 through March 15:

1. Long Creek Pond;

2. The eastern one-third (1/3) of Smith Bay, as marked by buoys; and

3. The eastern two-thirds (2/3) of Duncan Bay, as marked by buoys.

(b) The following portions shall be closed to waterfowl hunting:

1. The Environmental Education Center; and

2. Energy Lake.

(c) A person shall possess an annual Land Between the Lakes Hunting Permit if hunting waterfowl:

1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or
2. From a boat on a flooded portion of Land Between the Lakes when the lake level is above elevation 359.

(d) A person shall not hunt waterfowl on inland areas during a quota deer hunt.

(e) A person shall not establish or use a permanent blind:

1. On an inland area; or
2. Along the Kentucky Lake shoreline of Land Between the Lakes.

(f) A person hunting waterfowl shall remove decoys and personal items daily.

(22) Obion Creek WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(23) Ohio River Islands WMA.

(a) A person shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to the power line crossing at approximately river mile 911.5.

(b) Stewart Island shall be closed to public access from October 15 through March 15.

(c) Shooting hours shall be one-half (1/2) ~~hour~~[hours] before sunrise until 2 p.m.

(d) A person shall not enter a hunting area prior to 4 a.m. daily.

(24) Peabody WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) The following areas, as posted by signs, shall be closed to the public from October 15 through March 15:

1. The Sinclair Mine area, bounded by Hwy 176, the haul road, and Goose Lake Road; and
2. The Ken area, bounded by Wysox Road, H2 Road, H1 Road, and H6 Road.

(25) Pioneer Weapons WMA. A person hunting waterfowl:

(a) May use a breech-loading shotgun along the shoreline of Cave Run Lake; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(26) Robinson Forest WMA. The main block of the WMA shall be closed to waterfowl hunting.

(27) Sloughs WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) A person hunting waterfowl shall exit the area by 2 p.m. during the regular waterfowl season.

(d) On the ~~[Jenny Hole]~~Highlands Creek and Grassy Pond Powell's Lake units, a person hunting waterfowl shall:

1. Hunt:

- a. From a department blind;
- b. Within twenty-five (25) yards of a hunt site; or
- c. No closer than 200 yards of another hunting party; and
2. Remove decoys and personal items from the area on a daily basis.

(e) If the Ohio River reaches a level that requires boat access, a waterfowl hunter:

1. May hunt from a boat without regard to department blinds; and
2. Shall not hunt closer than 200 yards from another boat.

(f) If hunting waterfowl on the Crenshaw and Duncan Tracts of the Sauerheber Unit or the Jenny Hole Unit:

1. A person shall not hunt on a Tuesday or Wednesday;
2. A person shall hunt from a blind or a hunt site assigned by the department through a drawing as established in Section 5 of this administrative regulation;

3.~~[A person may occupy a permitted blind if not claimed by the permittee within one (1) hour before sunrise;~~

4.] A person shall not possess more than fifteen (15) shotgun shells, except that the shotgun shell possession limit shall be twenty-five (25) if:

- a. The daily bag limit for ducks is greater than three (3); and
- b. The daily bag limit for Canada goose is greater than or equal to two (2);

4.~~[5.]~~ If under eighteen (18) years of age, a person shall be accompanied by an adult;~~and~~

6.~~The waterfowl blind for a mobility-impaired person shall be open to the public if the permit holder or another mobility-impaired person has not claimed the blind on that day by one (1) hour before sunrise.]~~

(g) The Crenshaw and Duncan ~~[H]~~ tracts of the Sauerheber Unit shall be closed to hunting except for:

1. Waterfowl from November 1 through March 15; and
2. The modern gun deer season.

(h) The remainder of the Sauerheber Unit shall be closed to the public from November 1 through March 15.

(i) The Jenny Hole Unit shall be closed to boats from Thanksgiving Day through the last Sunday in January, except for persons participating in department-managed activities.

(j) A hunter participating in a quota waterfowl hunt at [drawn to hunt] Sloughs WMA [through a preseason draw] shall check out of the area by accurately completing the Daily Post-Hunt Survey provided by the department and submitting the survey at the designated drop point by 3 p.m. the day [submit a completed Sloughs WMA Waterfowl Hunter Survey Report at the conclusion] of the hunt or [shall] be ineligible to hunt [participate in the waterfowl blind or quota draw] at Sloughs WMA for the remainder of the current and [the] following waterfowl season [year].

(28) South Shore WMA.

(a) The WMA shall be closed to hunting from November 15 through January 15, except for waterfowl and dove hunting.

(b) A hunter shall use a department blind.

(c) A department blind shall be available daily on a first-come, first-served basis.

(29) Taylorsville Lake WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(30) Yatesville Lake WMA. The following areas shall be closed to waterfowl hunting, unless authorized by Yatesville Lake State Park:

(a) The Greenbrier Creek embayment; and

(b) The lake area north from the mouth of the Greenbrier Creek embayment to the dam, including the island.

(31) Yellowbank WMA. The area designated by a sign and painted boundary marker shall be closed to the public from October 15 through March 15.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(32) J.C. Williams WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

Section 5. Ballard WMA and Sloughs WMA Quota Hunts. (1) A person applying to hunt waterfowl on Ballard WMA or the Sauerheber Unit of Sloughs WMA shall:

(a) Apply by:

1. ~~Calling 1-877-598-2401 and completing the telephone application process; or~~

2.] completing the online Ballard or Sloughs Waterfowl Quota Hunt Form process on the department's Web site at fw.ky.gov;

(b) Apply from September 1 through September 30;

(c) Pay a three (3) dollar application fee for each application; and

(d) Not apply more than one (1) time for each hunt.

(2) A person drawn to hunt at Sloughs WMA shall check in on the Sunday prior to their hunt on the department's Web site at fw.ky.gov.

(3) A person drawn to hunt may bring up to three (3) additional

hunters.

(4)(3) A person shall be declared ineligible to hunt in department waterfowl quota hunts during the remaining portion of the waterfowl season and declared ineligible to apply for any department quota hunt the following year if the hunter violates state or federal regulations while waterfowl hunting on WMAs that have a preseason or daily drawing.

(5) A party applying to hunt waterfowl on the Jenny Hole Unit of Sloughs WMA shall:

(a) Apply by attending a weekly on-site drawing at the WMA; and

(b) Designate any other party members, if applicable, prior to the drawing.

(6) A party drawn to hunt on the Jenny Hole Unit of Sloughs WMA, as established in subsection (5) of this section, shall not be allowed to change any party members after being drawn.

Section 6. State Parks. (1) Waterfowl hunting shall be prohibited, except there shall be an open waterfowl hunt December 13 through January 31 on designated areas of state parks at:

- (a) [Barren River;
- (b) Grayson Lake;
- (c) Greenbo Lake;
- (b)(d) Lake Barkley;
- (c)(e) Lincoln Homestead;
- (d)(f) Nolin Lake;
- (e)(g) Paintsville Lake; and
- (f)(h) Pennyroyal Lake;
- (i) Rough River Lake; and
- (j) Yatesville Lake.

(2) Hunters shall check in and out each day at the ~~front desk of the state park or a~~ designated check station ~~check-in location on days that the park office is not open~~.

(3) During check-in, hunters shall be provided a map showing designated areas of the park that are open to waterfowl hunting.

~~[(4) Hunters shall check out each day at the front desk of the state park or a designated check-out location on days that the park office is not open.]~~

Section 7. Youth-Mentor and Mobility-Impaired Waterfowl Hunts. (1) There shall be youth-mentor waterfowl hunts on the Minor Clark and Peter W. Pfeiffer fish hatcheries each Saturday and Sunday in January.

(2) There shall be a mobility-impaired waterfowl hunt at Minor Clark Fish Hatchery that is held concurrently with each youth-mentor hunt.

(3) There shall be a waterfowl blind at Doug Travis WMA assigned by a random pre-season electronic drawing among all mobility-impaired applicants.

(4) A youth or mobility-impaired person shall:

(a) Apply on the department's Web site at fw.ky.gov between November 1 and November 15; and

(b) Carry a department provided postcard notification on the day of the hunt.

(5) A mobility-impaired person shall carry a mobility-impaired access permit pursuant to 301 KAR 3:026.

(6) Each youth shall be accompanied by an adult who is eighteen (18) years or older.

(7) At the youth-mentor hunts:

(a) Each youth shall not be accompanied by more than one (1) adult; and

(b) One (1) adult may accompany two (2) youths.

(8) A person shall:

(a) Hunt from an established blind; and

(b) Not change blinds.

(9) A blind shall not be used by more than four (4) hunters.

(10) A person shall only discharge a firearm from a blind.

(11) A person shall not possess more than twenty-five (25) shotshells.

(12) A waterfowl hunter, mentor, or assistant shall immediately retrieve downed birds.

(13) A person shall encase a firearm if traveling to and from a blind.

(14) A hunter at Minor Clark or Peter Pfeiffer Fish Hatcheries shall:

(a) Cease hunting by noon; and

(b) Exit the area by 1 p.m.

(15) All decoys and equipment shall be removed at the end of each day's hunt.

(16) A hunter at Minor Clark or Peter Pfeiffer Fish Hatcheries shall report harvest by depositing a completed hunt permit at the designated location.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Sloughs WMA Waterfowl Hunter Survey Report", 2014 edition;

(b) "Ballard or Sloughs Waterfowl Quota Hunt Form", 2014 edition;

(c) "Hatcheries Youth-Mentor/Mobility-Impaired Canada Goose Hunt Application", 2017 edition; and

(d) "Doug Travis WMA Mobility-Impaired Waterfowl Hunt Application", 2017 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 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

FRANK JEMLEY, Acting Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: April 11, 2018

FILED WITH LRC: April 12, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2018 at 8 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 May 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 waterfowl seasons, bag limits and requirements on public lands within federal migratory bird hunting frameworks established in 50 C.F.R. Part 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS).

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the 2018-2019 waterfowl hunting requirements on public lands in accordance with the USFWS and Department management objectives.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to establish hunting season dates, bag limits and other hunting requirements. KRS 150.360 authorizes the department to restrict methods and hunting hours for taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation assists the above statutes by managing waterfowl populations and hunting opportunity consistent with state and national management requirements and strategies.

(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 to waterfowl hunt from a blind on public and private land in Ballard County. It requires hunters to accurately complete the daily post-hunt survey at the close of each day. It allows hunters to hunt in hunt sites on the Sauerheber and Jenny Hole Units. It removes the ability to occupy unclaimed hunt sites on the Sauerheber Unit. It requires hunters on the Sauerheber and Jenny Hole units of Sloughs WMA to turn in a post-hunt survey at the completion of each days hunt. It removes the ability to apply for waterfowl quota hunts at Ballard and Sloughs WMA via telephone. It requires hunters drawn for Sloughs WMA quota hunts to check in for hunts on the Sunday prior to their hunt. It establishes a means for applying for quota hunts on the Jenny Hole Unit of Sloughs WMA. It removes the Kentucky State Parks hunts at Barren River, Grayson Lake, Pennyrite Lake, and Rough River Lake. It also requires hunters hunting at the remaining state parks to check in and out at a designated location.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide quality public hunting opportunity with minimal area use conflict that is consistent with meeting state and federal waterfowl management objectives.

(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: There are approximately 20,000 waterfowl hunters in Kentucky that may be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Hunters will need to comply with all application procedures and hunting requirements established for public lands in this administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Higher quality hunting opportunity will be provided for hunters utilizing quota hunts at Ballard and Sloughs WMAs. Hunters will have the ability to hunt in hunt sites or units at Ballard instead of being required to hunt from blinds. In other areas, this change has resulted in a 100% increase in harvest for hunters. Requiring the accurate completion of post hunt surveys provides the department with better information to manage public hunts and ensures the information hunters use to choose their hunt sites is accurate. The creation of quota hunts in the Jenny Hole unit allows for a safer and more pleasurable hunting experience compared to the unlimited access previously provided. Hunters utilizing state park hunts will now be able to check in and out at a remote station versus having to go in to the park office, which should make the process faster.

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

(a) Initially: There will not be an additional cost to the agency to implement this administrative regulation initially.

(b) On a continuing basis: There will not be an additional cost to the agency on a continuing basis.

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

The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase a fee 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 nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering is not applied, as the requirements are the same for all hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Divisions of Wildlife and Law Enforcement will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1), 150.360, 150.600(1), and 50 C.F.R. Parts 20 and 21.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional funding 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 administrative regulation will not generate any additional funding for state or local government during subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 2:228. Sandhill crane hunting requirements.

RELATES TO: KRS 150.010, 150.305, 150.340, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.170(3)(4), 150.330, 150.603(2), 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.170(3)(4) authorizes license exemptions for people under twelve (12) and resident owners of farmlands, including their spouses and dependent children who hunt on those farmlands. KRS 150.330 authorizes take and possession of migratory birds when in compliance with the provisions of the Federal Migratory Bird Treaty Act and authorizes hunting of migratory birds with the appropriate permits. KRS 150.603(2) requires a person sixteen (16) years or older to possess a hunting license and a Kentucky migratory game bird

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~~and~~[permit or] waterfowl permit in order to hunt migratory birds. This administrative regulation establishes the requirements for taking sandhill cranes within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Crane" means a sandhill crane.

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

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

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

Section 2. Applications and Permits. (1) To apply for a crane hunting permit a person shall:

(a) Complete the online application process on the department's Web site at fw.ky.gov [http://fw.ky.gov] between ~~September 1 and September 30~~[November 15 and November 30];

(b) Possess a valid hunting license by September 30, unless the applicant is license exempt pursuant to KRS 150.170[Unless exempt pursuant to KRS 150.170, purchase a hunting license by November 30];

(c) Pay a three (3) dollar application fee; and

(d) Not apply more than once.

(2) The department shall:

(a) ~~Rank~~[Issue a maximum of 400 crane hunting permits;

~~Select] each applicant~~[permit recipient] with a random electronic draw from all qualified applicants;

(b) Issue a crane hunting permit and one (1) crane tag to all ranked applicants up to the maximum number of crane tags allowed by the United States Fish and Wildlife Service for that season, as established in 50 C.F.R. 20, except that if the number of applicants:

1. Exceeds the maximum number of tags, then those applicants ranking higher than the maximum will not receive a permit; and

2. Is less than the maximum number of tags available, then the additional tags will be assigned to applicants in the order of ranking until all tags are assigned;

(c) Issue each permit via the department's Web site at fw.ky.gov [http://fw.ky.gov];

(d) Issue the appropriate number of[two (2)] metal leg tags to each permit recipient prior to the crane hunting season; ~~and~~[.]

(e) Disqualify an applicant who does not possess a hunting license prior to ~~September~~[November] 30, unless the applicant is license exempt pursuant to[exempted by] KRS 150.170; ~~and~~[.]

(3) A person who does not have access to the internet may call the department's toll-free number at 1-800-858-1549 for assistance in applying.

(4) A crane hunting permit shall not be transferable.

(5) A person selected to receive a permit shall pass a bird identification test provided by the department prior to receiving a permit[.];

(6) A permit recipient shall complete and submit a post-season crane hunting survey on the department's website no later than fourteen (14) days after the close of the season[January 25].

(7) A person who fails to complete the post-season survey by the date specified in subsection 6 of this section shall be ineligible to be drawn the following year.

Section 3. Season, Bag Limits, and Hunting Requirements. (1) Unless license exempt pursuant to[exempted by] KRS 150.170, a person shall not hunt a crane without a:

(a)[A] Valid Kentucky hunting license;

(b)[A] Valid Kentucky crane hunting permit; and

(c)[A] Kentucky migratory game bird and waterfowl permit[; or

~~(d) A Kentucky waterfowl permit].~~

(2) A permit recipient shall possess a printed copy of a valid crane hunting permit:

(a) While crane hunting; and

(b) When in possession of a harvested crane.

(3) The season shall be for fifty-six (56) consecutive days ending on the last Sunday in January of the following year[:

~~(a) Begin on the Saturday closest to December 15 for thirty (30) consecutive days; or~~

~~(b) End at sunset on the day when a harvest of 400 cranes is projected to be attained;~~

~~(4) The department shall notify hunters on the day that the crane season has closed by:~~

~~(a) Providing a pre-recorded message on the department's toll-free number at 1-800-858-1549; and~~

~~(b) Posting the closure on the department's website.~~

~~(5) A permit recipient shall be responsible for checking if the crane season is closed on a daily basis prior to hunting cranes].~~

~~(4)[(6)] The~~[season] bag limit shall be:

(a) Two (2) cranes daily for permit holders with two (2) or more crane tags; or

(b) One (1) crane for permit holders with one (1) tag[per person].

~~(5)[(7)] A person shall only hunt cranes from sunrise to sunset.~~

(6)[(8)] A person who has harvested a crane shall attach a department-issued metal tag to the leg of the crane prior to moving the carcass.

(7) A person shall check a harvested crane on the day the crane is harvested by:

~~(a)[Attaching one of the department-issued metal tags to the leg of the harvested crane prior to moving the carcass;~~

(b) Calling 800-245-4263 and providing the information requested by the automated check-in system; or

(b) Completing the check-in process on the department's Web site at fw.ky.gov [1-877-245-4263 on the day the crane is harvested]; and

~~(c)[Providing the information requested by the automated check-in system; and~~

~~(d) Recording and retaining the check-in confirmation number for the rest of the current season.~~

(8)[(9)] A hunter who has harvested a crane shall possess the check-in confirmation number when in the field during the current season.

(9)[(10)] A person shall not knowingly falsify the harvest of a crane on the automated check-in system.

(10)[(11)] A person hunting cranes shall not use or possess a shotgun shell containing:

(a) Lead shot; or

(b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting.

(11)[(12)] A person shall not use the following to take cranes:

(a) A shotgun larger than ten (10) gauge;

(b) A shotgun shell larger than three and one-half (3 1/2) inches; or

(c) A shotgun shell with shot larger than size "T".

(14)[(13)] A person hunting a crane on a Wildlife Management Area shall comply with the applicable WMA waterfowl hunting requirements, pursuant to 301 KAR 2:222, except that on Barren River WMA crane hunting shall be prohibited within 100 yards of the normal summer pool level of 552 feet in the[following] embayments established in paragraphs (a) through (c) of this subsection:

(a) Beaver Creek;

(b) Peters Creek; and

(c) Skaggs Creek.

(13) On Green River Lake, crane hunting shall be prohibited within 100 yards of the normal summer pool level of 675 feet, east of the Hwy 551 bridge in the embayments established in paragraphs (a) and (b) of this subsection:

(a) Green River to the Snake Creek Boat Ramp; and

(b) Casey Creek to the Hwy 76 bridge.

FRANK JEMLEY, Acting Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: April 11, 2018

FILED WITH LRC: April 12, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2018 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell

Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through May 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 sandhill crane seasons, bag limits and requirements on public lands within federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS).

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the 2018-2019 sandhill crane hunting requirements on private and public lands in accordance with the USFWS and Department management objectives.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing sandhill crane hunting seasons and area specific requirements, this administrative regulation maintains and manages migratory game bird conservation efforts consistent with national and international management goals.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the timing of the season and season length to coincide with duck seasons. It will change the number of permits available from a fixed 400 permits to the maximum allowed by the USFWS for that season. Tags with each permit will go from a fixed two (2) per permit to a system where one (1) tag is allocated to each permit holder and any remaining tags are allocated to permit holders in order of drawing. The application period for sandhill crane permits will be moved to September with the drawing held in early October. The eastern portion of Green River Lake will now have a no crane-hunting zone created. This amendment also removes a season closure if harvest were to reach 400 cranes.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide additional hunting opportunity for Kentucky's sandhill crane hunters, to move the application period to September to conform to other quota hunt application periods, and to protect a roosting area on Green River Lake. At the completion of Kentucky's Experimental Season Period, the USFWS granted Kentucky additional harvest opportunity. This amendment allows for additional hunting days (56 vs. 30) while simplifying regulations similar to duck seasons. For the 2017-2018 season, 30% of applicants were turned away for a

lack of permits. The new application period also provides additional time for the delivery of permits and tags. The closure of crane hunting on Green River Lake protects a roosting area that will result in additional hunting and wildlife viewing opportunity.

(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: For the 2017-2018 season, there were a total of 565 applicants for the crane quota hunt.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will now be required to apply during the month of September, and hunters will be prohibited to hunt in a protected area of Green River Lake.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): More hunters will be able to participate in the annual crane hunt, and it is possible for hunters to harvest an additional crane depending on the number of applicants and their draw ranking. The prohibited hunting area in Green River Lake will protect the crane population in a key roosting area, which is important to the long-term sustainability of the population.

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

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

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

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

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

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

(9) TIERING: Is tiering applied? No. Tiering was not applied since the same requirements and limits apply to all crane hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Wildlife Division and Law Enforcement Division.

(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), 150.170(3),(4), 150.330, 150.603(2), and 50 C.F.R. Parts 20 and 21.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate revenue for the first year.

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

years? This amendment will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? No new costs will be incurred in the administration of this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No new costs will be incurred in the administration of 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:

**GENERAL GOVERNMENT
Department of Agriculture
Office of Agricultural Marketing
(Amendment)**

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 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 pursuant to KRS 260.862 do not exceed the concentration levels defined in 7 U.S.C. 5940. 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 if the industrial hemp plants, plant parts, and materials are in compliance with the provisions of KRS 260.850 through 260.869 and 302 Chapter 50. This administrative regulation establishes the procedures and requirements for sampling, testing, and post-testing.

Section 1. Definitions. (1) "Department" is defined by KRS 260.850(3).

(2) "UK DRS" means the University of Kentucky Division of Regulatory Services.

Section 2. Department Procedures. (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), Sections II through VII.

(2) 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)

(3) 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).

(4) 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), Section IX.

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

(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), April 4, 2018~~[August 1, 2017]~~ edition; and

(c) SOP# HM-LB-001 (Procedures for Receiving, Preparing and Releasing Hemp Samples), April 3, 2018~~[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: April 12, 2018

FILED WITH LRC: April 12, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23rd, 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 May 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 amendment updates material incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: This amendment updates material incorporated by reference, replacing older versions.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment updates material incorporated by reference, replacing older versions updating statutory testing.

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

(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, but not increased.

(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:

JUSTICE AND PUBLIC SAFETY CABINET Department of Juvenile Justice (Amendment)

505 KAR 1:120. Department of Juvenile Justice Policies and Procedures Manual: Health and Safety Services.

RELATES TO: KRS 15A.065, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095 and 640.120 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 Policy and Procedures Manual: Health and Safety Services", March 30, 2018[February 10, 2014], is incorporated by reference and includes the following:

- 400 [Health Services] Definitions (Amended 03/30/18[2/40/44])
- 400.1 Health Services (Amended 03/30/18[2/40/44])
- 401 Health Services Administration and Personnel (Amended 03/30/18[2/40/44])
- 402 Access to Treatment and Continuity of Care [Medical, Dental, and Mental Health] (Amended 03/30/18[2/40/44])
- 402.1 Continuity of Care and Medical Discharge (Amended

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- 03/30/18[2/40/44])
- 403 Medical Records (Amended 03/30/18[2/40/44])
- 404.1 Admission Screening for Physical and Mental Challenges (Amended 12/15/17[2/40/44])
- 404.2 Ectoparasite Control (Amended 03/30/18[40/44/43])
- 404.3 Health Assessment and Physical Examination (Amended 03/30/18[40/44/43])
- 404.4 Sick Call (Amended 03/30/18[40/44/43])
- 404.5 Access to Diagnostic Services (Amended 03/30/18[40/44/43])
- 404.6 Emergency Services (Amended 03/30/18[40/44/43])
- 404.7 First Aid and First Aid Kits (Amended 03/30/18[40/44/43])
- 404.8 Hospital Care (Amended 03/30/18[2/40/44])
- 404.10 Special Needs Treatment Plans (Amended 03/30/18[40/44/43])
- 404.11 Perinatal Care (Amended 03/30/18[40/44/43])
- 404.12 Oral Screening and Oral Care (Amended 03/30/18[2/40/44])
- 404.13 Preventative Health Care (Amended 03/30/18[40/44/43])
- 404.14 Family Planning Services (Amended 03/30/18[2/40/44])
- 405 Behavioral[Mental] Health Services Administration and Personnel (Amended 03/30/18[40/44/43])
- 405.1 Behavioral[Mental] Health Assessment and Evaluation (Amended 03/30/18[40/44/43])
- 405.2 Forced Psychotropic Medications (Amended 03/30/18[2/40/44])
- 405.3 Referral for Behavioral[Mental] Health Services (Amended 03/30/18[40/44/43])
- 405.4 Suicide Prevention and Intervention (Amended 03/30/18[2/40/44])
- 405.5 Behavioral[Mental] Health Emergencies (Amended 03/30/18[40/44/43])
- 405.6 Psychiatric Hospitalization (Amended 03/30/18[2/40/44])
- 406 Therapeutic Restraints (Amended 03/30/18[40/44/43])
- 407 Pharmaceuticals (Amended 03/30/18[40/44/43])
- 408.1 Forensic Information (Amended 03/30/18[40/44/43])
- 409 Substance Abuse and Chemical Dependency (Amended 03/30/18[40/44/43])
- 410 Orthoses, Prostheses[Protheses] and Other Aids to Reduce the Effects of Impairments (Amended 03/30/18[40/44/43])
- 411 Notification in Emergencies (Amended 03/30/18[2/40/44])
- 414 Environmental Health and Safety (Amended 03/30/18[40/44/43])
- 415 Occupational Exposure to Bloodborne Pathogens (Amended 03/30/18[40/44/43])
- 416 HIV/AIDS/STI[STD] (Amended 03/30/18[40/44/43])
- 416.1 Infectious Communicable Disease (Amended 03/30/18[40/44/43])
- 424 Emergency Preparedness Plans (Amended 03/30/18[2/40/44])
- 424.1 Emergency Plans for Central Office (Amended 03/30/18[Added 40/44/43])
- 426 Dietary Services (Amended 03/30/18[2/40/44])
- 427 Maintenance (Amended 03/30/18[40/44/43])
- 427.1 Control and Use of Tools and Sharps (Amended 03/30/18[40/44/43])
- 428 Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials (Amended 03/30/18[2/40/44])
- 428.1 Control of Hazardous Materials in Central Office (Amended 03/30/18[40/44/43])
- 430 Pets and Domestic Animals (Amended 03/30/18[40/44/43])

(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: March 29, 2018

FILED WITH LRC: March 30, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2018 at 10:00 a.m. Eastern Time at the Department of Juvenile Justice, 1025 Capital Center 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 this 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 May 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: 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 community operations of the Department of Juvenile Justice including the assessment, supervision and case management of juveniles probated or committed to the Department.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 15A.065 and KRS 15A.067.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation governs every aspect of the program services for the community population of the Department of Juvenile Justice.

(d) How this administrative regulation currently assists, or will assist, in the effective administration of the statutes: By providing clear and concise direction and information to the Department of Juvenile Justice employees and the community population as to their duties, rights, privileges, and responsibilities.

(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 Department of Juvenile Justice in to compliance to reflect actual practice of the agency and compliance.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.065 and 15A.067.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the Commissioner or her authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Department of Juvenile Justice.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will help the Department of Juvenile Justice to operate more efficiently.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 250 employees of the Department of Juvenile Justice, approximately 1100 youth in all programs, and all visitors and volunteers to Department of Juvenile Justice.

(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: All entities will meet the minimum standards as dictated by federal and state law, American Correctional Association (ACA).

(a) List the actions that each of the regulated entities identified

in question (3) will have to take to comply with this administrative regulation or amendment: The Department of Juvenile Justice employees and volunteers will provide quality health care in accordance with standardized practice. The Department of Juvenile Justice youth shall receive health care prescribed by law and standardized by the American Correctional Association (ACA).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No monetary cost will be incurred by the youth, employees, or volunteers of the Department of Juvenile Justice.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Department will be accredited by the ACA and will provide all medical care prescribed by law. The Department youth shall receive quality health care and reside within a safe environment.

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

(a) Initially: No Additional funding will be required.

(b) On a continuing basis: No Additional funding will be required on an annual basis

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted for this 2016-2018 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: None

(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 appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as the Sections 2 and 3 of the Kentucky Constitution.

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: Department of Juvenile Justice

(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(1), 15A.067

(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 revised administrative regulations will only impact the Department of Juvenile Justice. There are no anticipated expenditures for initial staff training or annual training thereafter.

(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: 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? Response: None.

(c) How much will it cost to administer this program for the first year? Response: The revised administrative regulations will only impact the Department of Juvenile Justice. No Additional funding will be required for the first year.

(d) How much will it cost to administer this program for subsequent years? Response: No Additional funding will be required for the first year.

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: This regulation will provide a clear and concise policies and procedures for all youth receiving services from the Department of Juvenile Justice, and reflect the treatment and practice of the agency.

JUSTICE AND PUBLIC SAFETY CABINET Department of Juvenile Justice (Amendment)

505 KAR 1:140. Department of Juvenile Justice Policies and Procedures Manual: detention services.

RELATES TO: KRS 15A.065, 15A.067, 15A.200-245, 15A.305, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095 and 640.120 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 Policy and Procedures Manual: Detention Services", March 30, 2018~~July 15, 2005~~, is incorporated by reference and includes the following:

700	Definitions Detention Services Delivery System (Amended <u>03/30/18</u> 7/15/05)
700.1	<u>Detention Services Delivery System (Added 03/30/18)</u>
701	Criteria for Admission (Amended <u>03/30/18</u> 7/15/05)
702	Intake, Reception and Orientation (Amended <u>03/30/18</u> 7/15/05)
703	Detention Risk Assessment (Amended <u>03/30/18</u> 7/15/05)
704	Alternatives to Secure Detention (Amended <u>03/30/18</u> 7/15/05)
704.1	Supervision of Youth in Alternative Detention Programs (Amended <u>03/30/18</u> 7/15/05)
704.2	Revocation of Youth in Alternative Detention Programs (Amended <u>03/30/18</u> 7/15/05)
704.3	<u>Juvenile Justice and Delinquency Prevention Act (Added 03/30/18)</u>
705	Individual Client Records (Amended <u>03/30/18</u> 7/15/05) 705.1 Medical Records (Amended 7/15/05)
705.2	Progress Notes (Amended <u>03/30/18</u> 7/15/05)
706	Grievance Procedure (Amended <u>03/30/18</u> 7/15/05)
707	Bed Capacities and Staffing of Regional Juvenile Detention Facilities (Amended <u>03/30/18</u> 7/15/05)
708	Classification of Youth for Housing and Program Assignment (Amended <u>03/30/18</u> 7/15/05)
709	Security and Control (Amended <u>03/30/18</u> 7/15/05)
710	Shift and Log Reports (Amended <u>03/30/18</u> 7/15/05)
711	Transportation of Youth (Amended <u>03/30/18</u> 7/15/05)
712	Escape/AWOL (Amended <u>03/30/18</u> 7/15/05)
713	Restraints (Amended <u>03/30/18</u> 7/15/05)
714	Searches (Amended <u>03/30/18</u> 7/15/05)
715	Critical Incident Reports (Amended <u>03/30/18</u> 7/15/05)
716	Behavior Management (Amended <u>03/30/18</u> 7/15/05)
717	Discipline and Special Behavior Management (Amended <u>03/30/18</u> 7/15/05)
718	Disciplinary Review (Amended <u>03/30/18</u> 7/15/05)
720	Programs and Services (Amended <u>03/30/18</u> 7/15/05)
720.1	Library Services (Amended <u>03/30/18</u> 7/15/05)

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- 720.2 Recreation and Structured Activities (Amended 03/30/18[7/15/05])
720.3 Religious Programs (Amended 03/30/18[7/15/05])
720.4 Youth Work Details (Amended 03/30/18[7/15/05])
720.5 Social Services (Amended 03/30/18[7/15/05])
720.6 Family and Community Contact (Amended 03/30/18[7/15/05]) [723 Health Services (Amended 7/15/05)]
724 Suicide Prevention and Intervention (Amended 7/15/05)]
725 Educational Programming and Instructional Services (Amended 03/30/18[7/15/05])
725.1 Instructional Staffing (Amended 03/30/18[7/15/05])
725.2 Education Records (Amended 03/30/18[7/15/05])
726 Day Leaves (Amended 03/30/18[7/15/05])
729 Release From Detention (Amended 03/30/18[7/15/05])
730 Annual Inspections of Secure Juvenile Detention Facilities, Juvenile Holding Facilities and Intermittent Holding Facilities (Amended 03/30/18[7/15/05])
731 Complaint Investigations of Secure Juvenile Detention Facilities, Juvenile Holding Facilities and Intermittent Holding Facilities (Amended 03/30/18[7/15/05])

(b) 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: March 29, 2018

FILED WITH LRC: March 30, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2018 at 10:00 a.m. Eastern Time at the Department of Juvenile Justice, 1025 Capital Center 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 this 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 May 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: 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 community operations of the Department of Juvenile Justice including the assessment, supervision and case management of juveniles probated or committed to the Department.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 15A.065 and KRS 15A.067.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation governs every aspect of the program services for the community population of the Department of Juvenile Justice.

(d) How this administrative regulation currently assists, or will assist, in the effective administration of the statutes: By providing clear and concise direction and information to the Department of Juvenile Justice employees and the community population as to their duties, rights, privileges, and responsibilities.

(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 Department of Juvenile Justice in to compliance to reflect actual practice of the agency and compliance.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.065 and 15A.067.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the Commissioner or her authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Department of Juvenile Justice.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will help the Department of Juvenile Justice to operate more efficiently.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 250 employees of the Department of Juvenile Justice, approximately 1100 youth in all programs, and all visitors and volunteers to Department of Juvenile Justice.

(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: All entities will meet the minimum standards as dictated by federal and state law, American Correctional Association (ACA).

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department of Juvenile Justice employees and volunteers will provide quality health care in accordance with standardized practice. The Department of Juvenile Justice youth shall receive health care prescribed by law and standardized by the American Correctional Association (ACA).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No monetary cost will be incurred by the youth, employees, or volunteers of the Department of Juvenile Justice.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Department will be accredited by the ACA and will provide all medical care prescribed by law. The Department youth shall receive quality health care and reside within a safe environment.

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

(a) Initially: No Additional funding will be required.

(b) On a continuing basis: No Additional funding will be required on an annual basis

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted for this 2016-2018 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: None

(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 appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as the Sections 2 and 3 of the Kentucky Constitution.

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: Department of Juvenile Justice

(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(1), 15A.067

(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 revised administrative regulations will only impact the Department of Juvenile Justice. There are no anticipated expenditures for initial staff training or annual training thereafter.

(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: 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? Response: None.

(c) How much will it cost to administer this program for the first year? Response: The revised administrative regulations will only impact the Department of Juvenile Justice. No Additional funding will be required for the first year.

(d) How much will it cost to administer this program for subsequent years? Response: No Additional funding will be required for the first year.

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: This regulation will provide a clear and concise policies and procedures for all youth receiving services from the Department of Juvenile Justice, and reflect the treatment and practice of the agency.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET **Kentucky Commission on the Deaf and Hard of Hearing** **(Amendment)**

735 KAR 1:010. Eligibility requirements, application and certification procedures to receive specialized telecommunications equipment for the deaf, hard of hearing, and speech impaired.

RELATES TO: KRS 12.290, Chapter 45A, 61.878, 163.525[163.500]-163.527, 334.010(9), 334.020, 29 U.S.C. 794, 42 U.S.C. 12101

STATUTORY AUTHORITY: KRS 12.290, 163.525(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 12.290 requires each administrative body of state government to promulgate administrative regulations in compliance with federal mandates to provide accessibility to services by persons who are deaf or hard-of-hearing. KRS 163.525(5) requires the Commission on the Deaf and Hard of Hearing to promulgate administrative regulations to establish procedures for application for, and distribution of, specialized telecommunications equipment. This administrative regulation establishes eligibility criteria, requirements for application, and certification procedures.

Section 1. Definitions, as applies to 735 KAR 1:010 and 1:020.

(1) "Applicant" means a person who applies to receive specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access Program.

(2) "Application" means the current KCDHH Telecommunications Access Program application entitled "Telecommunications Access Program Application and Certification" both hardcopy and electronic.

(3) "Approved date" means the date that all supporting

documentation for the application is received and verified by the KCDHH as complete.

(4) "APRN" means Advanced Practice Registered Nurse licensed by the Kentucky Board of Nursing.

(5) "Audiologist" is defined at KRS 334A.020(5), and is limited to a person licensed by the board, as defined at KRS 334A.020(1).

(6) "Certification" means professional verification of the extent and permanence of the applicant's disability.

(7) "Deaf" and "hard of hearing" are defined by KRS 163.500.

(8) "Deaf-blind" means an individual whose primary disability is deafness and secondary disability is vision impairment.

(9) "ENT" or Otolaryngologist, for purposes of KAR 1:010 and 1:020, means a medical professional trained in the medical and surgical management of patients with diseases and disorders of the ear, nose and throat.

(10)[(9)] "Fiscal constraint" means when seventy-five (75) percent of annual program funds have been disbursed or encumbered.

(11)[(40)] "Hearing instrument specialist" means "specialist in hearing instruments" as defined at KRS 334.010(9).

(12)[(44)] "KCDHH" means the Kentucky Commission on the Deaf and Hard of Hearing, as described at KRS 163.506.

(13)[(42)] "Physician" means a person:

(a) With a medical degree;

(b) Licensed by the state in which he or she practices medicine; and

(c) Recognized, by the state Board of Medical Licensure in the state in which the physician practices, as a specialist in:

1. Family practice;

2. General practice;

3. Otolaryngology; or

4. Internal Medicine.

(14) "Physician Assistant Certified" (PAC) means a person licensed under KRS 311.840 to 311.862.

(15)[(43)] "Recipient" means a person who receives specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access Program.

(16)[(44)] "Specialized telecommunications equipment" or "STE" is defined by KRS 163.525(1)(a) as:

(a) Telecommunication devices for the deaf;

(b) Amplified telephones[Amplifiers];

(c) Voice carry over telephones;

(d) Captioned telephones;

(e) Visual, audible, or tactile ring signal devices; and

(f) Appropriate wireless devices.

(17) "Speech-impaired" means a person with a communication disorder such as stuttering, impaired articulation, impaired language, or impaired voice that adversely affects the use of telecommunications access lines.

(18)[(45)] "Speech-language pathologist" means a person licensed by the Kentucky Board of Licensure for Speech-Language to engage in the treatment of speech-language pathology.

(19)[(46)] "Telecommunications Access Line" means the transmission of auditory, visual, and typed communication via electronic airwaves or hard-wired methods.

(20)[(47)] "Telecommunications Access Program" is defined by KRS 163.525(1)(b).

Section 2. General Applicant Criteria. (1) An applicant shall be:

(a) A person who has resided in Kentucky for one (1) year prior to the date of application, as demonstrated by one (1) or more of the following. The person:

1. Is in possession of a valid driver's license or photo ID issued by the state of Kentucky;

2. Is currently registered to vote in Kentucky;

3. Owns an automobile registered in Kentucky;

4. Filed a Kentucky income tax return for the calendar year preceding the date of application;

5. Is stationed in Kentucky on active military orders for at least one (1) year as a member of the Armed Forces, or is a dependent of the Armed Forces member;[or]

6. Is currently enrolled as a student at an institution of higher learning located in Kentucky and meets the residency

requirements of 13 KAR 2:045; or

7. If none of the above is attainable, the person shall provide alternate verification of residency such as a utility bill, lease agreement, bank statement, or documentation from another state or federal agency, as approved by the KCDHH Executive Director.

(b) At least five (5) years of age; and if the applicant is between five (5) and eighteen (18) years of age, the applicant's parents or guardians shall:

1. Apply on behalf of the child; and
2. Assume full responsibility for the equipment; ~~and~~

(c) Deaf, hard of hearing, or speech impaired such that the applicant cannot use a telecommunications access line independently~~[the telephone]~~ for communication without adaptive specialized telecommunications equipment.

(2) In addition to requirements listed in subsection (1) of this section, an applicant for a wireless STE shall be at least thirteen (13) years of age.

(3) An application shall be:

(a) Made on a "Telecommunications Access Program Application and Certification" form, either hardcopy or electronic;

(b) Signed (electronic signature is acceptable on the electronic form) and submitted in person, by facsimile, or by mail (electronic if applicable); and

(c) Accompanied by:

1. A copy (either hardcopy or electronic) of a telephone or internet bill showing telephone number and name and address of the person being billed for residential telephone service~~[customers]~~, unless the applicant is applying under the conditions of Section 2(6);

2. A copy (either hardcopy or electronic) of the applicant's proof of residence; and

3. Document of certification, as required by subsection (5) of this section.

(4) An applicant shall provide additional supporting documentation to verify information provided on the application, if requested by KCDHH.

(5) An applicant shall provide professional certification of the extent and permanence of the applicant's disability.

(a) Certification shall be at the applicant's expense.

(b) Certification shall be performed and provided by (one of the following):

1. A licensed physician licensed PAC or licensed APRN;
2. A licensed audiologist;

3. A licensed speech-language pathologist, which verifies that the applicant has the ability to access telecommunications independently;

4. A licensed hearing instrument specialist; or

5. With prior approval by KCDHH, a licensed or certified individual that works for a public or private agency providing direct services to deaf, hard of hearing, or speech-impaired individuals.

(6) Except for an individual receiving assistance from a program providing telephone services to persons normally unable to afford the services, or an applicant for a wireless device, an applicant shall subscribe to or have currently applied for telecommunications~~[telephone]~~ service, including:

(a) Installation of a telecommunications~~[telephone]~~ line in the applicant's home, at the applicant's expense; and

(b) Payment of monthly telecommunications~~[telephone]~~ bills.

(7) Eligible applicants shall be awarded program participation on a first-come, first-serve basis, in accordance with the approved date, as determined by the dated signature of the Telecommunications Access Program staff. Eligible applicants shall be placed on a waiting list during times of fiscal constraint.

(8) KCDHH shall distribute the STE in compliance with:

- (a) The Model Procurement Code, KRS Chapter 45A; and
- (b) 735 KAR 1:020.

(9) Not more than two (2) STEs, one (1) of which shall be a visual, auditory, or tactile signaler package, shall be distributed to a deaf, hard of hearing, or speech-impaired individual per telecommunications access line.

Section 3. Application Process. (1) The KCDHH staff shall provide assistance in completing forms if requested by an

applicant.

(2) The Telecommunications Access Program staff shall review each application in the order the KCDHH office receives them, in order to determine if:

(a) All the necessary information is completed on the application;

(b) All required documentation is included; and

(c) All eligibility requirements are met.

(3) If the criteria in subsection 2 of this section are met, the application shall be approved, dated, and signed by the Telecommunications Access Program staff. The approved date shall determine the first-come, first-served roster.

(4) The KCDHH shall, within sixty (60) days of receipt of the application, notify an applicant if the application has been approved or rejected.

(5) The KCDHH shall, within sixty (60) days of receipt of the application, provide to an ineligible applicant, written reasons for the determination of ineligibility. An applicant denied participation may reapply if, due to a change in conditions, the eligibility requirements as delineated in Section 2 of this administrative regulation are met.

(6) Training to properly~~[select and]~~ use the STE shall be provided to applicants upon request.

Section 4. An application shall be denied if:

(1) The applicant does not meet the eligibility requirements as established in KRS 163.525, this administrative regulation or 735 KAR 1:020;

(2) The applicant has received STE from the Telecommunications Access Program within the preceding four (4) years;

(3) The applicant is an active consumer of the Office of Vocational Rehabilitation and receives STE as part of an individual plan of employment, also known as an "IPE";

(4) The applicant has negligently or willfully damaged a STE previously received from the KCDHH's Telecommunications Access Program, or has violated another provision of the law governing the Telecommunications Access Program; or

(5) The applicant has the STE stolen, without a police report, or has lost or sold the STE; ~~or~~

~~(6) If replacing the equipment after four (4) years have passed, the original STE is found to be technologically up-to-date and functional by the KCDHH.]~~

Section 5. Replacing the Specialized Telecommunications Equipment. During times of fiscal constraint a reapplication shall be accepted and held pending until funds become available. An applicant shall provide verification of eligibility when the reapplication is processed. (1) A recipient may apply to replace the original STE if:

(a) The STE is damaged as a result of a natural disaster;

(b) There is a change in status, such as deteriorating vision or hearing;

(c) A new device has become available through the Telecommunications Access Program that is more appropriate to the recipient's disability than a device previously received through the program; or

(d) It has been four (4) years since the applicant last received STE.

(2) As funds are available, new STE to replace existing STE shall be issued to applicants who:

(a) Demonstrate eligibility; and

(b) Comply with the provisions of the administrative regulations governing the Telecommunications Access Program established in this administrative regulation and 735 KAR 1:020.

(3) Priority shall be given in the distribution of STE to first-time recipients during times of fiscal constraint.

(4) If a replacement is requested because the STE is damaged as a result of a natural disaster, the recipient shall ~~[first]~~ send the damaged equipment~~[to the KCDHH, or]~~ directly to the vendor as directed by Telecommunications Access Program staff. ~~[(a) If necessary, the KCDHH shall send the damaged STE to the vendor for verification of irreparable damage.]~~

(a) If the vendor certifies to the KCDHH that the equipment provided to the recipient is irreparable due to natural disaster, a replacement shall be issued to the recipient, upon reapplication, subject to:

1. Equipment availability;
2. Compliance with eligibility criteria established in this administrative regulation;
3. The first-come, first-served provision; and
4. Availability of funds.

(5) If the recipient obtains certification from an approved physician, PAC, audiologist, hearing instrument specialist, APRN, or speech-language pathologist stating that the recipient will benefit from another device available through the KCDHH Telecommunications Access Program due to a change in disability status or a new device becoming available, then a replacement shall be issued to the applicant based on eligibility criteria, first-come, first-served basis and availability of funds. As an alternative, a public or private agency providing direct services to deaf, hard of hearing, or speech-impaired individuals may provide certification, subject to approval by the KCDHH.

(6) If a replacement is requested because four (4) years have passed, then the recipient shall either bring in person or mail their original STE to the KCDHH.

(a) The KCDHH shall determine if the original STE is technologically obsolete or nonfunctional.

(b) If the original STE is:

1. Technologically obsolete or nonfunctional, then the recipient shall follow the application process to replace the equipment as delineated in this administrative regulation and 735 KAR 1:020; or
2. Not determined to be technologically obsolete or nonfunctional then the application for a replacement shall be denied and the original STE shall be returned to the recipient.]

Section 6. Fraud. If a recipient obtained STE under false premises or through misrepresentation of facts on the application, or sold or gave away the STE, and the violation is documented, the KCDHH shall demand return of the equipment immediately. Upon demand, the recipient shall return the STE and shall be ineligible to participate in the KCDHH Telecommunications Access Program thereafter.

Section 7. Confidentiality. All applicant and recipient information shall be kept confidential in compliance with the Open Records Law, KRS 61.878.

Section 8. Incorporation by Reference. (1) "Telecommunications Access Program Application and Certification", July 2018 [November 2014], is incorporated by reference and mirrors the electronic application.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the offices of the Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, phone 800-372-2907, V/TDD or (502) 573-2604 V/TDD, or 502-416-0607 VP, Monday through Friday, 8 a.m. to 4:30 p.m.

VIRGINIA L. MOORE, KCDHH Executive Director

APPROVED BY AGENCY: April 11, 2018

FILED WITH LRC: April 11, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2018, at 1:00 p.m. EST, at the Kentucky Commission on the Deaf and Hard of Hearing office located at 632 Versailles Road, Frankfort, KY. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 2018, 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 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 received. 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 May 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: Virginia L. Moore, Executive Director, email virginia.moore@ky.gov, 632 Versailles Road, Frankfort, Kentucky 40601, phone (502) 573-2604 v/t, fax (502) 573-3594, or VP (502) 416-0607.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Virginia L. Moore

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions and the criteria for awarding specialized telecommunications equipment (STE) to deaf, hard of hearing, or speech-impaired individuals, and includes application and certification procedures for providing access to telecommunications through the Telecommunications Access Program within the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the provisions of KRS 163.525(5), which mandates that the KCDHH establish a program to distribute STE to any deaf, hard of hearing or speech-impaired person qualified to receive the equipment. This regulation also provides a mechanism for providing access to telecommunications to meet the mandates of the ADA.

(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 defining terms used in KAR 1:010 and 1:020 and establishing procedures for the distribution of STE to any deaf, hard of hearing or speech-impaired person qualified to receive the equipment, so they have access to equitable communication.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the criteria for awarding STE to deaf, hard of hearing or speech-impaired constituents in Kentucky and includes the application and certification procedures, as well as penalty for fraud.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds definitions used in the program and updates procedures for accepting an application for STE to include an electronic format to meet today's technological advances. It also adds selling, giving or trading STE to fraud criteria, adds physician assistant certified (PAC) to authorized certification and removes the criteria for determining if a piece of STE is non-functional. With today's advancing technology, STE typically does not last more than four years and the cost of obtaining the equipment from the recipient and evaluating it for functionality is cost prohibitive with the state's budget limitations. The hardcopy application continues to be used in the program as needed, and the electronic application format shall match the hardcopy version incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: This amendment adds definitions utilized in the program, and updates procedures for accepting an application for STE to include an electronic format to meet today's technological advances. It also adds selling, giving or trading STE to fraud criteria, adds physician assistant certified (PAC) to authorized certification and removes the criteria for determining if a piece of STE is non-functional. With today's advancing technology, STE typically does not last more than four years and the cost of obtaining the equipment from the recipient and evaluating it for functionality is cost prohibitive with the state's budget limitations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment reflects updated definitions and procedures for application and distribution of STE as operated by KCDHH, per KRS 163.525.

(d) How the amendment will assist in the effective

administration of the statutes: This amendment allows applicants to utilize and electronic format for application if desired, which conforms to other state distribution programs, adds PAC as an authorized professional, defines other terminology used in the program, and implements stricter fraud procedures to ensure the STE is being utilized for the intended purpose rather than personal gain. The removal of diagnostic procedures for non-functional STE over four (4) years old will save staff time, resources and postage in today's climate of budgetary constraints.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The 700,000 deaf and hard of hearing consumers in the Commonwealth will be impacted by this regulation if they choose to apply for STE. Agencies and organizations, both state and local, that provide support services for deaf, hard of hearing or speech-impaired individuals throughout the Commonwealth may be impacted if they choose to assist a consumer with an application.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities identified in question (3) will not have to take any action to comply with this regulation amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Agencies or consumers participating in the Telecommunications Access Program will not incur any costs due to this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Both consumers and entities identified will benefit from this amendment, as application for STE may be made online and procedures are clarified. Consumers whose primary physician is a PAC will benefit, as they will not have to obtain alternate professional certification. KCDHH will benefit from this amendment by not having to outlay funds for diagnostic purposes when current STE's are not typically functional for more than four years and terminology used in the program is clarified.

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

(a) Initially: The initial loading of an online STE application is part of KCDHH staff duties and is included in the agency's budget calculations. Therefore, there is no change in cost initially to the administrative body after implementation of this amendment.

(b) On a continuing basis: There is no change in cost ongoing to the administrative body after implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Restricted funds collected per KRS 278.5499 to support the TAP will support the implementation 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 is required 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 directly or indirectly established or increased because of this amendment.

(9) TIERING: Is tiering applied? Tiering of TAP applicants is applied in times of 'fiscal constraints', which is defined as 75% (seventy-five percent) of program funds being disbursed or encumbered.

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 agencies or other entities supporting deaf, hard of hearing or speech-impaired individuals will benefit from this amendment, as their consumers

will now be able to make an online application for STE or utilize a PAC as an authorized professional. Applicants for STE throughout the Commonwealth will benefit from this amendment as they may now file an application online or utilize a PAC as an authorized professional. KCDHH will benefit from this amendment by not having to outlay funds for diagnostic purposes when STE's are not typically functional for more than four years and terminology utilized in the program is clarified in definitions.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. State statutory authority; KRS 12.290, 61.878, 163.525, 163.527, 334.010(9), 334.020. Federal statutory authority; 29 U.S.C. Sec 794 of the Rehabilitation Act of 1973 and 42 U.S.C. Sec 12101 of the American's with Disabilities Act.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire department, or school districts) for the first full year the administrative regulation is to be in effect. There is no impact on the expenditures and revenues of state government agencies who refer consumers to the TAP for STE because of this amendment. KCDHH will benefit from this amendment by not having to outlay funds for diagnostic purposes when STE's are not typically functional for more than four years and terminology utilized in the program is clarified in definitions.

(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 during the first year because of this amendment.

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

(c) How much will it cost to administer this program for the first year? The cost for administration of the TAP will not increase during the first year because of this amendment, as it is funded as mandated in KRS 278.5499.

(d) How much will it cost to administer this program for subsequent years? The cost for administration of the TAP will not increase during subsequent years because of this amendment, as it is funded as mandated in KRS 278.5499.

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

Revenues (+/-): This regulation amendment will have no impact on program revenues generated in compliance with KRS 278.5499.

Expenditures (+/-): This regulation amendment will have no impact on program expenditures, other than normal staff time to implement an online application.

Other Explanation: None

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Commission on the Deaf and Hard of Hearing (Amendment)

735 KAR 1:020. Processing system including vendor participation, security, and maintenance and repair for specialized telecommunications equipment.

RELATES TO: KRS 12.290, Chapter 45A, 61.878, KRS 163.525-527, 278.5499[163.500-163.527, 334.010(9)], 334.020, 29 U.S.C. 794, 42 U.S.C. 12101

STATUTORY AUTHORITY: KRS 12.290, 163.525(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 12.290 requires each administrative body of state government to promulgate administrative regulations in compliance with federal mandates to provide accessibility to services by persons who are deaf or hard of hearing. KRS 163.525(5) requires the Commission on the Deaf and Hard of Hearing to promulgate administrative regulations to establish procedures for application for, and

distribution of, telecommunications devices. This administrative regulation establishes procedures for specialized telecommunications equipment vendors, for security, and for maintenance and repair.

Section 1. Definitions. (1) "Applicant" means a person who applies to receive specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access Program.

(2) "Application" means the current KCDHH Telecommunications Access Program application entitled "Telecommunications Access Program Application and Certification" both hardcopy and electronic.

(3) "Approved date" means the date that all supporting documentation for the application is received and verified by the KCDHH.

(4) "APRN" means Advanced Practice Registered Nurse licensed by the Kentucky Board of Nursing.

(5) "Audiologist" is defined at KRS 334A.020(5), and is limited to a person licensed by the board, as defined at KRS 334A.020(1).

(6) "Certification" means professional verification of the extent and permanence of the applicant's disability.

(7) "Deaf" and "hard of hearing" are defined by KRS 163.500.

(8) "Deaf-blind" means an individual whose primary disability is deafness and secondary disability is vision impairment.

(9) "ENT" or Otolaryngologist, for purposes of KAR 1:010 and 1:020, means a medical professional trained in the medical and surgical management of patients with diseases and disorders of the ear, nose and throat.

~~(10)~~~~(9)~~ "Fiscal constraint" means when seventy-five (75) percent of annual program funds have been disbursed or encumbered.

~~(11)~~~~(40)~~ "Hearing instrument specialist" means "specialist in hearing instruments" as defined at KRS 334.010(9).

~~(12)~~~~(41)~~ "KCDHH" means the Kentucky Commission on the Deaf and Hard of Hearing, as described at KRS 163.506.

~~(13)~~~~(42)~~ "Physician" means a person:

(a) With a medical degree;

(b) Licensed by the state in which he or she practices medicine; and

(c) Recognized, by the state Board of Medical Licensure in the state in which the physician practices, as a specialist in:

1. Family practice;
2. General practice;
3. Otolaryngology; or
4. Internal Medicine.

~~(14)~~ "Physician Assistant Certified" (PAC) means a person licensed under KRS 311.840 to 311.862.

~~(15)~~~~(43)~~ "Recipient" means a person who receives specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access Program.

~~(16)~~~~(44)~~ "Specialized telecommunications equipment" or "STE" is defined by KRS 163.525(1)(a):

- (a) Telecommunication devices for the deaf;
- (b) Amplified telephones~~[Amplifiers]~~;
- (c) Voice carry over telephones;
- (d) Captioned telephones;
- (e) Visual, audible, or tactile ring signal devices; and
- (f) Appropriate wireless devices.

~~(17)~~ "Speech-impaired" means a person with a communication disorder such as stuttering, impaired articulation, impaired language, or impaired voice that adversely affects the use of telecommunications access lines.

~~(18)~~~~(45)~~ "Speech-language pathologist" means a person licensed by the Kentucky Board of Licensure for Speech-Language to engage in the treatment of speech-language pathology.

~~(19)~~~~(46)~~ "Telecommunications Access Line" means the transmission of auditory, visual, and typed communication via electronic airwaves~~[air waves]~~ or hard-wired methods.

~~(20)~~~~(47)~~ "Telecommunications Access Program" is defined by KRS 163.525(1)(b).

Section 2. Processing System. (1) The KCDHH shall use

accounting procedures consistent with Commonwealth accounting practices in compliance with applicable sections of the Model Procurement Code, KRS Chapter 45.

(2) Contracting, purchasing, bidding, invoicing, and payment practices shall be conducted in accordance with applicable provisions of the Model Procurement Code, KRS Chapter 45A, and shall be applied uniformly to ~~[applicants and]~~ vendors.

(3) The KCDHH Telecommunications Access Program accounts shall be audited on a regular basis by the Auditor of Public Accounts.

Section 3. Vendor and Recipient Participation. (1) The vendor shall be responsible for complying with the provisions of the Model Procurement Code, KRS Chapter 45, as established in the contract between the vendor and KCDHH. The vendor shall:

(a) Mail or otherwise deliver the STE directly to the recipient's Kentucky residence; and

(b) Send the following to the KCDHH:

1. An itemized invoice with the recipient's name and STE model and serial number; and

2. A copy of the delivery receipt for the STE sent to the recipient.

(2) The vendor, in exchange for an itemized invoice and a copy of the delivery receipt, shall be paid by the KCDHH through the state accounting system~~[or a bank,]~~ pursuant to the Memorandum of Agreement established between the Public Service Commission and the KCDHH.

(3) The recipient shall be responsible for any costs involved in having features not specified in the vendor contract added to their STE. This includes the responsibility for the maintenance and repair of those features not specified in the vendor contract.

(4) Ownership rights and responsibilities for the STE shall belong to the recipient, as evidenced by the recipient's copy of the delivery receipt. Equipment obtained under this program shall not be sold, loaned, gifted or otherwise transferred out of the possession of the originally authorized recipient. Any person who attempts to sell or who knowingly purchases stolen equipment shall be disqualified from the program indefinitely~~[prosecuted to the fullest extent of the law]~~.

(a) A recipient shall not be responsible for the actual maintenance and repair of the equipment during the applicable warranty period. In order to have a malfunctioning STE repaired, the recipient shall:

1. Contact the KCDHH, or the vendor if applicable to the contract; and

2. Comply with the repair and maintenance procedures established in Section 5 of this administrative regulation.

(b) Each recipient shall:

1. Assume responsibility for monthly maintenance of the telecommunications access line as described in 735 KAR 1:010; and

2. Pay for other general costs and supplies associated with the functions and use of the STE.

(c) A recipient shall be responsible for the loss of an STE received under the auspices of the KCDHH Telecommunications Access Program.

Section 4. Security. (1) The recipient shall notify the KCDHH within ten (10) working days if the equipment is lost or damaged; and

(2) File a police report and send it to KCDHH, if the equipment is stolen.

Section 5. Maintenance and Repair Procedures. (1) A recipient shall report equipment in need of repair to the KCDHH or the vendor if applicable to the contract. If applicable, the Telecommunications Access Program staff shall inform the recipient of:

(a) The mailing address and telephone number of the manufacturer; and

(b) The purchase order number for the equipment.

(2) The recipient shall:

(a) Report the problem to the vendor that distributed the

equipment, as instructed by Telecommunications Access Program staff.[manufacturer];

(b) Ask that the appropriate vendor[manufacturer] pay for shipping the defective equipment:

1. To the vendor's[manufacturer's] designated place of repair; and

2. Back to the recipient, once repaired.

(3) The vendor[recipient] shall determine from the contracted repair agent whether the STE is repaired or is not repairable. The vendor[recipient] shall obtain and provide verification of the transaction to KCDHH. If the warranty period has ended, per the vendor's contract, the recipient shall assume financial responsibility for repair of the equipment.

(4) A recipient shall notify the KCDHH immediately of a change of residential address.

VIRGINIA L. MOORE, KCDHH Executive Director

APPROVED BY AGENCY: April 11, 2018

FILED WITH LRC: April 11, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2018, at 1:00 p.m. EST, at the Kentucky Commission on the Deaf and Hard of Hearing office located at 632 Versailles Road, Frankfort, KY. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 2018, 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 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 received. 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 May 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: Virginia L. Moore, Executive Director, email virginia.moore@ky.gov, 632 Versailles Road, Frankfort, Kentucky 40601, phone (502) 573-2604 v/t, fax (502) 573-3594, or VP (502) 416-0607.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Virginia L. Moore

(1) Provide a brief summary of:

(a) What this administrative regulation does: The Telecommunications Access Program (TAP), administered by the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) was implemented in 1996 because of legislation enacted by the General Assembly in 1995. The TAP ensures equal access to telecommunication services by providing specialized telecommunications equipment (STE) to citizens of the Commonwealth who are deaf, hard of hearing or speech-impaired. This administrative regulation establishes the processing system for vendor participation in the TAP as well as outlining requirements for the security, maintenance and repair of the STE distributed.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the provisions of KRS 163.525(5), which mandates that the KCDHH establish a program to distribute STE to any deaf, hard of hearing, or speech-impaired individual that applies and is determined eligible to receive equipment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the processing system for vendors, security, and the maintenance and repair of equipment distributed through the TAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the processing requirements for vendors awarded a contract to distribute landline and wireless

telecommunication devices, as well as describing security, maintenance and repair provision of the TAP.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds: a definition for physician assistant certified; speech impaired, and sanction of an electronic application; it also updates payment authority; clarifies repair procedures, which are also included in the vendor contract; adds the requirement to file a police report for a stolen device; and makes technical corrections.

(b) The necessity of the amendment to this administrative regulation: This amendment brings the regulation into compliance with procedures under the vendor's contracts and updates procedures for the repair and maintenance of STE.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment clarifies the parameters utilized to administer the program when working with vendors.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies both recipient and vendor responsibilities regarding repairs, adds a definition for another authorized professional, authorizes an electronic application to meet the needs of today's applicants and updates payment procedures now utilized by state agencies.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The TAP deals with major vendors of assistive technology for deaf, hard of hearing and speech-impaired consumers, of which there are 700,000 in Kentucky. State and local governments, and professionals in the field throughout Kentucky, refer consumers to the TAP for assistance with specialized telecommunications equipment. These entities will benefit from this amendment as it clarifies procedures, introduces the electronic application and strengthens repair and maintenance procedures.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities identified in question (3) will not have to take any additional action to comply with the amendment, but will benefit from the ability to file an electronic application and will be better informed about procedures utilized to run the TAP.

(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 change in the cost for agencies or consumers because of the amendment to this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Both consumers and agencies will benefit from information added to clarify TAP procedural operations.

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

(a) Initially: No change in cost to the administrative body to implement this amendment.

(b) On a continuing basis: No change in cost to the administrative body to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Restricted Funds collected in compliance with KRS 278.5499 will support the implementation of this amendment and program operations.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by this amendment.

(9) TIERING: Is tiering applied? Tiering of TAP applicants is applied in times of 'fiscal constraints', which is defined as 75% of program funds being disbursed or encumbered. The program will not be under fiscal constraints because of this amendment.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? No state or local government agencies will be fiscally impacted by this regulation or its amendment. State and local governments and businesses within the Commonwealth that provide support services to deaf, hard of hearing and speech-impaired individuals will benefit because of the distribution of STE, at no cost to the agency or the applicant, so that this population has equitable access to state services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. State statutory authority; KRS 12.290, 163.525-527. Federal statutory authority; 29 U.S.C. Sec 794 and 42 U.S.C. Sec 12101.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire department, or school districts) for the first full year the administrative regulation is to be in effect. There is no effect on the expenditures and revenues of state and local government agencies because 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 will be generated initially because of this amendment.

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

(c) How much will it cost to administer this program for the first year? Program costs are covered as part of the restricted funding source designated in KRS 278.5499 and will not increase because of this amendment.

(d) How much will it cost to administer this program for subsequent years? Program costs are covered as part of the restricted funding source designated in KRS 278.5499 and will not increase because 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 (+/-): The cost for administration of this program is included in the annual restricted fund budget allocation for KCDHH, and will not increase because of this amendment. There is no direct fiscal impact because of this amendment.

Expenditures (+/-): There is no increase in expenditures due to this amendment.

Other Explanation: None

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Commission on the Deaf and Hard of Hearing (Amendment)

735 KAR 2:010. Definitions for 735 KAR Chapter 2.

RELATES TO: KRS 12.290, KRS 163.510(4), KRS 309.300

STATUTORY AUTHORITY: KRS 12.290 mandates that each department, program cabinet, and administrative body of state government shall promulgate administrative regulations to provide accessibility to all services by persons who are deaf or hard-of-hearing in compliance with federal mandates including 29 U.S.C. sec. 794, a part of the Rehabilitation Act of 1973, and 42 U.S.C. secs. 12101 et seq., a part of the Americans with Disabilities Act of 1990.; 163.510(4); 309.300 provides definitions related to the authority of the Kentucky Board of Interpreters for the Deaf and

Hard of Hearing

NECESSITY, FUNCTION, AND CONFORMITY: KRS 163.510(4) requires the Commission on the Deaf and Hard of Hearing to oversee the provision of interpreter services to the deaf and hard of hearing. This administrative regulation establishes definitions necessary to implement the Interpreter Referral Services Program.

Section 1. (1) "American Sign Language" (ASL) means a nonverbal language consisting of the following elements:

- (a) Handshape;
- (b) Position;
- (c) Hand movement;
- (d) Orientation of the hands;[and]
- (e) Facial expression;and
- (f) Body language.

(2) "Assigned interpreter," means the independent vendor interpreter who commits to provide interpreting services for a particular event.

(3) "Assignment" means an event interpreted for the enhancement of communication between[a] deaf, hard of hearing, and hearing individuals[individual].

(4) "Certified interpreter or Transliterator" means a sign language, oral, or cued speech interpreter or transliterator who was awarded certification by demonstrating an advanced level of expressive and receptive skills.

(5) "Close visual range interpreting" means an interpreting technique used with deaf people with limited vision.

(6) "Communication Access Realtime Translation" (CART) means a service that is provided by a realtime reporter by converting spoken English into a printed English format, primarily used by hard of hearing people[(6) "Contracted interpreter," means a freelance interpreter].

(7) "Code of ethics" or Code of Professional Conduct, means principles that guide[of] ethical behavior of sign language interpreters, and is established by a national certifying organization to guide an interpreter or transliterator in their dealings with a hearing, or[and] deaf, or hard of hearing person.

(8) "Cued speech" means a method of communication for use with and by a deaf and hard of hearing person, in which eight (8) configurations and four (4) positions of one (1) (either) hand are used to supplement the visible manifestations of natural speech.

(9) "Deaf and hard of hearing" means a person who is unable to hear and understand speech clearly by ear, with or without a hearing aid. This term shall include a person who:

- (a) Is deaf or hard of hearing;
- (b) Is deaf-blind;
- (c) Is late deafened;
- (d) Is recently deafened;
- (e) Is oral deaf; or
- (f) Has a similar hearing disorder.

(10) "Deaf Interpreter" (DI) means a deaf or hard of hearing individual, who is able to assist in providing an accurate interpretation between standard sign language and variants of sign language (including home signs) by acting as an intermediary between a deaf or hard of hearing person and an interpreter or transliterator.

(11) "Emergency" means a situation of an urgent nature in which the consumer or client determine that the delay of the event for more than twenty-four (24) hours is likely to result in injury or loss.

(12) "Extended Assignment" means and assigned event for an interpreter or captioner that includes an overnight stay or requires on call twenty-four (24) hour coordination.

(13) "Interaccount", for the purpose of KRS 163.510(4), means that one (1) state agency charges another state agency through the state's internal financial system, as outlined in KRS Chapter 45A.

(14)[(12)] "Interpretation" means the process of transmitting spoken English into American Sign Language or gestural communication (voice-to-sign); and the process of transmitting American Sign Language or gestural communication into spoken English (sign-to-voice).

(15)(13) "No show assignment" means an assignment at which the deaf or hard of hearing person or the state agency interpreter or captioner representative did not appear for the scheduled event.

(16)(14) "Nontraditional interpreting services" means the utilization of video-conferencing technology to eliminate the necessity of the interpreter having to travel to the site of the event or utilization of remote captioning technology to eliminate the necessity of the captioner traveling to the site of the event.

(17)(15) "Oral interpreting" means facilitating a mode of communication utilizing speech, speech-reading and residual hearing as a primary means of communication and using situational and culturally appropriate gestures, without the use of sign language.

(18)(16) "Preferred mode of communication" means the method of communication that the deaf or hard of hearing individual is most expressive and comfortable [in] using.

(19)(17) "Referral service" means a service that specializes in coordinating interpreting or captioning services and acts as an intermediary between the interpreter or captioner and the state agency providing services to a deaf or hard of hearing consumer[direct consumers of services].

(20)(18) "Replacement interpreter" means an interpreter sent to replace the assigned interpreter for a specific event if there is a:

- (a) Schedule conflict;
- (b) Illness; or
- (c) Unforeseen event that prevents attendance of the assigned interpreter.

(21)(19) "Staff interpreter" means an interpreter who works exclusively for, and is considered an employee of, a particular agency or organization.

(22) "State Agency" or "State Agencies", for purposes of KRS 163.510(4) and this Chapter, means an organizational unit within the Executive Branch of state government, as defined in KRS 12.010 (1)-(7), or an agency within the Legislative Branch of state government.

(23) "State Employee", for the purposes of KRS 163.510(4) and this Chapter, means a person who is permanently employed by a state agency within the Executive or Legislative Branch of state government.

(24)(20) "Tactile interpreting" means a communication technique used by and with deaf-blind individuals and deaf individuals[people] with limited vision involving touch of the shape, movement and location of signs.

(25)(21) "Team interpreting" means the utilization of two (2) or more interpreters who:

- (a) Function as a team;
- (b) Rotate responsibilities at prearranged intervals; and
- (c) Provide support and feedback to each other.

(26)(22) "Transliteration" means the process of transmitting:

- (a) Spoken English into one (1) of the English-related or English oriented varieties of sign language (voice-to-sign); and
- (b) One of the English-related or English-oriented varieties of sign language into spoken English (sign-to-voice).

(27)(23) "Traditional interpreting services" means the interpreter or captioner appears at the event in person and provides interpreting or captioning services on site.

VIRGINIA L. MOORE, KCDHH Executive Director

APPROVED BY AGENCY: April 11, 2018

FILED WITH LRC: April 11, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2018, at 10:00 a.m. EST, at the Kentucky Commission on the Deaf and Hard of Hearing office located at 632 Versailles Road, Frankfort, KY. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 2018, 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 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 received. 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 May 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: Virginia L. Moore, Executive Director, email virginia.moore@ky.gov, 632 Versailles Road, Frankfort, Kentucky 40601, phone (502) 573-2604 v/tty, fax (502) 573-3594, or Videophone (502) 416-0607.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Virginia L. Moore

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions that explain the meaning of terminology used to administer the Interpreter Referral Program within the Kentucky Commission on the Deaf and Hard of Hearing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the provisions of KRS 163.510(4), which mandates that the Kentucky Commission on the Deaf and Hard of Hearing administer Interpreter Referral Services, to meet the needs of deaf and hard of hearing consumers interacting with state agencies.

(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 definitions used to administer the Interpreter Referral Services Program within the Kentucky Commission on the Deaf and Hard of Hearing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation defines terminology used to administer the Interpreter Referral Services Program, which functions within the Kentucky Commission on the Deaf and Hard of Hearing.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds terminology pertinent to the operation of the Interpreter Referral Services Program.

(b) The necessity of the amendment to this administrative regulation: This amendment updates and adds terminology utilized within the Interpreter Referral Services Program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment expands on definitions utilized within the Interpreter Referral Services Program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment expands on definitions utilized within the Interpreter Referral Services Program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The 700,000 deaf and hard of hearing consumers in the Commonwealth that utilize state services may be positively affected by this administrative regulation. State agencies within the Commonwealth that provide interpreting or captioning services to deaf and hard of hearing consumers may be positively impacted by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities identified in question (3) will not have to take any action to comply with the amendment to this 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 change in the cost for state agencies or consumers to comply with the amendment to this regulation.

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

agencies serving deaf and hard of hearing consumers will benefit from the additional information added in definitions to clarify the Interpreter Referral Services Program operations.

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

(a) Initially: There is no additional cost to the administrative body after initial implementation of this amendment.

(b) On a continuing basis: There is no change in cost to the administrative body on an ongoing basis due to implementation of this amendment. Continued indirect costs include 10% of the Executive Director's time to supervise the administration of this program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Funds allotted to the KCDHH in the agency's annual budget supports the implementation 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 is required 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 directly or indirectly established or increased by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied, or required, to implement this amendment.

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 agencies utilizing the Interpreter Referral Services Program will benefit from the clarifications made in this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. State statutory authority; KRS 12.290, 163.510(4), 309.300. Federal statutory authority; 29 U.S.C. Sec 794 of the Rehabilitation Act of 1973 and 42 U.S.C. Sec 12101 of the American's with Disabilities Act.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire department, or school districts) for the first full year the administrative regulation is to be in effect. There is no effect on the expenditures and revenues of state government agencies because 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 will be generated because of this amendment.

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

(c) How much will it cost to administer this program for the first year? The cost for administration of this program is included in the agency's general fund budget and will not increase during the first year because of this amendment.

(d) How much will it cost to administer this program for subsequent years? The cost of administration of this program is included in the agency's general fund budget and will not increase in subsequent years because 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 (+/-): There is no direct fiscal impact because of this amendment.

Expenditures (+/-): There is no direct impact on expenditures because of this amendment.

Other Explanation: None

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Commission on the Deaf and Hard of Hearing (Amendment)

735 KAR 2:020. KCDHH Interpreter Referral Services Program parameters.

RELATES TO: KRS 12.290, 163.510(4), 29 U.S.C. 794, 42 U.S.C. 12132

STATUTORY AUTHORITY: KRS 12.290, 163.510(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 12.290 requires each department, program cabinet, and administrative body of state government to promulgate administrative regulations to provide accessibility to all services by persons who are deaf or hard-of-hearing. KRS163.510(4) requires the commission to oversee the provision of interpreter services to the deaf and hard of hearing. This administrative regulation establishes the Interpreter Referral Services Program parameters and the criteria of receiving and providing these services.

Section 1. (1) In accordance with the requirements of the Rehabilitation Act (29 U.S.C. 794) and the Americans with Disabilities Act (42 U.S.C. 12132), KCDHH Interpreter Referral Services shall be provided to a state agency if:

(a) An individual who is deaf or hard of hearing requires interpreting or captioning services to access state services~~[Necessary to receive public service by an individual who is deaf or hard-of-hearing];~~

(b) Requested by a state agency employee who is deaf or hard of hearing;

(c) Required under a provision of the Acts; or

~~(d) [(e)]~~ Necessary to provide accessibility to a public event, as defined by the Acts.

(2) Participation in the KCDHH Interpreter Referral Services Program shall be voluntary.

(3) The services of a qualified interpreter or transliterator or CART services shall be provided at no cost to the deaf or hard of hearing consumer.~~[(4) The KCDHH shall comply with KRS Chapter 45A in employing staff and contract interpreters with the KCDHH Interpreter Referral Services Program.]~~

~~(4) [(5)]~~ The KCDHH Interpreter Referral Service shall honor the preferred communication mode of a deaf or hard of hearing consumer if a qualified interpreter,~~or~~ transliterator, or CART is available.

~~(5) [(6)]~~ The KCDHH may assign two (2) or more interpreters as appropriate for assignments that are longer than one (1) hour, in accordance with the standard practices of "Team Interpreting".

~~(6) [(7)]~~ The KCDHH shall assign a deaf interpreter~~[(D)] interpreters~~ in accordance with standard practices in the interpreting profession.

~~(7) [(8)]~~ A nationally certified and state licensed interpreter shall be required~~[preferred in]~~ when working for the KCDHH Interpreter Referral Services Program.

~~(8) [(9)]~~ The interpreter fee for a state agency shall be negotiated between the state agency and the interpreter on an individual basis. The KCDHH Interpreter Referral Service Program shall provide the referral and share the average rate for services within the state, but shall not dictate hourly fees nor administer billing for services.

~~(9) [(10)]~~ The KCDHH shall:

(a) Respond to all requests for interpreting or CART services;

(b) Not guarantee that all requests will be filled; and

(c) Except in an emergency, provide service on a first-come, first-served basis;

~~(10) [(11)]~~ If the KCDHH Interpreter Referral Services Program is unable to fulfill a request for services by 12 p.m., two (2) working days prior to the date of the assignment, KCDHH staff shall contact the requesting agency and suggest the following:

(a) That the search for an interpreter or CART cease;

(b) Continuing to seek an interpreter or CART for the assignment, with the understanding that it may not be filled; or

~~(c) [(A)]~~ Rescheduling of the event with KCDHH Interpreter Referral Services Program staff continuing to seek a qualified

interpreter or CART for the new assignment date.

VIRGINIA L. MOORE, KCDHH Executive Director

APPROVED BY AGENCY: April 11, 2018

FILED WITH LRC: April 11, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2018, at 10:00 a.m. EST, at the Kentucky Commission on the Deaf and Hard of Hearing office located at 632 Versailles Road, Frankfort, KY. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 2018, 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 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 received. 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 May 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: Virginia L. Moore, Executive Director, email virginia.moore@ky.gov, 632 Versailles Road, Frankfort, Kentucky 40601, phone (502) 573-2604 v/tty, fax (502) 573-3594 or Videophone (502) 416-0607.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Virginia L. Moore

(1) Provide a brief summary of:

(a) What this administrative regulation does: 735 KAR 2:020 clarifies program parameters for administration of the Interpreter Referral Services Program within the Kentucky Commission on the Deaf and Hard of Hearing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the provisions of KRS 163.510(4), which mandates that the Kentucky Commission on the Deaf and Hard of Hearing administer the Interpreter Referral Services Program, to meet the needs of deaf and hard of hearing individuals seeking access to services offered by state agencies.

(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 clarifying parameters for administering the Interpreter Referral Services Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation clarifies parameters used to administer the Interpreter Referral Services Program within the Kentucky Commission on the Deaf and Hard of Hearing which ensures that deaf and hard of hearing consumers in Kentucky have access to state agency services.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds captioning as parameters pertinent to the operation of the Interpreter Referral Services Program and includes the requirement that interpreters utilized by the program must hold state licensure.

(b) The necessity of the amendment to this administrative regulation: This amendment expands on and clarifies parameters of the Interpreter Referral Services Program, includes requirements for licensure of interpreters in Kentucky, and brings the regulation into compliance with requirements mandated in KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment expands on parameters currently utilized to administer the Interpreter Referral Services Program, especially since the implementation of licensure requirements for interpreters in Kentucky.

(d) How the amendment will assist in the effective

administration of the statutes: The amendment clarifies parameters of the Interpreter Referral Services Program to ensure effective and efficient access to communication for deaf and hard of hearing consumers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The 700,000 deaf and hard of hearing consumers in the Commonwealth that utilize state services may be affected by this administrative regulation. State agencies within the Commonwealth that provide interpreting or captioning services to deaf or hard of hearing consumers for access to communication may be impacted 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: No action is required by the entities identified in question (3) to comply with the amendment to this regulation. Agencies that utilize the Interpreter Referral Services Program for coordination of interpreters and captioners will be better served and brought into compliance with ADA requirements for providing communication access to deaf and hard of hearing consumers.

(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 change in the cost for agencies utilizing services, or consumers accessing services, because of the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Both consumers and agencies will benefit from the streamlining of services to access interpreters and captioners, and agencies will be brought into compliance with ADA requirements for providing communication access to deaf and hard of hearing consumers.

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

(a) Initially: No change in cost initially after implementation of this amendment.

(b) On a continuing basis: No change in cost ongoing due to this amendment. Continued indirect costs include 10% of the Executive Director's time to supervise the administration of this program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Funds already allotted to KCDHH will support the implementation 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 is required 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 directly or indirectly established or increased by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied, or required, to implement this amendment.

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 agencies utilizing the Interpreter Referral Services Program will benefit from the clarifications made in this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. State statutory authority; KRS 12.290, 163.510(4). Federal statutory authority; 29 U.S.C. Sec 794 and 42 U.S.C. Sec 12132.

(3) Estimate the effect of this administrative regulation on the

expenditures and revenues of a state or local government agency (including cities, counties, fire department, or school districts) for the first full year the administrative regulation is to be in effect. There is no effect on the expenditures and revenues of state government agencies because of this amendment. Local agencies cannot utilize the Interpreter Referral Services Program, so there is no impact on expenditures and revenues for those entities.

(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 initially because of this amendment.

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

(c) How much will it cost to administer this program for the first year? The cost for administration of this program is included in the agency's general fund budget and will not increase because of this amendment.

(d) How much will it cost to administer this program for subsequent years? The cost of administration of this program is included in the agency's general fund budget and will not increase because 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 (+/-): There is no direct fiscal impact because of this amendment. The KCDHH Executive Director works with the agency's annual budget as provided by the General Assembly and is monitored by the Commission Board per KRS 163.506.

Expenditures (+/-): There is no direct fiscal impact because of this amendment. The KCDHH Executive Director works with the agency's annual budget as provided by the General Assembly and is monitored by the Commission Board per KRS 163.506.

Other Explanation: None

EDUCATION AND WORKFORCE DEVELOPMENT CABINET **Kentucky Commission on the Deaf and Hard of Hearing** **(Amendment)**

735 KAR 2:030. Interpreter qualifications.

RELATES TO: KRS 12.290, 163.510(4)

STATUTORY AUTHORITY: KRS 12.290, 163.510(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 163.510(4) requires the commission to oversee the provision of interpreter services to the deaf and hard of hearing. This administrative regulation establishes qualifications for the interpreters utilized by the Interpreter Referral Services Program.

Section 1. (1) A staff or freelance American Sign Language or[and] oral interpreter shall be certified by a nationally certified body, such as but not limited to, the:

(a) National Association of the Deaf (NAD);

(b) National Registry of Interpreters for the Deaf (RID);

(c) National Interpreter Certification (NIC); or

(d) Board for Evaluation of Interpreters (BEI) certification program.

(2) A cued speech transliterator shall be certified by the National Training Evaluation and Certification Unit.

VIRGINIA L. MOORE, KCDHH Executive Director

APPROVED BY AGENCY: April 11, 2018

FILED WITH LRC: April 11, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2018, at 10:00 a.m. EST, at the Kentucky Commission on the Deaf and Hard of Hearing office located at 632 Versailles Road, Frankfort, KY. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 2018, 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 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 received. 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 May 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: Virginia L. Moore, Executive Director, email virginia.moore@ky.gov, 632 Versailles Road, Frankfort, Kentucky 40601, phone (502) 573-2604 v/tty, fax (502) 573-3594, or Videophone (502) 416-0607.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Virginia L. Moore

(1) Provide a brief summary of:

(a) What this administrative regulation does: The amendment to 735 KAR 2:030 clarifies the certifying bodies for interpreters who work within the Interpreter Referral Services Program within the Kentucky Commission on the Deaf and Hard of Hearing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the provisions of KRS 163.510(4), and KRS 163.515, which mandates that the Kentucky Commission on the Deaf and Hard of Hearing administer the Interpreter Referral Services Program to meet the needs of deaf and hard of hearing individuals accessing services offered by state agencies.

(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 outlining interpreter qualifications for working with the Interpreter Referral Services Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation denotes the certifying bodies for interpreters who work through the Interpreter Referral Services Program.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds national certifying bodies for interpreters who work through the Interpreter Referral Services Program.

(b) The necessity of the amendment to this administrative regulation: Per the United States Bureau of Labor Statistics, Kentucky will need 990 qualified interpreters by 2024, so there is a greater need, and expanding nationally qualifying bodies that are acceptable may increase the number of licensed and certified interpreters who work through the Interpreter Referral Services Program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment denotes additional national certifying bodies for certification of interpreters.

(d) How the amendment will assist in the effective administration of the statutes: This amendment denotes additional qualifying bodies for certification of interpreters.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The 700,000 deaf and hard of hearing consumers in Kentucky that utilize interpreters to access state services will be better served and state agencies will be brought into compliance with the ADA.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is needed to comply with the

amendment to this 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 change in the cost of coordinating interpreter services because of the amendment to this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Per the Bureau of Labor Statistics, Kentucky will need 990 qualified interpreters by 2024, so there is a greater need, and expanding the number of nationally qualifying bodies for certifying interpreters may allow Kentucky to attract and retain qualified interpreters.

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

(a) Initially: No increase in cost initially after implementation of this amendment.

(b) On a continuing basis: No increase in costs ongoing after the implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Funds allotted to KCDHH will support the implementation of this amendment. The Executive Director works within the agency's annual budget as provided by the General Assembly, and is monitored by the Commission Board per KRS 163.506.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied, or required, to implement this amendment as the program functions as part of the overall mission of KCDHH.

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 agencies utilizing the Interpreter Referral Services Program, and consumers utilizing state agencies services, will benefit from the clarifications made in this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. State statutory authority; KRS 12.290, 163.510(4). Federal statutory authority; 29 U.S.C. Sec 794 and 42 U.S.C. Sec 12132.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire department, or school districts) for the first full year the administrative regulation is to be in effect. There is no impact on the expenditures and revenues of state government agencies because 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 will be generated initially because of this amendment.

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

(c) How much will it cost to administer this program for the first year? The cost for administration of this program is included in the agency's general fund budget and will not increase because of this amendment.

(d) How much will it cost to administer this program for subsequent years? The cost of administration of this program is included in the agency's general fund budget and will not increase because 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 (+/-): The Executive Director works within the agency's annual budget as provided by the General Assembly, and is monitored by the Commission Board per KRS 163.506.

Expenditures (+/-): The Executive Director works within the agency's annual budget as provided by the General Assembly, and is monitored by the Commission Board per KRS 163.506.

Other Explanation: None

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Commission on the Deaf and Hard of Hearing (Amendment)

735 KAR 2:040. Interpreter protocols.

RELATES TO: KRS 12.290, 163.510(4), 163.515(2)(c), 201 KAR 39:120

STATUTORY AUTHORITY: KRS 12.290, 163.510(4), 163.515 (2)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 12.290 requires each department, program cabinet, and administrative body of state government to promulgate administrative regulations to provide accessibility to all services by persons who are deaf or hard-of-hearing. KRS 163.510(4) requires the commission to oversee the provision of interpreter services to the deaf and hard of hearing. This administrative regulation establishes interpreter protocols. KRS 163.515 (2)(c) mandates that the Executive Director of the Commission on the Deaf and Hard of Hearing promote the training of interpreters for the deaf and hard of hearing. 201 KAR 39:120 outlines the Code of Ethical Conduct – Code of Professional Conduct a licensed interpreter must follow according to the Kentucky Board of Interpreters.

Section 1. (1) A staff or assigned[free-lance] interpreter shall adhere to the Code of Professional Conduct and:

(a) Keep assignment-related information strictly confidential;

(b) Be impartial to a proceeding;

(c) Recognize and work within his range of ability;

(d) Not accept an assignment beyond his skill level;

(e) Promptly notify Interpreter Referral Services Program staff if the communication mode of a deaf or hard of hearing person requires the additional skills of a [certified] deaf interpreter; and

(f) Arrive at an assignment fifteen (15) minutes before the scheduled starting time to:

1. Arrange logistics; and

2. Confer with the consumer and another interpreter.

(2) A KCDHH Interpreter Referral Services Program assigned interpreter shall display professional demeanor and conduct by:

(a) Wearing appropriate professional clothing, as outlined in the Code of Professional Conduct for the interpreter's national certifying organization, and[which include]

1. A skirt or dress;

2. A business suit;

3. ~~Slacks and a jacket; or~~

4. ~~Similar attire; and~~

(b) Treating a deaf [or] hard of hearing, or[and] hearing consumer involved in the assignment, pleasantly, fairly, and with respect.

(3) An Interpreter Referral Services Program[a contract and] staff interpreter, or assigned interpreter, shall comply with the code of ethics per 201 KAR 39:120 and per the appropriate certifying body of the:

(a) National Association of the Deaf – Registry of Interpreters for the Deaf Code of Professional Conduct (2005);

(b)[(a)] National Registry of Interpreters for the Deaf;[or]

(c)[(b)] National Association of the Deaf; or

(d) Board for Evaluation of Interpreters Certification Program.

(4) Assignment conflicts.

(a) If an assigned[contracted] interpreter is unable to fill the assignment because of illness or another unforeseen conflict, he shall contact the Interpreter Referral Services Program staff as

soon as he becomes aware of the conflict.

(b) The staff of the KCDHH Interpreter Referral Services Program shall be responsible for contacting and attempting to secure a replacement interpreter for the assignment.

(5) If resources are available, the KCDHH Interpreter Referral Services Program may provide a professional development opportunity for assigned interpreters~~[contract]~~ and staff interpreters. A development opportunity may include:

- (a) A mentoring program;
- (b) Diagnostic assessment and feedback;
- (c) Support for interpreter training or testing opportunities; and
- (d) Similar programs.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference: The National Association of the Deaf – Registry of Interpreters for the Deaf Code of Professional Conduct (2005).~~[(a) National "Registry of Interpreters for the Deaf Code of Ethics", (1996), National Registry of Interpreters for the Deaf; and~~

~~(b) "National Association of the Deaf Interpreter Code of Ethics", (1997), National Association of the Deaf.]~~

(2) This material may be inspected, copied, or obtained at Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

VIRGINIA L. MOORE, KCDHH Executive Director

APPROVED BY AGENCY: April 11, 2018

FILED WITH LRC: April 11, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2018, at 10 a.m. EST, at the Kentucky Commission on the Deaf and Hard of Hearing office located at 632 Versailles Road, Frankfort, KY. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 2018, 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 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 received. 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 May 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: Virginia L. Moore, Executive Director, email virginia.moore@ky.gov, 632 Versailles Road, Frankfort, Kentucky 40601, phone (502) 573-2604 v/t, fax (502) 573-3594, or VP (502) 416-0607 VP.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Virginia L. Moore

(1) Provide a brief summary of:

(a) What this administrative regulation does: 735 KAR 2:040 outlines expected protocols for staff or assigned interpreters who work for the Interpreter Referral Services Program within the Kentucky Commission on the Deaf and Hard of Hearing. The amendment clarifies these procedures.

(b) The necessity of this administrative regulation: KRS 12.290 requires each department, program cabinet, and administrative body of state government to promulgate administrative regulations to provide accessibility to all services by persons who are deaf or hard-of-hearing. KRS 163.510(4) requires the commission to oversee the provision of interpreter services to the deaf and hard of hearing. This administrative regulation establishes interpreter protocols. KRS 163.515 (2)(c) mandates that the Executive Director of the Commission on the Deaf and Hard of Hearing promote the training of interpreters for the deaf and hard of hearing. This administrative regulation allows for support of opportunities to promote the professionalism of interpreters utilized

by state agencies. 201 KAR 39:120 outlines the Code of Ethical Conduct – Code of Professional Conduct a licensed interpreters must follow according to the Kentucky Board of Interpreters. This administrative regulation is necessary to implement these provisions and ensure accessible communication is provided to meet the needs of deaf and hard of hearing individuals participating in services offered by state agencies. This amendment to 735 KAR 2:040 clarifies these procedures.

(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 providing protocols for providing communication access to state government agencies providing services to deaf and hard of hearing individuals. The amendment outlines procedures for staff, and assigned interpreters that work for the Interpreter Referral Services Program, to follow in providing communication access.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in outlining expected protocol for staff or assigned interpreters that provide quality communication access for deaf and hard of hearing consumers utilizing state services. The amendment expands on and clarifies these protocols.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates references to the code of ethics, which governs interpreter services, and incorporates by reference the Professional Code of Conduct currently utilized by interpreters.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to incorporate the Professional Code of Conduct utilized by interpreters working with the Interpreter Referral Services Program, and brings the regulation into compliance with requirements mandated in KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment clarifies protocols and expectations for interpreters that accept assignments through the Interpreter Referral Services Program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies ethical expectations of interpreters, to guide them in providing better services to deaf and hard of hearing consumers utilizing state services.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The 700,000 deaf and hard of hearing consumers in the Commonwealth that utilize interpreters to access state government services will be impacted by the clarification of interpreter protocols. State agencies that require interpreter services to provide access to the programs they provide will be in compliance with ADA requirements.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities identified in question (3) will not have to take any action to comply with the amendment to this 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 change in the cost of services for qualified interpreters because of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities requesting interpreter services will be better able to meet ADA requirements for providing communication access by utilizing qualified interpreters. Deaf and hard of hearing consumers utilizing state government services will be guaranteed ethical treatment and quality communication access.

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

(a) Initially: There will be no change in costs after implementation of this amendment as the Interpreter Referral Services Program is funded through the agency's annual budget.

(b) On a continuing basis: There will be on change in costs ongoing after implementation of this amendment. Continued indirect costs to the program include 10% of the Executive Director's time to supervise the administration of this program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Funds will support the implementation of this amendment. The KCDHH Executive Director works with the agency's annual budget, as provided by the General Assembly, and monitored by the Commission Board per KRS 163.506, to ensure quality services are provided.

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

(9) TIERING: Is tiering applied? Tiering is not applied, or required, to implement this amendment as the program functions as part of the overall mission of KCDHH.

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 agencies utilizing the Interpreter Referral Services Program will benefit from the clarification of protocol made in this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. State statutory authority; KRS 12.290, 163.510(4), 163.515, 201 KAR 39:120. Federal statutory authority; 29 U.S.C. Sec 794 and 42 U.S.C. Sec 12132.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire department, or school districts) for the first full year the administrative regulation is to be in effect. There is no impact on the expenditures and revenues of state government agencies because 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 will be generated because of this amendment.

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

(c) How much will it cost to administer this program for the first year? The cost for administration of this program is included in the agency's annual general fund budget authorized by the General Assembly, and will not increase because of this amendment.

(d) How much will it cost to administer this program for subsequent years? The cost for administration of this program is included in the agency's annual general fund budget authorized by the General Assembly, and will not increase because 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 (+/-): In compliance with KRS 163.515, the Executive Director works within the agency's annual budget, as provided by the General Assembly, and monitored by the Commission Board per KRS 163.506. There is no direct impact on revenue because of this amendment.

Expenditures In compliance with KRS 163.515, the Executive Director works within the agency's annual budget, as provided by the General Assembly, and monitored by the Commission Board per KRS 163.506. There is no direct impact on revenue because of

this amendment.

Other Explanation: None

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Commission on the Deaf and Hard of Hearing (Amendment)

735 KAR 2:050. Processing of requests for services.

RELATES TO: KRS 12.290, 163.510(4)

STATUTORY AUTHORITY: KRS 12.290, 163.510(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 12.290 mandates that each department, program cabinet, and administrative body of state government shall promulgate administrative regulations to provide accessibility to all services by persons who are deaf or hard-of-hearing in compliance with federal mandates including 29 U.S.C. sec. 794, a part of the Rehabilitation Act of 1973, and 42 U.S.C. secs. 12101 et seq., a part of the Americans with Disabilities Act of 1990. KRS 163.510(4) requires the commission to oversee the provision of interpreter and Communication Access Realtime Translation (CART) captioning services to the deaf and hard of hearing. This administrative regulation establishes the process for requesting services from the KCDHH Interpreter Referral Services Program.

Section 1. (1) In accordance with the requirements of the Rehabilitation Act (29 U.S.C. 794) and the Americans with Disabilities Act (42 U.S.C. 12132), the KCDHH Interpreter Referral Services Program shall coordinate with~~be provided to~~ a state agency to provide services if:

(a)~~[Necessary to receive public service by an individual who is]~~ A deaf or hard of hearing individual requires access to services provided by a state agency;

(b)~~[Requested by]~~ A state agency authorizes services for an employee who is deaf or hard of hearing;

(c) Required under a provision of the Acts; or

(d) Necessary for a state agency to provide accessibility to a public event, as defined by the Acts.

(2) A request for services shall include the following information:

(a) Date and time off~~interpreted~~ event to be interpreted or captioned;

(b) Expected length of the interpreted or captioned event;

(c) Consumer (deaf or hard of hearing) and state agency names;

(d) Consumer communication preference (if known);

(e) Assignment location;

(f) Type of event to be interpreted or captioned, i.e. one-to-one situation, small group meeting, or platform presentation, etc;

(g) On-site contact person and phone number;

(h) A request for a specific interpreter or captioner; and

(i) Pertinent billing information including:

1. Purchase order or interaccount number;

2. Authorizing agency contact person; and

3. Billing address and phone number;

(j) Other information that would be beneficial to the interpreter or captioner, including:

1. Directions to the event location;~~and~~

2. Notice of special needs, including a tactile or oral interpreting request, a deaf interpreter~~or~~ specialized vocabulary, or set up needs for captioning; and

3. Specific non-traditional attire requirements, if appropriate.

(3) An agency shall submit an interpreting or captioning services request by doing one of the following:

(a) Telephoning or emailing~~[By telephone to]~~ the staff of the KCDHH Interpreter Referral Services Program, which may then require completion of an online electronic request form through the KCDHH Web site;~~(b) Faxed form;~~

(b) Submitting an~~(e)~~ electronic request form~~[submittal]~~ directly, via~~[email or]~~ the KCDHH Web site~~[KCDHH WWW home page]; or~~ ~~(d) Letter;~~

(e) In-person; or]

(c) Videophone[(f) Videoconferencing].

(4) A request for interpreting or captioning services shall be considered a binding agreement, in accordance with KRS Chapter 45A, between the requesting agency and the KCDHH Interpreter Referral Services Program, with the terms and conditions as outlined in this administrative regulation.

(5) Unless an emergency or other unforeseen circumstance arises preventing advance notice, an agency shall submit an interpreting or captioning request at least two (2) weeks prior to the assignment date. If an emergency or unforeseen circumstance occurs, KCDHH shall attempt to fill the request. ~~However, it may be impossible for KCDHH to fulfill the request for services.~~

(6) Upon receiving a request for an interpreting or captioning assignment, the Interpreter Referral Services Program[KCDHH] staff shall first attempt to schedule an assigned~~[a contract]~~ interpreter or captioner for the event, if one (1) is available and qualified. If there are no assigned~~[contract]~~ interpreters or captioners available, staff shall then attempt to schedule a staff interpreter or another captioner.

(7) If a specific interpreter or captioner is requested by an agency or consumer, the[KCDHH] Interpreter Referral Services Program shall attempt to provide the requested person. However, the program shall not guarantee that a specific request will be honored.

(8) The KCDHH recognizes that the demand for interpreting services exceeds the existing supply of staff and freelance interpreters; therefore, the KCDHH shall hire and assign an interpreter or captioner based on the following criteria:~~in order of importance~~

(a) Current and valid interpreter certification awarded by a nationally recognized organization, as outlined in 735 KAR 2:030;

(b) Meeting interpreter licensure requirements as outlined in KRS 309.300 to 309.319;

(c) Years of experience and references for captioners~~[Highly qualified, based on:~~

1. Years of interpreting experience;

2. Demonstrable interpreting skill, as evidenced by screening, or precertification level];

~~(d)[3.]~~ Consumer preference is honored whenever possible; and

~~(e)[4.]~~ Having no financial or personal conflict of interest, as defined by KRS Chapter 45A.

(9) The KCDHH Interpreter Referral Services Program staff shall notify the state agency of the name of the assigned interpreter or captioner.

(10) Due to the high demand for interpreting and captioning services and for specialized skills~~[skill]~~, the[KCDHH] Interpreter Referral Services Program shall reserve the right to reassign an interpreter or captioner, as appropriate, based on skill level~~[and]~~, qualifications or regional location if fiscal constraints are evident. If an assigned interpreter or captioner ~~is~~~~[should be]~~ reassigned, the[KCDHH] Interpreter Referral Services Program staff shall notify the state agency of the name of the replacement assigned interpreter or captioner.

(11) The[KCDHH] Interpreter Referral Services Program staff shall notify the assigned interpreter or captioner of the details of the assignment, including any communication preferences, special terminology, the date, the time and the location prior to the actual date of the assignment.

(12) The interpreter/captioner must inform the Interpreter Referral Services Program staff of any changes to their ability to keep the assignment.

(13) The Interpreter Referral Services Program is not responsible for fees associated with the assignment; however, interpreters or captioners are encouraged to notify the requesting agency of their fees prior to accepting the assignment.

~~(14)[(42)]~~ A client or consumer shall have the right to refuse the services of an interpreter or captioner and request a replacement. If a replacement is requested, Interpreter Referral Services Program staff~~[the service]~~ shall try to fill the request if possible. However, the[KCDHH] Interpreter Referral Services Program shall not guarantee a replacement.

(15) The interpreter or captioner assigned to the event, and the

requesting agency, shall notify the Interpreter Referral Services Program staff of any changes related to the assignment as soon as possible.

(16) The KCDHH Interpreter Referral Services Program does not guarantee that all interpreting or captioning requests will be filled. All requests are subject to:

(a) Prior approval by the KCDHH Executive Director; or

(b) The availability of the appropriate interpreter(s) or captioner.

VIRGINIA L. MOORE, KCDHH Executive Director

APPROVED BY AGENCY: April 11, 2018

FILED WITH LRC: April 11, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2018, at 10:00 a.m. EST, at the Kentucky Commission on the Deaf and Hard of Hearing office located at 632 Versailles Road, Frankfort, KY. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 2018, 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 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 received. 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 May 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: Virginia L. Moore, Executive Director, email virginia.moore@ky.gov, 632 Versailles Road, Frankfort, Kentucky 40601, phone (502) 573-2604 v/tty, fax (502) 573-3594 or Videophone (502) 416-0607.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Virginia L. Moore

(1) Provide a brief summary of:

(a) What this administrative regulation does: 735 KAR 2:050 outlines the process for state agencies requesting an interpreter or captioner through the KCDHH Interpreter Referral Services Program, in order to provide accessible communication for state agency programs per KRS 12.290.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the provisions of KRS 163.510(4), which mandates that the KCDHH administer the Interpreter Referral Services Program, to meet the needs of deaf and hard of hearing individuals participating in services offered by state agencies. This regulation covers procedures for processing requests for communication services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by outlining procedures for processing requests for interpreting and captioning services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines the process for state agencies to request interpreter or captioner services through the KCDHH Interpreter Referral Services Program, in order to provide services to deaf and hard of hearing individuals.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds additional guidance for state agencies making a request for interpreter or captioner services, and adds captioner services as another mode of communication primarily for hard of hearing individuals. It also delineates when services may be difficult to provide.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to add references to captioning services, and clarify the process of making a request for

interpreting or captioning services through the Interpreter Referral Services Program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment clarifies procedures for processing requests from state agencies for interpreters and captioners assigned by the Interpreter Referral Services Program to provide communication access for deaf and hard of hearing individuals.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies procedures for processing interpreter and captioning requests, from state agencies, through the Interpreter Referral Services Program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The 700,000 deaf and hard of hearing consumers in the Commonwealth that utilize interpreters or captioners to access state services will be better served and state agencies providing interpreter or captioning services will be in compliance with ADA requirements.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities identified in question (3) will not have to take any additional action to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no change in the cost for interpreter or captioner services requested through the Interpreter Referral Services Program because of the amendment to this regulation. Services are provided free of charge by the Interpreter Referral Services Program to state agencies, per KRS 163.510(4).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities requesting interpreting or captioning services will have additional instructions regarding the processing of requests for services through the Interpreter Referral Services Program, to stay in compliance with KRS 12.290.

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

(a) Initially: There will be no change in cost initially after implementation of this amendment as the Interpreter Referral Services Program is funded under the agency's budget.

(b) On a continuing basis: There will be no change in cost ongoing after implementation of this amendment as the Interpreter Referral Services Program is funded under the agency's budget. Continued indirect costs include 10% of the Executive Director's time to supervise the administration of this program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Funds already allotted in KCDHH's annual budget will support 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 increase in fees or funding is required 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 directly or indirectly established, or increased, by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied, or required, to implement this amendment as the program functions as part of the overall mission of KCDHH.

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 agencies utilizing the Interpreter Referral Services Program will benefit from the clarifications made in this amendment, in order to comply with

ADA requirements.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. State statutory authority; KRS 12.290, KRS 163.510(4). Federal statutory authority; 29 U.S.C. Sec 794 and 42 U.S.C. Sec 12132.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire department, or school districts) for the first full year the administrative regulation is to be in effect. There is no change in expenditures and revenues of state government agencies because 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 will be generated because of this amendment 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? No revenue will be generated because of this amendment in subsequent years.

(c) How much will it cost to administer this program for the first year? The Executive Director works within the agency's annual budget, as provided by the General Assembly, and monitored by the Commission Board per KRS 163.506, to support the Interpreter Referral Services Program. Costs will not increase in the first year because of this amendment.

(d) How much will it cost to administer this program for subsequent years? The Executive Director works within the agency's annual budget, as provided by the General Assembly, and monitored by the Commission Board per KRS 163.506, to support the Interpreter Referral Services Program. Costs will not increase in subsequent years because 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 (+/-): The Executive Director works within the agency's annual budget, as provided by the General Assembly and monitored by the Commission Board per KRS 163.506. There is no direct fiscal impact because of this amendment.

Expenditures (+/-): The Executive Director works within the agency's annual budget, as provided by the General Assembly, and monitored by the Commission Board per KRS 163.506. There is no direct expenditure impact because of this amendment.

Other Explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. NA
2. State compliance standards. NA
3. Minimum or uniform standards contained in the federal mandate. NA
4. Will this administrative regulation impose stricter requirement, or additional or different responsibilities or requirements, than those required by the federal mandate? NA
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

EDUCATION AND WORKFORCE DEVELOPMENT Kentucky Commission on the Deaf and Hard of Hearing (Amendment)

735 KAR 2:060. Grievance procedures.

RELATES TO: KRS 12.290, 163.510(4) 201 KAR 39:120
STATUTORY AUTHORITY: KRS 163.510(4), 163.515[1998
GA-HB-321, Commonwealth Budget Final Budget Memorandum,
FB-1998-2000]

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to implement KRS

163.510(4), which authorizes the Kentucky Commission on the Deaf and Hard of Hearing [(KCDHH)] to oversee the provision of interpreting and captioning services and to provide such services if necessary.~~[House Bill 321 (1998) and the Commonwealth Budget Final Budget Memorandum specifically authorizes the KCDHH to provide interpreter referral services to state agencies.]~~ This administrative regulation establishes a process for receiving and handling complaints against interpreters, captioners, state agencies or the Interpreter Referral Services Program.

Section 1. (1) Grievances may be filed against the:

- (a) Interpreter (freelance or assigned);
- (b) Captioner;
- (c) ~~[(b)]~~ State agency; ~~or~~
- (d) ~~[(e)]~~ KCDHH Interpreter Referral Services Program staff; or
- (e) Interpreter Referral Agency.

(2) All grievances shall be submitted in writing or on video within ninety (90) days of the event in question to the Executive Director of the Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601 and must include:

(a) Name, address, and phone number of person filing the grievance;

(b) Name and role (i.e., interpreter, captioner, state agency, referral agency) of person(s) against whom the grievance is being filed;

(c) Date, time and location of the alleged violation;

(d) Description of the alleged violation and, if known, reference made to the appropriate authorizing body, per 201 KAR 39:120, [NAD or RID] Code of Ethics, and what was [that were] allegedly violated; and

(e) Signature of the complainant.

(3) Anonymous grievances will not be recognized.

(4) The KCDHH Executive Director~~[Interpreter Referral Services staff]~~ will investigate the alleged grievance within thirty (30) days of receiving the grievance.

(5) Copies of the grievance shall be made available to the:

- (a) Complainant;
- (b) Respondent (person grievance is against);
- (c) Witnesses; and

(d) All other pertinent parties to the grievance or the investigation.

(6) The KCDHH Executive Director~~[Interpreter Referral Services staff]~~ shall submit a written decision within sixty (60) days of receiving the grievance, which may result in:

(a) Mediation among the involved parties; and

(b) Dismissal of the grievance; or

~~[(b)]~~ The grievance being referred to the Kentucky Board of Interpreters~~[national certifying body]~~, if the grievance is of serious nature; ~~or~~

(c) Dismissal of grievance; or

(d) ~~The KCDHH Interpreter Referral Service has the right to discontinue utilizing the services of an interpreter based on the findings of a grievance.]~~

(7) If the decision of the KCDHH Executive Director~~[Interpreter Referral Services Program staff]~~ is appealed, the KCDHH Commissioner Executive Board~~[Interpreter Services Advisory Board]~~ shall review the decision and make a ruling.~~[(8) If the decision of the KCDHH Interpreter Services Advisory Board is appealed, then the Executive Director of the KCDHH shall review the decision and make a ruling.]~~

(9) ~~If the decision of the Executive Director of the KCDHH is appealed, then the Commissioners of the KCDHH shall review the decision and make a ruling.]~~

~~[(40)]~~ If the decision of the KCDHH Commissioner Executive Board~~[Commissioners of the KCDHH]~~ is appealed, then the KCDHH shall comply with all provisions of KRS Chapter 13B.

(9) The KCDHH Interpreter Referral Service Program has the right to discontinue utilizing the services of a freelance or assigned interpreter, the State agency, Interpreter Referral Agency, or captioner based on the findings of a grievance.

~~[(10)]~~~~[(11)]~~ All records of grievances filed and the proceedings shall be kept at the KCDHH offices in accordance with the Open

Records and Open Meetings Law.

VIRGINIA L. MOORE, KCDHH Executive Director

APPROVED BY AGENCY: April 10, 2018

FILED WITH LRC: April 11, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2018, at 10:00 a.m. EST, at the Kentucky Commission on the Deaf and Hard of Hearing office located at 632 Versailles Road, Frankfort, KY. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 2018, 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 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 received. 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 May 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: Virginia L. Moore, Executive Director, email virginia.moore@ky.gov, 632 Versailles Road, Frankfort, Kentucky 40601, phone (502) 573-2604 v/t, fax (502) 573-3594, or VP (502) 416-0607.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Virginia L. Moore

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation outlines grievance procedures for anyone who works within or for the Interpreter Referral Services Program to provide or receive interpreting or captioning services for deaf and hard of hearing consumers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the provisions of KRS163.510(4), which mandates that the Kentucky Commission on the Deaf and Hard of Hearing administer the Interpreter Referral Services Program, to meet the needs of deaf and hard of hearing individuals participating in services offered by state agencies. The regulation outlines grievance procedures for participants in the program and includes entities working for the program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing procedures for filing grievances related to a request for interpreting or captioning service within the Interpreter Referral Services Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation clarifies procedures for filing a grievance with the Kentucky Commission on the Deaf and Hard of Hearing Interpreter Referral Services Program, in compliance with KRS Chapter 13B.

(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 procedures for filing a grievance against interpreters, agencies, or captioners providing services through the Interpreter Referral Services Program. The amendment updates the process of appealing grievances since the implementation of the Kentucky Board of Interpreters.

(b) The necessity of the amendment to this administrative regulation: This amendment adds captioners and agencies to the grievance procedures, and updates the process of hearing and appealing grievances since the implementation of the Kentucky Board of Interpreters.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment explains updated grievance procedures pertaining to the request for interpreters and captioners

through the Interpreter Referral Services Program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment explains updated grievance procedures pertaining to requests for interpreters and captioners and includes procedures for referring grievances to the Kentucky Board of Interpreters.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The 700,000 deaf and hard of hearing consumers in the Commonwealth that utilize interpreters or captioners to access state services will be more equitably served. Agencies providing services to deaf and hard of hearing consumers will comply with ADA requirements and are allowed to initiate grievances regarding those services.

(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: Consumers and state agencies identified in question (3) will not have to take any additional actions to comply with the amendment to this 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 additional charge to consumers or agencies in order to comply with the amendments to this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Consumers or state agencies requesting interpreter or captioner services will have additional information regarding the process of filing a grievance against the interpreter, captioners, state agency, interpreter referral agency or Interpreter Referral Services Program staff.

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

(a) Initially: There will be no cost to the administrative body initially to implement this amendment. Indirect costs include 10% of the Executive Director's time to supervise the administration of this program.

(b) On a continuing basis: There will be no cost to the administrative body ongoing to implement this amendment. Continued indirect costs include 10% of the Executive Director's time to supervise the administration of this program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Funds already allotted to the operation of the Interpreter Referral Services Program supports the implementation of this amendment. The Executive Director works within the agency's annual budget, as provided by the General Assembly and monitored by the Commission board per KRS 163.506.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased because of implementation of this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied, or required, to implement this amendment as the program functions as part of the overall mission of KCDHH.

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 agencies and consumers utilizing the Interpreter Referral Services Program will benefit from the clarification to grievance procedures made in this amendment.

(2) Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. State statutory authority; KRS 12.290, KRS 163.510(4), 163.506 and KRS Chapter 13B. Federal statutory authority; 29 U.S.C. Sec 794 and 42 U.S.C. Sec 12132.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire department, or school districts) for the first full year the administrative regulation is to be in effect. There is no effect on the expenditures and revenues of state government agencies because 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 will be generated for the first year because of this amendment.

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

(c) How much will it cost to administer this program for the first year? The cost for administration of the Interpreter Referral Services Program for the first year is included in KCDHH's general fund budget, and will not increase because of this amendment.

(d) How much will it cost to administer this program for subsequent years? The cost for administration of the Interpreter Referral Services Program for subsequent years is included in KCDHH's general fund budget, and will not increase because of this amendment Note:

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

Revenues (+/-): The Executive Director works within the agency's annual budget, as provided by the General Assembly and monitored by the Commission Board per KRS 163.506, to run the Interpreter Referral Services Program. There is no direct impact on revenues because of this amendment.

Expenditures (+/-): (+/-): The Executive Director works within the agency's annual budget, as provided by the General Assembly and monitored by the Commission Board per KRS 163.506, to run the Interpreter Referral Services Program. There is no direct fiscal impact on expenditures because of this amendment.

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) authorizes the Public Service Commission[commission] to[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) requires the commission to[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:]

(1)[(a)] "British thermal unit (BTU)" means quantity of heat that is required to[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).

(2)[(b)] "Commission" means the Public Service Commission.

(3)[(e)] "Cubic foot of gas" means the following:

(a)[1-] If gas is supplied and metered to customers at standard distribution pressure, a cubic foot of gas ~~means~~~~[shall be defined as]~~ that volume of gas which, at the temperature and pressure existing in the meter, occupies one (1) cubic foot.

(b)[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 ~~means~~~~[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 ~~if~~~~[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, ~~these~~~~[such]~~ different bases shall be effective.

(c)[3-] The standard cubic foot of gas for testing the gas itself for heating value ~~means the~~~~[shall be that]~~ volume of gas ~~that occupies one (1) cubic foot if:~~

1. Saturated~~[which, when saturated]~~ with water vapor and at temperature of sixty (60) degrees Fahrenheit; ~~and~~

2. Under~~[, 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 1 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.]

(4)[(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.

(e) "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.]

(5)[(u)] "Service line" means a distribution line that:

(a) Transports gas from a common source of supply to:

1. An individual customer;

2. Two (2) adjacent or adjoining residential or small

commercial customers; or

3. Multiple residential or small commercial customers served through a meter header or manifold; and

(b) Ends at the:

1. Outlet of the customer meter or connection to a customer's piping, whichever is farther downstream; or

2. Connection to a customer's piping if there is no customer meter.~~[transports gas from a common source of supply to: customer meter or connection to a customer's piping, whichever is farther downstream; or 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.]

(6)[(w)] "State" means Commonwealth of Kentucky.

(7)[(x)] "Therm" means the unit of heating value equivalent to 100,000 British thermal units.

(y) "Transmission line" means a pipeline, other than a gathering line that:

(a)[1-] Transports gas from a gathering line or storage facility to a distribution center,~~[or]~~ storage facility or large volume customer ~~that is not down-stream from a distribution center;~~

(b)[2-] Operates at a hoop stress of twenty (20) percent or more of SMYS; or

(c)[3-] Transports gas within a storage field.

Section 2. [(2) Scope. This administrative regulation prescribes] Minimum[safety and] Service Standards for Natural Gas Utilities Operating under the Jurisdiction of the Commission. (1)[(a)] Utilities serving customers under KRS 278.485 or other retail customers, under the jurisdiction of the commission, directly from transmission or gathering lines shall be[are] exempt from the following sections of this administrative regulation insofar as they apply to these customers:

(a)[1-] Section 4; [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 5[15]; and

(c)[5-] Section 6[16].

(2) Outage.

(a)[(b)] 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 or 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.

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
ASTM A 333	Seamless	1.00
	Electric resistance welded	1.00
ASTM A 384	Double submerged arc welded	1.00
ASTM A 674	Electric fusion welded	1.00
ASTM A 672	Electric fusion welded	1.00
ASTM A 694	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.).

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:

(e) Wall thickness for thermoplastic pipe shall not be less than 1.57 millimeters (0.062 in.).

(f) 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 or 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 piping 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 operating pressure	Minimum clearance (feet)
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 C1.

(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.

(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 valve 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 jointed 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 tested 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 SMYS 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	Normal Soil (inches)	Consolidated Rock (inches)
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 3[8]. [Gas Measurement. (1) Scope. This section

prescribes] Minimum requirements for measurement of gas, accuracy of measuring meters[instruments (meters)], meter testing facilities and periodic testing of meters. (1)[(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 that comply with this section except in cases of emergency or when otherwise authorized by the commission in accordance with Section 8 of this administrative regulation. Each meter shall bear an identifying number. If[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 shall be 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 807 KAR Chapter 5[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 accordance with Section 8 of this administrative regulation or if[in 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, if[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.

(2)[(3)] Accuracy requirements for meters. All tests to determine accuracy of registration of any gas meters shall be made by a[qualified] meter tester certified in accordance with 807 KAR 5:006, Section 17, and with[suitable] facilities that meet the requirements of subsection (3) of this section.

(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 be correct 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~~ the intervals required by subsection (4) of this section by the utility meter tester using flow provers or ~~other approved~~ methods approved in accordance with the requirements of this section either in the shop or at the location of use at the utility's option and with facilities that meet the requirements of subsection (3) of this section ~~[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 subsection (3) of this section ~~[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.

~~(3)~~ (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, such as humidity and dust. The proving room or the entire meter shop shall be air conditioned, if necessary, to achieve satisfactory temperature control required by subparagraph (3) of this paragraph.

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 not 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 a ~~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 shall ~~must~~ be signed by a proper authority of the party providing the certification ~~[designated by the commission]~~. A tag referring to the ~~such~~ certificate may be attached to the instruments ~~if~~ 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.

~~(4)~~ (5) Periodic tests.

(a) Periodic tests of all meters shall be made according to the following schedule based on rated capacities. Rated meter capacity shall be ~~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 as specified by the manufacturer.

(b) ~~If~~ Whenever the number of meters of any type which register in error beyond the limits specified in these rules is deemed excessive, this type shall be tested with an ~~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 make its request in accordance with Section (8) of this administrative regulation ~~[submit its application to the commission for approval]~~. Upon approval, the sample testing plan may be followed instead in lieu of tests prescribed in subsections (2) and (4) ~~(3) and (5)~~ of this section and 807 KAR 5:006, Section 17(1).

~~(5)~~ (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 4 ~~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 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 the [such] service.

(b) Other extensions.

1. If [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 [applicant(s)], based on average estimated cost per foot of the total extension.

2. Each customer receiving service under this extension shall [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 [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, a [no] refund shall not be required.

(d) Nothing contained in this administrative regulation [herein] shall be construed to prohibit the utility from making extensions under different arrangements if these [provided such] arrangements have been included in the utility's tariff and approved by the commission.

(e) Nothing contained in this administrative regulation [herein] shall be construed to prohibit a utility from making, at its expense, greater extensions than [herein] prescribed, if [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 this [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, [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, the [that portion of] service line [pipe] from its main to the meter, [property line or to and] 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 807 KAR Chapter 5, [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 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 operation 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)6 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, 1974, 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, 1974, 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 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 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 1(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 uprated 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	Maximum Interval Between Periods
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Location of Line	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 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 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 Principles 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 5[4][15]. Purity of Gas. (1) All gas supplied to customers shall not contain[ne] 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. Gas shall not contain impurities that[No gas shall contain impurities which] may cause excessive corrosion of mains or piping or form corrosive or harmful fumes if[when] burned in a properly designed and adjusted burner.

(2) If[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 shall not require testing[need not be tested] for ammonia. Testing shall be in accordance with excepted American Society for Testing and Materials methodologies[Approved methods of testing shall be used]. Records of all tests shall be retained and provided to the

Commission upon request[preserved as specified by the commission].

Section 6[16]. Heating Value of Gas. (1) Definitions of heating value. The heating value of gas shall be[is] the number of British Thermal Units (BTUs) produced by the combustion at constant pressure, of that amount of gas that[which] would occupy a volume of one (1) cubic foot at a temperature of sixty (60) degrees Fahrenheit;

(a) If saturated with water vapor;

(b) Under pressure equivalent to thirty (30) inches of mercury at a temperature of thirty-two (32) degrees Fahrenheit;

(c) Under gravity;

(d) With air of the same temperature and pressure as the gas;

(e) When the products of combustion are cooled to the initial temperature of the gas and air; and

(f) When the water formed by combustion is condensed to liquid stage], 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 as specified in the utility's tariff approved by the Commission.

(b) It shall be that value that[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[heating] value of gas or shall retain the services of a competent[testing] laboratory [approved by the commission]. All testing equipment shall be accompanied at all times by a certificate showing the date it was last tested and adjusted[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 this[such] equipment is available for testing and certification by the commission.

(7) Each utility shall conduct tests[test] and maintain necessary records to document that the requirements of this section are being met. Those utilities that[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 procedures[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 a change to the utility's tariff approved by [approval of] the commission and without adequate notice to affected customers. In this[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 7[17]. Waste. All practices in the production, distribution, consumption, or use of natural gas that[which] are wasteful shall be[are hereby] expressly prohibited.

Section 8[18]. 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), 1801 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 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 400 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.
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.
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:

NUMBER OF TENSILE TEST - ALL SIZES

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.

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(e).

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 I of this appendix, is qualified for use under this part if the following requirements are met:

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.

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:

(1) Physical (mechanical) properties of pipe, including yield and tensile strength, elongation, and yield to tensile ratio, and testing requirements to verify those properties.

(2) Chemical properties of pipe and testing requirements to verify those properties.

C. Inspection or test of welded pipe. On pipe with welded seams, one (1) of the following requirements shall be met:

(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.

(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.

APPENDIX C

QUALIFICATION OF WELDERS FOR LOW STRESS LEVEL PIPE

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.

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.

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:

(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.

(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.

APPENDIX D

CRITERIA FOR CATHODIC PROTECTION AND DETERMINATION OF MEASUREMENTS

I. Criteria for cathodic protection:

A. Steel, cast iron, and ductile iron structures:

(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.

(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.

(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.

(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.

B. Aluminum structures:

(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.

(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 Chairman has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 278.040(3)

GWEN R. PINSON, Executive Director

MICHAEL J. SCHMITT, Chairman

APPROVED BY AGENCY: April 9, 2018

FILED WITH LRC: April 10, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 29, 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 May 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, Policy Analyst, Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3940, fax (502) 564-7279, email Jason.Whisman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jason Whisman

(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 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 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, 49 C.F.R. 192

STATUTORY AUTHORITY: KRS 278.040(3), 278.485

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the Public Service Commission to [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) requires[provides that] gas service to[shall] be furnished at rates and charges determined by the commission. KRS 278.485(3) authorizes the commission to prescribe[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 meter" means the device that measures the transfer of gas from the pipeline company to the consumer.~~

(3) "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 a pipeline that transports gas from as current production facility to a transmission line or main[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)" 2016[1992] edition, as published by the American Society of Mechanical Engineers, Two Park Avenue[United Engineering Center, 345 East 47th Street], New York, N. Y. 10016-590[40017, 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 Sewer 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 this administrative regulation prior to commencement of service[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) 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, if[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 the regulating equipment, unless the gas company has dehydrated the natural gas supply prior to providing to the customer[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 is capable of exceeding[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 a properly-sized[an adequate] spring type relief valve to avoid over pressuring

the customer line. 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. A structure shall not ~~[No structure shall]~~ be erected over the line.

(2) A branch tee or other connection shall not ~~[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, if ~~[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, and shall conform ~~[at least one and one quarter (1 1/4) inches in diameter or larger, that conforms]~~ to standards in the Standard Specification for Pipe, Steel, Black, and Hot-dipped, Zinc Coated, Welded and Seamless (A53/A53M-12) 2012 edition ~~[(A53-95a)-1995]~~, as published by the American Society for Testing and Materials, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, Pennsylvania 19428-2959 ~~[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 and shall meet ~~[be constructed of one and one-quarter (1 1/4) pipe that meets]~~ the Standard Specification for Polyethylene (PE) ~~[Thermoplastic]~~ Gas Pressure Pipe, Tubing and Fittings (D2513-16a), 2016 ~~[(D-2513-94a)-1994]~~ edition, as published by the American Society for Testing and Materials, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, Pennsylvania 19428-2959 ~~[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. if ~~[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. A plastic line shall not ~~[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.

(12) A combustible gas in a distribution line must contain a natural odorant or be odorized so that at a concentration in air of one-fifth of the lower explosive limit, the gas is readily detectable by a person with a normal sense of smell.

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 in accordance with KRS Chapter 278 and 807 KAR Chapter 5. 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 termination of service shall not ~~[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 in

accordance with KRS Chapter 278 and 807 KAR Chapter 5. 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 in accordance with KRS 278 and 807 KAR Chapter 5 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) Instead[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 shall[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.

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

(a) "American National Standard Code for Pressure Piping, Gas Transmission and Distribution Piping Systems (ASME B31.8)", 2016 edition, as published by the American Society of Mechanical Engineers, Two Park Avenue, New York, N. Y. 10017-5990;

(b) "Standard Specification for Pipe, Steel, Black, and Hot-dipped, Zinc Coated, Welded and Seamless (A53-/53M)", 2012 edition, as published by the American Society for Testing and Materials, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, Pennsylvania 19428; and

(c) "Standard Specification for Polyethylene (PE) Gas Pressure Pipe, Tubing and Fittings (D 2513-16a)", 2016 edition, as published by the American Society for Testing and Materials, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, Pennsylvania 19428.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Public Service Commission, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky 40602-0615, Monday through Friday, 8:00 a.m. through 4:30 p.m.

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 29, 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 May 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, Policy Analyst, Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3940, fax (502) 564-7279, email Jason.Whisman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jason Whisman

(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

PUBLIC PROTECTION CABINET

Department of Housing, Buildings and Construction Division of Building Code Enforcement (Amendment)

815 KAR 7:110. Criteria for expanded local jurisdiction.

RELATES TO: KRS 67A, 67C, 82.105(1), 83, 83A, 198B.040(7), 198B.050, 198B.060, 198B.070, 212.626(5), 227.489[236.318]

STATUTORY AUTHORITY: KRS 198B.050(5), 198B.060(5), (6), (18)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.060(5) and (6) authorize a local government to petition the commissioner to request additional plan review and inspection functions[~~to be allocated~~]. This administrative regulation establishes the requirements for local governments[building departments] to request and be granted expanded jurisdiction for building code plan review and inspection [jurisdiction by the department].

Section 1. Definitions. (1) "Local governing body" means the chief governing body of a city, county, consolidated local government, or urban-county having legislative powers.

(2) "Local government" means:

(a) A city, as established by KRS Chapters 67A, 67C, 83, and 83A;

(b) A county, as defined by KRS 212.626(5);

(c) A consolidated local government; or[and]

(d) An urban-county government.

Section 2. Uniform Criteria for Granting Expanded Jurisdiction.[~~To apply for expanded jurisdiction pursuant to KRS 198B.060(5), a local government shall comply with the requirements established in this section.~~] (1) Inspector requirements. A local government shall employ or execute a legal

contract with at least one (1):

(a) Individual certified as a building inspector, level III, in accordance with 815 KAR 7:070. The building inspector, level III, shall be responsible for reviewing plans, reviewing specifications, and performing building inspections; and

(b) Certified electrical inspector in accordance with KRS 227.489 and 815 KAR 35:015. The certified electrical inspector shall enforce the National Electric Code (NFPA 70) as adopted and incorporated into the Kentucky Building Code and Kentucky Residential Code. An authorized representative of a local government shall complete the Application for Local Expanded Jurisdiction, Form BCE/EJ #1, and submit it to the department together with the supporting documentation required by this administrative regulation.

(2) Record retention [Certified inspectors required].

(a) The local government shall be responsible for maintaining all records in compliance with the department's record retention schedule in accordance with 725 KAR 1:061 [certify that it employs or contracts with a person, firm, or company to perform the plan reviews, specifications, and building inspection functions granted to the local government].

(b) If the local government contracts with a person, firm, or company to perform plan and specification inspections or building inspection functions pursuant to KRS 198B.060(15), the local government shall be responsible for the records produced by the person, firm, or company in compliance with paragraph (a) of this subsection [employ or execute a legal contract with at least one (1) person certified as a building inspector level III, pursuant to 815 KAR 7:070. The building inspector level III shall be responsible for reviewing plans, reviewing specifications, and performing building inspections].

(c) The local government shall employ or execute a legal contract with a certified electrical inspector to enforce the National Electric Code (NFPA 70) as adopted and incorporated into the Kentucky Building Code (815 KAR 7:120) and Kentucky Residential Code (815 KAR 7:125).

(3) Minimum jurisdiction responsibilities. The local government shall maintain the minimum responsibilities required by KRS 198B.060(2), unless specifically agreed otherwise in writing between the local government and the department [Additional personnel. A complete list of code enforcement personnel, including the building inspector level III and certified electrical inspector, employed or contracted with to enforce the code within the expanded jurisdiction shall be submitted with the application. The list of personnel shall include the name, job title, and certification status of each individual].

(4) [Construction activity. The local government shall provide documentation of the permits issued and fees collected for the previous calendar year, if any, and an estimation of the anticipated increase in activity if granted expanded jurisdictional authority.

(5) Local government contracts.

(a) If a local government associates with other local governments to share plan and specifications inspection or building functions pursuant to KRS 198B.060(15), the documentation of permit and fee activity required by subsection (4) of this section shall be provided by the applicant; or

(b) If a local government contracts with a person, firm, or company to provide plan and specification inspections or building inspection functions, and the person, firm, or company, the documentation of permit and fee activity required by subsection (4) of this section shall be provided by the applicant.

(6) Official contact person. The local government shall identify and provide the:

(a) Name and title of the chief building code official;

(b) Name of the department;

(c) Official mailing address;

(d) Phone number;

(e) Fax number; and

(f) E-mail address, if applicable.

(7) Inclusions and exclusions.

(a) Application for expanded jurisdiction pursuant to KRS 198B.060(5) shall include a:

1. List of each building occupancy classification and size for

which expanded jurisdiction is requested;

2. List of each building occupancy classification and size for which expanded jurisdiction is not requested;

3. Copy of the local ordinance requiring single family dwelling plan review and inspection within the jurisdiction; and

4. Copy of the schedule of fees as adopted by the local governing body.

(b) The minimum responsibilities required by KRS 198B.060(2) shall be maintained by the local government, unless specifically agreed otherwise in writing between the local government and the department.

(8) State jurisdiction. The department shall retain plan review, inspection, and enforcement responsibility pursuant to the Kentucky Building Code, 815 KAR 7:120, for all buildings that are:

(a) Institutional buildings;

(b) Educational buildings [unless specifically agreed in writing by the local government and the department];

(c) Licensed facilities as mandated by the Cabinet for Health and Family Services, including day care centers, hospitals, and nursing homes;

(d) State-owned and state-leased buildings and facilities;

(e) High-hazard occupancies, unless specifically agreed in writing by the local government and the department; and

(f) Industrialized building systems (including modular homes), except for site placement and assembly of individual modular homes. A local government may permit placement and assembly locally. Local placement and assembly shall not commence until the local government submits written notification to the department for each placement.

Section 3. Application for Expanded Jurisdiction. (1) Application. An authorized representative of a local government shall submit to the department:

(a) A completed Application for Local Expanded Jurisdiction, Form BCE/EJ #1;

(b) An affidavit certifying the local government employs or contracts with a certified building inspector, level III, and a certified electrical inspector, and the name and job title for each inspector;

(c) A complete list of code enforcement personnel employed by or contracted with the local government, including the name, job title, and certification status of each individual;

(d) Documentation of all permits issued and fees collected for the previous calendar year, if any, and an estimation of the anticipated increase in activity if granted expanded jurisdictional authority;

(e) A complete list of each:

1. Building occupancy, classification, and size for which expanded jurisdiction is requested; and

2. Building occupancy, classification, and size for which expanded jurisdiction is not requested;

(f) A copy of the local ordinance requiring single-family dwelling plan review and inspection within the jurisdiction;

(g) A copy of the schedule of relevant fees adopted by the local governing body;

(h) A copy of any agreement between the applicant and another local government pursuant to KRS 198B.060(14); and

(i) A copy of any agreement between the applicant and any person, firm, or company to perform plan and specification inspections or building inspection functions pursuant to KRS 198B.060(15).

(2) Expanded jurisdiction agreement.

(a) If the application is approved by the department, the department and the local government shall enter into an expanded jurisdiction agreement.

(b) Each agreement for expanded jurisdiction shall be in effect for three (3) years, unless:

1. Canceled by one or both parties in writing; or

2. Preempted in whole or in part pursuant to subsection (1) of this section.

(c) The local government shall notify the department within thirty (30) days of any changes in personnel or fees that differ from the terms of the agreement.

Section 4. Procedures for Maintaining Expanded Jurisdiction.

(1) Renewal. ~~The department shall monitor the program of each local government granted expanded jurisdiction responsibilities. If a local government is found to be in violation of the requirements of this administrative regulation, the Kentucky Building Code, 815 KAR 7:120, the Kentucky Residential Code, 815 KAR 7:125, the terms of the applicable expanded jurisdiction agreement, or KRS Chapters 198B, 236, or 318, the local government shall be subject to preemption, in whole or in part, by the department.~~

(2) Each agreement for expanded jurisdiction shall be in effect for three (3) years, unless:

- (a) Canceled by agreement of the parties in writing; or
- (b) Preempted in whole or in part pursuant to subsection (1) of this section.

(3)(a) The local government shall notify the department, within thirty (30) days of changes in personnel or fees during the terms of the agreement.

(b) Failure to notify the department of changes may result in the revocation of expanded jurisdiction responsibilities pursuant to KRS 198B.060(4).

(4) Before the expiration of the ~~three (3)-year~~ agreement ~~for expanded jurisdiction~~, the local jurisdiction shall submit a Renewal ~~Renewable~~ Application for Expanded Jurisdiction on Form BCE/EJ #2. The renewal application shall include the submissions required by Section 3 of this administrative regulation.

(2) Renewal application review. ~~contain a:~~

- (a) List of each building occupancy classification and size for which expanded jurisdiction is requested to continue;
- (b) List of each building occupancy classification and size for which expanded jurisdiction is not requested;
- (c) Copy of the local ordinance, if different than submitted with previous application requiring single family dwelling plan review and inspection within the jurisdiction; and
- (d) Copy of the current schedule of fee as adopted by the local governing body.

(5) After receiving and reviewing the local government's application for renewal, the department shall:

- (a) Reevaluate the building code enforcement program of the local government; and
- (b) ~~Either~~ Renew the local government's expanded jurisdiction agreement or deny the renewal request within forty-five (45) days of receiving the local program's renewal application and supporting documentation.

(3) Expanded jurisdiction monitoring. The department shall monitor the program of each local government granted expanded jurisdiction responsibilities. If a local government violates the requirements of this administrative regulation, the Kentucky Building Code, 815 KAR 7:120, the Kentucky Residential Code, 815 KAR 7:125, the terms of the expanded jurisdiction agreement, or KRS Chapters 198B, 236, or 318, the local government shall be subject to preemption, in whole or in part, by the department.

(4) ~~(6) The department shall report to the Board of Housing, Buildings, and Construction the department's decision regarding the renewal of expanded building code enforcement program of the local government.~~

(7) The department shall retain plan review, inspection, and enforcement responsibility pursuant to the Kentucky Building Code, 815 KAR 7:120, for all buildings as specified in the original agreement for expanded local jurisdiction with the local government.

Section 5[4]. Local Appeals Board. (1) The local government with expanded jurisdiction may establish a local appeals board. A local appeals board shall operate in accordance with KRS 198B.070.

(2) If the local government establishes a local appeals board, the local government shall send a written notice to the department, which shall:

- (a) Identify each member by name and qualifications for being appointed to the appeals board; and
 - (b) Include contact information for the local appeals board.
- (3) If a local appeals board is not established, all costs incurred by the department ~~[and Board of Housing, Buildings, and~~

Construction] to conduct hearings for appeals filed pursuant to KRS 198B.070(5) shall be charged to the local government.

Section 6[5]. One (1) and Two (2) Family Dwellings. (1) The local building inspection program shall not include the plan review and inspection for one (1) and two (2) family dwellings that are:

- (a) Manufactured homes;
- (b) Modular homes; or
- (c) Farm dwellings.

(2) The local building inspection program shall include permits and inspections for the foundation system and other on-site construction related to modular home installations.

Section 7[6]. Incorporation by Reference. (1) The following material incorporated by reference:

(a) "Application for Local Expanded Jurisdiction", Form BCE/EJ #1, May 2018 ~~December 2012~~; and

(b) "Renewal Application for Expanded Jurisdiction", Form BCE/EJ #2, May 2018 ~~December 2012~~.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN A. MILBY, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: April 12, 2018

FILED WITH LRC: April 13, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2018, at 9:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 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: David Startsmann, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone: 502-573-0365, fax 502-573-1057, email david.startsmann@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Startsmann

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for local governments to request and obtain expanded jurisdiction for building code plan review and inspection pursuant to KRS 198B.060(5) and (6).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the process by which a local government may apply and be approved to operate a local building inspection program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.050(5) and (6) authorizes a local government to petition the commissioner to request additional plan review and inspection functions to be allocated to that local government. KRS 198B.050(5) requires the Department to promulgate administrative regulations to carry out the Department's responsibilities.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: The regulation sets forth the requirements for a local government when petitioning the commissioner to form or renew a local building inspection program through expanded jurisdiction agreement.

(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 reorganizes the administrative regulation to be consistent with other license and certification application processes of the Department. The changes clarify the administrative regulation to facilitate understanding and compliance.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to make the expanded jurisdiction process more user friendly.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment clarifies the process a local government needs to follow when applying for expanded jurisdiction.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist jurisdictions requesting additional plan review and inspection responsibilities by removing confusing language and providing updated, standardized forms for application and renewal.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the Department of Housing, Buildings and Construction, as well as local governments and building inspection programs with, or applying for, expanded jurisdiction responsibilities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: Affected entities must comply with the application and renewal standards established herein, and must provide information to the department as requested.

(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 additional cost associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Local governments and building inspection programs will benefit from the clarification of confusing terms and requirements.

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

(a) Initially: There are no anticipated additional costs to administer this amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the agency. Any agency costs resulting from these administrative amendments will be met with existing 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: This amendment will not necessitate an increase in fees or funding.

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

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation applies equally to all local governments with an expanded jurisdiction agreement or applying for an expanded jurisdiction agreement.

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction and local jurisdiction inspection and plan review programs.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 198B.050(5), 198B.060(5), (6) and (18).

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 is not anticipated to generate additional revenue for the agency.

(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 is not anticipated to generate additional revenue for the agency.

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

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Code Enforcement
(Amendment)

815 KAR 7:120. Kentucky Building Code.

RELATES TO: KRS 132.010, 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.260, 198B.990, 227.300, 227.550(7)

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) and 198B.050 require the department to [adopt and] promulgate a mandatory uniform state[statewide] building code[, based on a model code] that establishes standards for the construction of all buildings in the state. This administrative regulation establishes the Kentucky Building Code's general provisions.

Section 1. Definitions. (1) "Building" is defined by KRS 198B.010(4).

(2) "Department" is defined by KRS 198B.010(11).

(3) "Industrialized building system" or "building system" is defined by KRS 198B.010(16).

(4) "Manufactured home" is defined by KRS 227.550(7).

(5) "Single-family dwelling" or "one (1) family dwelling" means a single unit that:

(a) Provides complete independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation; and

(b) Is not connected to another unit or building.

(6) "Townhouse" means a single-family dwelling unit constructed in a group of three (3) or more attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two (2) sides.

(7) "Two (2) family dwelling" means a building containing not more than two (2) dwelling units that are connected.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government

VOLUME 44, NUMBER 11 – MAY 1, 2018

Section 2.~~Adoption of the~~ Building Code. (1) The 2015 International Building Code~~[2012 International Building Code]~~ shall be the mandatory state building code for all buildings constructed in Kentucky, except that:

(a) The Kentucky amendments in the 2018 Kentucky Building Code~~[2013 Kentucky Building Code]~~ shall supersede any conflicting provision in the 2015 International Building Code~~[2012 International Building Code]~~;

(b) One (1) family dwellings, two (2) family dwellings, and townhouses shall be governed by 815 KAR 7:125; and

(c) Manufactured homes shall be governed by KRS 227.550 through 227.665.

Section 3. State Plan Review and Inspection Fees. The fees required by this section shall apply for plan review and inspection by the department. (1) Fast track elective.

(a) A request for expedited site and foundation approval of one (1) week or less, prior to full review of the complete set of construction documents, shall be accompanied by the fee required by Table 121.3.1 in subsection (3) of this section, plus an additional fifty (50) percent of the basic plan review or inspection fee.

(b) The additional fifty (50) percent fee shall not be less than \$400 and not more than \$3,000.

(c) The entire fee shall be paid with the initial plan submission.

(2) New buildings.

(a) The department's inspection fees shall be calculated by multiplying:

1. The cost per square foot of each occupancy type as listed in Table 121.3.1 in subsection (3) of this section; and

2. The square footage of the outside dimensions of the building.

(b) The fee for a building with multiple or mixed occupancies shall be calculated using the cost per square foot multiplier of the predominant use.

(c) The minimum fee for review of plans pursuant to this subsection shall be \$285.

(3) Table 121.3.1, Basic Department Fee Schedule. The basic plan review or inspection fee shall be as established in~~the~~ Table 121.3.1 in this subsection.

OCCUPANCY TYPE	COST PER SQUARE FOOT
Assembly	Sixteen (16) cents
Business	Fifteen (15) cents
Day care centers	Fifteen (15) cents
Educational	Fifteen (15) cents
High hazard	Sixteen (16) cents
Industrial factories	Fifteen (15) cents
Institutional	Sixteen (16) cents
Mercantile	Fifteen (15) cents
Residential	Fifteen (15) cents
Storage	Fifteen (15) cents
Utility and Miscellaneous	Thirteen (13) cents
Production greenhouse	Ten (10) cents

(4) Additions to existing buildings.

(a) Plan review fees for additions to existing buildings shall be calculated by multiplying the cost per square foot of the occupancy type listed in Table 121.3.1 in subsection (3) of this section by the measurement of the square footage of the addition, as determined by the outside dimensions of the addition and any other changes made to the existing building.

(b) The minimum fee for review of plans pursuant to this subsection shall be \$285.

(5) Change in use.

(a) Plan review fees for existing buildings in which the use group or occupancy type is changed shall be calculated in accordance with the schedule listed in Table 121.3.1 in subsection (3) of this section by using the total square footage of the entire building or structure pursuant to the new occupancy type as determined by the outside dimensions.

(b) The minimum fee for review of plans pursuant to this subsection shall be \$285.

(6) Alterations and repairs.

(a) Plan review fees for alterations and repairs not otherwise covered by this fee schedule shall be calculated by using the lower result of multiplying the:

1.~~[Multiplying the]~~ Cost for the alterations or repairs by 0.0030; or

2.~~[Multiplying the]~~ Total area being altered or repaired by the cost per square foot of each occupancy type listed in the schedule in subsection (3) of this section.

(b) The total square footage shall be determined by the outside dimensions of the area being altered or repaired.

(c) The minimum fee for review of plans pursuant to this subsection shall be \$285.

(7) Specialized fees. In addition to the fees established by subsections (1) through (6) of this section, the following fees shall be applied for the specialized plan reviews listed in this subsection:

(a) Table 121.3.9, Automatic Sprinkler Review Fee Schedule. The inspection fee for automatic sprinklers shall be as established in~~the~~ Table 121.3.9 in this paragraph;

NUMBER OF SPRINKLERS	FEE
4 - 25	\$150
26 - 100	\$200
101 - 200	\$250
201 - 300	\$275
301 - 400	\$325
401 - 750	\$375
OVER 750	\$375 plus thirty (30) cents per sprinkler over 750

(b) Fire detection system review fee~~;~~

1. Zero through 20,000 square feet shall be \$275; and

2. Over 20,000 square feet shall be \$275 plus thirty (30) dollars for each additional 10,000 square feet in excess of 20,000 square feet;

(c) The standpipe plan review fee shall be \$275. The combination stand pipe and riser plans shall be reviewed pursuant to the automatic sprinkler review fee schedule;

(d) Carbon dioxide suppression system review fee~~;~~

1. One (1) through 200 pounds of agent shall be \$275; and

2. Over 200 pounds of agent shall be \$275 plus five (5) cents per pound in excess of 200 pounds;

(e) Clean agent suppression system review fee~~;~~

1. a. Up to thirty-five (35) pounds of agent shall be \$275; and

b. Over thirty-five (35) pounds shall be \$275 plus ten (10) cents per pound in excess of thirty-five (35) pounds; and

2. The fee for gaseous systems shall be ten (10) cents per cubic foot and not less than \$150;

(f) Foam suppression system review fee~~;~~

1. The fee for review of a foam suppression system shall be fifty (50) cents per gallon of foam concentrate if the system is not part of an automatic sprinkler system.

2. Foam suppression system plans that are submitted as part of an automatic sprinkler system shall be reviewed pursuant to the automatic sprinkler review fee schedule.

3. The fee for review of plans pursuant to ~~subclause~~~~[subparagraph]~~ 1. of this paragraph shall not be less than \$275 or more than \$1,500;

(g) The commercial range hood review fee shall be \$225 per hood;

(h) Dry chemical systems review fee (except range hoods). The fee for review of:

1. One (1) through thirty (30) pounds of agent shall be \$275; and

2. Over thirty (30) pounds of agent shall be \$275 plus twenty-five (25) cents per pound in excess of thirty (30) pounds; and

(i) The flammable, combustible liquids or gases, and hazardous materials plan review fee shall be \$100 for the first tank, plus fifty (50) dollars for each additional tank and \$100 per piping system including valves, fill pipes, vents, leak detection, spill and overfill detection, cathodic protection, or associated components.

Section 4. General. All plans shall be designed and submitted to conform to this administrative regulation.

Section 5. Incorporation by Reference. (1) The following

material is incorporated by reference:

- (a) "2015 International Building Code"[2012 International Building Code, First Edition], International Code Council, Inc.; and
- (b) "2018 Kentucky Building Code, First Edition, April 2018[2013 Kentucky Building Code, Fifth Edition, April 2017].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN A. MILBY, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: April 12, 2018

FILED WITH LRC: April 13, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2018, at 9:00 a.m., EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 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: David Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the uniform Kentucky Building Code as required pursuant to KRS 198B.050.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to adopt the most up to date version of the Kentucky Building Code as required pursuant to KRS 198B.050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation utilizes the International Building Code as the basis for construction standards and allows the Department of Housing, Buildings and Construction to make amendments unique to Kentucky after due consideration of equivalent safety measures as required by KRS 198B.050.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth standards authorized by the statute for the enforcement of the uniform state building code, incorporating all applicable laws into its processes.

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

(a) The amendment will change this existing administrative regulation: The amendment updates the Kentucky Building Code to the model 2015 International Building Code ("IBC") standards of construction. Kentucky Building Code amendments that correspond with certain provisions of the IBC are included.

(b) The necessity of the amendment to this administrative regulation: To implement code changes proposed by the Department of Housing, Buildings and Construction, which have been reviewed and commented on by the Department of Housing, Buildings and Construction Advisory Board during its August 22, 2017 meeting.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.050 mandates the Department of Housing, Buildings and Construction to establish a uniform Kentucky Building Code. These amendments adopt a more recent model building code – going from the 2012 IBC to the 2015 IBC.

(d) How the amendment will assist in the effective administration of the statutes: These amendments to the Kentucky Building Code will enhance public safety and allow the construction industry to utilize current technologies, methods, and materials.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All construction projects subject to the Kentucky Building Code will be affected by the amendments to this regulation. Architects, engineers, contractors, project managers, businesses, local governments, and Department personnel 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 comply with this administrative regulation or amendment: The identified entities must comply with the new amendments to the building code.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Affected entities will incur a slight increase in expenses for obtaining new codebooks.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits include enhanced safety features, flexibility in building design, and increased clarity of construction standards.

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

(a) Initially: There are no anticipated additional costs to administer this amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the agency. Any agency costs resulting from these administrative amendments will be met with existing 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: This amendment will not necessitate an increase in fees or require funding to the Department for implementation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment does not change previous established fees.

(9) TIERING: Is tiering applied? Tiering is not applied as all builders, contractors, local governments, and owners will be subject to the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction and local jurisdiction inspection and plan review programs will be affected.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 198B.040(7) and 198B.050.

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 is not anticipated to generate additional revenue for the state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment is not anticipated to generate additional revenue for the state or local government.

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

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

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Code Enforcement
(Amendment)

815 KAR 7:125. Kentucky Residential Code.

RELATES TO: KRS[132.010(9), (10),] 198B.010, 198B.040, 198B.050, 198B.060, 198B.080,[198B.140,] 198B.260, 198B.990,[227.550(7)]

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) and 198B.050 require the department[requires the Kentucky Board of Housing, Buildings and Construction] to[adopt and] promulgate a mandatory uniform state building code that[based on a model code, which] establishes standards for the construction of all buildings in the state. This administrative regulation establishes the basic mandatory uniform statewide code provisions relating to construction of one (1) and two (2) family dwellings and townhouses.

Section 1. Definitions. (1) ["Board of Housing" or "board" means the Kentucky Board of Housing, Buildings and Construction.

(2) "Building" is defined by KRS 198B.010(4).

(3) "Commissioner" means the commissioner of the Department of Housing, Buildings, and Construction.

(4) "Department" means the Department of Housing, Building, and Construction.

(5) "Farm" means property having a bona fide agricultural or horticultural use as defined by KRS 132.010(9) and (10) that is qualified by and registered with the property valuation administrator in the county in which the property is located.

(6) "KBC" means the Kentucky Building Code as established in 815 KAR 7:120.

(7) "Manufactured home" is defined by KRS 198B.010(23) and 227.550(7).

(8) "Modular home" means an industrialized building system, which is designed to be used as a residence and that is not a manufactured or mobile home.

(9) "Ordinary repair" is defined by KRS 198B.010(19).

(10) "Single-family dwelling" or "one (1)-family dwelling" means a single unit that:

(a) Provides[providing] complete independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation[;] and

(b)[which] Is not connected to any other unit or building.

(2) "Townhouse" means a single-family dwelling unit constructed in a group of three (3) or more attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two (2) sides.

(3)[(4)] "Two (2) family dwelling" means a building containing

not more than two (2) dwelling units that are connected.

Section 2. Residential Code[Mandatory Building Code Requirements for Dwellings]. (1) Except as provided in subsection (2) of this section, the 2015 International Residential Code for One (1) and Two (2) Family Dwellings shall be the mandatory state residential building code for all[a] single-family dwellings[dwelling], two (2) family dwellings[dwelling], and townhouses[or townhouse shall not be] constructed in Kentucky, except that the Kentucky amendments in the 2018 Kentucky Residential Code shall supersede any conflicting provision in the 2015 International Residential Code for One (1) and Two (2) Family Dwellings[unless it is in compliance with the 2012 International Residential Code for One (1) and Two (2) Family Dwellings, as amended by this administrative regulation and the 2013 Kentucky Residential Code].

(2) Exceptions.

(a) Permits, inspections, and certificates of occupancy shall not be required for a single-family dwelling unless required by a local ordinance.

(b) All residential occupancies that are not single-family, two (2) family, or townhouses shall comply with the 2015 International Building Code for One (1) and Two (2) Family Dwellings[2012 International Building Code for One (1) and Two (2) Family Dwellings] and the 2018 Kentucky Building Code[2013 Kentucky Building Code].

(3)[The 2012 International Residential Code for One (1) and Two (2) Family Dwellings shall be amended as established in the 2013 Kentucky Residential Code.

(4) Plans for single-family[or one (1)-family] dwellings, two (2) family dwellings, and townhouses shall be designed and submitted to conform to this administrative regulation.

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

(a) "2015 International Residential Code for One (1) and Two (2) Family Dwellings[2012 International Residential Code for One (1) and Two (2) Family Dwellings]," International Code Council, Inc.; and

(b) "2018 Kentucky Residential Code," First Edition, April 2018[2013 Kentucky Residential Code", Third Edition, December 2015].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN A. MILBY, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: April 12, 2018

FILED WITH LRC: April 13, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2018, at 9:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 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: David Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-

0365, fax 502-573-1057, email david.startsman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Startsman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the uniform Kentucky Residential Code as required pursuant to KRS 198B.050.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to adopt the Kentucky Residential Code as required pursuant to KRS 198B.050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation utilizes the International Residential Code as the basis for construction standards and allows the Department of Housing, Buildings and Construction to make amendments unique to Kentucky after due consideration of equivalent safety measures as required by KRS 198B.050.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth standards authorized by the statute for the enforcement of the residential code, incorporating all applicable laws into its processes.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the Kentucky Building Code to the model 2015 International Residential Code ("IRC") standards of construction. Kentucky Residential Code amendments that correspond with certain provisions of the IRC are included.

(b) The necessity of the amendment to this administrative regulation: To implement code changes proposed by the Department of Housing, Buildings and Construction, which have been reviewed and commented on by the Department of Housing, Buildings and Construction Advisory Board during its August 22, 2017 meeting.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.050 mandates the Department of Housing, Buildings and Construction to establish a uniform Kentucky Building Code. These amendments adopt a more recent model building code – going from the 2012 IRC to the 2015 IRC.

(d) How the amendment will assist in the effective administration of the statutes: These amendments to the Kentucky Building Code will enhance public safety and allow the construction industry to utilize current technologies, methods, and materials.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All construction projects subject to the Kentucky Residential Code will be affected by the amendments to this regulation. Architects, engineers, contractors, project managers, businesses, local governments, and Department personnel 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 comply with this administrative regulation or amendment: The identified entities must comply with the new amendments to the residential code.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Affected entities will incur a slight increase in expenses for obtaining new codebooks.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits include enhanced safety features, flexibility in building design, and increased clarity of construction standards.

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

(a) Initially: There are no anticipated additional costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional

costs to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the agency. Any agency costs resulting from these administrative amendments will be met with existing 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: This amendment will not necessitate an increase in fees or require funding to the Department for implementation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment does not change previous established fees.

(9) TIERING: Is tiering applied? Tiering is not applied as all builders, contractors, local governments, and owners will be subject to the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction and local jurisdiction inspection and plan review programs.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 198B.040(7) and 198B.050.

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 is not anticipated to generate additional revenue for the agency.

(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 is not anticipated to generate additional revenue for the agency.

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

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET

Department of Housing, Buildings and Construction Division of Heating, Ventilation and Air Conditioning (Amendment)

815 KAR 8:070. Installation permits.

RELATES TO: KRS 198B.654, 198B.6673, 198B.6674, 198B.6678, Chapter 236

STATUTORY AUTHORITY: KRS 198B.654, 198B.6671, 198B.6672, 198B.6673, [~~198B.6674~~] 198B.6675, 198B.6676, 198B.6677, 198B.6678

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654 requires the department [~~Board of Heating, Ventilation and Air Conditioning Contractors~~] to promulgate administrative

regulations to administer, coordinate, and enforce[for the enforcement, administration and coordination of] KRS 198B.650 through 198B.689. KRS 198B.6673 requires the department[board] to establish a reasonable schedule of fees and charges to be paid for HVAC installation permits and inspections. This administrative regulation establishes the process, procedures, fees, and charges for obtaining HVAC installation permits in Kentucky.

Section 1. Permit Required. (1) An HVAC installation permit shall be required for the initial heating, ventilation, or air conditioning system:

(a) For all new construction installations of heating, ventilation, or air conditioning systems;

(b) For all construction additions in which an additional heating, ventilation, or air conditioning system is installed; and

(c) For all existing buildings in which the first heating, ventilation, or air conditioning system is being installed.

(2) Permit application. An application shall be made for a permit prior to installation on the appropriate form:

(a) HVAC Construction Permit Application: Commercial Buildings;

(b) HVAC Construction Permit Application: Multi-family Dwellings;

(c) HVAC Construction Permit Application: One & Two Family Dwellings; or

(d) HVAC Construction Permit Application: Homeowner One & Two Family Dwellings.

Section 2. Issuance of HVAC Installation Permits. (1) A permit to construct, install, or alter a heating, ventilation, or air conditioning system shall only be issued to a licensed master heating, ventilation, and air conditioning contractor, except as provided by subsection (2)[subsection (3)] of this section.

(2)[A journeyman HVAC mechanic shall not construct, install, or alter a heating, ventilation, or air conditioning system unless the work is performed under the supervision of a licensed master HVAC contractor.

(3) A permit to construct, install, or alter a heating, ventilation, or air conditioning system shall be issued to a homeowner who installs a heating, ventilation, or air conditioning system in the homeowner's legal residence or in a home constructed by a homeowner for personal residential use, if all the requirements of this subsection are met.

(a) Application for the permit shall be made on the HVAC Construction Permit Application: Homeowner One (1) & Two (2) Family Dwellings[for the permit] prior to the initiation of the HVAC work.

(b) The homeowner shall file with the application:

1. An affidavit stating that the homeowner shall abide by the terms of this administrative regulation;

2. Proof of adequate sizing of heating, ventilation, or air conditioning system to be installed; and

3. A complete design plan of all related duct and piping of system.

(c) All work shall be performed in compliance with the Kentucky Residential Code in 815 KAR 7:125 and the Kentucky Building Code in 815 KAR 7:120.

(d) All the work shall be personally performed by the owner.

(4) Only one (1) homeowner HVAC construction permit[permit for construction of a new home] shall be issued to an individual within a five (5) year period. [Section 2. Permit Required. (1) An application shall be made for a permit prior to installation on the:

(a) HVAC Construction Permit Application: Commercial Buildings;

(b) HVAC Construction Permit Application: Multi-family Dwellings; or

(c) HVAC Construction Permit Application: One & Two Family Dwellings.

(2) An HVAC installation permit shall be required for the initial heating, ventilation, or air conditioning system:

(a) For all new construction installations of heating, ventilation, or air conditioning systems;

(b) For construction additions in which an additional heating,

ventilation, or air conditioning system is installed;

(c) For all existing buildings in which the first heating, ventilation, or air conditioning system is being installed; and

(d) For projects in which a contractor assumes responsibility to:

1. Make corrections;

2. Test an installation performed by another contractor; or

3. Install a system for which another master contractor has obtained a permit.]

Section 3. Issuance of HVAC Related Permits. (1) A permit shall be issued and inspections performed upon request for the replacement of:

(a)[(1)] Furnaces;

(b)[(2)] Condensing units;

(c)[(3)] Heat pumps;

(d)[(4)] Fan coil units;

(e)[(5)] Chiller systems; or

(f)[(6)] Heating boiler systems not covered by KRS Chapter 236.

(2) An HVAC correction and testing permit may be requested for projects in which a contractor assumes responsibility to:

(a) Make corrections;

(b) Test an installation performed by another contractor; or

(c) Install a system for which another master contractor has obtained a permit.

Section 4.[HVAC Installation] Permit Fees. (1) One (1)- and Two (2)- Family Dwelling Installations and Homeowner permits. The fee for each heating, ventilation, or air conditioning system installation permit for one (1)- and two (2)- family dwellings and Homeowner permits shall be \$105 for the first system plus fifty (50) dollars for each additional system.

(2) Multi-Family Dwelling Installations. The fee for each heating, ventilation, or air conditioning system installation permit for multi-family dwellings other than duplexes, shall be \$105 for the first system plus fifty (50) dollars for each additional system.

(3) Commercial installations.

(a) The fee for each heating, ventilation, or air conditioning system installation permit other than one (1), two (2), and multi-family dwellings shall be based upon the total dollar value of each HVAC installation, either actual or estimated.

(b) 1. The[It shall be the obligation of the] installing contractor shall[te] supply the total dollar[complete] value of the installation, including labor and material costs regardless of the purchaser.

2. Except as provided in subparagraph 3b of this paragraph, an exact figure does not need to be quoted or divulged to the HVAC inspector or department.

3. The permit application shall include a statement signed by the applicant affirming that the total dollar[true] value of the installation lies within certain limits, as listed in the left column of the table in clause c of this subparagraph and as established in clause d of this subparagraph.

a. The fees for heating, ventilation, or air conditioning system installation are listed in the right column of the table.

b. The department may request documented proof of costs from the permit applicant if the true value is in question.

c. The permit fee shall be calculated as follows:

Amount in dollars	Permit fee
\$2,000 or less	\$125
\$2,001 to \$10,000	\$180
\$10,001 to \$25,000	\$270
\$25,001 to \$50,000	\$330
\$50,001 to \$75,000	\$390
\$75,001 to \$100,000	\$500
\$100,001 to \$150,000	\$630
\$150,001 to \$200,000	\$760
\$200,001 to \$250,000	\$885
\$250,001 to \$300,000	\$1,025
\$300,001 to \$400,000	\$1,150
\$400,001 to \$500,000	\$1,500
\$500,001 to \$600,000	\$1,725
\$600,001 to \$700,000	\$1,900

\$700,001 to \$800,000	\$2,125
\$800,001 to \$900,000	\$2,355
\$900,001 to \$1,000,000	\$2,590
\$1,000,001 to \$1,100,000	\$2,820
\$1,100,001 to \$1,200,000	\$3,050
\$1,200,001 to \$1,300,000	\$3,280
\$1,300,001 to \$1,400,000	\$3,510
\$1,400,001 to \$1,500,000	\$3,735
\$1,500,001 to \$1,600,000	\$3,965

d. The permit for a commercial installation valued over \$1,600,000 shall be calculated at the cost of \$3,965 plus \$200 per \$100,000 or fraction thereof in excess of \$1,600,000.

(4) Request permit fees. (a) One (1) and two (2) family dwelling and homeowner. A permit request pursuant to Section 3(1) of this administrative regulation for a one or two family dwelling, or by a homeowner shall be seventy-five (75) dollars.

(b) Commercial. The fee for a permit requested pursuant to Section 3(1) of this administrative regulation for a commercial project shall be calculated the same as subsection (3) of this section.

(5) Correction and Testing Permits. The correction and testing permit fee shall be [the base fee of] seventy-five (75) dollars if [the] application for a permit does not include any new installation [but is to make corrections or provide testing for an installation made by someone else].

Section 5. Inspection Fees. (1) Each heating, ventilation, or air conditioning system permit shall include three (3) heating, ventilation, or air conditioning system inspections at no additional cost.

(2)(a) A heating, ventilation, or air conditioning system inspection in excess of the three (3) provided with purchase of permit shall be performed at the rate of fifty (50) dollars per inspection.

(b) Payment shall be received by the inspecting authority prior to the final inspection approval being granted.

Section 6. Expiration of Permits. (1) A heating, ventilation, or air conditioning system installation permit issued under this administrative regulation shall expire six (6) months after the date of issuance unless the permitted work has begun.

(2) If construction begins within six (6) months of permit issuance:

(a) The permit shall be effective until completion of the planned heating, ventilation, or air conditioning system inspection; or

(b) If the work ceases on a permitted project for a period exceeding twelve (12) months, the permit shall be void.

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

(a)[HVAC-27:] "HVAC Construction Permit Application: Commercial Buildings", Form HVAC 27, April 2018[September 2014];

(b)[HVAC-28:] "HVAC Construction Permit Application: Multi-family Dwellings", Form HVAC 28, April 2018[September 2014; and]

(c)[HVAC-29:] "HVAC Construction Permit Application: One (1) & Two (2) Family Dwellings", Form HVAC 29, April 2018; and [September 2014]

(d) "HVAC Construction Permit Application: Homeowner One (1) & Two (2) Family Dwellings", Form HVAC 30, April 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the [Kentucky] Department of Housing, Buildings, and Construction, Division of Heating, Ventilation, and Air Conditioning, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8:30 a.m. to 4:30 p.m.

STEVEN A. MILBY, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: April 12, 2018

FILED WITH LRC: April 13, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2018, at 9:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments regarding this administrative regulation shall be accepted if received until 11:59 p.m. on May 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: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process and fees for obtaining HVAC permits.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedure for issuing HVAC permits, as set forth in KRS 198B.6671.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills KRS 198B.654(1) requirements that the department promulgate administrative regulations to administer, coordinate, and enforce the provisions of KRS 198B.650 to 198B.689. This administrative regulation further conforms with the permitting requirements of KRS 198B.6671, the prohibitions in KRS 198B.6672, and the establishment of fees in KRS 198B.6673.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the standards applicable to those seeking to obtain HVAC permits, and sets forth how the HVAC permits will be issued and administered.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates and clarifies the permitting process and changes the permit application forms. This amendment also reorganizes the administrative regulation and fixes grammatical and technical errors.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update, clarify, and streamline the permitting process and the forms incorporated into the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is authorized by KRS 198B.654(1)'s grant of authority to regulate the Commonwealth's HVAC industry.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates and clarifies HVAC permitting requirements and forms to make them more user friendly and easier for the HVAC Division to process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals seeking a HVAC permit, and the HVAC Division will be affected.

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

amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: HVAC permit seekers will be required to complete updated forms when seeking installation, component, or correction and testing permits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): These amendments will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will have use of application forms that are easier to read and understand, as well as easier to process for the HVAC Division.

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

(a) Initially: There are no anticipated initial costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional continuing costs to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the agency. Any agency costs resulting from these administrative amendments will be met with existing 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: This amendment will not necessitate an increase in fees or require funding to the Department for implementation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees directly or indirectly increased by this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all heating, ventilation, and air conditioning operations will be subject to the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Heating, Ventilation and Air Conditioning.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The amendments are authorized by KRS 198B.654.

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? These amendments are not anticipated to generate additional 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? These amendments are not anticipated to generate additional revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer these regulatory amendments.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer these regulatory amendments.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Heating, Ventilation and Air Conditioning (Amendment)

815 KAR 8:080. Inspections and tests.

RELATES TO: KRS 198B.6671, 198B.6672, 198B.6673, 198B.6674, 198B.6675, 198B.6676, 198B.6677, 198B.6678[–EO 2009-535]

STATUTORY AUTHORITY: KRS 198B.654, 198B.6671, 198B.6673, 198B.6675[EO-2009-535]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654 authorizes the department[Board of Heating, Ventilation and Air Conditioning–contractors] to promulgate administrative regulations to administer, coordinate, and enforce KRS 198B.650-689.[EO-2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department.] This administrative regulation establishes the requirements for the tests and inspections[that are] necessary to ensure compliance with the Uniform State Building Codes.

Section 1. Inspections. (1) The department or authorized local HVAC permitting and inspection program shall inspect the following initial installations to ensure compliance with the Uniform State Building Code and the Uniform State Residential Code:

[(1)](a) Air conditioning or cooling system;

(b) Heating system; [and]

(c) Residential exhaust and ventilation systems;

(d) Commercial exhaust and ventilation systems, other than commercial range hood exhaust systems; and

(e) Dryer venting[Ventilation system; and].

(2) Alterations of an HVAC system in a building[buildings] condemned by a local jurisdiction[jurisdictions, alterations of an HVAC system, which] shall be considered an initial HVAC system installation.

Section 2. Major Repairs. At the request of a master HVAC contractor or homeowner with purchase of the requisite permit, the department or authorized local HVAC permitting and inspection program may inspect major repairs[, if requested and permitted. This shall not pertain to inspections that arise from violations or complaints].

Section 3. Access. All access, equipment, and material necessary for inspections and tests shall be provided[furnished] by the persons obtaining the HVAC installation permit.

Section 4. Conduct of[Residential] Inspections. (1) It shall be the responsibility of the person who obtained the HVAC installation permit to [notify the department or authorized local HVAC permitting and inspection program and] request an inspection by the department or authorized local HVAC permitting and inspection program[all inspections].

(2) For residential inspections:

(a) Prior to, or at the time of the first inspection, sizing calculations shall be provided to the department or authorized local HVAC permitting and inspection program or inspector; and[-]

(b) [(3)] The inspector shall verify the:

1. [(a)] Date of calculation;

2. [(b)] Orientation of structure;

3. [(c)] Design conditions;

4. [(d)] Heat gain;

5. [(e)] Heat loss;

6. [(f)] Square footage; and

7. [(g)] Additional documentation if necessary to support sizing

calculations.

(3) For commercial inspections, approved plans shall be made available to an inspector on site during an inspection.

(4)(a) If any portion of the HVAC system is below ground, the underground portion of the system shall be inspected and approved prior to covering.

(5) Rough-in inspections shall be required only if any portion of the system will be covered or concealed. The rough-in inspection shall be conducted prior to covering or concealment.

(6)(a)(b) If conditions require partial coverage of the permitted system, permission shall be requested of and received from the inspector prior to coverage.

(c) Covering an installation is covered without prior inspection, the inspector shall require approval or permission shall result in the uncovering of the system to be uncovered for inspection, unless unnecessary to perform the inspection or if uncovering the system is likely to result in more damage.

(b) If conditions require partial coverage of the permitted system, permission shall be requested of and received from the inspector prior to coverage.

(c) If in the judgment of the inspector uncovering the system is likely to result in more damage, then exposing the system shall only occur at the request of the property owner.

(7)(5)(a) Rough-in inspections shall be conducted on all work prior to covering or concealment.

(b) If conditions require partial coverage of the permitted system, permission shall be requested of and received from the inspector prior to coverage.

(c) Covering an installation without approval or permission shall result in the uncovering of the system for inspection, unless unnecessary or if uncovering the system is likely to result in more damage.

(6) A final inspection shall be conducted after all equipment has been set, in working order, and prior to occupancy.

(8) Section 5. Commercial Inspections. (1) It shall be the responsibility of the person who obtained the HVAC installation permit to notify the department or authorized local HVAC permitting and inspection program and request all inspections.

(2) Approved plans shall be made available to an inspector on site during an inspection.

(3)(a) If any portion of the HVAC system is below ground, the underground portion of the system shall be inspected and approved prior to covering.

(b) If conditions require partial coverage of the permitted system, permission shall be requested of and received from the inspector prior to coverage.

(c) Covering an installation without approval or permission shall result in the uncovering of the system for inspection, unless unnecessary or if uncovering the system is likely to result in more damage.

(4)(a) Rough-in inspections shall be conducted on all work prior to covering, concealment, or setting equipment.

(b) If conditions require partial coverage of the permitted system, permission shall be requested of, and received from the inspector prior to coverage.

(c) Covering an installation without approval or permission shall result in the uncovering of the system for inspection, unless unnecessary or if uncovering the system is likely to result in more damage.

(5) A final inspection shall be conducted after all equipment has been set, in working order, and prior to occupancy.

(6) A partial or temporary final inspection may be conducted if:

(a) The HVAC system's service area of the building is completed; and

(b) The temporary or partial final inspection will not prevent the remaining portion of the system from being inspected.

Section 5.6. Extent of Inspections. (1) Inspections shall include the following:

- (a) Heating systems;
- (b) Cooling systems;
- (c) Residential exhaust and ventilation systems;
- (d) Commercial exhaust and ventilation systems, other than

commercial range hood exhaust systems; and

(e) Dryer venting.

(2) An inspection shall not include consist of gas piping on the supply side of equipment shut offs.

Section 7. Certificate of Approval. Upon the satisfactory completion, in accordance with this administrative regulation, of final inspection of the HVAC system, a certificate of approval shall be issued by the department or authorized local HVAC permitting and inspection program shall issue a certificate of approval.

STEVEN A. MILBY, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: April 12, 2018

FILED WITH LRC: April 13, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2018, at 9:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments regarding this administrative regulation shall be accepted if received until 11:59 p.m. on May 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: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements, processes, and procedures for HVAC inspections.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the HVAC inspection protocols required by KRS 198B.6673(1).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.654(1) requires the department to "promulgate administrative regulations to administer, coordinate, and enforce the provisions of KRS 198B.650 to 198B.689 and to conduct examinations. KRS 198B.6673 requires the Department to establish HVAC inspection protocols that ensure timely inspections and minimal interruption to the construction process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the HVAC inspection protocols required by KRS 198B.6673(1) and defines what equipment and systems should be inspected.

(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 exclude "commercial range hood exhaust systems" from those systems subject to HVAC inspection. This amendment also reorganizes the administrative regulation and corrects grammatical and technical errors.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to eliminate duplicative inspections and to simplify compliance. The Division of Building Codes Enforcement already inspects "commercial range

hood exhaust systems," so there is no need for the HVAC Division to inspect the same systems.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is consistent with KRS 198B.654, which directs the Department of Housing, Buildings and Construction to promulgate administrative regulations to administer, coordinate, and enforce the provisions of KRS 198B.6673, which requires the Department to establish HVAC inspection protocols.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will simplify HVAC inspection compliance and eliminate duplicative inspections of "commercial range hood exhaust systems." This will further ensure timely inspections and minimal interruption to the construction process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Housing, Buildings and Construction, HVAC Division, and any local government inspectors authorized by the Department to make inspections.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: This amendment will not impose any additional requirements on any entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will no longer have to conduct duplicative inspections of "commercial range hood exhaust systems."

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

(a) Initially: There are no anticipated additional costs to administer this regulatory amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this regulatory amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional costs to the agency. Any agency costs resulting from this administrative amendment will be met with existing 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: This amendment will not necessitate an increase in fees or require funding to the Department for implementation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because all HVAC inspections will be subject to the amended regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, HVAC Division, and any local government inspectors authorized by the Department to make inspections will be impacted by this amended administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. These amendments are authorized by KRS 198B.654 and KRS 198B.6673(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 regulatory amendment will decrease revenue to the Division of HVAC by approximately \$45,000.00. This amendment eliminates duplicative range hood exhaust inspections so that only the Building Code Enforcement Division is responsible for such inspections.

(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 regulatory amendment will not generate additional revenues for state or local government for subsequent years.

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

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this regulatory 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 (+/-): -\$45,080

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET

Department of Housing, Buildings and Construction Division of Heating, Ventilation and Air Conditioning (Amendment)

815 KAR 8:100. Criteria for local jurisdiction HVAC programs.

RELATES TO: KRS 171.450, 198B.650 - 198B.689

STATUTORY AUTHORITY: KRS 171.450, 198B.654(1), 198B.6673

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654(1) requires the department to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 to 198B.689. KRS 198B.6673 requires[authorizes] the department[Board of Heating, Ventilation and Air Conditioning Contractors] to authorize local governing bodies to establish[regulate] HVAC inspection and permitting programs upon application. This administrative regulation[regulations] establishes the requirements for local HVAC inspection and permitting programs[to operate a program pursuant to board adopted guidelines].

Section 1. Uniform Criteria for Authorizing HVAC Inspection and Permitting Program~~[existing as of January 1, 2007]. To petition the department[Kentucky Board of Heating, Ventilation and Air Conditioning Contractors], an individual governing entity or combination of entities applying for approval for an HVAC[with an existing HVAC permitting and] inspection program shall comply with the requirements established in this administrative regulation[section]. (1) A local governing entity or combination of entities shall complete [Form HVAC-31,] Notice of Local HVAC Inspection Program, Form HVAC 31, and submit it to the Department of Housing, Buildings, and Construction, Division of HVAC together with supporting documentation required by this administrative regulation.~~

~~(2) Qualified HVAC inspector and plan reviewer required. A[The] local jurisdiction administering a local HVAC inspection program shall employ a qualified person to perform HVAC installation plan reviews and inspections[inspection functions granted to the local government]. To be qualified, an inspector shall be licensed or certified in accordance with the provisions of KRS 198B.6673 and 198B.6678[198B.650 to 198B.689 at~~

employment and:

- (a) Have at least six (6) years of experience as a Kentucky licensed HVAC journeyman mechanic; or
- (b) Have at least six (6) years of experience as a Kentucky licensed master HVAC contractor; or
- (c) Be a certified building inspector who has successfully passed the examinations relating to HVAC systems as approved and recognized by the department pursuant to 815 KAR Chapter 8].

(3)[HVAC Plan Review. A local government's inspection program shall include plan review for commercial installations. Plan reviewers shall minimally have the same experience as those persons qualified under subsection two (2) of this administrative regulation.

(4)[Personnel. A complete list of HVAC inspection program personnel, who shall be employed to enforce the HVAC code within the local program's jurisdiction, shall be submitted to the Department of Housing, Buildings[,] and Construction, Division of HVAC. The list of personnel shall include the name, job title, and certification or license status of each individual.

(4)[(5)] Installation activity. The local HVAC program shall provide documentation of an estimation of the anticipated plan review, permitting, inspection, and enforcement activities for one (1) year to the Department of Housing Buildings and Construction, Division of HVAC[the permits issued and fees collected for the 2006 calendar year, if any, and an estimation of the anticipated activity for the current year].

(5)[(6)] Schedule of fees. Each local inspection program shall adhere to the schedule of fees established in 815 KAR 8:070, Sections 4 and 5, for the permitting and inspection functions performed under the provisions of KRS 198B.6671, 198B.6673, and 815 KAR Chapter 8.

(6)[(7)] Official contact person. The local government shall identify an individual authorized to correspond with the department]:

- (a) The name and title of the chief building code official;
- (b) The name of the department;
- (c) The official mailing address;
- (d) The phone number;
- (e) The fax number; and
- (f) The e-mail address, if applicable].

(7)[(8)] Detailed map required. If a local government's inspection program consists of a portion of a county, a detailed map shall be submitted to the department to identify[for clarification of] the areas subject to the program.

Section 2.[Uniform Criteria for Authorizing a New HVAC Inspection and Permitting Program. To petition the Kentucky Board of Heating, Ventilation and Air Conditioning Contractors, an individual governing entity or combination of entities applying for approval for an HVAC inspection program shall comply with the requirements established in this section.

(1) A local governing entity or combination of entities shall complete Form HVAC-31, Notice of Local HVAC Inspection Program, and submit it to the Department of Housing, Buildings and Construction, Division of HVAC together with supporting documentation required by this administrative regulation.

(2) Qualified HVAC inspector required. The local HVAC inspection program shall employ a person to perform HVAC installation inspection functions granted to the local government. To be qualified, an inspector shall be licensed or certified in accordance with the provisions of KRS 198B.650 to 198B.689 at employment and:

- (a) Have at least six (6) years of experience as a Kentucky licensed HVAC journeyman mechanic; or
- (b) Have at least six (6) years of experience as a Kentucky licensed master HVAC contractor; or
- (c) Be a certified building inspector who has successfully passed the examinations relating to HVAC systems.

(3) HVAC Plan Review. A local government's inspection program shall include plan review for commercial installations. Plan reviewers shall minimally have the same experience as those persons qualified under subsection two (2) of this section of this

administrative regulation.

(4) Personnel. A complete list of HVAC inspection program personnel, who shall be employed to enforce the HVAC code within the local program's jurisdiction, shall be submitted to the department, Division of HVAC. The list of personnel shall include the name, job title, and certification or license status of each individual.

(5) Installation activity. The local HVAC inspection program shall provide documentation an estimation of the anticipated plan review, permitting, inspection, and enforcement activities for one (1) year.

(6) Schedule of fees. Each local inspection program shall adhere to the schedule of fees established in 815 KAR 8:070, Sections 4 and 5, for the permitting and inspection functions performed under the provisions of KRS 198B.6671, 198B.6673, and 815 KAR Chapter 8.

(7) Official contact person. The local government shall identify:

- (a) The name and title of the chief building code official;
- (b) The name of the department;
- (c) The official mailing address;
- (d) The phone number;
- (e) The fax number; and
- (f) The e-mail address, if applicable.

(8) Detailed map required. If a local government's HVAC inspection program consists of a portion of a county, a detailed map shall be submitted to the department for clarification of the areas subject to the program.

Section 3.] Contractual Agreement. (1) If the department approves[Upon approval of] the Notice of Local HVAC Inspection Program[by the board], the department shall prepare a[the] contract to be executed by the department and local government to authorize the local HVAC inspection program. The contract shall specify the jurisdictional authority of each entity to provide clarity for the public and to avoid duplication of services.

Section 3.[4-] State Jurisdiction. The department shall retain plan review, permitting, inspection, and enforcement responsibility in accordance with[under] the Kentucky Building Code, 815 KAR Chapter 7, for all buildings that are:

- (1) Institutional buildings; and
- (2) Educational buildings or other facilities required to be licensed by the Cabinet for Health and Family Services, including day care centers, hospitals, and nursing homes, or other similar facilities.

Section 4.[5-] HVAC Complaints. (1) A local government's inspection program shall:

- (a) Address all complaints occurring within the jurisdiction related to HVAC;
 - (b) Document findings; and
 - (c) Document resolutions reached, if any.
- (2)[All documentation of complaints shall be maintained by the local HVAC inspection program for a period of at least three (3) years following resolution.
- (3)] If no resolution is reached, the alleged violator may request a hearing on the matter pursuant to KRS Chapter 13B.

Section 5.[Unresolved complaints shall be maintained for at least five (5) years following receipt of initial complaint.

(4) Status summaries of all complaints shall be submitted to the Division of HVAC by the 10th of the following month.

Section 6.] HVAC Violations. (1) A local government's HVAC inspection program shall:

- a) Investigate all violations that occur within the jurisdiction[.];
 - b) Issue stop work orders[.]; or
 - c) Require other remedial measures upon proof of violations.
- (2) Local HVAC inspection programs shall initiate contact with and fully cooperate with county and Commonwealth attorneys regarding court cases resulting from a violation.

(3) A local government inspection program representative shall act as a witness for the department on violations resulting in a hearing pursuant to KRS Chapter 13B.

(4) Violations shall be documented in writing.

~~Section 6.[(5) All documentation of violations shall be maintained by the local HVAC inspection program for a period of at least three (3) years following resolution of the violation or closure of the violation.~~

~~Section 7.] Accounting of Fees. (1) A local HVAC inspection program shall maintain an accurate accounting of all HVAC plan review, permitting, and inspection fees.~~

~~(2) The fees received shall be deposited no less frequently than monthly in the local government's treasury or otherwise disposed of as required by law.~~

~~Section 7.[(3) Monthly reports containing the number of commercial permits and number of residential permits issued, cost of each permit, the number of plans reviewed, and the number of inspections made shall be submitted to the Division of HVAC by the tenth of the following month.~~

~~Section 8.] Record Retention and Audits. (1) A local HVAC inspection program shall maintain official records of:~~

- ~~(a) Applications received;~~
- ~~(b) Permits and certificates issued;~~
- ~~(c) Fees collected;~~
- ~~(d) Inspection reports; and~~
- ~~(e) Notices and orders issued.~~

~~(2) Official records shall be retained for at least the statutory period required for retention of public records pursuant to KRS 171.450.~~

~~(3) All documentation of violations and complaints shall be maintained by the local HVAC inspection program for a period of at least three (3) years following resolution.~~

~~(4) Unresolved complaints shall be maintained for at least five (5) years following receipt of initial complaint.~~

~~Section 8.[9.] Procedures for Maintaining Local HVAC Inspection Program. (1)(a) The department shall monitor the program of local governments [that have been] granted to a local HVAC inspection and permitting program.~~

~~(b) If the local government is found to be in violation of the requirements of this administrative regulation; the Kentucky Building Code, 815 KAR Chapter 7; any terms of their agreement; or KRS Chapter 198B, the department shall cancel the agreement, rescind the local HVAC inspection jurisdiction, and preempt the local program in its entirety[, upon approval of the board].~~

~~(2) Each agreement for local HVAC inspection jurisdiction shall be in effect for three (3) years, unless canceled subject to subsection (1) of this section or[:~~

- ~~(a)] by agreement of the parties in writing[; or~~
- ~~(b) Pursuant to subsection (1) of this section].~~

~~(3) The local government shall notify the department[.] within thirty (30) days of any changes in personnel or fees during the contract period.~~

~~(4)(a) The department shall review any potential deficiencies of a local government's HVAC inspection program brought to the attention of the department.~~

~~(b) A representative of the local HVAC inspection program shall be present during the department's review.~~

~~(5)(a)[(4)] The department shall reevaluate the HVAC inspection program of the local government [and make a recommendation to the board] regarding continuation of the local inspection program and renewal of the agreement before the expiration of the three (3) year contract with the department.~~

~~(b) Upon approval by the department[board] and the local government, the department shall renew the contractual agreement for three (3) years.~~

~~Section 9.[10.] Program Deficiencies. (1) Deficiencies documented in a local government's HVAC inspection program shall be brought before the board for review and decision.~~

~~(2) The board shall reconsider a local government's HVAC inspection program approval if evidence of incompetence is found,~~

~~the program requirements are not being met, terms of the contract with the department are violated, or KRS Chapter 198B or 815 KAR Chapter 8 are not being properly enforced.~~

~~(3) A representative of the local HVAC inspection program shall be present during review to address questions and concerns the HVAC board may have.~~

~~Section 11.] Incorporation by Reference. (1)[Form HVAC 31,] "Notice of Local HVAC Inspection Program", Form HVAC 31, April 2018[June 2010], is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Heating, Ventilation, and Air Conditioning, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412[5405], Monday through Friday, 8 a.m. to 4:30 p.m.~~

STEVEN A. MILBY, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: April 12, 2018

FILED WITH LRC: April 13, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2018, at 9:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on May 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: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure for a local government to set up a local HVAC inspection program. The administrative regulation also requires local governments to submit certain reports to the Department of Housing, Building and Construction.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to assist the Division of Heating, Ventilation, and Air Conditioning in carrying out its duty to monitor and inspect heating, ventilation, and air conditioning activity in the Commonwealth. This administrative regulation establishes the requirements for local government inspection and permit programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the directive in KRS 198B.6673(1) that the Department of Housing, Buildings and Construction establish HVAC inspection protocols that ensure timely inspections and minimal interruption to the construction process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the standards and requirements for local government inspection and permit programs to help in the effective administration of KRS 198B.6673(1).

(2) If this is an amendment to an existing administrative

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will eliminate the redundancy of Section 1 and Section 2 of the pre-amended administrative regulation. The removal of the provisions in 815 KAR 8:100 Section 5(4) and Section 7(3) will eliminate a local government's obligation to submit certain periodic reports to the Department.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to eliminate an unnecessary burden placed on both local governments and the Department.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is consistent with KRS 198B.6673, which requires the department to establish HVAC inspection protocols.

(d) How the amendment will assist in the effective administration of the statutes: These changes will relieve local governments and the Department of the obligation to submit and retain unnecessary reports pertaining to local government complaints, permitting, and inspections. This amendment will also make it easier to read and understand the administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Housing, Buildings and Construction, HVAC Division, and all local government inspectors authorized by the Department to make inspections.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: These amendments will not impose any additional requirements on any of the regulated entities identified in question (3); in fact it will reduce burdensome reporting requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will relieve local governments and the Department of the obligation to submit and retain unnecessary reports pertaining to local government complaints, permitting, and inspections.

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

(a) Initially: There are no anticipated additional initial costs to administer the regulatory amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer the regulatory amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the agency. Any agency costs resulting from these administrative amendments will be met with existing 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: These amendments will not necessitate an increase in fees or require funding for implementation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees directly or indirectly increased by these amendments.

(9) TIERING: Is tiering applied? Tiering is not applied because all HVAC inspections will be subject to the amended regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, HVAC Division, and any local government inspectors authorized by the Department to make inspections will be affected.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. These amendments are authorized by KRS 198B.654 and 198B.6673(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? These amendments are not anticipated to generate additional revenue for the state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? These amendments are not anticipated to generate additional revenue for the state or local government.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer these regulatory amendments for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer these regulatory amendments 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 (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

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

906 KAR 1:200. Use of Civil Money Penalty Funds Collected from Certified Long-term Care Facilities.

RELATES TO: KRS 194A.050(1)[-209.005]

STATUTORY AUTHORITY: KRS 194A.050(1), 42 U.S.C. 1395i-3(h)(2)(B)(ii)(IV)(ff), 42 U.S.C. 1396r(h)(3)(C)(ii)(IV)(ff)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C. 1395i-3(h)(2)(B)(ii)(IV)(ff) and 42 U.S.C. 1396r(h)(3)(C)(ii)(IV)(ff) pertain to the collection and use of civil money penalties (CMP) imposed by the Centers for Medicare and Medicaid Services (CMS) on certified long-term care facilities (serving Medicare and Medicaid beneficiaries) ~~that~~^{which} do not comply with applicable federal health and safety laws and regulations. Except for temporary use in the case of sudden nursing facility relocations, natural disasters, or similar emergencies, states are required to obtain prior approval from CMS for any new project, new grantee, or new use of federally imposed CMP funds, ~~and any state-approved use or project that is currently in effect for a period that will endure more than thirty-six (36) months after December 31, 2011.~~ Upon approval by CMS, states may direct collected CMP funds to a variety of organizations if the funds are used in accordance with 42 U.S.C. 1395i-3(h)(2)(B)(ii)(IV)(ff) and 42 U.S.C. 1396r(h)(3)(C)(ii)(IV)(ff). This administrative regulation establishes a competitive grant program to provide funding to organizations which offer programs or services approved by CMS for the use of

CMP funds, thereby establishing the CMP Fund Grant Program.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Health and Family Services.

(2) "CMP" means civil money penalties imposed by CMS on certified long-term care facilities (serving Medicare and Medicaid beneficiaries) ~~that~~^{which} do not comply with applicable federal health and safety laws and regulations.~~;~~

(3) "CMS" means the Centers for Medicare and Medicaid Services.

(4) ~~"EAC" means the Elder Abuse Committee created by KRS 209.005.~~

(5) "Funding" means a grant from collected CMP funds distributed by the cabinet upon approval by CMS.

Section 2. Funding Opportunities. Collected CMP funds may be used to support activities ~~that~~^{which} benefit Kentucky's residents of certified long-term care facilities, including:

(1) Assistance to support and protect residents of a certified long-term care facility that closes (voluntarily or involuntarily) or is decertified, and may include offsetting the costs of relocating residents to a home and community-based setting or another facility;

(2) Projects that support resident and family councils;

(3) Consumer involvement activities which assure quality care in long-term care facilities; or

(4) Facility improvement initiatives approved by CMS, which may include:

(a) Joint training of facility staff and the cabinet's long-term care facility surveyors;

(b) Technical assistance for facilities implementing quality assurance programs; or

(c) The appointment of temporary management firms.

Section 3. Prohibited Uses of CMP Funds. CMP funds shall not be approved:

(1) For a project ~~in~~^{fer} which a conflict of interest exists or the appearance of a conflict of interest exists;

(2) If the applicant is currently paid by a federal or state source to perform the same function as the proposed CMP project or use;

(3) For capital improvements to a long-term care facility, or to build a long-term care facility;

(4) To pay for services or supplies that are the responsibility of the long-term care facility, including laundry, linen, food, heat, or staffing costs;

(5) To pay the salaries of temporary managers who are actively managing a long-term care facility; or

(6) To recruit or provide Long-Term Care Ombudsman certification training for staff or volunteers, or investigate and work to resolve complaints.

Section 4. Applicants. (1) An entity that applies for and receives funding shall be qualified and capable of carrying out the intended project or use described in the State Request for Approval of Use of Civil Money Penalty Funds for Certified Nursing Homes.

(2) Entities that may qualify for funding include:

(a) Consumer advocacy organizations;

(b) Resident or family councils;

(c) Professional or state long-term care facility organizations;

(d) State Long-term Care Ombudsman programs;

(e) Quality improvement organizations;

(f) Private contractors;

(g) Academic or research institutions;

(h) Certified long-term care facilities;

(i) State, local, or tribal governments; or

(j) Profit or not-for-profit organizations.

Section 5. Application Process. To apply for funding, an applicant shall:

(1) Download a copy of the application titled State Request for Approval of Use of Civil Money Penalty Funds for Certified Nursing Homes from the cabinet's Web site at

<http://chfs.ky.gov/os/oig/cmpfunds.htm>; and

(2) Complete and email the application to the cabinet at the following Web address: CMPPAPPLICATION_OIG@KY.GOV.

Section 6. Review of Applications. (1) Upon receipt of an application, the cabinet shall:

(a) review the application and determine if the application meets the criteria for use of collected CMP funds pursuant to:

~~(a)[4-] Sections 2 through 4 of this administrative regulation; and~~

~~(b)[2-] The application's instructions.~~

~~(2)[-]~~

~~(b) Present each application that meets the criteria for use of collected CMP funds at the next scheduled EAC meeting following receipt of the application;~~

~~(c) Advise the EAC of each application not approved for review by the EAC due to the receipt of an:~~

~~1. Incomplete application; or~~

~~2. Application that does not meet the criteria for use of collected CMP funds; and~~

~~(d) Notify each applicant electronically if an application is not approved for review by the EAC, including the reason the application was not approved.~~

~~(2) The EAC shall:~~

~~(a) Review each application presented by the cabinet based on the criteria for use of collected funds; and~~

~~(b) Make a recommendation to the cabinet secretary regarding the ability of the applicant's proposal to:~~

~~1. Improve resident outcomes; and~~

~~2. Advance the care and services provided in certified long-term care facilities.~~

~~(3) Upon[consideration of the recommendation made by the EAC and] review of the application based on the criteria for use of collected CMP funds, the Office of Inspector General[cabinet secretary] shall forward the application to CMS, including an initial determination on the ability of the project to improve resident outcomes and advance the care and services provided in certified long-term care facilities[the secretary's recommended award decision].~~

Section 7. Reporting. If an application is approved by CMS, the organization or entity from which the application originated shall:

(1) Submit a quarterly report on the status of the project to the CMS regional office and the cabinet;

(2) Submit a follow-up report within five (5) calendar days of conclusion of the funded project to the CMS regional office and the cabinet; and

(3) Submit a final report monitoring the success of the project within six (6) months of conclusion of the funded project to the CMS regional office and the cabinet.

Section 8. Denials. An application that is denied shall:

(1) Be accompanied by an explanation; and

(2) Not be subject to an appeal.

Section 9. Incorporation by Reference. (1) The Centers for Medicare and Medicaid Services, Region IV Atlanta, "State Request for Approval of Use of Civil Money Penalty Funds for Certified Nursing Homes", May 2013, is incorporated by reference.

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

STEVEN D. DAVIS, Inspector General

SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: April 11, 2018

FILED WITH LRC: April 12, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 21, 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 May 14, 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 May 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, phone 502-564-2888, email stephanie.brammer@ky.gov, and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a competitive grant program to provide funding from civil money penalties (CMP) to organizations that offer programs or services as approved by the Centers for Medicare and Medicaid Services (CMS).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements related to cabinet distribution of CMP funds in the form of grants upon final approval by CMS.

(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 related to cabinet distribution of CMP funds upon final approval by CMS.

(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 related to cabinet distribution of CMP funds upon final approval by CMS.

(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 currently requires the Cabinet to present each CMP grant application before the Elder Abuse Committee (EAC) for review and recommendation. In accordance with KRS 209.005, the EAC's primary focus is the development of a model protocol on elder abuse and neglect in the Commonwealth and related activities. Because the review of CMP grant applications to determine compliance with criteria established by CMS for the use of CMP funding is unrelated to the role and responsibilities of the EAC, this amendment removes the requirement for EAC review of each CMP application. This amendment also clarifies that denial of a CMP grant application shall be accompanied by an explanation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to streamline internal procedures for review of CMP grant applications.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by establishing requirements related to cabinet distribution of CMP funds upon final approval by CMS.

(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 requirements related to cabinet distribution of CMP funds upon final approval by CMS.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: Entities that may apply and qualify for funding from collected CMP funds include consumer advocacy organizations, resident or family councils, professional or state long-term care facility organizations, State Long-term Care Ombudsman programs, quality improvement organizations, private contractors, academic or research institutions, certified long-term care facilities, state, local, or tribal governments, or profit or not-for-profit 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: Applicants seeking funding for proposals that benefit Kentucky's residents of certified long-term care facilities are required to download an application from the cabinet's website and submit the application electronically for review and consideration.

(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 applicants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Successful applicants will be awarded funding in the form of a grant approved by CMS to implement proposals which benefit Kentucky's residents of certified long-term care facilities.

(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 impacts entities which may apply and qualify for funding, including consumer advocacy organizations, resident or family councils, professional or state long-term care facility organizations, State Long-term Care Ombudsman programs, quality improvement organizations, private contractors, academic or research institutions, certified long-term care facilities, state, local, or tribal governments, or profit or not-for-profit organizations. 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 194A.050(1), 42 U.S.C. 1395i-3(h)(2)(B)(ii)(IV)(ff), and 42 U.S.C. 1396r(h)(3)(C)(ii)(IV)(ff)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for the first year? This amendment will not generate additional revenue for state or local government during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate additional revenue for state or local government during subsequent years.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1395i-3(h)(2)(B)(ii)(IV)(ff) and 42 U.S.C. 1396r(h)(3)(C)(ii)(IV)(ff) pertain to the collection and use of civil money penalties (CMP) imposed by the Centers for Medicare and Medicaid Services (CMS) on certified long-term care facilities (serving Medicare and Medicaid beneficiaries) which do not comply with applicable federal health and safety laws and regulations. Except for temporary use in the case of sudden nursing facility relocations, natural disasters, or similar emergencies, states are required to obtain prior approval from CMS for any new project, new grantee, or new use of federally imposed CMP funds. Upon approval by CMS, states may direct collected CMP funds to a variety of organizations if the funds are used in accordance with 42 U.S.C. 1395i-3(h)(2)(B)(ii)(IV)(ff) and 42 U.S.C. 1396r(h)(3)(C)(ii)(IV)(ff). This administrative regulation establishes a competitive grant program to provide funding to organizations which offer programs or services approved by CMS for the use of CMP funds, thereby establishing the CMP Fund Grant Program.

2. State compliance standards. KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate provides that successful applicants must offer services or programs which benefit residents of certified long-term care facilities.

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.

NEW ADMINISTRATIVE REGULATIONS

**PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Heating, Ventilation and Air Conditioning
(Repealer)**

815 KAR 8:011. Repeal of 815 KAR 8:007 and 815 KAR 8:045.

RELATES TO: KRS 198B.654, 198B.656, 198B.658

STATUTORY AUTHORITY: KRS 198B.654

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654(1) requires the department to promulgate administrative regulations to administer, coordinate, and enforce the provisions of KRS 198B.650 to 198B.689. This regulation repeals two (2) administrative regulations to conform to recent legislative changes and statutory authority. 815 KAR 8:007 is being repealed because House Bill 394 of the 2017 Regular Session of the General Assembly abolished the Board of Heating, Ventilation and Air Conditioning Contractors. 815 KAR 8:045 is being repealed to eliminate an administrative regulation for which there is no statutory authority. The department has the authority to promulgate administrative regulations to establish a journeyman HVAC mechanic license, but not the authority to establish the limited licenses of a limited journeyman HVAC installer mechanic license nor a limited journeyman HVAC duct mechanic license.

Section 1. The following administrative regulations are hereby repealed:

(1) 815 KAR 8:007, Kentucky Board of Heating, Ventilation, and Air Conditioning (HVAC) Contractors budget review and responsibility; and

(2) 815 KAR 8:045, Limited licenses for journeyman HVAC mechanics.

STEVEN A. MILBY, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: April 12, 2018

FILED WITH LRC: April 13, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2018, at 9:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments regarding this administrative regulation shall be accepted if received on or before 11:59 p.m. on May 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: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 815 KAR 8:007, and thereby eliminates the requirement that the Division of HVAC to provide budget documents to the HVAC board, which no longer exists as a result of House Bill 394 of the 2017 Regular Session of the General

Assembly. This administrative regulation also repeals 815 KAR 8:045, eliminating the limited journeyman HVAC licenses previously established by an administrative regulation the Department lacked statutory authority to promulgate.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to remove a requirement for the HVAC Division to report to the Board because the Board was discontinued by House Bill 394 of the 2017 Regular Session of the General Assembly. The administrative regulation also eliminates limited licenses, the issuance of which have no basis in statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is a repealer that conforms with the Department's authority in KRS 198B.654(1) and with the discontinuation of the HVAC Board as a result of the repeal of KRS 198B.652 in House Bill 394 of the 2017 Regular Session of the General Assembly.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is a repealer that will assist in the effective administration of KRS 198B by removing the requirement that the Department of Housing, Buildings and Construction submit budget documents to the HVAC Board, which no longer exists as a result of House Bill 394 of the 2017 Regular Session of the General Assembly. This administrative regulation will further assist in the effective administration of KRS 198B by eliminating limited licenses that the Department has no authority to issue.

(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 will repeal reporting requirements to a board that no longer exists in statute and will eliminate a class of license that does not exist in statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who hold a limited HVAC license and the Department of Housing, Buildings and Construction will be affected. Currently, approximately 308 individuals hold limited HVAC licenses.

(a) 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:

(c) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The repeal of this administrative regulation will not require the regulated entities identified in question (3) to take any action to comply. After the licenses are repealed, the Department will accept the tests completed for the limited license for the journeyman HVAC mechanic licenses.

(c) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities identified in question (3) will not incur any cost to comply with this repealer.

(4) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities identified in question (3) who have a limited license will be recognized as journeyman HVAC mechanics. This will eliminate the confusion over whether a limited journeyman HVAC license satisfies the requirements for the Master HVAC contractor's license.

(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 implementation cost. This is a repeal of an administrative regulation.

(b) On a continuing basis: There will be no continuing basis

implementation cost. This is a repeal of an administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary for the implementation and enforcement 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: No increase in fees or funding will be necessary for the implementation of this repealer.

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

(9) TIERING: Is tiering applied? (Explain why or why not.) Tiering is not applied because this is a repeal of administrative regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of HVAC will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 198B.654.

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 revenues 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 revenues 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 costs to administer this administrative regulation for the first year.

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Child Care

(New Administrative Regulation)

922 KAR 2:270. Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes.

RELATED TO: KRS Chapter 13B, 158.030, 199.894, 199.8941, 199.8943, 199.896(4), 199.8982, 199.990, 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q,

STATUTORY AUTHORITY: KRS 194A.050(1), 199.8941(1), 199.8943(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth. KRS 199.8943(3) requires the Cabinet for Health and Family Services, in consultation with the Early Childhood Advisory Council, to promulgate administrative regulations that implement a quality-based graduated child care rating system for public-funded child care and certified family child-care homes; agency time frames of reviews for quality ratings; an appellate process under KRS Chapter 13B; and the ability of providers to request reevaluation for ratings. KRS 199.8941(1) requires the Early Childhood Advisory Council to develop a program of monetary incentives tied to participation in a quality rating system. This administrative regulation establishes the Kentucky All STARS Program, a quality-based graduated early childhood rating system, and monetary incentive awards for licensed child-care centers and certified family child-care homes, to the extent funding is available.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.894(1).

(2) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families, who meet the eligibility requirements of 922 KAR 2:160, with the financial resources to find and afford quality child care.

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

(4) "Environment assessment" means one (1) of four (4) rating scales designed to assess quality in an early childhood or school-age care group, and consists of the following items to evaluate:

(a) Physical environment;

(b) Basic care;

(c) Curriculum;

(d) Interaction;

(e) Schedule and program structure; and

(f) Parent and staff education.

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

(6) "Infant" means an age group of children who are less than twelve (12) months of age.

(7) "Issue date" means the date the quality-rating certificate is issued by the cabinet or its designee.

(8) "Kentucky All STARS Program" or "STARS" means the quality-based graduated early childhood rating system in accordance with KRS 199.8943.

(9) "Preschool" means an age group of children who are older than a toddler and younger than school-age.

(10) "Provider" means the entity providing child care services, including:

(a) A Type I child-care center;

(b) A Type II child-care center; or

(c) A certified family child-care home.

(11) "Public funds" means local, state, or federal funding.

(12) "Rating visit" means a visit conducted by the cabinet or its designee using the environment assessment tool to inform a child care provider's quality-rating level.

(13) "Renewal month" means the month that a child care provider's license or certification is to be renewed with the Office of Inspector General, Division of Regulated Child Care.

(14) "School-age" means an age group of children who meet the age requirements of KRS 158.030 or who attend kindergarten, elementary, or secondary education.

(15) "Toddler" means an age group of children who are between the age of twelve (12) months and thirty-six (36) months.

(16) "Type I child-care center" means a child-care center licensed to regularly provide child care services for:

(a) Four (4) or more children in a nonresidential setting; or

(b) Thirteen (13) or more children in a residential setting with designated space separate from the primary residence of a licensee.

(17) "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. Provider Participation. (1) A provider receiving public funds shall participate in STARS upon preliminary licensure or certification.

(2) A provider with a preliminary license in accordance with 922 KAR 2:090 shall participate at a STARS Level 1.

(3) A provider with a regular license in accordance with 922 KAR 2:090 or certification in accordance with 922 KAR 2:100 shall participate in STARS:

(a) At a Level 1; or

(b) As a Level 2 through Level 5 for which the provider applies and qualifies in accordance with this administrative regulation.

(4) A provider not receiving public funds shall participate in STARS unless the provider waives participation by completing the DCC-433, Kentucky All STARS Opt-Out Request.

Section 3. Application for Levels 2 through 5. (1) If a provider seeks participation in STARS as a Level 2 through 5, the provider shall:

(a) Complete the DCC-432, Kentucky All STARS Standards of Quality Verification Checklist; and

(b) Submit evidence documentation supporting each of the provider's responses within the DCC-432 to the cabinet or its designee.

(2) The cabinet or its designee shall:

(a) Require an onsite STARS quality-rating visit to include an environment assessment for a provider seeking a Level 3 through 5.

1. An environment assessment for a licensed child-care center shall be completed during each onsite quality-rating visit for at least one-third (1/3) of the total number of classrooms, including at least one (1) classroom for each age group for which the child-care center provides care:

- a. Infant;
- b. Toddler;
- c. Preschool; and
- d. School age.

2. An environment assessment for a certified provider shall be completed during each onsite quality-rating visit by using the appropriate scale;

(b) Contact the provider within fourteen (14) calendar days from the receipt of the provider's application in accordance with subsection (1) of this section to schedule the onsite quality-rating visit for a provider seeking a Level 3 through 5; and

(c) Reach an agreement with the provider for a two (2) week time period during which the onsite quality-rating visit in accordance with paragraph (a) of this subsection shall occur.

(3)(a) The cabinet or its designee shall issue a determination on a provider's application in accordance with subsection (1) of this section within sixty (60) calendar days from the date of the application's submission or the onsite quality-rating visit, whichever is later.

(b) The determination issuance pursuant to paragraph (a) of this subsection shall include:

1. A letter identifying the STARS level for which the provider qualifies in accordance with this administrative regulation;

2. The DCC-430, Kentucky All STARS Quality Rating Summary Report, detailing points awarded and environment rating results for the provider; and

3. A non-transferable quality-rating certificate.

(4) If the provider continues to qualify for the STARS level in accordance with this administrative regulation, the provider's quality-rating certificate issued in accordance with subsection (3) of this section shall:

(a) Be valid for three (3) years; and

(b) Expire in the provider's renewal month that most approximates three (3) years from the issue date unless the provider renews the STARS certificate in accordance with Section 7 of this administrative regulation.

(5) For the purpose of re-determining a provider's quality-rating, a provider participating in STARS may submit a new application for advancement to a STARS Level 2 through 5:

(a) After three (3) months from the issue date of the provider's STARS certificate; and

(b) No more than two (2) times in a twelve (12) month period.

Section 4. All STARS Quality-Rating Level Requirements. (1)(a) The cabinet or its designee shall determine a provider's level using the following four (4) domains:

1. Family and community engagement, which may include professional development related to family engagement, implementation of family engagement initiatives, and partnership building with community agencies for a maximum of ten (10) points to the provider;

2. Classroom and instructional quality, which may include the use of developmental screenings, curriculum, and assessments for a maximum of twenty (20) points to the provider;

3. Staff qualifications and professional development, which may include the hours of staff training, professional development plans for staff that align with state requirements, and staff credentials for a maximum of ten (10) points to the provider; and

4. Administrative and leadership practices, which may include time for lesson plan development, implementation of a continuous improvement plan, and provision of staff benefits, such as time off or health insurance, for a maximum of ten (10) points to the provider.

(b) The cabinet or its designee shall use the criteria in the DCC-431, Kentucky All STARS Standards of Quality, to determine points awarded in each domain.

(2) A provider in STARS holding a Level 1 quality-rating certificate shall meet regulatory requirements in accordance with 922 KAR Chapter 2.

(3) A provider in STARS holding a Level 2 quality-rating certificate shall meet the following requirements:

(a) Fifty (50) percent of the provider's teaching staff has participated in professional development activities concerning developmental screening:

1. At initial application; or

2. During the preceding certification period if the provider is renewing the provider's STARS certificate;

(b) The provider has completed an environment self-assessment using a valid and reliable tool appropriate for the ages or settings of children served;

(c) The provider or director for the provider has:

1. Received ten (10) hours of professional learning in curriculum, instructional practices, teaching, or learning:

a. At initial application; or

b. During the preceding certification period if the provider is renewing the provider's STARS certificate; or

2. An early childhood credential or degree; and

(d) Fifty (50) percent of teaching staff has:

1. Received ten (10) hours of professional learning in curriculum, instructional practices, teaching, or learning:

a. At initial application; or

b. During the preceding certification period if the provider is renewing the provider's STARS certificate; or

2. An early childhood credential or degree.

(4) A provider in STARS holding a Level 3 quality-rating certificate shall meet the following requirements:

(a) Level 2 requirements in accordance with subsection (3) of this section;

(b) Twenty-one (21) to thirty (30) points total in all four (4) domains with:

1. A minimum of two (2) points in each of the following domains:

a. Family and community engagement;

b. Staff qualifications and professional development; and

c. Administrative and leadership practices;

2. A minimum of eight (8) points in classroom and instructional quality; and

3. A minimum of seven (7) points of the provider's choice from any one (1) or more of the domains to the extent the points have not otherwise been taken into consideration in determining if the provider meets the requirements necessary to attain a STARS Level 3 quality-rating certificate; and

(c) Completion of an environment assessment conducted by the cabinet or its designee.

(5) A provider in STARS holding a Level 4 quality-rating certificate shall meet the following requirements:

(a) Level 2 requirements in accordance with subsection (3) of this section; and

(b) Thirty-one (31) to forty (40) points total in all four (4) domains with:

1. A minimum of two (2) points in each of the following domains:

- a. Family and community engagement;
- b. Staff qualifications and professional development; and
- c. Administrative and leadership practices;

2. A minimum of eight (8) points in classroom and instructional quality; and

3. A minimum of seventeen (17) points of the provider's choice from any two (2) or more of the domains to the extent the points have not otherwise been taken into consideration in determining if the provider meets the requirements necessary to attain a STARS Level 4 quality-rating certificate; and

(c) Completion of an environment assessment conducted by the cabinet or its designee with a minimum score of four (4) per classroom observed.

(6) A provider in STARS holding a Level 5 quality-rating certificate shall meet the following requirements:

(a) Level 2 requirements in accordance with subsection (3) of this section;

(b) Forty-one (41) to fifty (50) points total in all four (4) domains with:

1. A minimum of two (2) points in each of the following domains:

- a. Family and community engagement;
- b. Staff qualifications and professional development; and
- c. Administrative and leadership practices;

2. A minimum of eight (8) points in classroom and instructional quality; and

3. A minimum of twenty-seven (27) points of the provider's choice from any two (2) or more of the domains to the extent the points have not otherwise been taken into consideration in determining if the provider meets the requirements necessary to attain a STARS Level 5 quality-rating certificate; and

(c) Completion of an environment assessment conducted by the cabinet or its designee with a minimum score of five (5) per classroom.

(7) A provider applying for a Level 2 through 5 shall:

(a) Not have an immediate closure, denial of re-licensure or recertification, directed plan of correction, suspension, or revocation action against the provider's license or certificate; and

(b) Pay in full any civil penalty levied against the child-care center if the:

- 1. Child-care center has waived the right to appeal a civil penalty; or
- 2. Civil penalty has been upheld on appeal.

Section 5. Kentucky All STARS Awards. (1) To the extent funds are available, the cabinet shall pay a qualified provider:

- (a) An initial achievement award;
- (b) An annual quality award; or
- (c) A subsidy enrollment award.

(2) The cabinet shall initiate an achievement award payment within thirty (30) calendar days from determination of the provider's rating.

(3) The cabinet shall send a remittance statement to the child care provider detailing the provider's:

- (a) Name;
- (b) Location;
- (c) License or certification number;
- (d) STARS level;
- (e) STARS certificate's expiration date;
- (f) Award calculation; and
- (g) Award issuance date.

(4) A STARS initial achievement award shall be awarded to a Type I child-care center the first time that the provider achieves a STARS level in accordance with the following chart:

Type I Child-Care Centers Initial Achievement Award	
KY All STARS Level	Amount
2	\$500
3	\$1,500
4	\$3,000
5	\$5,000

(5) A STARS initial achievement award shall be awarded to a Type II child-care center or certified family child-care home the first time the provider achieves a STARS level in accordance with the following chart:

Type II Child-Care Centers and Certified Family Child-Care Homes Initial Achievement Award	
KY All STARS Level	Amount
2	\$250
3	\$750
4	\$1,500
5	\$2,500

(6) Upon verification of level from the quality review process pursuant to Section 6 of this administrative regulation, a Type I child-care center that continues to be a STARS Level 2, 3, 4, or 5 shall be eligible for an annual quality award during the renewal month in accordance with the following chart:

Type I Child-Care Centers Annual Quality Award	
KY All STARS Level	Amount
2	\$300
3	\$900
4	\$1,800
5	\$3,000

(7) Upon verification of level from the quality review process pursuant to Section 6 of this administrative regulation, a Type II child-care center or certified family child-care home that continues to be a STARS Level 2, 3, 4, or 5 provider shall be eligible for an annual quality award during the renewal month in accordance with the following chart:

Type II Child Care Center and Certified Family Child-Care Homes Annual Quality Award	
KY All STARS Level	Amount
2	\$150
3	\$450
4	\$900
5	\$1,500

(8) Subsidy Enrollment Award for a Type I Child-Care Center. (a) A subsidy enrollment award shall be calculated and paid based on a Type I child-care center's STARS level and the average enrollment of CCAP-eligible children served by the child-care center.

(b) A Type I child-care center shall be eligible for a subsidy enrollment award if the center has a STARS Level 3 through 5.

(c) The cabinet shall determine the average monthly enrollment of CCAP-eligible children by dividing the cumulative total number of CCAP-eligible children served by the Type I child-care center each month by the months that the center was in operation following the center's last STARS issue date or renewal month, whichever is later, by the same number of months.

(d) The cabinet shall make a subsidy enrollment award to a Type I child-care center in accordance with the following chart:

Type I Child-Care Center Subsidy Enrollment Award		
Kentucky All STARS Level	Child Under 3 Years of Age	Child Age 3 Years and Over
	Amount Per CCAP Child Per Month Based on Average	
3	\$25	\$23
4	\$35	\$33
5	\$45	\$43

(e) The cabinet shall calculate and pay a subsidy enrollment award to a Type I child-care center annually.

(9) Subsidy Enrollment Award for a Type II Child-Care Center or Certified Family Child-Care Home.

(a) A subsidy enrollment award shall be calculated and paid based on a Type II child-care center or certified family child-care home STARS level and the average enrollment of CCAP-eligible children served by the Type II child-care center or certified family child-care home.

(b) A Type II child-care center or certified family child-care home shall be eligible for a subsidy enrollment award if the center has a STARS Level 3 through 5.

(c) The cabinet shall determine the average monthly enrollment of CCAP-eligible children by dividing the cumulative total number of CCAP-eligible children served by the Type II child-care center or certified family child-care home each month by the months that the center was in operation following the center's last STARS issue date or renewal month, whichever is later, by the same number of months.

(d) The cabinet shall make a subsidy enrollment award to a Type II child-care center or certified family child-care home in accordance with the following chart:

Type II Child-Care Center and Certified Family Child-Care Home Subsidy Enrollment Award		
Kentucky All STARS Level	Child Under 3 Years of Age	Child Age 3 Years and Over
	Amount Per CCAP Child Per Month Based on Average	
3	\$20	\$18
4	\$30	\$28
5	\$40	\$38

(e) The cabinet shall calculate and pay a subsidy enrollment award to a Type II child-care center or certified family child-care home annually.

Section 6. Annual Quality Review for Level 2 through 5. (1) During the three (3) year STARS certification period, a child care provider shall annually verify the provider's STARS level during the provider's renewal month.

(2) A provider with a STARS Level 2 through 5 shall verify the provider's continued adherence to the level's standards pursuant to Sections 3 and 4 of this administrative regulation by completing the DCC-434, Kentucky All STARS Annual Quality Review.

(3) The cabinet shall utilize the cabinet-designated database maintained pursuant to 922 KAR 2:240 to verify continued compliance with professional development standards in accordance with Sections 3 and 4 of this administrative regulation.

(4) A provider that does not evidence sustained adherence to the standards pursuant to Sections 3 and 4 of this administrative regulation shall undergo a reevaluation of the provider's rating as detailed in Section 8 of this administrative regulation.

(5) The cabinet shall reduce the STARS level for a provider that fails to submit the DCC-434 in accordance with this section to a STARS Level 1.

Section 7. Renewal of a Quality Rating Certificate for Levels 2 through 5. (1) The cabinet or its designee shall notify a provider at least ninety (90) calendar days in advance of the expiration date for the provider's STARS certificate.

(2) A provider shall complete the application for Levels 2 through 5 as established in Section 3 of this administration regulation.

(3) The cabinet shall determine a provider's STARS level based upon the standards specified in Sections 3 and 4 of this administrative regulation.

Section 8. Reevaluation. (1) The cabinet or its designee shall reevaluate a provider's STARS level if the:

(a) Provider's location of child care services changes;

(b) Provider requests a reevaluation in accordance with Section 3(5) of this administrative regulation;

(c) Provider does not detail sustained adherence to the

standards pursuant to Section 6 of this administrative regulation;

(d) Cabinet or its designee determines a need to reassess due to a report or finding indicating a reduction in the provider's quality of care and services, including:

1. Failure to make payment arrangements for a civil penalty within sixty (60) calendar days and comply with that arrangement if:

a. The child-care center waived the right to appeal the civil penalty; or

b. The civil penalty has been upheld on appeal;

2. Failure to comply with the requirements of 922 KAR 2:160; or

3. Two (2) or more civil penalties with the severity levels of Type A violation against the child-care center in a twelve (12) month period pursuant to 922 KAR 2:190; or

(e) Ownership of a participating provider changes.

(2) The cabinet shall notify the provider within thirty (30) calendar days of the need to undergo a reevaluation.

(3) A provider shall submit a DCC-432 and evidence documentation within thirty (30) calendar days of the cabinet notice provided in accordance with subsection (2) of this section.

(4) The cabinet or its designee shall conduct an environment assessment for Levels 3 through 5 pursuant to Section 3 of this administration regulation.

(5) The cabinet shall:

(a) Issue results of its reevaluation in accordance with Section 3(3) of this administrative regulation; and

(b) Adjust awards made pursuant to Section 5 of this administrative regulation based upon the provider's STARS level resulting from the reevaluation in accordance with this section.

Section 9. Conditions Requiring Revocation. (1) The cabinet or its designee shall revoke a provider's STARS certificate if the provider is:

(a) Subject to immediate closure pursuant to KRS 13B.125 and 199.896(4);

(b) Subject to denial of:

1. Regular licensure or re-licensure in accordance with 922 KAR 2:090; or

2. Recertification in accordance with 922 KAR 2:100; or

(c) Pending suspension or revocation action.

(2) Upon revocation of a provider's STARS certificate, awards in accordance with Section 5 of this administrative regulation shall cease.

Section 10. Appeals. (1) If the cabinet or its designee determines that a provider does not meet the standards for the STARS level for which the provider is certified, a provider shall:

(a) Accept a lower rating level; or

(b) Request an administrative hearing in accordance with 922 KAR 2:260.

(2) Payment of an award in accordance with Section 5 of this administrative regulation shall be held in abeyance pending resolution of appeal of a rating level.

(3) The cabinet shall assign the provider the appropriate STARS level based on the resolution of the appeal.

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

(a) "DCC-430, Kentucky All STARS Quality Rating Summary Report", 4/18;

(b) "DCC-431, Kentucky All STARS Standards of Quality", 4/18;

(c) "DCC-432, Kentucky All STARS Standards of Quality Verification Checklist", 4/18;

(d) "DCC-433, Kentucky All STARS Opt-Out Request", 4/18; and

(e) "DCC-434, Kentucky All STARS Annual Quality Review", 4/18.

(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

SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: April 5, 2018

FILED WITH LRC: April 13, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 21, 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 May 14, 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 May 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:

(a) What this administrative regulation does: This new administrative regulation establishes the Kentucky All STARS Program, a quality-based graduated early childhood rating system, and monetary incentive awards for licensed child-care centers and certified family child-care homes, to the extent funding is available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Kentucky All STARS Program, a quality-based graduated early childhood rating system, and monetary incentive awards for licensed child-care centers and certified family child-care homes, contingent upon available funding.

(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 the Kentucky All STARS Program, a quality-based graduated early childhood rating system, and monetary incentive awards for licensed child-care centers and certified family child-care homes, to the extent funding is available.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation will assist in the effective administration of the statutes through its establishment of the Kentucky All STARS Program, a quality-based graduated early childhood rating system, and monetary incentive awards for licensed child-care centers and certified family child-care homes, to the extent funding is available.

(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: As of March 14, 2018, there were 1,930

licensed child-care centers and 260 certified family child-care homes eligible to participate in the Kentucky All STARS Program. Forty-five (45) percent of participating providers were participating at high quality levels. In accordance with the No-Cost Extension for the Race To the Top-Early Learning Challenge Grant, the state's goal is 45% participation of licensed and certified early care providers at high quality levels by December 21, 2018.

(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 receiving public funds are mandated to participate in Kentucky All STARS pursuant to KRS 199.8943. Providers may participate at STARS Level 1 by meeting licensure or certification requirements and can participate at STARS Levels 2-5 through an application and an environment assessment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Child care providers can participate in Kentucky All STARS by meeting licensure or certification requirements and minimum health and safety requirements to operate in the state. Providers choosing to participate at higher levels of Kentucky All STARS will absorb the cost associated with completed application, environment assessment, and the standards of quality. Federal Race to the Top-Early Learning Challenge Grant funds have been temporarily available to subsidize training materials, curriculum associated with high quality standards, and overall programmatic costs. Moving forward, providers participating in the Kentucky All STARS will have available technical assistance, support, and incentive awards under the program to offset the cost associated with providing high quality child care to Kentucky's children.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensed child-care centers' and certified family child-care homes' efforts to effect high quality child care environment will be supported and incentivized, thereby improving early care and education for Kentucky's children. The program, including its incentive awards, has also been structured to support the state's compliance with the purposes of the Child Care and Development Fund Block Grant, the state's major federal fund source for child care services, including the Child Care Assistance Program, specifically 42 U.S.C. 9857(a)(5) and (7).

(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 and support to child care providers. The grant totaled upwards of \$36 million over a four-year period for these efforts.

(b) On a continuing basis: The department will absorb costs associated with implementation of the Kentucky All STARS Program within agency appropriations. Upon repeal of 922 KAR 2:170 and 922 KAR 2:210 governing the current voluntary STARS for KIDS NOW Program, funding currently used for the STARS for KIDS NOW Program will be directed to the Kentucky All STARS Program. In accordance with 42 U.S.C. 9858e, the state must reserve and use a percentage of the federal Child Care and Development Fund Block Grant for activities relating to the quality of child care. Ongoing costs are projected to be \$7 million annually.

(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. Tobacco dollars, the federal Child Care and Development Fund Block Grant, and state and 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. Implementation and enforcement of this administrative regulation will be within agency appropriations. The program's incentive awards are contingent upon available funding.

(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 or increase any fees.

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

regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

2. State compliance standards. KRS 194A.050(1), 199.8941(1), 199.8943(3)

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

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, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or 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 entities, local governments, and school districts operating or funding a licensed child-care center will be impacted by this administrative regulation. The Kentucky Department of Education may be indirectly impacted by this administrative regulation due to the application of KRS 199.8943 to public preschool. The Governor's Office of Early Childhood will be impacted due to its statutory roles pertaining to early care and education.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 199.8941, 199.8943, 45 C.F.R. 98, 42 U.S.C. 601-619, 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.

(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 directly generate any new revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? The administration of this program is projected to fall within available federal and state appropriations and to cost \$7 million annually.

(d) How much will it cost to administer this program for subsequent years? The administration of this program is projected to fall within available federal and state appropriations and to cost \$7 million annually.

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

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of April 12, 2018

Call to Order and Roll Call

The March meeting of the Administrative Regulation Review Subcommittee was held on Thursday, April 12, 2018, at 1:00 p.m. in Room 149 of the Capitol Annex. Representative Hale, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the March 2018 meeting were approved.

Present were:

Members: Senators Ernie Harris, and Alice Forgy Kerr; and Representatives David Hale, Jason Petrie, and Tommy Turner.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Betsy Cupp, Ange Darnell, Emily Harkenrider, Karen Howard, and Carrie Klaber.

Guests: Margaret Walton, State Board of Elections; Anthony Cotto, Patrick Flannery, Mitch Mattingly, Claims Commission; Morgan Ransdell, Board of Nursing; Lora Arnold Parks, Board of Dietitians and Nutritionists, Matt James, Board of Licensed Diabetes Educators; Amber Arnett, Steve Beam, Karen Waldrop, Department of Fish and Wildlife Resources; Clint Quarles, Department of Agriculture; Amy Barker, Department of Corrections; David Couch, Amy Peabody, Department of Education; Molly Lewis, Office of Health Policy; Matt Kleinert, Donna Little, Department for Medicaid Services; Christa Bell, Elizabeth Caywood, Department for Community Based Services and David McMahan, National Background Check Program.

The Administrative Regulation Review Subcommittee met on Thursday, April 12, 2018, and submits this report:

Administrative Regulations Reviewed by the subcommittee:

KENTUCKY STATE BOARD OF ELECTIONS: Statewide Voter Registration

31 KAR 3:010 & E. Current address of Kentucky registered voters and distribution of voter registration lists. Margaret Walton, counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend 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.

PUBLIC PROTECTION CABINET: Kentucky Claims Commission: Claims and Awards

107 KAR 1:011. Repeal of 107 KAR 1:005, 107 KAR 1:010, 107 KAR 1:015, 107 KAR 1:025, 107 KAR 1:030, and 107 KAR 1:040. Anthony Cotto, executive advisor; Patrick Flannery, interim executive director; and Mitch Mattingly, staff attorney, represented the commission.

Sexual Assault Examination Program

107 KAR 2:011. Repeal of 107 KAR 2:010.

In response to questions by Co-Chair Harris, Mr. Mattingly stated that funding for the program came from the General Fund and a federal fund. The program representatives were unaware of the current status of the sexual assault kit analysis backlog.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Claims: Practice and Procedure

108 KAR 1:011. Repeal of 108 KAR 1:010, 108 KAR 1:030, and 108 KAR 1:040.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with

agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Nursing

201 KAR 20:501. Repeal of 201 KAR 20:500. Morgan Ransdell, staff attorney supervisor, represented the board.

A motion was made and seconded to approve the following amendment: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

201 KAR 20:506. Nurse licensure compact.

In response to questions by Co-Chair Harris, Mr. Ransdell stated that Kentucky had been a party to the Nurse Licensure Compact for over eight (8) years. Due to insufficient growth, a new compact with stronger qualification requirements was promulgated. The new compact was successful in bringing new states into the compact. West Virginia was a new member of the compact, while Tennessee was a long-standing member. Indiana was considering joining the compact; however, Ohio was not considering joining.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; Sections 1 through 14; and material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensure and Certification for Dietitians and Nutritionists

201 KAR 33:070. Telehealth and telepractice. Matt James, assistant attorney general, and Lora Parks, chair, represented the board.

201 KAR 33:080. Scope of practice.

In response to questions by Co-Chair Harris, Ms. Parks stated that the last update to licensee standards was in 2012. Dietary and nutrition standards were based on national standards and continuing education recommendations. Recommendations were from medical associations and were based on solid scientific research.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, and CONFORMITY paragraph; and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensed Diabetes Educators

201 KAR 45:001. Definitions for 201 KAR Chapter 45. Matt James, assistant attorney general, represented the board.

In response to questions by Co-Chair Hale, Mr. James stated that the fifteen (15) hours of required continuing education was provided by an agency approved in accordance with another of the board's administrative regulations. The board's intent was to clarify how continuing education hours factored in as work experience. Licensees functioned in many venues, including hospitals, clinics, physician offices, and other health-care facilities. Senator Kerr stated that she had sponsored the legislation to ensure that Kentucky had licensed diabetes educators. Kentucky lead the nation in the number of cases of diabetes. Logan Gregory, who was chosen as the American Diabetes Association spokesperson, in a prior meeting with Senator Kerr and Senate President David Williams, explained how a diabetes educator saved her life. Co-Chair Hale stated that his granddaughter had just been diagnosed with Type 1 diabetes; therefore, this issue was very important to him.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the

drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife: Game

301 KAR 2:178. Deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas. Amber Arnett, staff attorney; Steve Beam, division director; and Karen Waldrop, deputy commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 6 and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Department of Agriculture: Office of Agricultural Marketing: Agricultural Marketing

302 KAR 38:011. Repeal of 302 KAR 38:010. Clint Quarles, staff attorney, represented the department.

In response to questions by Senator Harris, Mr. Quarles stated that there was not a membership fee for the Kentucky Proud program. A membership fee might be considered in the future. Promotional materials were provided at cost.

Marketing and Product Promotion

302 KAR 39:011. Repeal of 302 KAR 39:010.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:020. Corrections policies and procedures. Amy Barker, assistant general counsel, represented the department.

In response to a question by Co-Chair Harris, Ms. Barker stated that placement of incarcerated LGBTI inmates was determined by a number of factors, including the identity stated by the inmate, security considerations, etc. Placement was based on the federal Rape Elimination Act, which established that protective custody was an option but should not be the first unit considered.

A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Kentucky Board of Education: Department of Education: Office of Chief State School Officer

701 KAR 5:110. Use of local monies to reduce unmet technology need. David Couch, associate commissioner, and Amy Peabody, attorney, represented the department.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Claims before the Commission PUBLIC PROTECTION CABINET: Kentucky Claims Commission: Tax Appeals

802 KAR 1:010. Tax appeal procedures. Anthony Cotto, executive advisor; Patrick Flannery, interim executive director; and Mitch Mattingly, staff attorney, represented the commission.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 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.

802 KAR 2:010. Negligence claims before the Kentucky Claims Commission.

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.

Crime Victim Claims

802 KAR 3:010. Crime victim's compensation.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

802 KAR 3:020. Payment schedule for sexual assault examinations.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Certificate of Need

900 KAR 6:121. Repeal of 900 KAR 6:120. Molly Lewis, executive director, represented the office.

Department for Medicaid Services: Managed Care

907 KAR 17:020. Managed care organization service and service coverage requirements and policies. Matthew Kleinert, assistant to the secretary, and Donna Little, deputy executive director, Office of Legislative and Regulatory Affairs, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 1 to revise the utilization criteria used in determining medical necessity to comply with a court order and HB 69 of the 2018 Regular Session of the General Assembly. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Division of Child Care: Day Care

922 KAR 2:280 & E. Background checks for child care staff members, reporting requirements, and appeals. Christa Bell, director, and Elizabeth Caywood, chief of staff, represented the division.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred or removed from the April 12, 2018, subcommittee agenda:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board: Teaching Certificates

16 KAR 2:010. Kentucky professional and provisional teacher certificates.

Administrative Certificates

16 KAR 5:030. Proficiency evaluation.

GENERAL GOVERNMENT: Board of Podiatry

201 KAR 25:090. Prescribing and dispensing controlled substances.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

[501 KAR 6:270](#). Probation and parole policies and procedures.

Capital Punishment

[501 KAR 16:290](#). Preliminary and post-execution procedures concerning condemned person.

[501 KAR 16:300](#). Execution procedures concerning attorneys representing the condemned, witnesses, visitors, and demonstrators.

[501 KAR 16:310](#). Pre-execution medical actions.

[501 KAR 16:330](#). Lethal injection protocols.

[501 KAR 16:340](#). Electrocution protocol.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Driver Licensing: Administration

[601 KAR 2:030 & E](#). Ignition interlock.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Quotas

[804 KAR 9:051](#). Repeal of 804 KAR 9:010, 804 KAR 9:040, and 804 KAR 9:050.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Office of Inspector General: Division of Healthcare: Health Services and Facilities

[902 KAR 20:016](#). Hospitals; operations and services.

Department for Community Based Services: Division of Family Support: K-TAP, Kentucky Works, Welfare to Work, State Supplementation

[921 KAR 2:015 & E](#). Supplemental programs for persons who are aged, blind, or have a disability.

Department for Community Based Services: Division of Child Care: Day Care

[922 KAR 2:090 & E](#). Child-care center licensure.

[922 KAR 2:100 & E](#). Certification of Family Child-Care Homes.

Day Care

[922 KAR 2:111E](#). Repeal of 922 KAR 2:110.

[922 KAR 2:120 & E](#). Child-care center health and safety standards.

[922 KAR 2:180 & E](#). Requirements for registered child care providers in the Child Care Assistance Program.

[922 KAR 2:190 & E](#). Civil penalties.

The subcommittee adjourned at 1:35 p.m. The next meeting of the subcommittee is tentatively scheduled for May 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.

NONE

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

K - 2

The Locator Index lists all administrative regulations published in VOLUME 44 of the *Administrative Register of Kentucky* from July 2017 through June 2018. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action that may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 43 are those administrative regulations that were originally published in VOLUME 43 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the *2017 Kentucky Administrative Regulations Service* was published.

KRS Index

K - 18

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*.

Certification Letter Summaries

K - 32

The Certification Index lists of administrative regulations that have had certification letters filed during this VOLUME year. The certification process is established in KRS 13A.3104. If the certification letter states the administrative regulation shall be amended, the administrative body shall file an amendment to the regulation within 18 months of the date the certification letter was filed. If the certification letter states that the regulation shall remain in effect without amendment, the last effective date of the regulation is changed to the date the regulations compiler received the letter.

Technical Amendment Index

K - 33

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

K - 34

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 year's) issues of the <i>Administrative Register of Kentucky</i> but had not yet gone into effect when the <i>2017 Kentucky Administrative Register Service</i> was published.					
SYMBOL KEY:			201 KAR 2:074		
* Statement of Consideration not filed by deadline			Amended	1796	See 44 Ky.R.
** Withdrawn, not in effect within 1 year of publication			201 KAR 2:076		
*** Withdrawn before being printed in Register			Amended	2184	See 44 Ky.R.
‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))			201 KAR 20:056		
IJC Interim Joint Committee			Amended	1799	
(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.			As Amended	2125	6-21-2017
			201 KAR 20:057		
			Amended	1802	6-21-2017
			201 KAR 20:070		
			Amended	2187	See 44 Ky.R.
			201 KAR 20:110		
			Amended	2189	See 44 Ky.R.
EMERGENCY ADMINISTRATIVE REGULATIONS:			201 KAR 20:225		
(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.)			Amended	2191	8-16-2017
			201 KAR 20:480		
EMERGENCY ADMINISTRATIVE REGULATIONS:			Amended	2193	8-16-2017
(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 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	
			Am Comments	2156	See 44 Ky.R.
ORDINARY ADMINISTRATIVE REGULATIONS:			201 KAR 26:180		
			Amended	1826	
4 KAR 1:010			Am Comments	2158	See 44 Ky.R.
Amended	2176	See 44 Ky.R.	201 KAR 26:185		
4 KAR 1:040			Amended	1827	See 44 Ky.R.
Amended	2178	See 44 Ky.R.	201 KAR 26:190		
4 KAR 1:050	2239	See 44 Ky.R.	Amended	1829	See 44 Ky.R.
16 KAR 2:020			201 KAR 26:200		
Amended	2005	See 44 Ky.R.	Amended	1831	See 44 Ky.R.
16 KAR 5:020			201 KAR 26:210		
Amended	2008	See 44 Ky.R.	Amended	1833	See 44 Ky.R.
16 KAR 6:020			201 KAR 26:215		
Amended	1627	7-7-2017	Amended	1834	See 44 Ky.R.
16 KAR 8:040			201 KAR 26:225	1900	See 44 Ky.R.
Amended	2011	See 44 Ky.R.	201 KAR 26:250		
30 KAR 2:010			Amended	1836	See 44 Ky.R.
Amended	2180	See 44 Ky.R.	201 KAR 26:280		
30 KAR 5:060			Amended	1838	See 44 Ky.R.
Amended	2182	See 44 Ky.R.	201 KAR 26:290		
40 KAR 2:145			Amended	1840	See 44 Ky.R.
Amended	2013	See 44 Ky.R.	201 KAR 32:050		
40 KAR 2:150			Amended	1841	See 44 Ky.R.
Amended	2015	See 44 Ky.R.	201 KAR 32:060		
200 KAR 5:080			Amended	1843	See 44 Ky.R.
Repealed	2240	9-1-2017	201 KAR 34:020		
200 KAR 5:081(r)	2240	9-1-2017	Amended	2023	See 44 Ky.R.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date	Regulation Number	43 Ky.R. Page No.	Effective Date
201 KAR 34:030			Repealed	2078	9-8-2017
Amended	2025	See 44 Ky.R.	401 KAR 8:600		
201 KAR 34:050			Repealed	2078	9-8-2017
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			725 KAR 2:060		
Amended	2034	7-6-2017	Amended	2060	
301 KAR 3:022		See 44 Ky.R.	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

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date	Regulation Number	43 Ky.R. Page No.	Effective Date
901 KAR 5:120	2243	See 44 Ky.R.	Repealed	2087	7-17-2017
902 KAR 2:060			906 KAR 1:091(r)	2087	7-17-2017
Amended	1454		907 KAR 1:065		
Am Comments	1989		Amended	1485	
As Amended	2143	See 44 Ky.R.	Am Comments	1997	
902 KAR 20:053(r)	2082	7-17-2017	As Amended	2149	7-7-2017
902 KAR 20:054			907 KAR 23:001	2088	10-6-2017
Repealed	2082	7-17-2017	907 KAR 23:010	2091	See 44 Ky.R.
902 KAR 21:030	1910		907 KAR 23:020	2096	See 44 Ky.R.
As Amended	2148	6-21-2017	910 KAR 1:210		
902 KAR 22:010			Amended	2070	7-17-2017
Repealed	2084	7-17-2017			
902 KAR 22:011(r)	2084	7-17-2017			
902 KAR 22:030					
Repealed	2084	7-17-2017			
902 KAR 55:075					
Repealed	2085	7-17-2017			
902 KAR 55:076(r)	2085	7-17-2017			
902 KAR 55:100					
Repealed	2085	7-17-2017			
902 KAR 95:040					
Amended	2234	See 44 Ky.R.			
906 KAR 1:080					
Repealed	2086	7-17-2017			
906 KAR 1:081(r)	2086	7-17-2017			
906 KAR 1:090					

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.

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			922 KAR 2:180E	1946	2-14-2018
(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.)			922 KAR 2:190E	1952	2-14-2018
17 KAR 3:020E	494	8-1-2017	922 KAR 2:260E	895	9-29-2017
Replaced	902	12-1-2017	Replaced	1166	3-15-2018
31 KAR 3:010E	1914	1-23-2018	922 KAR 2:270E	2308	4-13-2018
31 KAR 4:100E	2300	3-19-2018	922 KAR 2:280E	1487	12-14-2017
31 KAR 4:120E	2301	3-19-2018	-----		
32 KAR 1:020E	496	8-15-2017	ORDINARY ADMINISTRATIVE REGULATIONS		
Replaced	1209	1-5-2018	4 KAR 1:010		See 43 Ky.R.
32 KAR 1:045E	876	9-29-2017	As Amended	210	9-1-2017
Replaced	1493	1-29-2018	4 KAR 1:040		See 43 Ky.R.
101 KAR 2:210E	725	9-15-2017	As Amended	211	9-1-2017
Replaced	769	1-5-2018	4 KAR 1:050		See 43 Ky.R.
105 KAR 1:140E	1474	12-15-2017	As Amended	212	9-1-2017
Replaced	1959	4-6-2018	11 KAR 4:080		
201 KAR 2:390E	498	8-15-2017	Amended	1367	3-9-2018
Replaced	1501	1-18-2018	11 KAR 15:090		
201 KAR 2:400E	500	8-15-2017	Amended	107	
Replaced	1502	1-18-2018	As Amended	502	10-6-2017
201 KAR 12:082E	2303	4-13-2018	Amended	1368	
201 KAR 12:082E	877	10-13-2017	As Amended	1805	3-9-2018
Replaced	1502	2-2-2018	13 KAR 2:120	443	
201 KAR 20:505E	727	1-5-2018	As Amended	899	12-1-2017
Expired		3-11-2018	13 KAR 2:130	445	
201 KAR 22:020E	2180	3-14-2018	As Amended	900	12-1-2017
201 KAR 22:040E	2182	3-14-2018	13 KAR 3:050		
201 KAR 22:070E	2184	3-14-2018	Amended	257	
301 KAR 1:152E	4	5-26-2017	As Amended	901	12-1-2017
Replaced	132	9-8-2017	16 KAR 1:015	698	
501 KAR 1:030E	See 43 Ky.R.	4-17-2017	Withdrawn	*	10-13-2017
Replaced	218	9-1-2017	16 KAR 1:016	1453	
501 KAR 6:270E	183	6-28-2017	As Amended	1956	4-6-2018
Replaced	731	11-3-2017	16 KAR 2:010		
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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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183.011	602 KAR 15:030	194A.209	922 KAR 5:090
186	922 KAR 2:120	194A.381 – 383	902 KAR 10:040
186.010	601 KAR 2:030	194A.540	201 KAR 20:070
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186.020	601 KAR 23:020		201 KAR 20:225
	922 KAR 2:100		201 KAR 36:030
186.440	601 KAR 2:030	194A.550	922 KAR 5:040
186.442	601 KAR 2:030	196	501 KAR 6:020
186.450	922 KAR 1:550		501 KAR 6:030
186.470	922 KAR 1:550		501 KAR 6:110
186.480	601 KAR 2:030		501 KAR 6:170
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186.531	601 KAR 2:030		501 KAR 6:270
186.560	601 KAR 2:030	196.030	501 KAR 16:290
186.570	601 KAR 2:030		501 KAR 16:300
186.590	922 KAR 1:550		501 KAR 16:310
186.650	106 KAR 1:350		501 KAR 16:330
186A.070	601 KAR 23:020		501 KAR 16:340
186A.073	601 KAR 23:020	196.035	501 KAR 6:280
186A.115	601 KAR 23:020	196.070	501 KAR 16:290
186A.170	601 KAR 23:020		501 KAR 16:300
189.010	106 KAR 1:350		501 KAR 16:310
189.125	922 KAR 2:100		501 KAR 16:330
	922 KAR 2:120		501 KAR 16:340
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189.150	902 KAR 100:180		501 KAR 16:300
189.231	603 KAR 5:025		501 KAR 16:310
189.340	603 KAR 5:025		501 KAR 16:330
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189A.010	601 KAR 2:030		501 KAR 6:030
189A.040	601 KAR 2:030		501 KAR 6:110
189A.050	200 KAR 38:021		501 KAR 6:170
189A.070	601 KAR 2:030		501 KAR 6:230
189A.085	601 KAR 2:030		501 KAR 6:270
189A.090	601 KAR 2:030	197.020	501 KAR 6:280
189A.103	500 KAR 8:010	198B.010	815 KAR 7:120
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	601 KAR 2:030		815 KAR 7:120
189A.105	601 KAR 2:030	198B.050	815 KAR 7:110
189A.107	601 KAR 2:030		815 KAR 7:120
189A.200	601 KAR 2:030		922 KAR 5:040
189A.240	601 KAR 2:030	198B.060	815 KAR 7:110
189A.250	601 KAR 2:030		815 KAR 7:120
189A.340	601 KAR 2:030	198B.070	815 KAR 7:110
189A.345	601 KAR 2:030	198B.080	815 KAR 7:120
189A.400	601 KAR 2:030	198B.260	815 KAR 7:120
189A.410	601 KAR 2:030		902 KAR 20:016
189A.420	601 KAR 2:030	198B.650 – 198B.689	815 KAR 8:100
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198B.990	815 KAR 8:011		922 KAR 2:270
198B.6671	815 KAR 7:120	200.080 – 200.120	505 KAR 1:120
198B.6672	815 KAR 8:080		505 KAR 1:130
198B.6673	815 KAR 8:080		505 KAR 1:140
	815 KAR 8:070	202A	907 KAR 17:005
	815 KAR 8:080		907 KAR 17:020
198B.6674	815 KAR 8:070	202A.011	921 KAR 2:015
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198B.6675	815 KAR 8:080	205.455	922 KAR 5:040
198B.6676	815 KAR 8:080	205.510	907 KAR 3:005
198B.6677	815 KAR 8:080	205.520	907 KAR 1:045
198B.6678	815 KAR 8:070		907 KAR 1:047
	815 KAR 8:080		907 KAR 1:102
199.011	922 KAR 1:140		907 KAR 1:104
	922 KAR 1:320		907 KAR 1:479
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	922 KAR 1:550		907 KAR 3:066
	922 KAR 2:090	205.560	907 KAR 1:479
	922 KAR 2:100		907 KAR 3:005
	922 KAR 2:120		907 KAR 3:010
	922 KAR 2:171	205.565	907 KAR 3:010
	922 KAR 2:180	205.593	907 KAR 17:015
	922 KAR 2:190	205.622	907 KAR 1:047
	922 KAR 2:280		907 KAR 1:102
199.462	922 KAR 1:140		907 KAR 3:005
	922 KAR 1:490	205.624	907 KAR 17:010
199.466	922 KAR 1:470	205.646	907 KAR 17:035
	922 KAR 2:280	205.712	601 KAR 2:030
199.555	907 KAR 17:005	205.2005	921 KAR 3:025
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	922 KAR 1:320		907 KAR 1:047
199.557	922 KAR 1:140		907 KAR 1:102
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199.801	922 KAR 1:140	205.8451 – 205.8483	907 KAR 17:005
199.892	922 KAR 2:090	209	902 KAR 20:016
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199.892 – 199.8996	922 KAR 2:111		922 KAR 5:111
	922 KAR 2:171	209.020	921 KAR 2:015
199.894	922 KAR 2:090		922 KAR 1:320
	922 KAR 2:100		922 KAR 5:040
	922 KAR 2:120	209.030	922 KAR 5:040
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	922 KAR 2:180	209A	922 KAR 5:040
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	922 KAR 2:280		922 KAR 5:090
199.895	922 KAR 2:090	210.366	201 KAR 28:200
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199.896	922 KAR 1:470	210.370 – 210.485	907 KAR 1:045
	922 KAR 2:090		907 KAR 1:047
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	922 KAR 2:270		922 KAR 1:490
199.897	922 KAR 2:100	211.842 – 211.852	902 KAR 20:016
199.898	922 KAR 2:090	211.842 – 211.990	902 KAR 100:180
	922 KAR 2:100	211.892	805 KAR 1:060
	922 KAR 2:120	211.893	805 KAR 1:060
	922 KAR 2:160	212.626	815 KAR 7:110
	922 KAR 2:180	213.101	902 KAR 20:360
199.8941	922 KAR 2:270	214	902 KAR 20:016
199.8943	922 KAR 2:270	214.010	922 KAR 2:090
199.8982	922 KAR 1:470		922 KAR 2:100
	922 KAR 2:100		922 KAR 2:180
	922 KAR 2:160	214.036	922 KAR 1:330
	922 KAR 2:180		922 KAR 2:100
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199.899	922 KAR 2:160	214.610	201 KAR 9:310
199.8994	922 KAR 2:160	214.620	201 KAR 9:310
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216.750	921 KAR 2:015		902 KAR 55:041
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216.2970	902 KAR 20:016	218A.010	902 KAR 55:015
216B	921 KAR 2:015		902 KAR 55:110
216B.010	900 KAR 6:130	218A.020	902 KAR 55:015
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216B.010 – 216B.130	900 KAR 5:020		902 KAR 55:041
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	902 KAR 20:360	218A.070	902 KAR 55:095
216B.015	802 KAR 3:010	218A.080	902 KAR 55:015
	802 KAR 3:020	218A.100	902 KAR 55:015
	900 KAR 6:090	218A.120	902 KAR 55:015
	900 KAR 6:130	218A.175	902 KAR 20:145
216B.020	902 KAR 20:016	218A.180	902 KAR 55:095
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	900 KAR 6:130		201 KAR 9:310
216B.040	900 KAR 6:090		201 KAR 20:057
	900 KAR 6:130	218A.205	201 KAR 20:056
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216B.042	902 KAR 20:016	218.172	201 KAR 25:090
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216B.045	902 KAR 20:016	219.011 – 219.081	902 KAR 20:016
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216B.055	902 KAR 20:016		401 KAR 33:002
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216B.075	902 KAR 20:016		401 KAR 35:002
216B.085	902 KAR 20:016		401 KAR 36:002
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216B.185	902 KAR 20:016		401 KAR 43:002
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216C.010	900 KAR 11:010		401 KAR 39:011
216C.030	900 KAR 11:010		401 KAR 39:060
216C.040	900 KAR 11:010		401 KAR 39:080
216C.050	900 KAR 11:010		401 KAR 39:090
216C.060	900 KAR 11:010		401 KAR 39:120
216C.070	900 KAR 11:010		401 KAR 43:002
216C.080	900 KAR 11:010		401 KAR 44:002
216C.090	900 KAR 11:010		401 KAR 45:060
216C.100	900 KAR 11:010		401 KAR 48:005
216C.110	900 KAR 11:010		401 KAR 48:090
216C.120	900 KAR 11:010		401 KAR 59:015
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216C.170	900 KAR 11:010		401 KAR 51:240
216C.180	900 KAR 11:010		401 KAR 51:250
216C.200	900 KAR 11:010		401 KAR 51:260
216C.210	900 KAR 11:010		402 KAR 3:030
216C.220	900 KAR 11:010	224.10-110	401 KAR 8:510
216C.230	900 KAR 11:010	224.20-100	401 KAR 51:240
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224.20-120	401 KAR 51:240		401 KAR 35:002
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224.40	401 KAR 31:002		401 KAR 38:002
	401 KAR 32:002		401 KAR 39:011
	401 KAR 33:002		401 KAR 39:060
	401 KAR 34:002		401 KAR 39:080
	401 KAR 35:002		401 KAR 39:090
	401 KAR 36:002		401 KAR 39:120
	401 KAR 37:002		401 KAR 45:060
	401 KAR 38:002		401 KAR 48:005
	401 KAR 39:120		401 KAR 48:090
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	401 KAR 48:090	227.489	815 KAR 7:110
224.40-310	410 KAR 1:002	227.550	815 KAR 7:120
224.43	401 KAR 31:002	230.215	811 KAR 1:215
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	401 KAR 35:002	230.260	811 KAR 1:215
	401 KAR 36:002		811 KAR 1:220
	401 KAR 37:002	230.280	811 KAR 1:220
	401 KAR 38:002	230.290	811 KAR 1:220
	401 KAR 43:002	230.310	811 KAR 1:220
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224.43-815	410 KAR 1:002	230.990	811 KAR 1:215
224.46	401 KAR 31:002	235.010	301 KAR 1:015
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	401 KAR 39:090	236.030	815 KAR 15:026
	401 KAR 39:120	236.110	815 KAR 15:026
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	401 KAR 44:002	236.250	815 KAR 15:026
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224.46-820	410 KAR 1:002		804 KAR 4:410
224.46-825	410 KAR 1:002		804 KAR 6:011
224.46-830	410 KAR 1:002		804 KAR 9:051
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224.46-870	410 KAR 1:002		804 KAR 6:020
224.50	401 KAR 34:002	243.200	804 KAR 8:050
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224.70	401 KAR 34:002	244.085	804 KAR 5:070
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247.234	302 KAR 16:020	304.39-060	806 KAR 39:030
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247.236	302 KAR 16:020	309.083	201 KAR 35:055
247.800 – 247.810	302 KAR 39:011		201 KAR 35:070
260.010	302 KAR 38:011	309.0831	201 KAR 35:055
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	302 KAR 50:020	309.0832	201 KAR 35:070
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	302 KAR 50:060	309.331	201 KAR 45:110
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278.485	807 KAR 5:022		201 KAR 45:120
278.5499	735 KAR 1:020		201 KAR 45:170
281.010	907 KAR 3:066	309.336	201 KAR 45:170
281.605	907 KAR 3:066	309.0813	201 KAR 35:080
281.635	907 KAR 3:066	310	902 KAR 20:016
281.872	907 KAR 3:066	310.005	201 KAR 33:080
281.875	907 KAR 3:066	310.021	201 KAR 33:080
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286.6-225	808 KAR 3:050	310.041	201 KAR 33:080
286.6-585	808 KAR 3:050	310.070	201 KAR 33:070
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292.370	808 KAR 10:082		900 KAR 6:130
292.390	808 KAR 10:082	311.530 – 311.620	201 KAR 9:260
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304.18-130	806 KAR 18:011	311A.060	202 KAR 7:565
304.18-140	806 KAR 18:011	311A.170	201 KAR 20:400
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311B.110	201 KAR 46:020	314.161	201 KAR 20:056
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311B.120	201 KAR 46:020	314.193	201 KAR 20:057
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311B.130	201 KAR 46:020	314.470	201 KAR 20:056
311B.140	201 KAR 46:020		201 KAR 20:070
311B.150	201 KAR 46:081		201 KAR 20:110
311B.160	201 KAR 46:095		201 KAR 20:370
311B.170	201 KAR 46:095		201 KAR 20:411
311B.180	201 KAR 46:020		201 KAR 20:501
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311B.190	201 KAR 46:020	314.991	201 KAR 20:110
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314	902 KAR 20:058	315.002	201 KAR 2:390
314.011	201 KAR 20:056		201 KAR 2:400
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	201 KAR 20:065		201 KAR 2:400
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	405 KAR 8:010		922 KAR 2:100
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CERTIFICATION LETTER SUMMARIES

The certification process is established in KRS 13A.3104. If the certification letter states the regulation shall be amended, the administrative body shall file an amendment to the regulation within 18 months of the date the certification letter was filed. If the certification letter states that the regulation shall remain in effect without amendment, the last effective date of the regulation is changed to the date the regulations compiler received the letter.

* KRS 13A.010(6) - "Effective" means that an administrative regulation has completed the legislative subcommittee review established by KRS 13A.290, 13A.330, and 13A.331.

Regulation Number	Previous Last Effective Date*	Letter Filed Date	Action
201 KAR 9:021	2-14-2008	3-29-2018	Amendment due by 9-29-19
201 KAR 9:023	3-14-1994	3-29-2018	Remains Effective without Amendment
201 KAR 9:024	10-9-1984	3-29-2018	Remains Effective without Amendment
201 KAR 9:031	5-5-2006	3-29-2018	Amendment due by 9-29-19

TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments entered since being published in the *2017 Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published to show the technical corrections in the *Administrative Register of Kentucky*. NOTE: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at <http://www.lrc.ky.gov/KAR/frntpage.htm>.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).

Regulation Number		Date Corrected	Regulation Number	Date Corrected
101 KAR 1:365		1-22-2018		
101 KAR 1:375		1-22-2018		
103 KAR 18:060		6-22-2017		
103 KAR 18:080		6-22-2017		
103 KAR 18:090		6-22-2017		
103 KAR 18:120		6-22-2017		
103 KAR 26:010		8-3-2017		
201 KAR 12:060		4-3-2018		
201 KAR 12:100		4-3-2018		
201 KAR 30:030		1-11-2018		
201 KAR 30:040		1-11-2018		
201 KAR 30:050		1-11-2018		
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201 KAR 30:315		1-11-2018		
201 KAR 30:330		1-11-2018		
201 KAR 30:380		1-11-2018		
201 KAR 46:035	‡	11-30-2017		
201 KAR 46:040		11-30-2017		
201 KAR 46:045		11-30-2017		
201 KAR 46:050		11-30-2017		
201 KAR 46:060		11-30-2017		
201 KAR 46:081	‡	11-30-2017		
201 KAR 46:090		11-30-2017		
401 KAR 5:037		7-14-2017		
401 KAR 8:022		12-11-2017		
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401 KAR 101:040		4-11-2018		
405 KAR 5:032		6-27-2017		
405 KAR 5:070		6-27-2017		
405 KAR 5:082		6-27-2017		
405 KAR 10:015		3-28-2018		
405 KAR 10:030		3-28-2018		
902 KAR 20:058	‡	3-7-2018		
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907 KAR 1:054		10-6-2017		
907 KAR 1:065		10-30-2017		
907 KAR 1:340		10-6-2017		
907 KAR 1:604		10-6-2017		
907 KAR 1:672		10-6-2017		
907 KAR 3:225		10-6-2017		
907 KAR 3:230		10-6-2017		
907 KAR 9:005		10-6-2017		
907 KAR 9:010		10-6-2017		
907 KAR 10:015		11-16-2017		
907 KAR 17:015	‡	3-7-2018		
907 KAR 20:050		10-6-2017		

SUBJECT INDEX

ADULT SERVICES

See:

Community Based Services; 922 KAR Chapter 5
Education; See Postsecondary Education

AGRICULTURE

Agricultural Marketing

Repeal of 302 KAR 38:010; 302 KAR 38:011

Amusement Rides

Inspection and operation of amusement rides or amusement attractions; 302 KAR 16:020

Repeal of 302 KAR 16:080; 302 KAR 16:081

Rides and attractions not included in the definition of amusement ride or attraction; 302 KAR 16:091

Consumer Protection, Office of

Requirements for operating and inspecting aerial recreational devices and facilities; 302 KAR 17:010

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Affiliated universities and colleges; 302 KAR 50:040

Fees and forms; 302 KAR 50:060

Materials incorporated by reference; 302 KAR 50:080

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Claims Commission; KAR Title 107

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Housing Buildings and Construction; KAR Title 815

Insurance; KAR Title 806

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Fish and Wildlife Resources; KAR Title 301

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