



ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, May 15, 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 - [2469](#)

The Education Assessment and Accountability Review Subcommittee is tentatively scheduled to meet on June 19, 2018, 1:00 p.m.

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

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
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Administrative Certificates

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Board

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[201 KAR 12:260](#). Fees.

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Board

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[401 KAR 51:260](#). Cross-State Air Pollution Rule (CSAPR) SO2 group 1 trading program. (Amended After Comments)

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections**

Office of the Secretary

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Department of Juvenile Justice

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- [906 KAR 1:200](#). Use of civil money penalty funds collected from certified long-term care facilities.

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[922 KAR 2:180 & E](#). Requirements for registered child care providers in the Child Care Assistance Program. ("E" Expires 8-13-2018)
(Deferred from April)
[922 KAR 2:190 & E](#). Civil penalties. ("E" Expires 8-13-2018) (Deferred from April)
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**REMOVED FROM JUNE'S AGENDA
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[31 KAR 4:120 & E](#). Additional and emergency precinct officers. (Withdrawn 5-22-2018)

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

Filing and Publication

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

Public Hearing and Public Comment Period

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

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

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

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

Review Procedure

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

VOLUME 44, NUMBER 12 – JUNE 1, 2018
EMERGENCY ADMINISTRATIVE REGULATIONS

NONE

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, May 8, 2018)

201 KAR 20:056. Advanced practice registered nurse licensure and certification requirements.

RELATES TO: KRS 218A.205(3)(h), (8), 314.011, 314.042, 314.091, 314.103, 314.109, 314.161, ~~314.475~~**[314.470]**

STATUTORY AUTHORITY: KRS 218A.205(3)(h), (8), 314.042, 314.103, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(h) requires the board to establish by administrative regulation for licensees authorized to dispense or prescribe controlled substances the process for submitting a query on each applicant to the National Practitioner Data Bank. KRS 218A.205(8) requires the board to require for any applicant for an initial licensure that authorizes the prescribing or dispensing of controlled substances to complete a state and national criminal records check. KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.042 requires the licensure of an advanced practice registered nurse and authorizes the board to promulgate administrative regulations establishing licensing requirements. KRS 314.103 authorizes the board to require a criminal background investigation of an applicant or a nurse. This administrative regulation establishes the requirements for licensure, renewal, and reinstatement, education, and recognition of a national certifying organization.

Section 1. An applicant for licensure as an advanced practice registered nurse in Kentucky shall:

(1)(a) Complete an Application for Licensure as an Advanced Practice Registered Nurse as required by 201 KAR 20:370, Section 1(1);

(b) Provide a copy of a current active registered nurse license or validation of registered nurse licensure if the state of licensure does not issue licensure cards;

(c) Submit the fee required by 201 KAR 20:240, Section 1(2)(j); and

(d) Comply with the requirements established in KRS 314.042 and this administrative regulation.

(2) If the applicant is applying only for a license as an advanced practice registered nurse, the applicant shall also:

(a) Provide a criminal record check by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI);

(b);

(a) The applicant shall Use the FBI Applicant Fingerprint Card;

(c);

(b) The applicant shall Pay any required fee to the KSP and the FBI;

(d) Complete;

(c) the criminal record check [shall be] within six (6) months of the date of the application; and

(e);

(d) If there are any misdemeanor or felony convictions, [the applicant shall] provide:

1. A certified or attested copy of the court record as required by 201 KAR 20:370, Section 1(3); and

2. A letter of explanation that addresses each conviction[;]

(a) A completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;

(b) A report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of

the date of the application;

(c) A certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(d) A letter of explanation that addresses each conviction, if applicable].

(3) An applicant shall not be licensed until:

(a) A report is received from the FBI pursuant to the request submitted under subsection (2)(a) of this section and any conviction is addressed by the board; and

(b) A query is completed to the board's reporting agent to the National Practitioner Data Bank of the United States Department of Health and Human Services pursuant to KRS 218A.205(3)(h) and any relevant data on the applicant is received.

Section 2. Education and Clinical Experience. (1) An applicant for licensure as an advanced practice registered nurse shall complete an accredited education program that prepares a registered nurse for one (1) of the four (4) APRN roles established under Section 12(5) of this administrative regulation and clinical experience. This program shall conform to 201 KAR 20:062 or its substantial equivalence if from an out of state program.

(2)(a) If the applicant for licensure as an advanced practice registered nurse completed a program of study after January 1, 2005, the applicant shall hold a master's degree, doctorate, or postmaster's certificate awarding academic credit by a college or university related to the advanced practice registered nurse designation.

(b) If the applicant for licensure as an advanced practice registered nurse completed a program of study before January 1, 2005, the program shall be evaluated by the board on an individual basis to find if the program sufficiently prepares a student for advanced practice registered nursing by complying with the requirements of 201 KAR 20:062.

Section 3. National Certifying Organizations. (1) A nationally established organization or agency which certifies registered nurses for advanced practice registered nursing shall be recognized by the board if it meets the following criteria:

(a) The certifying body is an established national nursing organization or a subdivision of this type of organization;

(b) Eligibility requirements for certification are delineated;

(c) Certification is offered in a role as defined by KRS 314.042(2)(a) and in a population focus as defined by KRS 314.011 and with primary or acute care competencies;

(d) Scope and standards of practice statements are promulgated;

(e) Mechanism for determining continuing competency is established; and

(f) The certifying body is accredited by the American Board of Nursing Specialties or the National Commission for Certifying Agencies.

(2) The board recognizes the following national certifying organizations:

(a) American Nurses Credentialing Center;

(b) American Midwifery Certification Board;

(c) National Board of Certification and Recertification for Nurse Anesthetists;

(d) Pediatric Nursing Certification Board;

(e) National Certification Corporation;

(f) American Academy of Nurse Practitioners Certification Board; and

(g) American Association of Critical-Care Nurses Certification Corporation.

(3) The board recognizes the Oncology Nursing Certification Corporation only for an individual who has received certification prior to December 15, 2010 and who has continually renewed his

or her Kentucky advanced practice registered nurse license since that date.

Section 4. Practice Pending Licensure. (1) A registered nurse who meets all the requirements for practice as an advanced practice registered nurse, and who holds a registered nurse temporary work permit issued pursuant to 201 KAR 20:110 pending licensure by endorsement or a privilege to practice as a registered nurse, shall be authorized to practice as an advanced practice registered nurse for a period of time not to exceed the expiration date of the temporary work permit.

(2) Authorization to practice pursuant to this section shall be in the form of a letter from the board acknowledging that the applicant has met all the requirements of this section. An applicant shall not practice until the authorization letter has been issued.

(3) An individual authorized to practice pursuant to subsection (1) of this section may use the title "APRN Applicant" or "APRN App.".

Section 5. License Renewal. (1) The advanced practice registered nurse license shall expire or lapse when the registered nurse license or privilege expires or lapses.

(2) To be eligible for renewal of the license as an advanced practice registered nurse, the applicant shall:

(a) Renew the registered nurse license or privilege on an active status;

(b) Submit a completed Annual Licensure Renewal Application: RN and APRN or a completed Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky) form, as applicable, and as required by 201 KAR 20:370, Section 1(1);

(c) Submit the current renewal application fee, as established in 201 KAR 20:240, Section 1(2)(k); and

(d) Maintain current certification by a recognized national certifying organization.

(3) An advanced practice registered nurse who fails to renew the registered nurse license or privilege or is otherwise unable to legally practice as a registered nurse shall not practice as or use the title of advanced practice registered nurse until:

(a) A current active license has been issued by the board or a privilege is recognized by the board; and

(b) The advanced practice registered nurse license has been reinstated.

(4) An advanced practice registered nurse shall provide to the board evidence of current certification by a recognized national certifying organization upon recertification and at the request of the board.

Section 6. License Reinstatement. (1) If a nurse fails to renew the advanced practice registered nurse license as prescribed by KRS 314.042 and this administrative regulation, the license shall lapse on the last day of the licensure period.

(2) To be eligible for reinstatement of the advanced practice registered nurse license, the applicant shall:

(a) Submit a completed Application for Licensure as an Advanced Practice Registered Nurse form as required by 201 KAR 20:370, Section 1(1);

(b) Submit the current reinstatement application fee, as established in 201 KAR 20:240, Section 1(2)(l); and

(c) Maintain and submit evidence of current certification by a recognized national certifying organization.

(3) If the applicant is applying for reinstatement of a license as an advanced practice registered nurse, the applicant shall also provide a:

(a) Provide a criminal record check by the KSP and the FBI;

(b) Use the FBI/Completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card [and the fee required by the FBI that is within six (6) months of the date of the application];

(b) Report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application];

(c) Pay any required fee to the KSP and the FBI;

(d) Complete the criminal record check within six (6)

months of the date of the application; and

(e) If there are any misdemeanor or felony convictions, provide:

1. A certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

2. A letter of explanation that addresses each conviction, if applicable.

(4) The license shall not be issued until a report is received from the FBI and any conviction is addressed by the board.

Section 7. Certification or Recertification. (1)(a) An advanced practice registered nurse (APRN) shall maintain current certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation throughout the licensure period.

(b) The APRN shall notify the board if current certification or recertification has been obtained and provide evidence of the certification or recertification prior to the expiration date.

(2)(a) A nurse who fails to attain current, active certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation shall not practice or use the title of advanced practice registered nurse (APRN) until current certification or recertification is obtained.

(b)1. An APRN who does not provide evidence of current certification or recertification prior to its expiration date shall have the APRN license voided. This action shall not be considered to be a disciplinary action. The board shall send notice to the APRN's address of record that the certification or recertification is about to lapse and a notice if the license has been voided.

2. The APRN may request a hearing on this action by submitting the request in writing. If the action is upheld or not challenged, the APRN may seek reinstatement of the license in accordance with Section 6 of this administrative regulation, except as provided in subparagraph 3 of this paragraph.

3. If, after the APRN license has been voided, the APRN provides evidence of current certification acquired before the certification expiration date and there are no complaints pending against the APRN pursuant to 201 KAR 20:161, then the APRN shall meet the requirements of Section 6 of this administrative regulation except for Section 6(4) of this administrative regulation. A license may be issued prior to receipt of the FBI report.

(3) An advanced practice registered nurse whose certification lapses or is not renewed by the appropriate national organization shall:

(a) Notify the board of that fact; and

(b) Not practice as or use the title of advanced practice registered nurse during the period of decertification.

Section 8. (1) An application shall be valid for a period of one (1) year from the date of submission to the board.

(2) After one (1) year from the date of application, the applicant shall be required to reapply.

Section 9. The requirements of this administrative regulation shall not prohibit the supervised practice of a nurse enrolled in:

(1) An accredited educational program for preparation for advanced practice registered nursing; or

(2) An advanced practice registered nurse refresher course.

Section 10. A registered nurse who holds himself or herself out as a clinical nurse specialist or is known as a clinical nurse specialist shall be required to be licensed as an advanced practice registered nurse if his or her practice includes the performance of advanced practice registered nursing.

Section 11. A nurse practicing as an advanced practice registered nurse who is not licensed as an advanced practice registered nurse by the board, an advanced practice registered nurse whose practice is inconsistent with the population focus to which he or she has been designated, or an advanced practice registered nurse who does not recertify and continues to practice as an advanced practice registered nurse shall be subject to the

disciplinary procedures established in KRS 314.091.

Section 12. Dual designations. (1) An advanced practice registered nurse who wishes to practice in more than one (1) role designation shall complete an accredited educational program of study and clinical experience for each desired designation in compliance with the educational requirements established in KRS Chapter 314 and 201 KAR 20:062 and meet all the requirements for licensure for each designation.

(2) To apply for licensure for more than one (1) role designation, the applicant shall submit a separate application and fee for each desired designation.

(3) To renew each role designation, the APRN shall pay a separate licensure fee as set forth in 201 KAR 20:240, Section 1(2)(k).

(4) For the purposes of Section 7(2)(b) of this administrative regulation, if the APRN does not provide evidence of current recertification in a role designation, then that role designation shall be voided. The license shall not be voided if the other role designation is maintained. All other provisions of Section 7(2)(b) of this administrative regulation shall apply to the voided designation.

(5) Role designations shall be the Certified Registered Nurse Anesthetist, Certified Nurse Midwife, Certified Nurse Practitioner, and Clinical Nurse Specialist pursuant to KRS 314.042.

LEWIS PERKINS, President

APPROVED BY AGENCY: February 15, 2018

FILED WITH LRC: March 1, 2018 at 4 p.m.

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**GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, May 8, 2018)**

201 KAR 20:070. Licensure by examination.

RELATES TO: KRS 194A.540, 314.041, 314.051(3), (6), 314.103, 314.109, ~~314.475~~**[314.470]**

STATUTORY AUTHORITY: KRS 314.041(2), 314.051(3), 314.103, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Kentucky Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.041(2) requires an applicant for licensure as a registered nurse to pass an examination prescribed by the board. KRS 314.103 authorizes the board to require a criminal background check investigation of an applicant or nurse. KRS 314.051(3) requires an applicant for licensure as a licensed practical nurse to pass an examination prescribed by the board. This administrative regulation establishes the requirements for the licensure of nurses by examination.

Section 1. Eligibility for Licensure by Examination for a Graduate of a Kentucky Program or Other State or Territorial Nursing Program. (1) To be eligible for licensure by examination, an applicant shall:

(a) Submit:

1. A properly executed application for licensure, as required by and incorporated by reference in 201 KAR 20:370, Section 1(1);

2. The licensure application fee as established in 201 KAR 20:240;

3. A criminal record check **completed within six (6) months of the date of the application** by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) using the FBI Applicant Fingerprint Card, and **including payment of [paying]** any required fee to the KSP and the FBI **[and that is within six (6) months of the date of the application]** ~~A completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six~~

~~(6) months of the date of the application;~~

~~4. A report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application];~~

~~4[5]. A certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3);~~

~~5[6]. A letter of explanation that addresses each conviction, if applicable;~~

~~6[7]. A certified copy of any disciplinary action taken on any professional or business license in another jurisdiction with a letter of explanation or a report if there is any disciplinary action pending on any professional or business license in another jurisdiction; and~~

~~7[8]. Evidence of completion of the jurisprudence examination required by KRS 314.041(4) for RN applications or KRS 314.051(4) for LPN applications;~~

(b) Notify the board as soon as a new address is established after submitting the application;

(c) Submit a copy of a marriage certificate, divorce decree, Social Security card, or court order to change the applicant's name, if the applicant's name is changed after the original application is filed;

(d) While taking the examination, abide by and cooperate with security procedures adopted by the board; and

(e) Apply to take and pass the National Council Licensure Examination.

(2) An application for licensure shall be valid for a period of one (1) year from the date the application is filed with the board office or until the board receives the results of the examination.

(3)(a) Except as provided in paragraph (b) of this subsection, the name of the applicant shall appear on the Certified List of Kentucky Program of Nursing Graduates or the Certified List of Out-of-state Program of Nursing Graduates.

(b) If the name does not appear on the list, the applicant shall request that the program submit to the board an official transcript verifying completion of program requirements.

(c) The Certified List of Out-of-state Program of Nursing Graduates shall be submitted by the nurse administrator of the out-of-state program of nursing.

(4)(a) The applicant shall complete the three (3) hour continuing education course on domestic violence within three (3) years of licensure as required by KRS 194A.540.

(b) The applicant shall complete the one and one-half (1.5) contact hour continuing education course on pediatric abusive head trauma within three (3) years of licensure as required by 201 KAR 20:215, Section 5(3).

(5) An applicant shall not be licensed until a report is received from the FBI pursuant to the request submitted pursuant to subsection (1)(a)3 of this section and any conviction is addressed by the board.

(6) A graduate of a school of nursing in Puerto Rico after September 1, 2006, in addition to the other requirements of this section, shall provide evidence of evaluation of the graduate's transcript by the Commission on Graduates of Foreign Nursing Schools or a credential evaluation organization that is a member of the National Association of Credentialing Evaluation Services. The evaluation shall indicate that the school of nursing is substantially equivalent to a school of nursing in this state.

Section 2. Retaking the Examination. (1) An examination candidate who fails to achieve a passing result may retake the examination after meeting the requirements of Section 1 of this administrative regulation.

(2) The applicant shall not be eligible to take the examination more often than once every forty-five (45) days.

Section 3. Release of Examination Results. The board shall release examination results to:

(1) The candidate;

(2) Other state boards of nursing;

(3) The National Council of State Boards of Nursing, Inc.;

(4) The candidate's program of nursing; and

(5) An individual or agency who submits an applicant's or

licensee's written authorization for their release, if applicable.

Section 4. Provisional License. (1) An applicant shall request a provisional license by completing the application for licensure required by Section 1 of this administrative regulation.

(2)(a) The board shall issue the provisional license to the applicant after Section 1(1)(a) and (3) of this administrative regulation are met, but not until the report is received from the FBI and any conviction is addressed by the board.

(b) In the case of a graduate of a foreign nursing school, the board shall issue the provisional license after the requirements of 201 KAR 20:480, Section 1(1) and (4), are met.

(3) To qualify as direct supervision pursuant to KRS 314.041(5) and KRS 314.051(6), the nurse responsible for the applicant shall be physically present in the facility and immediately available to the applicant during work hours while the applicant holds a provisional license.

(4) The nurse responsible for the applicant shall be currently licensed or privileged to practice pursuant to KRS ~~314.475~~~~[314.470]~~ as a nurse in Kentucky.

(5) Upon notification to the board that the applicant has failed the NCLEX examination, the provisional license shall be voided.

Section 5. (1) An applicant not from a party state under the Nurse Licensure Compact who is issued a license and who does not have permanent residency in Kentucky shall be issued a license that indicates on the license that it is only valid in Kentucky.

(2) The board may request that an applicant provide evidence of the applicant's state of residence.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Certified List of Kentucky Program of Nursing Graduates", 6/10, Kentucky Board of Nursing; and

(b) "Certified List of Out-of-State Program of Nursing Graduates", 6/10, Kentucky Board of Nursing.

(2) 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, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

LEWIS PERKINS, President

APPROVED BY AGENCY: February 15, 2018

FILED WITH LRC: March 1, 2018 at 4 p.m.

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GENERAL GOVERNMENT CABINET

Board of Nursing

(As Amended at ARRS, May 8, 2018)

201 KAR 20:110. Licensure by endorsement.

RELATES TO: KRS 194A.540, 314.031, 314.041, 314.051, 314.091, 314.103, 314.109, ~~314.475~~~~[314.470]~~, 314.991

STATUTORY AUTHORITY: KRS 314.041(7), 314.051(8), 314.101(4), 314.103, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.041(7) and 314.051(8) authorize the board to issue a license to practice nursing as a registered nurse or a licensed practical nurse to an applicant who has passed the required examination or its equivalent and who was licensed to practice nursing in another jurisdiction. KRS 314.103 authorizes the board to require a criminal background check investigation of an applicant or nurse. KRS 314.101(4) authorizes the board to issue a temporary work permit to a person who has completed the requirements for, applied for, and paid the fee for licensure by endorsement. This administrative regulation establishes the

requirements for licensure by endorsement and establishes the requirements for a temporary work permit for an applicant to practice nursing while the application for a license is being processed.

Section 1. Eligibility for Licensure by Endorsement. (1) To be eligible for licensure by endorsement, an applicant shall:

(a)1. Have completed a state approved program of nursing equivalent to Kentucky requirements; or

2. Have completed that portion of a state-approved program of nursing that is equivalent to a Kentucky program of nursing;

(b) Have taken and passed the State Board Test Pool Examination or National Council Licensure Examination or an examination that is consistent with Section 4 of this administrative regulation;

(c) Complete the application form, as required by 201 KAR 20:370, Section 1(1);

(d) Submit the current fee for a licensure application, as established by 201 KAR 20:240;

(e) Report and submit a certified or attested copy of each disciplinary action taken or pending on a nursing or other professional or business license by another jurisdiction and a letter of explanation;

(f) Submit a certified copy of the court record of each misdemeanor or felony conviction and a letter of explanation that addresses each conviction as required by 201 KAR 20:370, Section 1(3);

(g) Request the U.S. jurisdiction, territory, or foreign country of initial licensure to submit to the board a verification of licensure by examination, which shall include the following information:

1. a. Name of the program of nursing completed and date of graduation; or

b. Name of the program of nursing attended and date of completion of the requirements for eligibility to take the licensure examination in that jurisdiction; and

2. A statement that the applicant's license has not been revoked, suspended, limited, probated, or otherwise disciplined by the licensing authority and is not subject to disciplinary action;

(h) Submit a criminal record check **completed within six (6) months of the date of the application** by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) using the FBI Applicant Fingerprint Card, and **including payment of [paying] any required fee to the KSP and the FBI [and that is within six (6) months of the date of the application]** [completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI]; and

(i) Submit evidence of completion of the jurisprudence examination required by KRS 314.041(4) for RN applications or KRS 314.051(4) for LPN applications as approved by the board[; and

~~(j) Submit a report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application].~~

(2) An application shall be valid for a period of six (6) months. The applicant shall:

(a) Submit a copy of a marriage certificate, divorce decree, Social Security card, or court order to change the applicant's name, if the applicant's name is changed after the original application is filed; and

(b) Notify the board in writing as soon as a new address is established after submitting the application.

(3) After six (6) months if the requirements for licensure have not been met, the applicant shall:

(a) Submit a new application;

(b) Submit the current licensure application fee; and

(c) Meet the requirements established in this section.

(4)(a) The applicant shall complete the three (3) hour continuing education course on domestic violence within three (3) years of licensure as required by KRS 194A.540.

(b) The applicant shall complete the one and one-half (1.5) contact hour continuing education course on pediatric abusive head trauma within three (3) years of licensure as required by 201 KAR 20:215, Section 5(3).

(5) An applicant shall not be licensed until a report is received from the FBI pursuant to the request submitted under subsection (1)(h) of this section and any conviction is addressed by the board.

(6) A graduate of a school of nursing in Puerto Rico after September 1, 2006, in addition to the other requirements of this section, shall provide evidence of evaluation of the graduate's transcript by the Commission on Graduates of Foreign Nursing Schools or a credential evaluation organization that is a member of the National Association of Credentialing Evaluation Services. The evaluation shall indicate that the school of nursing is substantially equivalent to a school of nursing in this state.

Section 2. Nursing Practice and Continuing Education Requirements. (1) Except as provided in subsection (2) of this section, an applicant shall complete fourteen (14) contact hours in continuing education for each year since the last year in which the applicant is able to demonstrate at least 100 hours of practice.

(2) The requirement established in subsection (1) of this section shall not apply to an applicant who:

(a) Has been licensed for less than five (5) years from the date of initial licensure;

(b) Has been actively licensed and engaged in nursing practice for at least 500 hours during the preceding five (5) years; or

(c) Has not been engaged in nursing practice during the five (5) years preceding the date of the application. This applicant shall complete at least 120 contact hours of continuing education earned within one (1) year of the date of the application.

(3) At least fourteen (14) contact hours shall have been earned within the twelve (12) months preceding the date of application for active Kentucky licensure status.

(4) Continuing education earned more than five (5) years preceding the date of application shall not be counted toward meeting the requirements established in subsections (1) and (3) of this section.

Section 3. Temporary Work Permit. (1) An applicant for licensure by endorsement who meets all of the requirements of Section 1(1)(a) through ~~(1)(f)]~~, except for paragraph (g) of this administrative regulation shall be issued a temporary work permit, but not until the report is received from the FBI and any conviction is addressed by the board.

(2) A temporary work permit shall be valid for a period not to exceed six (6) months.

(3) An individual who practices as a nurse in Kentucky without a current temporary work permit prior to issuance of a current active license shall be considered to be practicing without a license in violation of KRS 314.031 and shall be subject to the penalties listed in KRS 314.091 and 314.991.

Section 4. Licensing Examination Standards. An applicant who has taken an examination other than the State Board Test Pool Examination or the National Council Licensure Examination shall provide evidence to the board that the examination met the following standards of equivalency:

(1) Accepted psychometric procedures shall be used in the development of the examination;

(2) The examination shall be available to the board in the English language;

(3) The examination test plan blueprint shall be available for board review and adequately identifies test content and content weighting;

(4) Test items shall be available for board review and demonstrate the testing of competency necessary for safe practice;

(5) At least one (1) of the reliability estimates for the examination shall be 0.80 or higher;

(6) The examination shall be revised after each administration to ensure currency and security of content; and

(7) The examination shall be given under strict security measures.

Section 5. Applicants for LPN license pursuant to KRS 314.041(13). An applicant for an LPN license pursuant to KRS 314.041(13) shall meet the requirements of this administrative

regulation.

Section 6. (1) An applicant not from a party state under the Nurse Licensure Compact who is issued a license and does not have permanent residency in Kentucky shall be issued a license that indicates on the license that it is only valid in Kentucky.

(2) The board may request that an applicant provide evidence of the applicant's state of residence.

LEWIS PERKINS, President

APPROVED BY AGENCY: February 15, 2018

FILED WITH LRC: March 1, 2018 at 4 p.m.

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**GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, May 8, 2018)**

201 KAR 20:225. Reinstatement of license.

RELATES TO: KRS 164.772, 194A.540, 314.041(11), 314.042(6), 314.051(11), 314.071, 314.073, 314.075, 314.085(1), 314.091, 314.103, 314.109

STATUTORY AUTHORITY: KRS 314.103, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.103 authorizes the board to require a criminal background check investigation of an applicant or nurse. KRS 314.041(11), 314.042(6), and 314.051(11) allow a person whose license has lapsed due to failure to renew to be able to reinstate the license. KRS 314.091 authorizes the board to discipline a licensee for a violation of KRS Chapter 314 or 201 KAR Chapter 20. This administrative regulation establishes procedures for reinstatement of a license that has lapsed or has been subject to disciplinary action.

Section 1. Reinstatement of Lapsed or Retired License. (1) A license shall be lapsed if it has expired because of the licensee's failure to:

(a) Submit a completed and timely application for renewal;

(b) Submit data required to enable the board to complete the processing of an application;

(c) Submit the current application fee; or

(d) Meet all requirements for renewal of a license, in accordance with KRS 314.071.

(2) A lapsed or retired license may be reinstated by:

(a) Submitting a completed application form required by 201 KAR 20:370, Section 1(1)(a) or (c);

(b) Paying the current application fee required by 201 KAR 20:240, Section 1(2)(g) or (l);

(c) Submitting a criminal record check **completed within six (6) months of the date of the application** by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) using the FBI Applicant Fingerprint Card, and **including payment of/paying** any required fee of the KSP and the FBI **and that is within six (6) months of the date of the application** [completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application, the board receiving the report from the FBI, and any conviction is addressed by the board];

(d) [Submitting a criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

(e)] Submitting a certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3);

(e)] [f)] Submitting a letter of explanation that addresses each

conviction, if applicable;

(f)(g) Submitting a certified copy of any disciplinary action taken on a nursing or other professional or business license in another jurisdiction with a letter of explanation or a report if there is any disciplinary action pending on a nursing or other professional or business license in another jurisdiction; and

(g)(h) Meeting all other requirements of this section.

(3)(a) If an individual applies for reinstatement of a lapsed license to active status, the applicant shall complete fourteen (14) contact hours of continuing education for each year since the date of last active licensure, if the date of last active licensure is within five (5) years of the application for reinstatement, but more than one (1) year from the date of last active licensure.

1. Fourteen (14) hours of continuing education shall have been earned within twelve (12) months of the date of the application.

2. Continuing education earned more than five (5) years preceding the date of application shall not be counted toward meeting this requirement.

(b) If an applicant has not been engaged in nursing practice during the five (5) years preceding the date of the application, the applicant shall complete at least 120 contact hours of continuing education earned within one (1) year of the date of the application.

(c) An individual may use the continuing competency methods set out in 201 KAR 20:215, Section 3, for reinstatement if that individual allowed the license to lapse and applies for reinstatement of a lapsed license within one (1) year from the date of lapse.

(d) Continuing competency used for reinstatement pursuant to paragraph (c) of this subsection shall not be used for renewal of the license.

(4)(a) If the applicant has been currently licensed and actively engaged in nursing practice in another jurisdiction for at least 500 hours during the preceding five (5) years, the requirements of subsection (3) of this section shall not apply.

(b) The applicant shall submit evidence to verify active practice.

(5) In addition to the requirements of this administrative regulation, an applicant whose license has lapsed for one (1) year or more shall submit evidence of completion of the jurisprudence examination required by KRS 314.041(11) for registered nurses and KRS 314.051(11) for licensed practical nurses as approved by the board.

Section 2. Reinstatement of License Subject to Disciplinary Action. (1) If a license has been revoked, an individual may apply for reinstatement by:

(a) Completing the appropriate application required by 201 KAR 20:370, Section 1(1)(a) or (c);

(b) Paying the current application fee required by 201 KAR 20:240, Section 1(2)(g) or (l);

(c) Meeting the terms of the disciplinary order; and

(d) Retaking the licensure examination and achieving a passing score.

(2) A hearing shall be held to determine if the issuance of a license would no longer be a threat to public safety and health.

(3)(a) If a license has been suspended or voluntarily surrendered, an individual may apply for reinstatement by:

1. Completing an application required by 201 KAR 20:370, Section 1(1)(a) or (c);

2. Paying the fee required by 201 KAR 20:240, Section 1(2)(g) or (l); and

3. Notifying the board, in writing, that the requirements of the decision or agreed order have been met.

(b) If the decision or agreed order requires that a hearing be held, the individual shall notify the board, in writing, to request that a hearing be scheduled.

(4) An individual whose license has been suspended or voluntarily surrendered shall be required to comply with the continuing education requirements of KRS 314.073 for the period during which the license was suspended or surrendered.

(5)(a) If a license has been probated and the individual has allowed the license to expire prior to the end of the probationary period, and the individual later applies for reinstatement, the license shall be reinstated subject to the remaining probationary

period.

(b) The individual shall comply with all requirements for reinstatement, in accordance with KRS 314.071.

(6)(a) A person may seek reinstatement of a license pursuant to subsection (3) of this section, if an order of immediate temporary suspension has been issued pursuant to:

1. KRS 314.085(1) because of a person's failure to obtain an evaluation and the person subsequently obtains the evaluation;

2. KRS 314.075 because of a person's submission of a bad check and the person subsequently makes the check good; or

3. KRS 164.772 because of a notice from the Kentucky Higher Education Assistance Authority that a person is in default on a student loan and the Kentucky Higher Education Assistance Authority subsequently notifies the board that the person is no longer in default.

(b) A request for reinstatement of a license following the issuance of an order of immediate temporary suspension as listed in paragraph (a) of this subsection shall be denied, if in the opinion of the board, continuance of the temporary suspension is necessary in order to protect the public.

Section 3. Miscellaneous Requirements. (1)(a) A copy of an official name change document shall be submitted by the applicant if making application, if applicable.

(b) Verification of the name change shall be made by submitting a copy of a:

1. Court order;
2. Marriage certificate;
3. Divorce decree; or
4. Social Security card.

(2) An individual whose license lapsed, was suspended, or voluntarily surrendered prior to July 15, 1996 shall earn three (3) hours of continuing education in domestic violence within three (3) years of reinstatement of the license as required by KRS 194A.540.

(3) An individual who holds a nursing license that was revoked by disciplinary order of the board prior to December 31, 1987 shall meet all requirements of Section 2 of this administrative regulation except Section 2(1)(d) of this administrative regulation.

(4) An individual whose license lapsed, was suspended, or voluntarily surrendered prior to July 15, 2010 shall earn one and one-half (1.5) hours of continuing education in pediatric abusive head trauma as required by KRS 314.073(6) within three (3) years of reinstatement of the license.

LEWIS PERKINS, President

APPROVED BY AGENCY: February 15, 2018

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**GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, May 8, 2018)**

201 KAR 20:370. Applications for licensure.

RELATES TO: KRS 314.041, 314.042, 314.051, 314.071, 314.091, 314.103, **314.475[314.470]**

STATUTORY AUTHORITY: KRS 314.041, 314.042, 314.051, 314.071, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.041, 314.042, 314.051, and 314.071 require the board to review an application for licensure and a licensee for conformity with KRS Chapter 314. This administrative regulation establishes requirements and procedures for licensure.

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Section 1. To be eligible for licensure by examination, endorsement, renewal, reinstatement, retired licensure status, or for advanced practice registered nurse licensure, renewal, or reinstatement, an applicant shall:

(1) Submit the completed application form to the board office, as follows:

(a) For RN or LPN licensure by examination, endorsement, or reinstatement, Application for Licensure;

(b) For RN or LPN Renewal, Annual Licensure Renewal Application: RN or LPN;(c) For licensure or reinstatement as an advanced practice registered nurse, Application for Licensure as an Advanced Practice Registered Nurse;

(d) For renewal as an RN and an APRN, Annual Licensure Renewal Application: RN and APRN;

(e) For licensure as an RN and as an APRN, Application for RN and APRN Licensure;

(f) For retired licensure status, Application for Retired Status;

(g) For APRN renewal with an RN Compact license, Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky); or

(h) In addition to any other renewal form, for APRN renewal, APRN Practice Data;

(2) Submit the current application fee, as required by 201 KAR 20:240;

(3) Submit a certified or attested copy of the court record of each misdemeanor or felony conviction in this or any other jurisdiction and a letter of explanation that addresses each conviction, except for traffic-related misdemeanors (other than DUI) or misdemeanors older than five (5) years;

(4) Submit a certified copy of a disciplinary action taken in another jurisdiction with a letter of explanation or report a disciplinary action pending on a nurse licensure application or license in another jurisdiction;

(5) Have paid all monies due to the board;

(6) Submit a copy of an official name change document (court order, marriage certificate, divorce decree, Social Security card), if applicable;

(7) Submit additional information as required by the board in 201 KAR Chapter 20;

(8) Meet the additional requirements for:

(a) Licensure by examination established by 201 KAR 20:070;

(b) Licensure by endorsement established by 201 KAR 20:110;

(c) Licensure by reinstatement established by 201 KAR 20:225;

(d) Licensure by renewal established by 201 KAR 20:230;

(e) Retired nurse or inactive licensure status established by 201 KAR 20:095; or

(f) Advanced practice registered nurse licensure, renewal, or reinstatement established by 201 KAR 20:056;

(9) If not a citizen of the United States, maintain proof of legal permanent or temporary residency under the laws and regulations of the United States; and

(10) Notify the board upon establishment of a new mailing address.

Section 2. A completed renewal application form and all information needed to determine that an applicant meets the requirements for renewal of licensure shall be postmarked or received by the board no later than the last day for renewal of license.

Section 3. An application shall lapse and the fee shall be forfeited if the application is not completed as follows:

(1) For an application for licensure by endorsement, within six (6) months from the date the application form is filed with the board office;

(2) For an application for licensure by examination, within one (1) year from the date the application form is filed with the board office or the date the applicant fails the examination, whichever comes first; or

(3) For all other applications except renewal of license applications, within one (1) year from the date the application form is filed with the board office.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Licensure", 1/2016, Kentucky Board of Nursing;

(b) "Annual Licensure Renewal Application: RN or LPN", 2/2018[1/2016], Kentucky Board of Nursing;

(c) "Application for Licensure as an Advanced Practice Registered Nurse", 1/2016, Kentucky Board of Nursing;

(d) "Annual Licensure Renewal Application: RN and APRN", 2/2018[1/2016], Kentucky Board of Nursing;

(e) "Application for RN and APRN Licensure", 1/2016, Kentucky Board of Nursing;

(f) "Application for Retired Status", 8/2004, Kentucky Board of Nursing;

(g) "Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky)", 5/2018[2/2018][1/2016], Kentucky Board of Nursing; and

(h) "APRN Practice Data", 6/2012, Kentucky Board of Nursing.

(2) 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, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

LEWIS PERKINS, President

APPROVED BY AGENCY: February 15, 2018

FILED WITH LRC: March 14, 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) 429-1248, email nathan.goldman@ky.gov.

GENERAL GOVERNMENT CABINET Board of Nursing (As Amended at ARRS, May 8, 2018)

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

RELATES TO: KRS 216B.400(2), (4), 314.011(14), 314.103, 314.142, 314.475[314.470], 403.707, 421.500-421.575

STATUTORY AUTHORITY: KRS 314.131(1), 314.142(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.142(1) requires the board to promulgate administrative regulations to create a Sexual Assault Nurse Examiner Program. This administrative regulation establishes the requirements relating to a sexual assault nurse examiner course and the credentials of a sexual assault nurse examiner.

Section 1. Definition. "SANE course" means a formal, organized course of instruction that is designed to prepare a registered nurse to perform forensic evaluation of a sexual assault victim fourteen (14) years of age or older and to promote and preserve the victim's biological, psychological, and social health.

Section 2. SANE Course Approval Application. (1) On the form Application for Initial or Continued SANE Course Approval, the applicant for approval of a SANE course shall submit evidence to the board of completion of the requirements for course approval that consists of the following documentation:

(a) Position description and qualifications of the nurse administrator of the SANE course;

(b) Qualifications and description of the faculty;

(c) Course syllabus;

(d) Course completion requirements;

(e) Tentative course presentation dates;

(f) Records maintenance policy; and

(g) Copy of certificate of course completion form.

(2) Nurse administrator of SANE course. A registered nurse, with current, active Kentucky licensure or a multistate licensure

privilege pursuant to KRS ~~314.475~~~~[314.470]~~, a baccalaureate or higher degree in nursing, and experience in adult and nursing education shall be administratively responsible for assessment, planning, development, implementation, and evaluation of the SANE course.

(3) Faculty qualifications. The course shall be taught by multidisciplinary faculty with documented expertise in the subject matter. The name, title, and credentials identifying the educational and professional qualifications for each instructor shall be provided as part of the application.

(4) Course syllabus. The syllabus shall include:

(a) Course prerequisites, requirements, and fees;
(b) Course outcomes, which shall provide statements of observable competencies, which if taken as a whole, present a clear description of the entry level behaviors to be achieved by the learner;

(c) Unit objectives for an individual, which shall be stated in operational or behavioral terms with supportive content identified;

(d) Content, which shall be described in detailed outline format with corresponding lesson plans and time frame, and which shall be related to, and consistent with, the unit objectives, and support achievement of expected course outcomes;

1. The SANE course shall include:

a. A minimum of forty (40) hours of didactic instruction pursuant to subparagraph 3. of this paragraph; and

b. The clinical practice experience required by subparagraph 2. of this paragraph.

2. Clinical practice. The clinical portion of the course shall include:

a. Detailed genital and anal inspection, including speculum insertion, visualization techniques, and use of equipment supervised by a physician, a physician assistant, an advanced practice registered nurse, or a sexual assault nurse examiner until the student is deemed competent by the supervisor;

b. Sexual assault history taking and examination techniques with evaluation supervised by a physician, a physician assistant, an advanced practice registered nurse, or a sexual assault nurse examiner;

c. Observing live or previously recorded criminal trials and meeting with the Commonwealth Attorney or a representative from the Commonwealth Attorney's office in order to gain an understanding of the trial process including testifying;

d. Meeting with the local rape crisis center and a rape crisis center victim advocate in order to gain an understanding of the services provided to victims by rape crisis centers and the role of an advocate; and

e. Meeting with local law enforcement officers or investigators responsible for investigating reports of rape or sexual assault in order to gain an understanding of the investigative process.

3. The didactic portion of the course shall include instruction consistent with the Sexual Assault Nurse Examiner (SANE) Education Guidelines. It shall also include:

a. Application of the Kentucky statewide medical protocol relating to the forensic and medical examination of an individual reporting sexual assault pursuant to KRS 216B.400(2) and (4); and

b. The victim's bill of rights, KRS 421.500 through 421.575.

(e) Teaching methods with the activities of both instructor and learner specified in relation to the content outline, and which shall be congruent with stated course objectives and content, and reflect the application of adult learning principles;

(f) Evaluation methods, which shall be clearly defined for evaluating the learner's achievement of course outcomes, and which shall include a process for annual course evaluation by students, providers, faculty, and administration; and

(g) Instructional or reference materials required, which shall be identified.

(5) Completion requirements. Requirements for successful completion of the SANE course shall be clearly specified and shall include demonstration of clinical competency. A statement of policy regarding a candidate who fails to successfully complete the course shall be included.

Section 3. (1) Contact hour credit for continuing education. The

SANE course shall be approved for contact hour credit which may be applied to licensure requirements.

(2) Approval period. Board approval for a SANE course shall be granted for a four (4) year period.

(3) Records shall be maintained for a period of five (5) years, including the following:

(a) Provider name, date, and site of the course; and
(b) Participant roster, containing at a minimum the name, Social Security number, and license number for each participant.

(4) A participant shall receive a certificate of completion that documents the following:

(a) Name of participant;
(b) Title of course, date, and location;
(c) Provider's name; and
(d) Name and signature of authorized provider representative.

Section 4. Continued Board Approval of a SANE Course. (1) An application for continued approval of a SANE course shall be submitted on the Application for Initial or Continued SANE Course Approval at least three (3) months prior to the end of the current approval period.

(2) A SANE course syllabus shall be submitted with the Application for Initial or Continued SANE Course Approval.

(3) Continued approval shall be based on the past approval period performance and compliance with the board standards described in this administrative regulation.

Section 5. The board may deny, revoke, or suspend the approval status of a SANE course for violation of this administrative regulation.

Section 6. Appeal. If a SANE course administrator is dissatisfied with a board decision concerning approval and wishes a review of the decision, the procedure established in this section shall be followed. (1) A written request for the review shall be filed with the board within thirty (30) days after the date of notification of the board action which the SANE course administrator contests.

(2) The board, or its designee, shall conduct a review in which the SANE course administrator may appear in person and with counsel to present reasons why the board's decision should be set aside or modified.

Section 7. Requirements for Sexual Assault Nurse Examiner (SANE) Credential. (1) The applicant for the SANE credential shall:

(a) Hold a current, active registered nurse license in Kentucky or a multistate licensure privilege pursuant to KRS ~~314.475~~~~[314.470]~~;

(b) Have completed a board approved SANE educational course or a comparable course;

1. The board or its designee shall evaluate the applicant's course to determine its course comparability; and

2. The board or its designee shall advise an applicant if the course is not comparable and specify what additional components shall be completed to allow the applicant to be credentialed;

(c) Complete the Sexual Assault Nurse Examiner Application for Credential;

(d) Pay the fee established in 201 KAR 20:240;

(e) Provide a ~~criminal record check by the Department of Kentucky State Police (KSP) and the~~~~completed~~ Federal Bureau of Investigation (FBI);

~~(f) Use the FBI Applicant Fingerprint Card;~~

~~(g) Pay any~~~~[the fee]~~ required ~~fee to the KSP and~~~~by~~ the FBI;

~~(h) Complete the criminal record check~~~~[that is]~~ within six (6) months of the date of the application;

~~(i) Provide a report from the Kentucky Administrative Office of the Courts, CourtNet Disposition System that is within six (6) months of the date of the application;~~

~~(g)~~ Provide a certified ~~or attested~~ copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

~~(j) Provide a letter of explanation that addresses each conviction, if applicable.~~

(2) Upon completion of the application process, the board shall issue the SANE credential for a period ending October 31.

(3) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(e) of this section and any conviction is addressed by the board.

Section 8. Renewal. (1) To renew the SANE credential for the next period, each sexual assault nurse examiner shall complete at least five (5) contact hours of continuing education related to the role of the sexual assault nurse examiner or forensic nursing within each continuing education earning period. A provider of a board approved SANE course may offer continuing education related to the role of the sexual assault nurse examiner.

(2) Upon completion of the required continuing education, completion of the Annual Credential Renewal Application: SANE Credential with RN in Kentucky or Annual Credential Renewal Application: SANE with RN Compact License (Not Kentucky), as applicable, and payment of the fee established in 201 KAR 20:240, the SANE credential shall be renewed at the same time the registered nurse license is renewed.

(3) The five (5) contact hours may count toward the required contact hours of continuing education for renewal of the registered nurse license.

(4) Failure to meet the five (5) contact hour continuing education requirement shall cause the SANE credential to lapse.

Section 9. Reinstatement. (1) If the SANE credential has lapsed for a period of less than four (4) consecutive registered nurse licensure periods, and the individual wants the credential reinstated, the individual shall apply to reinstate the credential by:

(a) Submitting the Sexual Assault Nurse Examiner Application for Credential;

(b) Paying the fee established in 201 KAR 20:240;

(c) Submitting evidence of earning the continuing education requirement referenced in Section 8(1) of this administrative regulation for the number of registered nurse licensure periods since the SANE credential lapsed;

(d) Providing a criminal record check by the KSP and FBI;

~~(e) Using the FBI[completed Federal Bureau of Investigation (FBI)] Applicant Fingerprint Card;~~

~~(f)[and] Paying any[the fee] required fee to the KSP and[by] the FBI;~~

~~(g) Completing the criminal record check[that is] within six (6) months of the date of the application;~~

~~(h)[e] Providing a report from the Kentucky Administrative Office of the Courts, CourtNet Disposition System that is within six (6) months of the date of the application;~~

~~(f)~~ Providing a certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

~~(i)[g)]~~ Providing a letter of explanation that addresses each conviction, if applicable.

(2) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(d) of this section and any conviction is addressed by the board.

(3) If the SANE credential has lapsed for more than four (4) consecutive licensure periods, the nurse shall complete a SANE course prior to reinstatement.

Section 10. The board shall obtain input from the Sexual Assault Response Team Advisory Committee concerning any proposed amendment to this administrative regulation as follows:

(1) The board shall send a draft copy of any proposed amendment to the co-chairs of the Sexual Assault Response Team Advisory Committee prior to approval by the board;

(2) The board shall request that comments on the proposed amendment be forwarded to the board's designated staff person within ninety (90) days; and

(3) At the conclusion of that time period or upon receipt of comments, whichever is sooner, the board, at its next regularly-

scheduled meeting, shall consider the comments.

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

(a) "Application for Initial or Continued SANE Course Approval", 6/2014, Kentucky Board of Nursing;

(b) "Sexual Assault Nurse Examiner Application for Credential", 8/2016, Kentucky Board of Nursing;

(c) "Annual Credential Renewal Application: SANE Credential with RN in Kentucky", 5/2018[2/2018][8/2016], Kentucky Board of Nursing;

(d) "Annual Credential Renewal Application: SANE with RN Compact License (Not Kentucky)", 5/2018[2/2018][8/2016], Kentucky Board of Nursing; and

(e) "Sexual Assault Nurse Examiner (SANE) Education Guidelines", 2015, International Association of Forensic Nurses.

(2) 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, Kentucky 40222-5172, Monday through Friday, 8:00 a.m. to 4:30 p.m.

LEWIS PERKINS, President

APPROVED BY AGENCY: February 15, 2018

FILED WITH LRC: March 14, 2018 at 4 p.m.

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**GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, May 8, 2018)**

201 KAR 20:470. Dialysis technician credentialing requirements and training program standards.

RELATES TO: KRS 314.035, 314.089, 314.091, 314.103, 314.137, 314.991

STATUTORY AUTHORITY: KRS 314.131(1), 314.137

NECESSITY, FUNCTION AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians. This administrative regulation establishes the requirements for dialysis technician training programs and for credentialing dialysis technicians.

Section 1. Definitions. (1) "Approved dialysis technician training program" means a program to train dialysis technicians that is approved by the board in accordance with Sections 7 through 10 of this administrative regulation.

(2) "Central venous catheter" means a catheter that is inserted in such a manner that the distal tip is located in the superior vena cava.

(3) "Conviction" is defined by KRS 314.011(21).

(4) "Dialysis technician applicant" means an individual who has applied for a dialysis technician credential.

(5) "Dialysis technician trainee" means an individual who is enrolled in an approved dialysis technician training program. (6) "Supervision" means:

(a) Initial and ongoing direction, procedural guidance, observation, and evaluation by a registered nurse or physician; and

(b) While a patient is being dialyzed the registered nurse or physician is in the immediate clinical area.

Section 2. Requirements for Dialysis Technician Credential.

(1)(a) An individual who applies to be credentialed as a dialysis technician in order to engage in dialysis care shall:

1. File with the board the completed Application for Dialysis Technician Credential;

2. Have completed an approved dialysis technician training program or an out-of-state dialysis training program pursuant to paragraph (b) of this subsection;

3. Pay the fee established in Section 12 of this administrative

regulation;

4. Provide a criminal record check by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI)[report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is dated within six (6) months of the submission date of the Application for Dialysis Technician Credential];

5. Use the FBI[Provide a completed Federal Bureau of Investigation (FBI)] Applicant Fingerprint Card;

6. Pay any required[and the] fee to the KSP and[required by] the FBI;

7. Complete the criminal record check[that is] within six (6) months of the submission date of the Application for Dialysis Technician Credential;

8.[6.] Provide to the board a certified or attested copy of the court record of any misdemeanor or felony conviction from any jurisdiction, except for:

- a. Traffic-related misdemeanors (other than DUI); or
- b. Misdemeanors older than five (5) years; and

9.[7.] Provide to the board a letter of explanation that addresses each conviction identified pursuant to subparagraph 8.[6.] of this paragraph.

(b)1. If the dialysis technician applicant has completed an out-of-state dialysis technician training program, the applicant shall submit the training program curriculum and evidence of completion to the board.

2.a. The board or its designee shall evaluate the applicant's training program to determine its comparability with the standards as established in Section 7 of this administrative regulation.

b. The board or its designee shall advise an applicant if the training program is not comparable and specify what additional components shall be completed to meet the requirements of Section 7 of this administrative regulation.

3. A dialysis technician applicant who has completed an out-of-state dialysis technician training program shall be required to complete that portion of a board-approved dialysis technician training program related to specific portions of the legal and ethical aspects of practice as established in the Dialysis Technician Training Program Guide.

4. An applicant shall submit evidence to the board of successful completion of the following sections of the Dialysis Technician Training Program Guide:

- a. State and Federal Regulations Governing Dialysis;
- b. The Principles and Legal Aspects of Documentation, Communication and Patient Rights;
- c. The Roles of the Dialysis Technician and other Multidisciplinary Team Members; and
- d. Principles Related to Patient Safety.

5. A dialysis technician applicant who has completed an out-of-state dialysis technician training program shall submit the completed Checklist for Dialysis Technician Competency Validation signed by the applicant's immediate supervisor in Kentucky. The Checklist for Dialysis Technician Competency Validation shall be filed after the submission of the Application for Dialysis Technician Credential.

6. A dialysis technician applicant who has completed an out-of-state dialysis technician training program shall submit evidence of:

- a. Successful completion of a comprehensive, written final examination from a board-approved dialysis technician training program; or
- b. Dialysis technician certification issued within the past two (2) years by the Nephrology Nursing Certification Commission, the Board of Nephrology Examiners Nursing and Technology, or the National Nephrology Certification Organization.

(2) An individual shall be exempt from the credentialing requirement while enrolled in an approved dialysis technician training program. The individual shall use the title dialysis technician trainee.

(3) Upon approval, pursuant to subsection (1) of this section, of the Application for Dialysis Technician Credential, the board shall initially issue the dialysis technician credential for twenty-four (24) months following the month of issuance. The credential shall lapse on the last day of the credentialing period.

(4)(a) An applicant for a dialysis technician credential may engage in dialysis care as a dialysis technician applicant upon:

1. Receipt by the board of the Application for Dialysis Technician Credential; and
2. Meeting the requirements of subsection (6) of this section.

(b) The dialysis technician applicant shall only practice dialysis care as an applicant until:

1. The credential is issued; or
2. The application is denied by the board.

(5) An Application for Dialysis Technician Credential submitted for initial credentialing shall be valid for six (6) months from the date of receipt by the board.

(6) A felony or misdemeanor conviction shall be reviewed to determine, based on Section 6(2)(c) of this administrative regulation, if:

(a) The Application for Dialysis Technician Credential shall be processed with no further action; or

(b) The Application for Dialysis Technician Credential shall be processed only after:

1. The applicant has entered into an agreed order with the board with terms and conditions as agreed by the parties; or
2. If the parties are unable to agree on terms and conditions, a hearing is held pursuant to KRS 314.091 and 201 KAR 20:162, and a final decision is entered by the board.

(7) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted pursuant to subsection (1)(a)5 of this section and any conviction is addressed by the board.

Section 3. Renewal. (1) To be eligible for renewal of the credential, the dialysis technician shall submit, no later than one (1) month prior to the expiration date of the credential:

(a) The completed Application for Renewal of the Dialysis Technician Credential; and

(b) The fee established in Section 12 of this administrative regulation.

(2) Upon approval of the Application for Renewal of the Dialysis Technician Credential, the credential shall be renewed for twenty-four (24) months. The credential shall lapse on the last day of the credentialing period.

(3) A dialysis technician shall report to the board at renewal the name of the national certification program that has issued the technician's certification and provide a copy of the certification certificate to the board.

Section 4. Reinstatement. (1) Before beginning practice as a dialysis technician or a dialysis technician applicant, the individual shall meet the requirements of this section. If the dialysis technician credential has lapsed for a period of less than one (1) credentialing period, the individual may reinstate the credential. The reinstatement shall be accomplished by:

(a) Submitting the completed Application for Dialysis Technician Credential;

(b) Paying the fee established in Section 12 of this administrative regulation; [and]

(c) Providing a criminal record check by the KSP and the FBI;

(d) Using the FBI Applicant Fingerprint Card;

(e) Paying any required fee to the KSP and the FBI;

(f) Completing the criminal record check[report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is dated] within six (6) months of the submission date of the Application for Dialysis Technician Credential;

(g) Providing to the board a certified or attested copy of the court record of any misdemeanor or felony conviction, except for:

1. Traffic-related misdemeanors (other than DUI); or
2. Misdemeanors older than five (5) years; and

(h) Providing to the board a letter of explanation that addresses each conviction identified pursuant to paragraph (g) of this subsection.

(2) If the dialysis technician credential has lapsed for more than one (1) credentialing period, the dialysis technician may

reinstate the credential. The reinstatement shall be accomplished by:

(a) Completing a dialysis technician training program approved by the board pursuant to the criteria established in the Dialysis Technician Training Program Guide before submitting the Application for Dialysis Technician Credential. While enrolled in a training program, the individual shall be referred to as a dialysis technician trainee;

(b) Submitting the completed Application for Dialysis Technician Credential;

(c) Paying the fee established in Section 12 of this administrative regulation;

(d) Submitting the Checklist for Dialysis Technician Competency Validation signed by the individual's immediate supervisor;

(e) Providing a criminal record check by the KSP and the FBI; report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is dated within six (6) months of the submission date of the Application for Dialysis Technician Credential; and]

(f) Using the FBI[Providing a completed Federal Bureau of Investigation (FBI)] Applicant Fingerprint Card;

(g) Paying any required[and the] fee to the KSP and[required by] the FBI;

(h) Completing the criminal record check[that is dated] within six (6) months of the submission date of the Application for Dialysis Technician Credential;

(i) Providing to the board a certified or attested copy of the court record of any misdemeanor or felony conviction, except for:

1. Traffic-related misdemeanors (other than DUI); or

2. Misdemeanors older than five (5) years; and

(j) Providing to the board a letter of explanation that addresses each conviction identified pursuant to paragraph (i) of this subsection.

(3) An Application for Dialysis Technician Credential submitted for reinstatement shall be valid for six (6) months from the date of receipt by the board.

(4) Upon approval of the Application for Dialysis Technician Credential pursuant to Section 2(1) of this administrative regulation, the credential shall be reinstated for twenty-four (24) months following the month of issuance. The credential shall lapse on the last day of the credentialing period.

(5) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted pursuant to subsection (2)(f) of this section and any conviction is addressed by the board.

Section 5. Scope of Practice. (1) The scope of practice of a dialysis technician shall include the following and shall be performed under the direct, on-site supervision of a registered nurse or a physician:

(a) Preparation and cannulation of peripheral access sites (arterial-venous fistulas and arterial-venous grafts);

(b) Initiating, delivering, or discontinuing dialysis care;

(c) Administration of the following medications only:

1. Heparin 1:1000 units or less concentration either to prime the pump, initiate treatment, or for administration throughout the treatment, in an amount prescribed by a physician, physician's assistant, or advanced registered nurse practitioner. The dialysis technician shall not administer heparin in concentrations greater than 1:1000 units;

2. Normal saline via the dialysis machine to correct dialysis-induced hypotension based on the facility's medical protocol. Amounts beyond that established in the facility's medical protocol shall not be administered without direction from a registered nurse or a physician; and

3. Intradermal lidocaine, in an amount prescribed by a physician, physician's assistant, or advanced practice registered nurse;

(d) Assistance to the registered nurse in data collection;

(e) Obtaining a blood specimen via a dialysis line or a peripheral access site;

(f) Responding to complications that arise in conjunction with dialysis care; and

(g) Performance of other acts as delegated by the registered nurse pursuant to 201 KAR 20:400.

(2) The scope of practice of a dialysis technician shall not include:

(a) Dialysis care for a patient whose condition is determined by the registered nurse to be critical, fluctuating, unstable, or unpredictable;

(b) The connection and disconnection of patients from, and the site care and catheter port preparation of, percutaneously or surgically inserted central venous catheters; and

(c) The administration of blood and blood products.

Section 6. Discipline of a Dialysis Technician. (1) The board shall have the authority to discipline a dialysis technician for:

(a) Failure to safely and competently perform the duties of a dialysis technician as established in Section 5 of this administrative regulation;

(b) Practicing beyond the scope of practice as established in Section 5 of this administrative regulation;

(c) Conviction of any felony, or a misdemeanor involving drugs, alcohol, fraud, deceit, falsification of records, a breach of trust, physical harm or endangerment to others, or dishonesty under the laws of any state or of the United States. The record of conviction or a copy thereof, certified by the clerk of the court or by the judge who presided over the conviction, shall be conclusive evidence;

(d) Obtaining or attempting to obtain a credential by fraud or deceit;

(e) Abusing controlled substances, prescription medications, or alcohol;

(f) Personal misuse or misappropriation for use of others of any drug placed in the custody of the dialysis technician for administration;

(g) Falsifying or in a negligent manner making incorrect entries or failing to make essential entries on essential records;

(h) Having a dialysis technician credential disciplined by another jurisdiction on grounds sufficient to cause a credential to be disciplined in this Commonwealth;

(i) Practicing without filing an Application for Dialysis Technician Credential or without holding a dialysis technician credential;

(j) Abuse of a patient;

(k) Theft of facility or patient property;

(l) Having disciplinary action on a professional or business license;

(m) Violating any lawful order or directive previously entered by the board;

(n) Violating any applicable requirement of 201 KAR Chapter 20;

(o) Having been listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property; or

(p) Having violated the confidentiality of information or knowledge concerning any patient, except as authorized or required by law.

(2) The discipline may include the following:

(a) Immediate temporary suspension of the credential, following the procedure established in KRS 314.089;

(b) Reprimand of the credential;

(c) Probation of the credential for a specified period of time, with or without limitations and conditions;

(d) Suspension of the credential for a specified period of time;

(e) Permanent revocation of the credential; or

(f) Denying the Application for Dialysis Technician Credential.

(3) The board shall follow the procedures established in and have the authority established in KRS 314.091, 201 KAR 20:161, and 201 KAR 20:162 for management and resolution of complaints filed against a dialysis technician.

(4) In addition to the provisions of subsection (3) of this section, the board may impose a civil penalty of up to \$10,000.

Section 7. Dialysis Technician Training Program Standards. (1)

Program administrator. Each dialysis technician training program shall have a registered nurse who holds a current Kentucky license, temporary work permit, or multistate privilege, with at least one (1) year of experience in dialysis care, who shall be administratively responsible for planning, development, implementation, and evaluation of the dialysis technician training program.

(a) The name, title, and credentials identifying the educational and professional qualifications of the program administrator shall be provided to the board.

(b) A change in the program administrator shall be reported to the board within thirty (30) days of the change.

(2) Faculty qualifications.

(a) The dialysis technician training program shall be taught by multidisciplinary faculty with expertise in the subject matter.

(b) The name, title, and credentials identifying the educational and professional qualifications of each didactic and clinical instructor shall be provided to the board.

(3) The dialysis technician training program shall be based upon the Dialysis Technician Training Program Guide.

(4) The dialysis technician training program syllabus shall include:

(a) Prerequisites for admission to the program;

(b) Program outcomes. The outcomes shall provide statements of measurable competencies to be demonstrated by the learner; supportive content identified;

(c) Content. The content shall be described in outline format with corresponding time frame and testing schedules;

(d) Teaching methods. The activities of both instructor and learner shall be specified. These activities shall be congruent with stated objectives and content and shall reflect application of adult learning principles;

(e) Instructional or reference materials. All required instructional reference materials shall be identified; and

(f) Evaluation. There shall be:

1. Clearly defined criteria for evaluating the learner's achievement of program outcomes; and

2. A process for annual program evaluation by trainees, program administrator, faculty, and employers.

(5) Any proposed substantive changes to the dialysis technician training program syllabus after initial submission shall be submitted to the board in writing and shall not be implemented without approval from the board pursuant to the criteria established in the Dialysis Technician Training Program Guide.

(6) Trainee clinical practice requirements. The dialysis technician trainee enrolled in a dialysis technician training program shall practice dialysis care incidental to the training program only under the supervision of a faculty member or the faculty member's designee.

(7) The dialysis technician training program shall be at least 400 hours in length. A minimum of 200 hours shall be didactic.

(8) Completion requirements. Requirements for successful completion of the dialysis technician training program shall be clearly specified.

(a) The requirements shall include demonstration of clinical competency and successful completion of a comprehensive, written final examination.

(b) The final examination shall be administered only during the final forty (40) hours of the training program.

(c) There shall be a statement of policy regarding a trainee who fails to successfully complete the training program.

(9) The program shall establish a written records retention plan describing the location and length of time records shall be maintained. At a minimum, the following records shall be maintained by the program:

(a) Provider name, dates of program offerings, and sites of the training program;

(b) The program code number issued by the board; and

(c) Trainee roster, with a minimum of name, date of birth, Social Security number, and program completion date.

(10) An individual who successfully completes the training program shall receive a certificate of completion that documents the following:

(a) Name of individual;

(b) Title of training program, date of completion, and location;

(c) Provider's name;

(d) The program code number issued by the board; and

(e) Name and signature of program administrator.

(11) The program shall submit the List of Dialysis Technician Training Program Graduates within three (3) working days of the program completion date.

(12)(a) The program shall notify the board in writing within thirty (30) days of a training program closure.

(b) The notification shall include:

1. The date of closing;

2. A copy of the program trainee roster from the date of the last renewal to the date of closing;

3. The location of the program's records as established in subsection (9) of this section; and

4. The name and address of the custodian of the records.

(13) A dialysis technician training program that conducts either the didactic portion or the clinical portion in this state shall be required to be approved by the board pursuant to the criteria established in the Dialysis Technician Training Program Guide, and the program shall meet the requirements of this section.

Section 8. Dialysis Technician Training Program Initial Approval. (1) To receive initial approval, a dialysis technician training program shall:

(a) File a completed Application for Dialysis Technician Training Program Approval; and

(b) Pay the fee established in Section 12 of this administrative regulation.

(2) Board approval for a dialysis technician training program shall be:

(a) Based on compliance with the standards established in Section 7 of this administrative regulation; and

(b) Granted for a two (2) year period from the date of approval.

(3) Upon approval, the board shall issue a program code number.

Section 9. Continued Board of Approval of a Dialysis Technician Training Program. (1) To receive continued approval, a dialysis technician training program shall:

(a) File a completed Application for Dialysis Technician Training Program Approval;

(b) Submit an annual program evaluation summary report and any actions taken as a result of the evaluation as required by Section 7(4)(f) of this administrative regulation;

(c) Submit a list of current faculty including the name, title, and credential identifying the educational and professional qualifications of each instructor;

(d) Submit a copy of the program trainee roster for the past two (2) years as required by Section 7(9)(c) of this administrative regulation; and

(e) Pay the fee established in Section 12 of this administrative regulation.

(2) The completed Application for Dialysis Technician Training Program Approval shall be submitted at least two (2) months prior to the end of the current approval period.

(3) Continued approval shall be based on compliance with the standards established in Section 7 of this administrative regulation.

(4) Continued approval shall be granted for a two (2) year period.

(5) If a program fails to maintain continued approval, the approval shall lapse.

Section 10. Reinstatement of Dialysis Technician Training Programs. A program with lapsed approval that seeks to reinstate that approval shall:

(1) File a completed Application for Dialysis Technician Training Program Approval; and

(2) Pay the fee established in Section 12 of this administrative regulation.

Section 11. Board Actions on Dialysis Technician Training

Programs. (1) A representative of the board may make a site visit to a dialysis technician training program to evaluate compliance with 201 KAR Chapter 20.

(2) The board shall prepare a report of the site visit, identifying deficiencies for the training program if applicable, and shall include recommendations and requirements to be met in order to maintain compliance with standards.

(3) The program administrator shall submit to the board a response to the site visit report.

(4) Based on the report of deficiencies, the training program's response, and any other relevant evidence, the board shall grant approval, continue approval, continue approval with stipulations, or propose to deny or withdraw approval of the program.

(5) A dialysis technician training program administrator may request a review of a board decision concerning approval. A review shall be conducted using the procedure established in this subsection.

(a) A written request for the review shall be filed with the board within thirty (30) days after the date of notification of the board action that the dialysis technician training program administrator contests.

(b) The board, or the board's designee, shall conduct a review. The dialysis technician training program administrator may appear in person to present reasons why the board's decision should be set aside or modified.

(c) The dialysis technician training program administrator shall be notified of the board's decision.

(6) The board shall deny or withdraw approval of a program after an administrative hearing conducted pursuant to KRS Chapter 13B.

Section 12. Fees. (1) The application fee for the initial credential shall be seventy (70) dollars.

(2) The credential renewal fee shall be seventy (70) dollars.

(3) The credential reinstatement fee shall be \$100.

(4) The dialysis technician training program initial approval fee shall be \$950.

(5) The dialysis technician training program continued approval fee shall be \$800.

(6) The dialysis technician training program reinstatement fee shall be \$950.

(7) An additional fee of twenty-five (25) dollars shall be charged for an Application for Renewal of Dialysis Technician Credential that is filed after the deadline for filing.

(8) An additional fee of \$150 shall be charged for an Application for Dialysis Technician Training Program Approval that is filed after the deadline for continued approval filing.

(9) A fee of ten (10) dollars shall be charged for issuing a duplicate of the credential.

(10) A check submitted to the board for payment of a fee that is returned by the bank for nonpayment shall be assessed a return check fee of thirty-five (35) dollars.

(11) A fee of ten (10) dollars shall be charged for written verification of a dialysis technician credential. If submitted in list format, a fee of ten (10) dollars for the first name shall be assessed and a fee of one (1) dollar shall be assessed for each additional name.

(12) A fee of twenty-five (25) dollars shall be charged for a duplicate application form that is issued due to the failure to maintain a current mailing address as required by Section 13 of this administrative regulation.

(13) A fee of ~~twenty-five (25)~~**[thirty-five (35)]** dollars shall be charged for a name change and the issuance of a new credential.

(14) All fees shall be nonrefundable.

Section 13. Miscellaneous Requirements. (1) Any person credentialed by the board as a dialysis technician shall maintain a current mailing address with the board and immediately notify the board in writing of a change of mailing address.

(2)(a) Holding a credential shall constitute consent by the dialysis technician to service of notices or orders of the board. Notices and orders shall be sent to the mailing address on file with the board.

(b) Any notice or order of the board mailed or delivered to the mailing address on file with the board shall constitute valid service of the notice or order.

(3)(a) Any dialysis technician credentialed by the board shall, within ninety (90) days of entry of the final judgment, notify the board in writing of any misdemeanor or felony conviction in this or any other jurisdiction.

(b) Upon learning of any failure to notify the board pursuant to this subsection, the board shall initiate an action for immediate temporary suspension until the person submits the required notification.

(4) Any dialysis technician credentialed by the board shall immediately notify the board in writing if any professional or business license that is issued to the person by any agency of the commonwealth or any other jurisdiction:

(a) Is surrendered or terminated under threat of disciplinary action;

(b) Is refused, limited, suspended, or revoked; or

(c) If renewal of continuance is denied.

(5) If the board has reasonable cause to believe that any dialysis technician is unable to practice with reasonable skill and safety or has abused alcohol or drugs, it shall require the person to submit to a chemical dependency evaluation or a mental or physical examination by a practitioner it designates.

(a) Holding a credential shall constitute:

1. Consent by the dialysis technician to a chemical dependency evaluation, mental examination, or physical examination if directed in writing by the board. The direction to submit to an evaluation or examination shall contain the basis for the board's concern that the technician is unable to practice safely and effectively; and

2. Waiver of objections to the admissibility of the examining practitioner's testimony or examination reports on the grounds of privileged communication.

(b) The dialysis technician shall bear the cost of chemical dependency evaluation, mental examination, or physical examination ordered by the board.

(c) Upon failure of the dialysis technician to submit to a chemical dependency evaluation, mental examination, or physical examination ordered by the board, unless due to circumstances beyond the person's control, the board shall initiate an action for immediate temporary suspension pursuant to KRS 314.089 or deny an application until the person submits to the required examination.

(d) If a chemical dependency evaluation, mental examination, or physical examination pursuant to this subsection results in a finding that indicates that the dialysis technician is unable to practice with reasonable skill and safety or has abused alcohol or drugs, the dialysis technician shall be subject to disciplinary procedures as established in Section 6 of this administrative regulation.

Section 14. Due process procedures, including appeal, pertaining to this administrative regulation shall be conducted in accordance with KRS Chapter 13B.

Section 15. Incorporation by Reference. (1) The following materials are incorporated by reference:

(a) "Application for Dialysis Technician Training Program Approval", Kentucky Board of Nursing, 6/2006;

(b) "Application for Dialysis Technician Credential", Kentucky Board of Nursing, 1/2016;

(c) "Application for Renewal of Dialysis Technician Credential", Kentucky Board of Nursing, ~~5/2018~~**[2/2018]**~~1/2016~~;

(d) "Checklist for Dialysis Technician Competency Validation", Kentucky Board of Nursing, 9/2007;

(e) "Dialysis Technician Training Program Guide", August 14, 2001, Kentucky Board of Nursing; and

(f) "List of Dialysis Technician Training Program Graduates", Kentucky Board of Nursing, 9/2007.

(2) 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, Kentucky

40222-5172, Monday through Friday, 8 a.m. to 4:30 p.m.

LEWIS PERKINS, President

APPROVED BY AGENCY: February 15, 2018

FILED WITH LRC: March 14, 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) 429-
1248, email nathan.goldman@ky.gov.

GENERAL GOVERNMENT
Board of Physical Therapy
(As Amended at ARRS, May 8, 2018)

201 KAR 22:020. Eligibility and credentialing procedure.

RELATES TO: KRS 164.772, 327.010, 327.050, 327.060,
327.075, 327.080, 327.310

STATUTORY AUTHORITY: KRS 327.040(1), (11), (13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.040(1) requires the board to determine if physical therapist applicants meet the qualifications and standards required by KRS Chapter 327. KRS 327.040(13) authorizes the board to promulgate administrative regulations regarding the qualifications for physical therapist assistants. This administrative regulation establishes the criteria for eligibility, methods, and procedures of qualifying for a credential to practice physical therapy in Kentucky.

Section 1. An application shall be accepted for credentialing as a physical therapist or physical therapist assistant based on successful completion by the applicant of one (1) of the following processes:

- (1) Examination;
- (2) Endorsement; or
- (3) Reinstatement.

Section 2. Examination Candidate. (1) To be eligible for the examination, the applicant for licensure as a physical therapist shall:

- (a) Have successfully completed the academic and clinical requirements of a physical therapy program accredited by CAPTE;
- (b) Submit certification of completion by the educational administrator of that program;
- (c) Have successfully completed the Jurisprudence Exam;
- (d) Submit a complete Application for Credentialing that includes a photo taken within one (1) year;
- (e) Submit the correct, nonrefundable fee as required in 201 KAR 22:135;
- (f) If applicable, submit on an Applicant Special Accommodations Request Form a request for a reasonable accommodation in testing due to a documented disability;
- (g) Register for the NPTE examination; and
- (h) Effective six (6) months after the board [Board] receives an Originating Agency Number from the Federal Bureau of Investigation [May 1, 2018], submit to the board [Board] a completed nationwide criminal background check as required by KRS 327.310 with the background investigation completed no later than six (6) months prior to the date of the filing of the application.

(2) To be eligible for the examination, the applicant for certification as a physical therapist assistant shall:

- (a) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE; and
- (b) Complete the requirements of subsection (1)(b) through (h) of this section.

(3) Effective July 1, 2012, after six (6) failed attempts at either the physical therapist or physical therapist assistant examination, or combination thereof, in any jurisdiction, an applicant shall not be eligible to register for any additional examinations.

Section 3. An applicant for credentialing who is registered for the examination in another jurisdiction shall:

- (1) Meet the eligibility requirements of Section 2 of this administrative regulation; and
- (2) Register with the FSBPT Score Transfer Service to have results submitted to Kentucky.

Section 4. To be eligible for a temporary permit, the candidate shall:

- (1) Meet the qualifications of Section 2 or 3 of this administrative regulation, except for the retake provisions in Section 2(3) of this administrative regulation;
- (2) Complete a Supervisory Agreement for Applicant with Temporary Permit with one (1) or more physical therapists; and
- (3) Have not failed either the physical therapist or physical therapist assistant examination in any jurisdiction.

Section 5. (1) Upon issuance of a temporary permit, the physical therapist or physical therapist assistant applicant shall practice only under the supervision of a physical therapist currently engaged in the practice of physical therapy in Kentucky who:

- (a) Has practiced in Kentucky for more than one (1) year; and
 - (b) Has an unrestricted license.
- (2) A supervising physical therapist:
- (a) Shall be on-site at all times during the practice of the applicant with a temporary permit;
 - (b) Shall be responsible for the practice of physical therapy by the applicant with a temporary permit;
 - (c) Shall review, approve, date, and co-sign all physical therapy documentation by the applicant with a temporary permit;
 - (d) May designate an alternate supervising physical therapist who meets the qualifications of subsection (1)(a) and (b) of this section. The alternate supervising physical therapist shall sign and date written documentation of the acceptance of the responsibility as identified in paragraph (a) through (c) of this subsection; and
 - (e) Shall notify the board immediately if the supervisory relationship is terminated.
- (3) The applicant with a temporary permit shall:
- (a) Disclose the applicant's temporary credential status to all patients prior to initiating treatment;
 - (b) Sign documentation with temporary permit number and designation as defined in 201 KAR 22:053, Section 5(5)(a) or (b); and
 - (c) Notify the board immediately if the supervisory relationship is terminated.
- (4) The temporary permit shall expire the earlier of:
- (a) Six (6) months from the date of issuance; or
 - (b) Notice of exam results by the board.

Section 6. A physical therapist applicant who meets the qualifications for physical therapy licensure by examination may become a special candidate for physical therapist assistant certification by examination.

Section 7. To be eligible for credentialing by endorsement, the applicant shall:

- (1) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE;
- (2) Meet the requirements established in Section 2(1)(b) through (e) of this administrative regulation;
- (3) Have successfully completed the NPTE or its equivalent, predecessor examination and register with the FSBPT Score Transfer Service to have results submitted to Kentucky;
- (a) A passing score in Kentucky for the person who took the NPTE prior to July 1, 1993, shall be at least equal to the national average raw score minus one and five-tenths (1.5) standard deviation set equal to a converted score of seventy-five (75); or
- (b) After July 1, 1993, a passing score shall be the criterion referenced passing point recommended by the FSBPT set equal to a scaled score of 600;
- (4) Have an active credential in this profession in another

jurisdiction; and

(5) Have verification of credentials showing the credential has never been revoked, suspended, placed on probation, or is not under disciplinary review in another jurisdiction upon application.

Section 8. To be eligible for reinstatement, the applicant shall meet the requirements in 201 KAR 22:040.

Section 9. A credential issued by the board shall be in effect until March 31 of the next odd-numbered year.

Section 10. A foreign-educated physical therapist shall comply with the provisions of 201 KAR 22:070.

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

- (a) "Application for Credentialing", December 2011;
- (b) "Supervisory Agreement for Applicant with Temporary Permit", January 2017; and
- (c) "Applicant Special Accommodations Request Form", December 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140 and fax (502) 429-7142, email ScottD.Majors@ky.gov.

**GENERAL GOVERNMENT
Board of Physical Therapy
(As Amended at ARRS, May 8, 2018)**

201 KAR 22:040. Procedure for renewal or reinstatement of a credential for a physical therapist or physical therapist assistant.

RELATES TO: KRS ~~[12.335,]~~164.772, 327.050(8), (9), 327.070 ~~[,327.075]~~

STATUTORY AUTHORITY: KRS 327.040(10), (11), 327.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. ~~[,]~~ **[and] KRS 327.040(10)** authorizes the board to promulgate administrative regulations establishing a measure of continued competency as a condition of license renewal. This administrative regulation establishes the requirements and procedures for the renewal and reinstatement of credentials.

Section 1. A credential shall be renewed upon:

(1) Payment of the renewal fee established in 201 KAR 22:135 on or before March 31~~[st]~~ of each odd numbered year. The fee shall be waived for renewal of license or certificate held by an active duty member of the Armed Forces as established/set forth in KRS 12.355;

(2) Submission of the completed Renewal Application or Reinstatement Application; **and**

(3) Verification of continued competence as established in 201 KAR 22:045.

Section 2. Credentials not renewed by the board by March 31 of each odd numbered year shall lapse.

Section 3. (1) A credential holder who has a credential that has lapsed may, within three (3) years of the lapsed date, reinstate upon:

- (a) Meeting the requirements of Section 1(2) of this administrative regulation for the current renewal period;
- (b) Verification of having obtained within two (2) years prior to

the date of submission of the completed Renewal Application or Reinstatement Application:

1. Thirty (30) hours of continued competency as established in 201 KAR 22:045, Section 2(1)(a)1, 2, and 3 and (c) for a physical therapist; or

2. Twenty (20) hours of continued competency as established in 201 KAR 22:045, Section 2(1)(b)1, 2, and 3 and (c) for a physical therapist assistant;

(c) Submission of payment of the reinstatement fee established in 201 KAR 22:135; **and [.]**

(d) Effective six (6) months after the board [Board] receives an Originating Agency Identification Number from the Federal Bureau of Investigation [May 1, 2018], submitting to the board [Board] a completed nationwide criminal background check as required by KRS 327.310 with the background investigation completed no later than six (6) months prior to the date of the filing of the application.

(2) Continued competency hours submitted under subsection (1)(b) of this section for reinstatement shall satisfy the continued competency hours for the next renewal period as established in 201 KAR 22:045, Section 2(2) and (3).

Section 4. A credential holder who has a credential that has lapsed may, more than three (3) years of the lapsed date, reinstate upon:

(1) Meeting the requirements of Section 3 of this administrative regulation;

(2) Submission of all credentials from other jurisdictions since last renewal; and

(3) Completing the following requirements of the board if not holding a current credential from any other jurisdiction since last renewal:

- (a) Submission of evidence of professional competency;
- (b) An agreement to practice physical therapy under direct supervision not to exceed six (6) months;
- (c) Successful completion of the board-approved examination;

or

(d) Any combination of paragraphs (a) through (c) of this subsection.

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

(a) "Renewal Application", July 2015; and

(b) [(2)] "Reinstatement Application", July 2015.

(2) [(3)] This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140 and fax (502) 429-7142, email ScottD.Majors@ky.gov.

**GENERAL GOVERNMENT
Board of Physical Therapy
(As Amended at ARRS, May 8, 2018)**

201 KAR 22:070. Requirements for foreign-educated physical therapists.

RELATES TO: KRS 327.050, 327.060

STATUTORY AUTHORITY: KRS 327.040(1), (11), 327.060(3), 327.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.060(3) authorizes the board to approve services to provide an evaluation of a foreign-educated physical therapist applicant's educational credentials. This administrative regulation establishes the requirements a foreign-educated physical therapist shall satisfy

to become credentialed in the state of Kentucky.

Section 1. A foreign-educated physical therapist applicant shall be credentialed if the applicant:

(1) Complies with the requirements of KRS 327.060(1)(b).

(2) In accordance with KRS 327.060(1)(b), meets the following requirements:

(a) Furnishes the board a favorable educational credentials evaluation report from a credentialing agency that uses the appropriate edition of the "Coursework Evaluation Tool" (CWT) copyrighted by the Federation of State Boards of Physical Therapy (FSBPT). An academic deficiency in general education coursework identified by the CWT shall be satisfied by the applicant through submission of evidence identifying one (1) of the following:

1. Completion of appropriate coursework at a regionally accredited academic institution; ~~or~~

2. Continuing education in a course approved by the board; or

3. Submission of a portfolio including a detailed resume and description of relevant work experience approved by the board;

(b) Shows proof of English Language Proficiency ~~by~~:

1. A score of not less than fifty (50) on the Test of Spoken English (TSE);

2. Verification that the applicant has achieved the following minimum scores for each category of the Test of English as a Foreign Language, TOEFL Internet-based test (TOEFL ~~II~~BT):

~~(a) Writing, twenty-two (22);~~

~~(b) Speaking, twenty-four (24);~~

~~(c) Listening, twenty-one (21);~~

~~(d) Reading, twenty-two (22); or~~

~~(e) With an overall score of not less than eighty-nine (89)[Writing, twenty-two (22), Speaking, twenty-four (24), Listening, twenty-one (21), Reading, twenty-two (22); with an overall score of not less than eighty-nine (89)]; or~~

3. Verification that English is the native language of the country of origin.

(c) Submits a satisfactorily-completed application and appropriate fee as required by 201 KAR 22:135;

(d) Completes the Jurisprudence Exam;

(e) Obtains a passing score on the National Physical Therapy Examination (NPTE). The requirements of 201 KAR 22:020, Section 2(3) and (4) shall be applicable to examination candidates; and

(f) Has successfully completed a minimum of three (3) months and no more than six (6) months of practice under the on-site supervision of a physical therapist credentialed under KRS Chapter 327 at a Kentucky facility previously approved by the board ~~that~~ **[which]** satisfies the following requirements:

1. The supervised practice shall be a minimum of 390 hours in a three (3) month period, in a facility ~~that~~ **[which]** is serving as a clinical education site for students enrolled in a program in physical therapist education accredited by the Commission for Accreditation of Physical Therapy Education (CAPTE);

2. The applicant shall furnish the board a favorable evaluation of on-site supervision performed by a clinical supervisor who utilizes the "Performance Evaluation Tool for Foreign Educated Therapists Completing a Supervised Clinical Practice in the United States" copyrighted by FSBPT. The clinical supervisor shall submit the evaluation to the board after three (3) months practice, and if required, after the sixth ~~(6th)~~ month, when the required score denoting clinical competency shall have been reached;

3. The supervising physical therapist shall, within the three (3) years prior to serving as a supervisor, have previously acted as clinical supervisor for a physical therapist student as part of a CAPTE accredited program; and

4. The supervisor shall countersign all of the candidate's physical therapy records within fourteen (14) days.

(3) Effective ~~six (6) months after the board receives an Originating Agency Number from the Federal Bureau of Investigation~~~~[May 1, 2018]~~, submits to the board a completed nationwide criminal background check as required by KRS 327.310 with the background investigation completed no later than six (6) months prior to the date of the filing of the application.

Section 2. Temporary Permits for Foreign-educated Physical Therapist Applicants. (1) An applicant who has not satisfactorily completed three (3) months of supervised practice as a physical therapist shall be issued a temporary permit to complete Section 1(2)(f) of this administrative regulation if the applicant has:

(a) Completed the requirements of Section 1(2)(a) through (e) of this administrative regulation; and

(b) Submitted an approved "Supervisory Agreement for Physical Therapists Educated in a Foreign Country".

(2) The temporary permit shall be revoked if the applicant has not satisfactorily completed the supervised practice within a six (6) month period.

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

(a) "Supervisory Agreement for Physical Therapists Educated in a Foreign Country, August 2017".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140 and fax (502) 429-7142, email ScottD.Majors@ky.gov.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, May 8, 2018)**

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

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

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

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

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

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

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

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

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

~~(6) "Wildlife Management Area" or "WMA" means a tract of land:~~

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

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

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

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

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

(2) The hunter orange clothing requirement in subsection (1) of this section shall not apply to a person:

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

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

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

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

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

(a) In the center of the trap; and

(b) In the unset position.

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

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

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

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

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

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

(2) Beaver Creek WMA, including private inholdings.

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

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

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

(3) Cane Creek WMA, including private inholdings.

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

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

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

(4) Cedar Creek Lake WMA.

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

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

(5) Clay WMA.

(a) The area shall be closed for four (4) consecutive days beginning on the first Friday in December to all hunting except archery deer hunting, muzzleloader deer hunting, as established in 301 KAR 2:178, and the pheasant quota hunt, as established in Section 5 of this administrative regulation.

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

(c) Any person hunting rabbits shall:

1. Check in and check out at a ~~self-service~~self-service kiosk; and

2. Clearly display a department-provided hang-tag in a vehicle~~[Ruffed grouse and northern bobwhite hunting shall be restricted to quota hunt dates established in Section 5 of this administrative regulation. All other small game hunting shall be closed until 2:00 p.m. on upland bird quota hunt dates].~~

(d) Northern bobwhite and ruffed grouse hunting shall be open from November 1 through December 31 on Tuesday and Saturday except:

1. After 3:00 p.m.;

2. During a quota deer hunt as established in 301 KAR 2:178;

3. During opening weekend of modern gun deer season as established in 301 KAR 2:172; and

4. During a pheasant quota hunt, as established in Section 5 of this administrative regulation.

(e) The daily bag limit shall be:

1. Four (4) northern bobwhite; and

2. Two (2) ruffed grouse.

(f) A northern bobwhite or ruffed grouse hunter shall:

1. Check in and check out at a self-service kiosk; and

2. Clearly display a department-provided hang-tag in a vehicle.

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

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

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

(h)~~[(e)]~~ Quota fox hunting field trials.

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

2. Each event shall be limited to 250 participants.

3. The area shall be closed to nonparticipants.

4. A participant shall:

a. Wear a laminated identification badge issued by the department during the event; and

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

(6) Curtis Gates Lloyd WMA.

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

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

(7) Dix River WMA.

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

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

(8) Fleming WMA.

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

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

(9) Green River Lake WMA.

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

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

(c) Pheasant.

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

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

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

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

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

(12) Lake Cumberland WMA.

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

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

(13) Mill Creek WMA.

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

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

(14) Miller-Welch Central Kentucky WMA.

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

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

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

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

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

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

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

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

(17) Otter Creek Outdoor Recreation Area.

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

(b) Northern bobwhite season shall be closed.

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

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

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

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

2. Only trap in department designated areas.

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

1. A rifle;

2. Ball ammunition; or

3. Slug ammunition.

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

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

(19) Peabody WMA.

(a) A person hunting northern bobwhite [~~hunting~~] on the Sinclair Unit shall:

1. Only hunt [~~Have shooting hours~~] between 7:30 a.m. and 3:00 p.m.; [~~and~~]

2. Only hunt on Thursday and [~~Be closed on~~] Sunday; and

3. Not take more than four (4) northern bobwhite daily.

(b) A person hunting northern bobwhite on the Ken Unit shall:

1. Only hunt between 7:30 a.m. and 3:00 p.m.;

2. Only hunt on Wednesday and Saturday; and

3. Not take more than four (4) northern bobwhite daily.

(c) A northern bobwhite or rabbit hunter on the Sinclair Unit or Ken Unit shall:

1. Check in and check out at a self-service kiosk [~~the Peabody WMA office~~]; and

2. Clearly [~~Visibly~~] display a department-provided hang-tag in a [~~hunting log on the dashboard of the hunter's~~] vehicle.

(20) Pennyryle Forest WMA.

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

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

(21) Pioneer Weapons WMA.

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

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

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

(23) Robinson Forest WMA.

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

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

(24) Rockcastle WMA.

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

(b) A rabbit hunter shall:

1. Check in and check out at a self-service kiosk; and

2. Clearly display a department-provided hang-tag in a vehicle.

(c) Northern bobwhite and ruffed grouse hunting shall be open on Tuesday and Saturday until 3:00 p.m. from November 1 through December 31, except it shall be closed during:

1. A deer quota hunt as established in 301 KAR 2:178; and

2. Opening weekend of modern gun deer season, as established in 301 KAR 2:172.

(d) The daily bag limit shall be:

1. Four (4) northern bobwhite; and

2. Two (2) ruffed grouse daily.

(e) A northern bobwhite or ruffed grouse hunter shall:

1. Check in and check out at a self-service kiosk; and

2. Clearly display a department-provided hang-tag in a vehicle.

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

(26) [(25)] Tradewater WMA.

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

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

(27) [(26)] West Kentucky WMA.

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

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

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

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

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

(d) A person shall not:

1. Use a rifle, ball, or slug ammunition;

2. Operate a vehicle on Tract 6 from February 1 through April 16; or

3. Allow a dog to be unleashed from April 1 until the third Saturday in August, except while squirrel hunting.

(28) [(27)] Yellowbank WMA.

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

(b) The area shall be closed for four (4) consecutive days beginning on the first Friday in December to all hunting except archery deer hunting, muzzleloader deer hunting, and the pheasant quota hunt as established in Section 5 of this administrative regulation [~~Pheasants may be taken beginning on the Tuesday following the pheasant quota hunt through December 31.~~].

(c) A person shall:

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

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

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

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

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

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

(2) There shall be a one (1) day clean-up hunt immediately following each of the hunts for pheasant quota hunters drawn for that particular WMA.

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

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

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

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

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

(6) Pheasant quota hunt procedures.

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

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

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

2. As a group of more than five (5) people.

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

Section 6. Pheasant Quota Hunt Requirements~~[Northern Bobwhite and Upland Bird Quota Hunts. (1) There shall be one (1) day northern bobwhite quota hunts on one (1) tract of Peabody WMA on the:~~

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

~~(b) Tuesday following the fourth Saturday in November;~~

~~(c) Tuesday following the third Saturday in December;~~

~~(d) First Saturday in January;~~

~~(e) Second Saturday in January; and~~

~~(f) Tuesday following the third Saturday in January.~~

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

~~(a) Wednesday following the first Saturday in November;~~

~~(b) Third Sunday in November;~~

~~(c) Third Saturday in December; and~~

~~(d) Fourth Tuesday in December.~~

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

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

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

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

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

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

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

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

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

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

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

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

(a) Complete the pheasant 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 between September 1 and September 30; and

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

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

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

1. Check;

2. Money order;

3. Visa; or

4. MasterCard].

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

(a) Department-issued quota hunt permit;

(b) Valid Kentucky hunting license or proof of exemption; and

(c) Hunter education card, if required pursuant to 301 KAR 2:185.

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

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

~~(4)](5)] A person shall comply with all quota hunt requirements or be ineligible to apply for any other quota hunt during the following year, except for an elk quota hunt.~~

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

~~(6)](7)] A youth shall only apply as part of a party that has at least one (1) adult.~~

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

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

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

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

Section 8. Dog Training Areas on Wildlife Management Areas.

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

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

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

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

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

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

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

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

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

1. May 15 through August 15;

2. The youth statewide turkey season; and

3. The statewide turkey season.

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

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

1. Walk and examine the entire dog training area to ensure that no wild northern bobwhite [quail] are present; and

2. Then place released birds in the training area.

Section 9. General Requirements on Federally Owned Areas.

(1) Season dates, bag limits, and other requirements of 301 KAR 2:251 and 2:050 shall apply, except as otherwise established in this administrative regulation.

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

(3) A person shall:

(a) Obtain permission from the landowner before hunting;

(b) Not hunt except on assigned dates and in assigned areas; and

(c) Comply with all requirements established by the agency

controlling the area.

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

- (a) Squirrels, from June 1 through June 14;
- (b) Northern bobwhite and rabbit, no earlier than November 1 nor later than the last day of February;
- (c) Furbearers, no earlier than October 1 nor later than the last day of February;
- (d) Frogs, year round; or
- (e) Crows, for a maximum of 124 days between September 1 and the last day of February.

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

- (a) Daniel Boone National Forest;
- (b) George Washington and Jefferson National Forests;
- (c) Land Between the Lakes National Recreation Area;
- (d) Clarks River National Wildlife Refuge; and
- (e) Reelfoot National Wildlife Refuge.

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

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

- (a) Crossbows;
- (b) Shotgun slugs or shot larger than BB; or
- (c) Center-fire rifles or center-fire handguns, except during designated groundhog or coyote hunts.

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

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

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

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

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

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

GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: March 8, 2018

FILED WITH LRC: March 13, 2018 at 4 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.

**GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Regulation and Inspection
(As Amended at ARRS, May 8, 2018)**

302 KAR 16:020. Inspection and operation of amusement rides or amusement attractions.

RELATES TO: KRS 247.232, 247.234(3), 247.236(3)

STATUTORY AUTHORITY: KRS 247.234, 247.236

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.234(3)(b) and (d) require the department to promulgate administrative regulations establishing initial safety inspection fees and safety requirements for amusement rides or attractions. KRS 247.236(3) requires the department to promulgate an administrative regulation establishing the requirements for the

construction of safety barriers around an amusement ride or attraction. This administrative regulation establishes safety guidelines for the operation and inspection of amusement rides or attractions and establishes the initial safety inspection fees.

Section 1. Definitions. (1) "Air inflatable device" means an object that is filled with air by an electric motor-driven blower.

(2) ~~["Chair lift or aerial tramway" means an amusement ride or amusement attraction that is operated by a series of cables and pulleys.~~

(3) ~~]~~ "Dark ride" means an amusement ride or amusement attraction ~~[which is]~~ enclosed and ~~with~~ has the lights turned off during the duration of the ride, and is a nonmechanized self-propelled amusement.

(3) ~~[(4)]~~ "Go-cart facility" means an amusement ride or amusement attraction that carries a rider on a fixed path and includes the vehicle ~~that~~ which travels the fixed path.

(4) ~~[(5)]~~ "Inspection fee" means a fee required to be paid to operate any amusement ride or amusement attraction in Kentucky.

(5) ~~[(6)]~~ "Kiddie ride" means an amusement ride or amusement attraction that has a height requirement of forty-two (42) inches or less to ride.

(6) ~~[(7)]~~ "Major ride" means any ride that:

(a) Has height requirement of forty-three (43) inches or greater to ride; and

(b) Does not have a specific fee established for it in Section 2 of this administrative regulation.

(7) ~~[(8)]~~ "Play port" means an object designed for use by children on which a child can swing, walk, climb, or slide, and ~~that~~ which follows a fixed path.

(8) ~~[(9)]~~ "Steel roller coaster" means roller coaster of which the track portion is constructed of steel or other metal material.

(9) ~~[(10)]~~ "Walk through" means a fun house, glass house, or laser tag that is nonmechanized and self-propelled.

(10) ~~[(11)]~~ "Water ride" means an amusement ride or amusement attraction ~~that~~ which uses water as a means of propulsion and includes bumper boats and water park slides ~~that~~ which are in excess of fifteen (15) feet at the highest point of the slide.

(11) ~~[(12)]~~ "Wooden roller coaster" means a roller coaster of which the track portion is constructed of wood material.

Section 2. (1) All amusement ride and amusement attractions operating in Kentucky shall bear an initial safety inspection seal. Following an initial safety inspection, an initial safety inspection seal shall be affixed to a permanent and accessible section of the amusement ride or amusement attraction.

(2) If the required initial safety inspection seal does not appear on the amusement ride or amusement attraction, operation of the amusement ride or amusement attraction shall be stopped until proof of an initial inspection is provided.

Section 3. Initial safety inspection fees shall be levied for each amusement ride and amusement attraction. The initial safety inspection fees shall be assessed as established in subsections (1) through (12) of this section, follows:

(1) Air inflatable devices shall be fifty (50) dollars ~~;~~ ; (2) Euro or turbo bungee shall be seventy-five (75) dollars ~~;~~ ;

(2) ~~[(3)]~~ Kiddie rides shall be seventy-five (75) dollars ~~;~~ ;

(3) ~~[(4)]~~ Play port shall be seventy-five (75) dollars ~~;~~ ; (5) Climbing walls shall be seventy-five (75) dollars ~~;~~ ;

(4) ~~[(6)]~~ Water rides shall be seventy-five (75) dollars ~~;~~ ;

(5) ~~[(7)]~~ Dark rides shall be seventy-five (75) dollars ~~;~~ ;

(6) ~~[(8)]~~ Walk throughs and glass houses shall be seventy-five (75) dollars ~~;~~ ;

(7) ~~[(9)]~~ Tracked or trackless trains shall be \$100 ~~;~~ ;

(8) ~~[(10)]~~ Go cart facility shall be \$125 ~~;~~ ;

(9) ~~[(11)]~~ Major rides shall be \$150 ~~;~~ ;

(10) ~~[(12)]~~ Steel roller coaster shall be \$200 ~~;~~ ; (13) Bungee or ejector seat shall be \$200 ~~;~~ ;

(11) ~~[(14)]~~ Wooden roller coaster shall be \$300 ~~;~~ ; and

(12) ~~[(15)]~~ Any amusement ride or amusement attraction not listed in this section shall be \$150.

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Section 4. All new permanent amusement rides and amusement attractions shall have all required state and local permits before the initial safety inspection.

Section 5. All amusement rides and amusement attractions shall be under the supervision of an operator at all times during the operation of the amusement ride or amusement attraction.

Section 6. (1) All amusement rides and amusement attractions that[which] are potentially hazardous to spectators shall be fenced to provide protection to bystanders and riders in accordance with KRS 247.236(3).

(2) A barrier providing a safe distance from the outermost arc shall be present for aerial amusement rides or swings.

Section 7. (1) Properly charged fire extinguishers shall be present at all amusement rides and amusement attractions not more than seventy-five (75) feet from any point of a ride.

(2) A first aid kit shall be available at the park, fair, event, or ride location.

Section 8. The operator of an amusement ride or amusement attraction shall deny admittance to an amusement ride or amusement attraction to persons who appear to be under the influence of alcohol or drugs, persons who are wearing footwear or clothing that could[may] cause a safety concern, or persons who have in their possession any object that can be dropped from the amusement ride or amusement attraction.

Section 9. (1) All power units shall be shielded to provide for public safety.

(2) An amusement ride or amusement attraction, or its power unit, shall not be located where it could[may] present a fire hazard to adjacent buildings, exhibits, or other structures.

(3) Use of gasoline engines and storage of gasoline in or adjacent to a riding device shall be in an approved safety container and at a safe distance from the amusement ride or amusement attraction.

(4) All electrical wires leading to and from the amusement ride or amusement attraction shall be protected and insulated to prevent shock hazard and shall be properly grounded. All electrical junction boxes shall be locked or sealed.

Section 10. Pre-operation Inspection. (1) The owner or operator shall provide to the department's safety inspectors the manufacturer pre-operational inspection checklist specific to each ride or attraction.

(2) The owner of the ride or attraction shall develop a daily pre-opening checklist that[which] shall contain, at a minimum, all requirements listed in the operator manual, the date and time of the pre-operation inspection, printed name of the person completing the pre-operation inspection, and signature of the person completing the pre-operation inspection.

(3) The owner or operator of an amusement ride or attraction shall perform a pre-opening daily pre-operation inspection prior to public use of the ride or attraction, using the checklist provided by the owner, in accordance with subsection (2) of this section. This pre-opening inspection shall include rides or attractions that do not require an operator.

(4) Upon request, the owner or operator shall immediately provide to the safety inspector a logbook containing all pre-operation daily inspections for the previous twelve (12) months. This logbook shall be kept in close proximity to the ride or attraction.

Section 11. Amusement rides and attractions shall be operated according to manufacturer's guidelines.

Section 12. To assure continued safety of amusement rides and amusement attractions, routine inspections may be conducted at undetermined times throughout the year.

RYAN F. QUARLES, Commissioner
APPROVED BY AGENCY: March 14, 2018
FILED WITH LRC: March 15, 2018 at noon

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.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Regulation and Inspection
(As Amended at ARRS, May 8, 2018)

302 KAR 16:091. Rides and attractions not included in the definition of amusement ride or attraction.

RELATES TO: KRS 247.232

STATUTORY AUTHORITY: KRS 247.232

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.232(1)(b) authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations to designate other rides and attractions that are not included in the definition of "amusement ride or attraction". This administrative regulation establishes the list of rides or attractions not specifically reference[mentioned] in the statute that are not included in the definition.

Section 1. Amusement ride or attraction shall not include:

- (1) Dinner trains;
- (2) Any amusement ride or attraction utilizing animals;
- (3) Structures holding slides less than fifteen (15) feet above the ground at the base of the slide;
- (4) Items, devices, and contrivances used for educational purposes as part of a structured class or program, including team building and challenge courses;
- (5) All terrain vehicles, paddleboats, canoes, or rafts;
- (6) Haunted houses;
- (7) Hay rides;
- (8) Corn Mazes or any other noninflatable obstacle course;
- (9) Mechanical bulls;
- (10) Ski lifts, aerial lifts, or aerial tramways;
- (11) Bicycles or bicycle courses;
- (12) Children's toys;
- (13) Watercraft other than bumper boats;
- (14) Swamp buggies;
- (15) Ice skating facilities;
- (16) Roller skating facilities;
- (17) Base jumping equipment;
- (18) Paintball equipment or courses;
- (19) Lazy rivers;
- (20) Wave pools;
- (21) Trampolines not requiring an assistive device;
- (22) Self or manual belayed rappelling equipment and facilities;
- (23) Privately owned, not open to the public, facilities;
- (24) Mobile and permanent ziplines;
- (25) Rope courses;
- (26) Tree swings;
- (27) Platform swings;
- (28) Canopy tours;
- (29) Tree platforms;
- (30) Balloons;
- (31) Pools and pool items;
- (32) Swinging bridges;~~[and]~~
- (33) Obstacle courses;~~[.]~~
- (34) Climbing walls;
- (35) Bungees; and
- (36) Euro or turbo bungees[Euro-Bungees].

RYAN F. QUARLES, Commissioner
APPROVED BY AGENCY: March 14, 2018
FILED WITH LRC: March 15, 2018 at noon
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.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, May 8, 2018)**

501 KAR 6:270. Probation and parole policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.3104, 439.3105, 439.3107, 439.345, 439.470, 439.551

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.3105, 439.3107, 439.345, 439.470, and 439.551 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 Division of Probation and Parole.

Section 1. Incorporation by Reference. (1) "Probation and Parole Policies and Procedures", May 8/February 14], 2018[September 11, 2017], are incorporated by reference. Probation and Parole Policies and Procedures include:

- 27-06-02 Access to Services (Amended 6/4/15)
- 27-07-01 Cooperation with Law Enforcement Agencies (Amended 6/4/15)
- 27-08-01 Critical Incident Planning and Reporting and Use of Force (Amended 8/11/15)
- 27-09-01 Community Resources (Amended 6/4/15)27-10-01 Pretrial Diversion (Amended 6/4/15)
- 27-10-02 Mandatory Re-Entry Supervision (Amended 2/14/18[6/4/15])
- 27-10-03 Post-incarceration Supervision (Amended 6/4/15)
- 27-11-01 Citizen Complaints (Amended 6/4/15)
- 27-11-02 Employee-Offender Interaction (Amended 6/4/15)
- 27-12-01 Case Classification (Amended 8/11/15)
- 27-12-03 Initial Interview and Intake of New Case (Amended 8/11/15)
- 27-12-04 Conditions of Supervision Document and Request for Modification (Amended 6/4/15)
- 27-12-05 Releasee's Report Document (Amended 6/4/15)
- 27-12-06 Grievance Procedures for Offenders (Amended 6/4/15)
- 27-12-07 Administrative Caseloads (Amended 6/4/15)
- 27-12-11 Guidelines for Monitoring Financial Obligations (Amended 6/4/15)
- 27-12-13 Community Service Work (Amended 8/11/15)
- 27-12-14 Offender Travel (Amended 6/4/15)
- 27-13-01 Drug and Alcohol Testing, Assessment, and Referral of Offenders (Amended 2/14/18[6/4/15])
- 27-14-01 Interstate Compact (Amended 5/8/18[2/14/18][6/4/15])
- 27-15-01 Investigating and Reporting Violations and Unusual Incidents (Amended 6/4/15)
- 27-15-02 Home Incarceration, Curfew, and Electronic Monitoring for Community Offenders (Added 6/4/15)
- 27-15-03 Graduated Sanctions and Discretionary Detention (Amended 9/11/17)
- 27-16-01 Search, Seizure, and Processing of Evidence (Amended 8/11/15)
- 27-17-01 Absconder Procedure (Amended 7/11/12)
- 27-18-01 Probation and Parole Issuance of Detainer or Warrant (Amended 5/8/18[2/14/18][7/11/12])
- 27-19-01 Preliminary Revocation Hearing (Amended 6/4/15)
- 27-20-03 Parole Compliance Credit (Amended 9/11/17)
- 27-21-01 Apprehension of Probation and Parole Violators (Amended 2/14/18[12/16/11])
- 27-23-01 In-state Transfer (Amended 2/14/18[7/11/12])
- 27-24-01 Releasing Offender from Active Supervision (Amended 2/14/18[12/16/11])
- 27-24-02 Reinstatement of Offenders to Active Supervision

- (Amended 7/11/12)
- 27-26-01 Assistance to Former Offenders and Dischargees (Amended 7/11/12)
- 27-30-01 Sex Offender Registration (Amended 12/16/11)
- 27-30-02 Sex Offender Supervision (Amended 7/11/12)
- 28-01-01 Probation and Parole Investigation Reports, Confidentiality, Timing, and General Comments (Amended 12/16/11)
- 28-01-02 Probation and Parole Investigation Documents (Administrative Responsibilities) (Amended 12/16/11)
- 28-01-03 Presentence, Post-sentence, and Other Investigative Reports (Amended 2/14/18[3/12/12])
- 28-01-08 Calculation of Custody Time Credit (Amended 5/8/18[2/14/18][9/11/12])
- 28-03-01 Parole Plan Investigation, Half-way Houses, and Sponsorship (Amended 3/12/12)
- 28-03-02 Release on Parole (Amended 12/16/11)
- 28-04-01 Furlough Verifications (Amended 7/11/12)

(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 Web site in the policies and procedures area at <https://corrections.ky.gov/Pages/default.aspx>.

JAMES ERWIN, Acting Commissioner

APPROVED BY AGENCY: February 6, 2018

FILED WITH LRC: February 14, 2018 at 10 a.m.

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**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, May 8, 2018)**

501 KAR 16:290. Preliminary and post-execution procedures concerning condemned person.

RELATES TO: KRS 72.025(5), 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 examination[exam] of the body and that the body is transferred to the Office of the State Medical Examiner for the post-mortem examination[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(1) 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.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, May 8, 2018)**

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 (1) 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 (1) 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 subsection[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.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, May 8, 2018)**

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 (7) 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~~ the department shall:

~~(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) of this administrative regulation~~[(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:

- ~~(1)(a)]~~ Warden shall notify the commissioner; and
- ~~(2)(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

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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.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, May 8, 2018)**

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:

(a)[1.] Observe the heart monitor; and

(b)[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:

(a)[1.] Coroner enters the chamber to declare death; and

(b)[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 Section 5(1) of this administrative regulation[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

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TRANSPORTATION CABINET

Office of Civil Rights and Small Business Development
(As Amended at ARRS, May 8, 2018)

600 KAR 4:010. Certification of disadvantaged business enterprises.

RELATES TO: 49 C.F.R. Parts 23, 26, 15 U.S.C. 637 (a), (d), (m), Titles 23 U.S.C., 49 U.S.C., Pub. L. 114-94[KRS 96A.090, 176.080, 176.100, 176.110, 176.130, 176.140, 176.150, 176.240, 177.410, 183.120, 183.130, 183.137, 183.160, 13 C.F.R., 121.201, 40 C.F.R. Parts 23, 26, 15 U.S.C. 637(a), (d), (m)]

STATUTORY AUTHORITY: KRS 174.080, 49 C.F.R. 26.3, 26.21

NECESSITY, FUNCTION, AND CONFORMITY: 49 C.F.R. 26.3 and 26.21 require[requires] that recipients of federal-aid highway funds authorized under Titles I and V of the Intermodal

Surface Transportation Efficiency Act of 1991 (ISTEA), Titles 23 and 49 U.S.C., or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), and Fix America's Surface Transportation Act of 2015 (FAST), Pub. L. 114-94, from the United States Department of Transportation (USDOT) implement a program to ensure nondiscrimination in the award and administration of USDOT-assisted contracts in its highway financial assistance programs. The Kentucky Transportation Cabinet, as a recipient of these funds, is required by 49 C.F.R. 26.21 to have a program that requires the participation of disadvantaged, minority, and women-owned[women] business enterprises in contracts financed in whole or in part with these funds. This administrative regulation establishes the requirements for certification of DBE firms pursuant to federal law.

Section 1. Definitions. (1) "ACDBE" means an Airport Concessionaire Disadvantaged Business Enterprise as defined by 49 C.F.R. 23.3(2).

(2)"Applicant" or "firm" means any corporation, partnership, sole proprietorship, or joint venture applying with the Transportation Cabinet for certification or continuation as a disadvantaged business enterprise.

(3)"Approval" means that the applicant has been determined by the DBE Certification Committee to comply with the disadvantaged business enterprise eligibility criteria as established in 49 C.F.R. Part 26, Subpart D and 49 C.F.R. Part 23.

(4)"Cabinet" means the Transportation Cabinet.

(5)"Certification" means the process used by the Transportation Cabinet to determine if an applicant complies with the disadvantaged business enterprise criteria established in 49 C.F.R. Part 26, Subpart D and 49 C.F.R. Part 23.

(6)"Denial" means the cabinet has determined that the applicant does not comply with the disadvantaged business enterprise eligibility criteria established in 49 C.F.R. Part 26, Subpart D and as required by this administrative regulation.

(7)"Department" or "DOT" means the United States Department of Transportation.

(8)"Disadvantaged business enterprise" or "DBE" is defined by 49 C.F.R. 26.5, Subpart D.

(9)"Ineligibility complaint" means an action of a third party alleging verbally or in writing that a firm is ineligible to participate in the DBE program.

(10)"Notice" means a written notice from the Transportation Cabinet or Office for Civil Rights and Small Business Development delivered via certified mail to the business address listed on the application form.

(11)"On-site visit" means an interview conducted by the Office of Civil Rights and Small Business Development with principals of the firm at its primary place of business, reviewing business-related documents, and inspecting business facilities or equipment pursuant to 49 C.F.R. 26.83(c).

(12)"Program" is defined by 49 C.F.R. 26.5

(13)"Removal" or "removed" means that a firm or business enterprise that has been certified by the cabinet as a disadvantaged business enterprise has been determined to be ineligible, and is no longer entitled to the rights and privileges of a firm or business that has been certified by the cabinet as a disadvantaged business enterprise.

(14)"Small Business Administration" or "SBA" is defined by 49 C.F.R. 26.5.

(15)"Small business concern" is defined by 49 C.F.R. 26.5.

(16)"Socially and economically disadvantaged individual" is defined by 49 C.F.R. 26.5.

(17) **"Unified Certification Program" or "UCP" is defined by 40 C.F.R. 26.81.**

(18)"USDOT" means the United States Department of Transportation. **[(18) "Unified Certification Program" or "UCP" is defined by 40 C.F.R. 26.81.]**

Section 2. Certification Committee. (1) The cabinet shall establish and maintain a Certification Committee for the purpose of determining the eligibility of an applicant for certification as a DBE as established in 49 C.F.R. 26.83.

(2) The Certification Committee shall include:

(a) The following voting members:

1. Executive Director, Office for Civil Rights and Small Business Development, or a proxy;

2. Executive Director of the Office of Legal Services, or a proxy; and

3. Director of the Division of Internal Audits, or a proxy; and

(b) The non-voting member, Manager of the Small Business Development Branch, or a proxy who shall chair the Certification Committee.

(3) The Kentucky administrator of the Federal Highway Administration or FHWA, or a proxy may attend Certification Committee meetings ex officio.

Section 3. Advisory Panel. (1) The cabinet shall establish a DBE Certification Advisory Panel whose members may be called upon as needed by the Certification Committee to provide technical counsel regarding a firm's eligibility.

(2) The DBE Certification Advisory Panel shall be comprised of representatives of the following cabinet divisions:

(a) Division of Contract Procurement;

(b) Division of Professional Services;

(c) Division of Highway Design;

(d) Division of Audits;

(e) Division of Highway Safety; and

(f) Division of Licensing.

Section 4. Certification Committee Procedures. (1) The Executive Director of the Office for Civil Rights and Small Business Development or the executive director's proxy, and a voting member of the DBE Certification Committee shall constitute a quorum and shall each have one (1) vote. In the event of a tie, the deciding vote shall be rendered by the executive director or his or her proxy.

(2) A summary record of each DBE Certification Committee meeting shall be retained by the Office for Civil Rights and Small Business Development for at least three (3) years from the date of initial notice of certification.

(3) The completed applications, staff summaries, and recommendations shall be provided to the DBE Certification Committee members no less than five (5) business days in advance of the scheduled meeting in which the application is to be considered.

(4) The Certification Committee shall have the authority to remove a firm's eligibility for DBE certification as established in 49 C.F.R. 26.87.

Section 5. Applications for Certification. (1) The UCP application review process for approval of certification, and continuation of certification as a DBE, or ACDBE shall be conducted pursuant to 49 C.F.R. 26.83, 26.85, and 26.86.

(2) A UCP application shall be approved by the Federal Highway Administration pursuant to Appendix F to 49 C.F.R. Part 26. A link to the electronic version of the application form shall be available on the Kentucky Transportation Cabinet Web site.

(3) The completed UCP application shall be submitted electronically to the cabinet's Office for Civil Rights and Small Business.

(4) An incomplete UCP application missing the required information or documentation shall not be processed until the documentation and information requirements are received by the Office for Civil Rights and Small Business Development.

(5) A UCP application submitted by a firm having a principal business office registered in the Commonwealth of Kentucky shall be reviewed in accordance with 49 C.F.R. Parts 23 and 26, Subpart D.

(6) A UCP application submitted by a firm whose primary office is registered in a state other than Kentucky shall be submitted for approval of DBE certification in Kentucky to the Office for Civil Rights and Small Business Development for review in accordance with 49 C.F.R. 23 and 49 C.F.R. 26.85.

(7) The Office for Civil Rights and Small Business Development shall conduct an on-site visit at the firm's primary

place of business pursuant to 49 C.F.R. 26.83(c).

(8) An applicant for DBE, or ACDBE certification, or a certified DBE or ACDBE may withdraw without penalty from the DBE program prior to the Certification Committee making a decision regarding the application.

Section 6. Appeals. (1) The appeal of a decision by the Certification Committee shall be submitted to the United States Department of Transportation, Office of Civil Rights, 1200 New Jersey Avenue, SE, Washington D.C. 20590 within ninety (90) days of the date of the decision of the committee.

(2) An applicant who is denied certification, or whose certification is removed by the committee, shall not reapply for DBE certification for six (6) months from the date of notice of the denial or removal. "Applicant" or "firm" means any corporation, partnership, sole proprietorship, or joint venture applying with the Transportation Cabinet for certification or continuation as a disadvantaged business enterprise.

(2) "Approval" means that the applicant has been determined by the DBE Certification Committee to meet the disadvantaged business enterprise eligibility criteria as outlined in 49 C.F.R. Part 26.

(3) "Cabinet" means the Transportation Cabinet.

(4) "Certification" means the process whereby the Transportation Cabinet determines if an applicant meets the disadvantaged business enterprise criteria.

(5) "Decertified" means that a firm or business enterprise which has been certified by the Transportation Cabinet as a disadvantaged business enterprise has been determined to be ineligible and is, therefore, no longer entitled to the rights and privileges accorded to those who are certified by the Transportation Cabinet as a disadvantaged business enterprise.

(6) "Denial" means that the applicant does not meet disadvantaged business enterprise eligibility criteria as outlined in 49 C.F.R. Part 26 and as required by this administrative regulation.

(7) "Department" or "DOT" is defined by 49 C.F.R. 26.5.

(8) "Disadvantaged business enterprise" or "DBE" is defined by 49 C.F.R. 26.5.

(9) "Ineligibility complaint" means an action of a third party alleging that a firm is ineligible to participate in the DBE program.

(10) "Notice" means written notice from the Transportation Cabinet or Office of Minority Affairs delivered certified mail to the business address listed on the application form.

(11) "On-site inspection" means conducting an interview with principals of the firm at its primary place of business, reviewing business-related documents, and inspecting business facilities or equipment.

(12) "Program" is defined by 49 C.F.R. 26.5.

(13) "Small Business Administration" or "SBA" is defined by 49 C.F.R. 26.5.

(14) "Small business concern" is defined by 49 C.F.R. 26.5.

(15) "Socially and economically disadvantaged individual" is defined by 49 C.F.R. 26.5.

Section 2. Adoption of Governing Federal Material. (1) 49 C.F.R. Part 26, effective October 1, 2003, is adopted without change. This federal regulation governs the federal Department of Transportation's and the Kentucky Transportation Cabinet's relationship with and responsibility to each other in the DBE Program. It further sets forth the basic requirements that the Transportation Cabinet shall impose on firms desiring certification.

(2) Kentucky's DBE Program shall be implemented in accordance with this administrative regulation and the Kentucky Transportation Cabinet DBE Program Plan as approved by the Federal Highway Administration.

Section 3. Application Process. (1)(a) Application for certification or continuation of certification as a DBE shall be pursuant to and governed by the procedures set forth in 49 C.F.R. Part 26 Subparts D and E.

(b) An application for certification shall be submitted on the Uniform Certification Application published by the Federal Highway Administration as Appendix F to 49 C.F.R. Part 26, effective June

16, 2003, and incorporated by reference in this administrative regulation.

(c) Each application form shall be completed in full.

(d) All documentation required by the application shall be attached to the completed application.

(e) The person signing the application shall be one (1) of the persons on whom the DBE status is based and shall identify that person's position with the firm or business enterprise applying for certification.

(f) The completed application shall be submitted to the Transportation Cabinet, Office of Minority Affairs.

(2) If the application is not complete, the Office of Minority Affairs shall return the application to the applicant firm requesting that the omitted information be included. An incomplete application shall not be considered by the Office of Minority Affairs. The Transportation Cabinet may request additional information in order to determine if an applicant firm should be certified. Failure of the applicant firm to provide the requested information shall be cause for the Transportation Cabinet to deny the application.

(3)(a) The Transportation Cabinet shall perform an on-site inspection of each new applicant located within the boundary of Kentucky.

(b) The Transportation Cabinet may certify out-of-state firms in accordance with 49 C.F.R. 26.81. All out-of-state firms shall first be certified in their home state prior to becoming certified by the Transportation Cabinet.

(c) Failure of the applicant firm to participate in the on-site inspection shall be sufficient cause for the Transportation Cabinet to deny the application.

Section 4. Evaluation of Application. The Transportation Cabinet shall use the eligibility standards set forth in 49 C.F.R. Part 26, Subpart D to determine the eligibility of a firm to be certified.

Section 5. DBE Certification Committee. (1) The DBE Certification Committee established in the Transportation Cabinet shall:

(a) Determine the eligibility of each applicant firm to be certified or renewed as a DBE; and

(b) If an issue regarding eligibility has arisen, determine whether a firm is eligible to remain certified as a DBE.

(2) The DBE Certification Committee shall be comprised of the following members:

(a) Executive Director, Office of Minority Affairs or a designee, as chair and as a nonvoting member;

(b) Deputy Secretary of the Transportation Cabinet or a designee;

(c) Director, Division of Construction or a designee;

(d) Director, Division of Highway Design or a designee;

(e) Audit Manager, Internal Audit Branch or a designee;

(f) Director, Division of Contract Procurement, or a designee;

(g) Director, Division of Professional Services, or a designee;

(h) Executive Director, Office of General Counsel or a designee, nonvoting member; and

(i) Kentucky Administrator of the Federal Highway Administration or a designee, ex officio, nonvoting member.

(3) The Chairman of the DBE Certification Committee shall schedule meetings as needed.

(4) Four (4) of the voting members of the DBE Certification Committee shall constitute a quorum.

(5) (a) A simple majority of the voting members present at a meeting with a quorum shall be required to approve or deny an application or decertification submitted to the committee.

(b) A summary record of each meeting shall be maintained by the Office of Minority Affairs and presented for review and approval at the next meeting of the committee which has a quorum present.

(6) At least seven (7) working days prior to the meeting of the committee if an application or decertification is to be considered, the Office of Minority Affairs shall provide an agenda and a complete copy of the application and staff summary and recommendation to each member of the committee.

(7) The DBE Liaison Officer shall be present at committee meeting to answer questions and provide technical information.

(8) If requested by a committee member, the Executive Director of the Office of Minority Affairs shall have the technical staff member available to answer questions regarding an application or decertification.

(9) Consistent with the decision of the DBE Certification Committee, the Transportation Cabinet shall issue a written determination regarding the applicant's eligibility for certification within ninety (90) days of receipt of a completed original application if an ineligibility complaint as set forth in Section 10 of this administrative regulation has not been received.

Section 6. Certification of Applicant Firm. (1) If an application for certification as a DBE is approved by the Transportation Cabinet and an ineligibility complaint questioning the status of a firm from a third party as set forth in Section 10 of this administrative regulation is not received during the time the Transportation Cabinet is evaluating the application, the written notification required by Section 5(9) of this administrative regulation shall be the notice to the applicant firm of certification as a DBE.

(2) Certification as a DBE shall be valid for three (3) years from the date of notice of certification, except as provided by 49 C.F.R. 26.83(h) or Section 9 of this administrative regulation.

(3) Records of a certified firm shall be retained by the Office of Minority Affairs for a period of not less than three (3) years from the date of notice of certification.

(4) A certified DBE shall immediately notify the Office of Minority Affairs of any change of condition that may impact its certification status.

Section 7. Continuation. At least thirty (30) days prior to its certification continuation date, a certified DBE that intends to continue its certification shall submit a new Uniform Certification Application to the Transportation Cabinet, Office of Minority Affairs.

Section 8. Denial of Certification. (1) If an application for certification as a DBE is denied by the Transportation Cabinet, the notification required by Section 5(9) of this administrative regulation shall set forth the reasons for denial.

(2) A denial may be appealed to the Transportation Cabinet within thirty (30) days of the notice. The appeal shall be filed in accordance with Section 11 of this administrative regulation.

(3) An applicant firm shall not reapply for certification for one (1) year from the effective date of denial.

(4) The effective date of denial shall be one (1) of the following dates:

(a) If the denial is not appealed, the date the notice is received or delivery is attempted;

(b) If the denial is appealed and the denial is upheld, the date of the notice of final action on behalf of the Transportation Cabinet; or

(c) If the denial is appealed and the appellant withdraws, cancels, or otherwise suspends the appeal, the date of the withdrawal, cancellation, or suspension of the appeal.

Section 9. Decertification. (1) The Transportation Cabinet shall decertify a noncompliant DBE pursuant to the provisions of 49 C.F.R. 26.87.

(2) A firm may appeal a decision to decertify in accordance with Section 11 of this administrative regulation.

(3) Decertification shall be for a specific period of time as determined by the Transportation Cabinet but shall not be for a period of less than one (1) year.

Section 10. Ineligibility Complaints. (1)(a) A third party may file a written complaint alleging that a firm is ineligible to participate in the DBE program and specifying the alleged reasons why the firm is ineligible. An individual who has a current certification from the Small Business Administration issued pursuant to 15 U.S.C. 637 shall be rebuttably presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the Transportation Cabinet, Office of Minority Affairs as a DBE.

(b) The ineligibility complaint shall be made in writing to the Office of Minority Affairs.

(2) With its letter, the complaining third party shall include all information available to it which is relevant to a determination of whether the firm at issue is in fact socially and economically disadvantaged and a qualified DBE.

(3) The Transportation Cabinet shall determine, on the basis of the information provided by the ineligibility complaint and its subsequent investigation, if there is reason to believe that the firm at issue is in fact not socially and economically disadvantaged and a qualified DBE.

(4) If the Transportation Cabinet determines that there is not reason to believe that the firm at issue is not socially and economically disadvantaged and not a qualified DBE, the cabinet shall so inform the complaining party and the firm in writing. This shall terminate the proceeding.

(5)(a) If the Transportation Cabinet determines that there is sufficient reason to believe that the firm at issue is not socially and economically disadvantaged and not a qualified DBE, the office shall notify the firm at issue that its status as a socially and economically disadvantaged enterprise has been challenged. The notice shall:

1. Summarize the grounds for the ineligibility complaint and the subsequent findings of the investigation; and

2. Require the firm at issue to provide to the Office of Minority Affairs, within thirty (30) days, information sufficient to evaluate its status as socially and economically disadvantaged and qualified DBE.

(b) Failure to provide the requested information within the time limit shall be cause for the DBE to be decertified or to be denied certification.

(6) If the social and economic disadvantaged status of a new applicant is challenged, the ineligibility complaint shall be reviewed and investigated prior to completion of the certification process.

(7) The Transportation Cabinet shall evaluate the information available and make a determination of the social and economic disadvantage of the firm at issue. The office shall notify both parties of this determination, setting forth the reasons for its proposal.

(8) In making the determinations called for in this section the Transportation Cabinet shall use the standards set forth in 49 C.F.R. 26.87.

(9) During the pendency of an ineligibility complaint filed under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect.

(10) The decision of the Transportation Cabinet after an appeal and hearing before the Secretary of the Transportation Cabinet as set forth in Section 11 of this administrative regulation may be appealed to the United States Department of Transportation, by the adversely affected party to the proceeding under the procedures of 49 C.F.R. 26.89.

Section 11. Appeal and Hearing. (1) A party adversely affected by a decision of the Transportation Cabinet may appeal that decision within thirty (30) days of the notice of determination. The appeal shall be filed in writing with the Transportation Cabinet, Office of Minority Affairs, Executive Director, Station: W6-06-01, 200 Mero Street, Frankfort, Kentucky 40622. Alternatively, an appeal may be made directly to United States Department of Transportation, Office of Civil Rights, 400 7th Street, SW, Room 5414, Washington, DC, 20590.

(2)(a) The Transportation Cabinet shall schedule the date for the hearing on the appeal not less than fifteen (15) nor more than thirty (30) days after the appeal is received unless otherwise agreed upon by the parties.

(b) If an appeal hearing is rescheduled beyond thirty (30) days from the date of the notification to deny certification at the request of the applicant firm and the firm is not currently certified, the firm's certification has expired, or the firm's request for recertification has been denied, the Office of Minority Affairs shall not approve as part of an established DBE goal any of the work contracted by the applicant.

(3) The Transportation Cabinet shall conduct the administrative

hearing pursuant to the provisions of KRS Chapter 13B.

(4) The hearing officer's findings of fact shall be based on conditions existing at the time the on-site inspection or owner interview was conducted by the Transportation Cabinet. Changes made in an applicant's firm since the on-site inspection or owner interview shall not be considered by the Transportation Cabinet or a hearing examiner in determining the eligibility of the firm.

(5) An appeal from the Transportation Cabinet's final decision may be made to the United States Department of Transportation in accordance with the provisions of 49 C.F.R. 26.89.

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

(a) The Uniform Certification Application, 68 Fed. Reg. 35542, June 16, 2003; and

(b) Kentucky Transportation Cabinet DBE Program Plan as approved by the Federal Highway Administration, revised February 2002.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet, Office of Minority Affairs, Station W6-06-01, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.]

GREG THOMAS, Secretary

JAMIR DAVIS, Executive Director

APPROVED BY AGENCY: March 8, 2018

FILED WITH LRC: March 13, 2018 at 3 p.m.

CONTACT PERSON: D. Ann Dangelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, email Ann.Dangelo@ky.gov.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Comments)

**401 KAR 51:240. Cross-State Air Pollution Rule (CSAPR)
NO_x annual trading program.**

RELATES TO: KRS 224.1-010(8), KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 97.401- 97.435, 42 U.S.C. 7410

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-110, 42 U.S.C. 7410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes the requirements for the control of annual nitrogen oxides (NO_x) emissions from large boilers and turbines used in power plants, pursuant to the Cross-State Air Pollution Rule (CSAPR) NO_x annual trading program, 40 C.F.R. 97.401 through 97.435, Subpart AAAAA for sources located in the Commonwealth of Kentucky. This administrative regulation is not more stringent than the provisions of the federal regulations.

Section 1. Definitions. (1) Except as established in subsection (2) of this section, terms shall have the meaning established in 40 C.F.R. 97.402 and 97.403, as published July 1, 2017.

(2) "Permitting Authority" means:

(a) For a unit located in Kentucky, the cabinet, as defined by KRS 224.1-010(8); and

(b) For a unit located outside of the Commonwealth of Kentucky participating in the trading program, "permitting authority" as defined by 40 C.F.R. 97.402.

Section 2. Applicability. This administrative regulation shall apply to CSAPR NO_x Annual units in Kentucky subject to 40 C.F.R. 97.404, as published July 1, 2017.

Section 3. Compliance Requirements. CSAPR NO_x Annual units shall comply with:

(1) 40 C.F.R. 97.401, Purpose, as published July 1, 2017;

(2)(a) 40 C.F.R. 97.404, Applicability, as published July 1, 2017; and

(b) In 40 C.F.R. 97.404(a)(1) and (b), the phrase "in a state (and Indian Country within the borders of such state)" shall be replaced with "in Kentucky".

(3) 40 C.F.R. 97.405, Retired Unit Exemption, as published July 1, 2017;

(4) 40 C.F.R. 97.406, Standard Requirements, as published July 1, 2017;

(5) 40 C.F.R. 97.407, Computation of Time, as published July 1, 2017;

(6) 40 C.F.R. 97.408, Administrative Appeal Procedures, as published July 1, 2017;

(7)(a) State NO_x Annual Trading Budgets, New Unit Set-Asides, and Variability Limits for the 2017 control period and thereafter:

1. The NO_x Annual trading budget shall be 77,238 tons;

2. The new unit set-aside shall be 3,090 tons; and

3. The variability limit shall be 13,903 tons; and

(b) Each Kentucky NO_x Annual trading budget in subparagraph (a)1. of this subsection~~[(a) of this section]~~ shall include any tons in the new unit set-aside but shall not include any tons in the variability limit;

(8) 40 C.F.R. 97.411(a) through (b)(1) and (c)(1) through (c)(5)(ii), Timing Requirements for CSAPR NO_x Annual Allowance Allocations, as published July 1, 2017;

(9) 40 C.F.R. 97.412(a), CSAPR NO_x Annual Allowance Allocations to New Units, as published July 1, 2017;

(10) 40 C.F.R. 97.413, Authorization of Designated Representative and Alternate Designated Representative, as published July 1, 2017;

(11) 40 C.F.R. 97.414, Responsibilities of Designated Representative and Alternate Designated Representative, as published July 1, 2017;

(12) 40 C.F.R. 97.415, Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source, as published July 1, 2017;

(13) 40 C.F.R. 97.416, Certificate of Representation, as published July 1, 2017;

(14) 40 C.F.R. 97.417, Objections Concerning Designated Representative and Alternate Designated Representative, as published July 1, 2017;

(15) 40 C.F.R. 97.418, Delegation by Designated Representative and Alternate Designated Representative, as published July 1, 2017;

(16) 40 C.F.R. 97.420, Establishment of Compliance Accounts, Assurance Accounts, and General Accounts, as published July 1, 2017;

(17) 40 C.F.R. 97.421(a) through (g), (i), and (k) through (l), Recordation of CSAPR NO_x Annual Allowance Allocations and Auction Results, as published July 1, 2017;

(18) 40 C.F.R. 97.422, Submission of CSAPR NO_x Annual Allowance Transfers, as published July 1, 2017;

(19) 40 C.F.R. 97.423, Recordation of CSAPR **NO_x** Annual Allowance Transfers, as published July 1, 2017;

(20) 40 C.F.R. 97.424, Compliance with CSAPR NO_x Annual Emissions Limitation, as published July 1, 2017;

(21) 40 C.F.R. 97.425, Compliance with CSAPR NO_x Annual Assurance Provisions, as published July 1, 2017;

(22) 40 C.F.R. 97.426, Banking, as published July 1, 2017;

(23) 40 C.F.R. 97.427, Account Error, as published July 1, 2017;

(24) 40 C.F.R. 97.428, Administrator's Action on Submissions, as published July 1, 2017;

(25) 40 C.F.R. 97.430, General Monitoring, Recordkeeping, and Reporting Requirements, as published July 1, 2017;

(26) 40 C.F.R. 97.431, Initial Monitoring System Certification and Recertification Procedures, as published July 1, 2017;

(27) 40 C.F.R. 97.432, Monitoring System Out-of-Control Periods, as published July 1, 2017;

(28) 40 C.F.R. 97.433, Notifications Concerning Monitoring, as published July 1, 2017;

(29) 40 C.F.R. 97.434, Recordkeeping and Reporting, as published July 1, 2017; and

(30) 40 C.F.R. 97.435, Petitions for Alternative to Monitoring, Recordkeeping, or Reporting Requirements, as published July 1, 2017.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: May 10, 2018

FILED WITH LRC: May 14, 2018 at 2 p.m.

CONTACT PERSON: Chris Ewing, Environmental Scientist,
Division for Air Quality, 300 Sower Blvd., Frankfort, Kentucky
40601, phone (502) 782-6604, fax (502) 564-4245, email
Christian.Ewing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Christian Ewing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the control of nitrogen oxides (NO_x) emissions from electricity generating units (EGUs) subject to the provisions of the Cross-State Air Pollution Rule (CSAPR) NO_x Annual Trading Program. This administrative regulation will assist in mitigating interstate transport of annual NO_x emissions for downwind states.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to reduce annual NO_x emissions from EGUs. This administrative regulation will assist with implementing the 1997 and 2006 fine particulate matter National Ambient Air Quality Standards (NAAQS) and the 1997 ozone NAAQS. A reduction in annual NO_x emissions will result in other criteria pollutant reductions because NO_x is a precursor to particulate matter and contributes to the formation of ozone. The United States Environmental Protection Agency (US EPA) is requiring states to address the interstate transport of fine particulates and nitrogen oxides in their State Implementation Plans (SIPs).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Energy and Environment Cabinet (Cabinet) to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation reduces annual NO_x emissions from EGUs. This administrative regulation will address Clean Air Act Section 110, requirements for interstate transport. This administrative regulation will be part of the Kentucky SIP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of KRS 224.10-100(5) by reducing annual NO_x emissions from EGUs, resulting in the protection of human health and the environment. This administrative regulation will address Clean Air Act Section 110, requirements for interstate transport.

(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 language to be consistent with federal regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify language for consistency with federal regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by providing clarity and consistency for language in federal regulations.

(d) How the amendment will assist in the effective administration of statutes: The amendment clarifies language to be consistent with federal regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Owners, operators, and designated representatives of stationary, fossil-fuel-fired boilers or stationary, fossil-fuel-fired combustion turbines serving at any time, on or after January 1, 2005, a generator with nameplate capacity of more than 25 Megawatt electrical (MWe) producing electricity for sale, subject to the provisions of the CSAPR NO_x Annual Trading Program will be affected by this administrative regulation. This includes 8 organizations: American Electric Power/Kentucky Power, Eastern Kentucky Power Cooperative, Big Rivers Electric Corporation, Louisville Gas & Electric/Kentucky Utilities, Duke Energy Kentucky, Owensboro Municipal Utilities, Tennessee Valley Authority, and Riverside Generating Company. These organizations represent a total of 78 affected units.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will have clarification in language that is used in federal regulations.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the sources will have clarity on how to follow state regulations in

comparison to related federal regulations.

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

(a) Initially: The Cabinet will not incur any additional costs for the implementation of this administrative regulation initially.

(b) On a continuing basis: The Cabinet will not incur any additional costs for the implementation of this administrative regulation on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Cabinet's current operating budget will be used for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. The requirements of this administrative regulation apply to stationary, fossil-fuel-fired boilers or stationary, fossil-fuel-fired combustion turbines serving a generator with a nameplate capacity of more than 25 MWe producing electricity for sale.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of state or local government operating a unit subject to the provisions of the Cross-State Air Pollution Rule (CSAPR) Nitrogen Oxide (NO_x) Annual Trading Program. Henderson Municipal Power & Light (HMP&L), owned by the City of Henderson, and Owensboro Municipal Utilities (OMU), owned by the City of Owensboro, operate units affected by this administrative regulation. However, both of the above utilities are already subject to the requirements of this administrative regulation pursuant to the CSAPR FIP.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation.

KRS 224.10-100(5), 224.20-110, 224.20-120, 42 U.S.C. 7410, and 40 C.F.R. Part 97, Subpart AAAAA CSAPR NO_x Annual Trading Program

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed administrative regulation will not generate revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The Energy and Environment Cabinet's (Cabinet) current operating budget will be used to administer this program for the first year. Costs incurred by HMP&L and OMU will not be more than what is already required by the CSAPR Federal Implementation Plan (FIP).

(d) How much will it cost to administer this program for subsequent years? The Cabinet's operating budget will be used to administer this program for subsequent years. Expenditures from HMP&L and OMU will not be more than the costs already required under the CSAPR FIP.

Note: If specific dollar estimates cannot be determined, provide

a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

The federal mandate for this administrative regulation is in 40 C.F.R. Part 97, Subpart AAAAA, Cross-State Air Pollution Rule (CSAPR) Nitrogen Oxide (NO_x) Annual Trading Program and Clean Air Act (CAA) Section 110. On July 6, 2011, the United States Environmental Protection Agency (US EPA) issued a Federal Implementation Plan (FIP) for the CSAPR Nitrogen Oxide (NO_x) annual emission budgets for affected units. The Energy and Environment Cabinet (Cabinet) is promulgating this administrative regulation to address CAA Section 110 requirements for interstate transport.

2. State compliance standards. This administrative regulation adopts the federal standards for the control of NO_x emissions from electricity generating units subject to the provisions of the CSAPR NO_x Annual Trading Program.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires states to revise their State Implementation Plan (SIP) to reduce the emission of NO_x. Each affected unit will have to hold allocations for the tons of emissions of NO_x for each control period. The NO_x Annual trading budget is 77,238 tons. The new-unit set aside is 3,090 tons and the variability is 13,903 tons. This administrative regulation will reduce annual NO_x emissions from 85,086 tons to 77,238 tons, a reduction of approximately 9 percent.

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 establishes the same requirements as the federal CSAPR NO_x Annual Trading Program and will impose no more stringent requirements than those required by the CSAPR FIP.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards or additional or different responsibilities and requirements are not imposed.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division for Air Quality (Amended After Comments)

401 KAR 51:250. Cross-State Air Pollution Rule (CSAPR) NO_x ozone season group 2 trading program.

RELATES TO: KRS 224.1-010, 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 97.801-97.835, 42 U.S.C. 7410
STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-110, 42 U.S.C. 7410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes the requirements for the control of ozone season nitrogen oxides (NO_x) emissions from large boilers and turbines used in power plants, pursuant to the Cross-State Air Pollution Rule (CSAPR) NO_x ozone season group 2 trading program, 40 C.F.R. 97.801 through 97.835, Subpart EEEEE for sources located in the Commonwealth of Kentucky. This administrative regulation is not more stringent than the provisions of the federal regulations.

Section 1. Definitions. (1) Except as established in subsection (2) of this section, terms shall have the meaning established in 40

C.F.R. 97.802 and 97.803, as published July 1, 2017.

(2) "Permitting Authority" means:

(a) For a unit located in Kentucky, the cabinet, as defined by KRS 224.1-010(8); and

(b) For a unit located outside of the Commonwealth of Kentucky participating in the trading program, "permitting authority" as defined by 40 C.F.R. 97.802.

Section 2. Applicability. This administrative regulation shall apply to CSAPR NO_x Ozone Season Group 2 units in Kentucky subject to 40 C.F.R. 97.804, as published July 1, 2017.

Section 3. Compliance Requirements. CSAPR NO_x Ozone Season Group 2 units shall comply with:

(1) 40 C.F.R. 97.801, Purpose, as published July 1, 2017;

(2)(a) 40 C.F.R. 97.804, Applicability, as published July 1, 2017; and

(b) In 40 C.F.R. 97.804(a)(1) and (b), the phrase "in a State (and Indian Country within the borders of such state)" shall be replaced with "in Kentucky".

(3) 40 C.F.R. 97.805, Retired Unit Exemption, as published July 1, 2017;

(4) 40 C.F.R. 97.806, Standard Requirements, as published July 1, 2017;

(5) 40 C.F.R. 97.807, Computation of Time, as published July 1, 2017;

(6) 40 C.F.R. 97.808, Administrative Appeal Procedures, as published July 1, 2017;

(7)(a) State NO_x Ozone Season Trading Budgets, New Unit Set-Asides, and Variability Limits for the 2017 control period and thereafter:

1. The NO_x Ozone Season trading budget shall be 21,115 tons;

2. The new unit set-aside shall be 426 tons; and

3. The variability limit shall be 4,434 tons; and

(b) Each Kentucky NO_x Ozone Season Group 2 trading budget in ~~subparagraph (a)1. of this subsection [(a) of this section]~~ shall include any tons in the new unit set-aside but shall not include any tons in the variability limit;

(8) 40 C.F.R. 97.811(a) through (b)(1) and (c)(1) through (c)(5)(ii), Timing Requirements for CSAPR NO_x Ozone Season Group 2 Allowance Allocations, as published July 1, 2017;

(9) 40 C.F.R. 97.812(a), CSAPR NO_x Ozone Season Group 2 Allowance Allocations to New Units, as published July 1, 2017;

(10) 40 C.F.R. 97.813, Authorization of Designated Representative and Alternate Designated Representative, as published July 1, 2017;

(11) 40 C.F.R. 97.814, Responsibilities of Designated Representative and Alternate Designated Representative, as published July 1, 2017;

(12) 40 C.F.R. 97.815, Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Change in Units at the Source, as published July 1, 2017;

(13) 40 C.F.R. 97.816, Certificate of Representation, as published July 1, 2017;

(14) 40 C.F.R. 97.817, Objections Concerning Designated Representative and Alternate Designated Representative, as published July 1, 2017;

(15) 40 C.F.R. 97.818, Delegation by Designated Representative and Alternate Designated Representative, as published July 1, 2017;

(16) 40 C.F.R. 97.820, Establishment of Compliance Accounts, Assurance Accounts, and General Accounts, as published July 1, 2017;

(17) 40 C.F.R. 97.821(a) through (g), (i), and (k) through (l), Recordation of CSAPR NO_x Ozone Season Group 2 Allowance Allocations and Auction Results, as published July 1, 2017;

(18) 40 C.F.R. 97.822, Submission of CSAPR NO_x Ozone Season Group 2 Allowance Transfers, as published July 1, 2017;

(19) 40 C.F.R. 97.823, Recordation of CSAPR ~~NO_x~~ Ozone Season Group 2 Allowance Transfers, as published July 1, 2017;

- (20) 40 C.F.R. 97.824, Compliance with CSAPR NO_x Ozone Season Group 2 Emissions Limitation, as published July 1, 2017;
- (21) 40 C.F.R. 97.825, Compliance with CSAPR NO_x Ozone Season Group 2 Assurance Provisions, as published July 1, 2017;
- (22) 40 C.F.R. 97.826, Banking, as published July 1, 2017;
- (23) 40 C.F.R. 97.827, Account Error, as published July 1, 2017;
- (24) 40 C.F.R. 97.828, Administrator's Action on Submissions, as published July 1, 2017;
- (25) 40 C.F.R. 97.830, General Monitoring, Recordkeeping, and Reporting Requirements, as published July 1, 2017;
- (26) 40 C.F.R. 97.831, Initial Monitoring System Certification and Recertification Procedures, as published July 1, 2017;
- (27) 40 C.F.R. 97.832, Monitoring System Out-of-Control Periods, as published July 1, 2017;
- (28) 40 C.F.R. 97.833, Notifications Concerning Monitoring, as published July 1, 2017;
- (29) 40 C.F.R. 97.834, Recordkeeping and Reporting, as published July 1, 2017; and
- (30) 40 C.F.R. 97.835, Petitions for Alternative to Monitoring, Recordkeeping, or Reporting Requirements, as published July 1, 2017.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: May 10, 2018

FILED WITH LRC: May 14, 2018 at 2 p.m.

CONTACT PERSON: Chris Ewing, Environmental Scientist, Division for Air Quality, 300 Sower Blvd., Frankfort, Kentucky 40601, phone (502) 782-6604, fax (502) 564-4245, email Christian.Ewing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chris Ewing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the control of nitrogen oxides (NO_x) emissions from electricity generating units (EGUs) subject to the provisions of the Cross-State Air Pollution Rule (CSAPR) NO_x Ozone Season Trading Program. This administrative regulation will assist in mitigating interstate transport of NO_x emissions during the months of May through September in downwind states.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to reduce NO_x emissions from EGUs during the months of May through September. This administrative regulation will assist with implementation of the 2008 ozone National Ambient Air Quality Standards (NAAQS) and the 2015 ozone NAAQS. Ozone formation occurs when NO_x reacts with other compounds in the atmosphere in the presence of sunlight. The United States Environmental Protection Agency (US EPA) is requiring states to address the interstate transport of fine particulates and nitrogen oxides in their State Implementation Plans (SIPs).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Energy and Environment Cabinet (Cabinet) to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation will address Clean Air Act Section 110 requirements for interstate transport. This administrative regulation reduces NO_x emissions from EGUs. This administrative regulation will be part of the Kentucky SIP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of KRS 224.10-100(5) by reducing ozone season NO_x emissions, resulting in the protection of human health and the environment. This administrative regulation will address Clean Air Act Section 110 requirements for interstate transport.

(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 language to be consistent

with federal regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify language for consistency with federal regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by providing clarity and consistency for language in federal regulations.

(d) How the amendment will assist in the effective administration of statutes: The amendment clarifies language to be consistent with federal regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Owners, operators, and designated representatives of stationary, fossil-fuel-fired boilers or stationary, fossil-fuel-fired combustion turbines serving at any time, on or after January 1, 2005, a generator with nameplate capacity of more than 25 Megawatt electrical (MWe) producing electricity for sale, subject to the provisions of the CSAPR NO_x Ozone Season Trading Program will be affected by this administrative regulation. This includes 9 organizations: American Electric Power/Kentucky Power, Eastern Kentucky Power Cooperative, Big Rivers Electric Corporation, Louisville Gas&Electric/Kentucky Utilities, Duke Energy Kentucky, Owensboro Municipal Utilities, Tennessee Valley Authority, Paducah Power Systems, and Riverside Generating Company. These organizations represent a total of 83 affected units.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will have clarification in language that is used in federal regulations.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the sources will have clarity on how to follow state regulations in comparison to related federal regulations.

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

(a) Initially: The Cabinet will not incur any additional costs for the implementation of this administrative regulation initially.

(b) On a continuing basis: The Cabinet will not incur any additional costs for the implementation of this administrative regulation on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Cabinet's current operating budget will be used for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. The requirements of this administrative regulation apply to stationary, fossil-fuel-fired boilers or stationary, fossil-fuel-fired combustion turbines serving at any time, on or after January 1, 2005, a generator with a nameplate capacity of more than 25 MWe producing electricity for sale.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of state or local government operating a unit subject to the provisions of the Cross-State Air Pollution Rule (CSAPR) Nitrogen Oxide (NO_x) Ozone Season Trading Program. Henderson Municipal Power & Light (HMP&L), owned by the City of Henderson, and Owensboro Municipal Utilities (OMU), owned by the City of Owensboro, operate units affected by this administrative regulation. However, both of the above utilities are already subject to the requirements of this administrative regulation pursuant to the CSAPR Federal Implementation Plan (FIP).

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 224.10-100(5), 224.20-110, 224.20-120, 42 U.S.C. 7410, and 40 C.F.R. Part 97, Subpart EEEEE CSAPR NO_x Ozone Season Group 2 Trading Program.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed administrative regulation will not generate revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The Energy and Environment Cabinet's (Cabinet) current operating budget will be used to administer this program for the first year. Costs incurred by HMP&L and OMU will not be more than what is already required by the CSAPR FIP.

(d) How much will it cost to administer this program for subsequent years? The Cabinet's operating budget will be used to administer this program for subsequent years. Expenditures from HMP&L and OMU will not be more than the costs already required under the CSAPR FIP.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate for this administrative regulation is in 40 C.F.R. Part 97 Subpart EEEEE Cross-State Air Pollution Rule (CSAPR) Nitrogen Oxide (NO_x) Ozone Season Group 2 Trading Program and Clean Air Act (CAA) Section 110. On September 7, 2016, the United States Environmental Protection Agency (US EPA) issued a Federal Implementation Plan (FIP) for the Cross-State Air Pollution Rule (CSAPR) Nitrogen Oxide (NO_x) ozone season emission budgets for affected units. The Energy and Environment Cabinet (Cabinet) is promulgating this administrative regulation to address CAA Section 110, requirements for interstate transport.

2. State compliance standards. This administrative regulation adopts the federal standards for the control of NO_x emissions from electricity generating units subject to the provisions of the CSAPR NO_x Ozone Season Trading Program.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires states to revise their State Implementation Plan (SIP) to reduce the emission of NO_x. Each affected unit will have to hold allocations for the tons of emissions of NO_x for each control period. The NO_x Ozone Season trading budget is 21,115 tons. The new-unit set aside is 426 tons and the variability limit is 4,434 tons. This administrative regulation will

reduce ozone season NO_x emissions from 27,731 tons to 21,115 tons, a reduction of approximately 24 percent.

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 establishes the same requirements as the federal CSAPR NO_x Ozone Season Trading Program and will impose no more stringent requirements than those required by the CSAPR FIP.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards or additional or different responsibilities or requirements are not imposed.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division for Air Quality (Amended After Comments)

401 KAR 51:260. Cross-State Air Pollution Rule (CSAPR) SO₂ group 1 trading program.

RELATES TO: KRS 224.1-010, KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 97.601-97.635, 42 U.S.C. 7410
STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-110, 42 U.S.C. 7410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes the requirements for the control of sulfur dioxide (SO₂) emissions from large boilers and turbines used in power plants, pursuant to the Cross-State Air Pollution Rule (CSAPR) SO₂ group 1 trading program, 40 C.F.R. 97.601 through 97.635, Subpart CCCCC for sources located in the Commonwealth of Kentucky. This administrative regulation is not more stringent than the provisions of the federal regulations.

Section 1. Definitions. (1) Except as established in subsection (2) of this section, terms shall have the meaning established in 40 C.F.R. 97.602 and 97.603, as published July 1, 2017.

(2) "Permitting Authority" means:

(a) For a unit located in Kentucky, the cabinet, as defined by KRS 224.1-010(8); and

(b) For a unit located outside of the Commonwealth of Kentucky participating in the trading program, "permitting authority" as defined by 40 C.F.R. 97.602.

Section 2. Applicability. This administrative regulation shall apply to CSAPR SO₂ Group 1 units in Kentucky subject to 40 C.F.R. 97.604, as published July 1, 2017.

Section 3. Compliance Requirements. CSAPR SO₂ Group 1 units shall comply with:

(1) 40 C.F.R. 97.601, Purpose, as published July 1, 2017;

(2)(a) 40 C.F.R. 97.604, Applicability, as published July 1, 2017; and

(b) In 40 C.F.R. 97.604(a)(1) and (b), the phrase "in a State (and Indian Country within the borders of such state)" shall be replaced with "in Kentucky".

(3) 40 C.F.R. 97.605, Retired Unit Exemption, as published July 1, 2017;

(4) 40 C.F.R. 97.606, Standard Requirements, as published July 1, 2017;

(5) 40 C.F.R. 97.607, Computation of Time, as published July 1, 2017;

(6) 40 C.F.R. 97.608, Administrative Appeal Procedures, as published July 1, 2017;

(7)(a) State SO₂ Group 1 Trading Budgets, New Unit Set-Asides, and Variability Limits for the 2017 control period and thereafter;

1.((a)) The SO₂ Group 1 trading budget shall be 106,284 tons;

2.[(b)] The new unit set-aside shall be 6,377 tons; and

3.[(e)] The variability limit shall be 19,131 tons; and

[(b)](d) Each Kentucky SO₂ **Group 1** trading budget in **subparagraph (a)1. of this subsection[(a) of this section]** shall include any tons in the new unit set-aside but shall not include any tons in the variability limit;

(8) 40 C.F.R. 97.611(a) through (b)(1) and (c)(1) through (c)(5)(ii), Timing Requirements for CSAPR SO₂ Group 1 Allowance Allocations, as published July 1, 2017;

(9) 40 C.F.R. 97.612(a), CSAPR SO₂ Group 1 Allowance Allocations to New Units, as published July 1, 2017;

(10) 40 C.F.R. 97.613, Authorization of Designated Representative and Alternate Designated Representative, as published July 1, 2017;

(11) 40 C.F.R. 97.614, Responsibilities of Designated Representative and Alternate Designated Representative, as published July 1, 2017;

(12) 40 C.F.R. 97.615, Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Change in Units at the Source, as published July 1, 2017;

(13) 40 C.F.R. 97.616, Certificate of Representation, as published July 1, 2017;

(14) 40 C.F.R. 97.617, Objections Concerning Designated Representative and Alternate Designated Representative, as published July 1, 2017;

(15) 40 C.F.R. 97.618, Delegation by Designated Representative and Alternate Designated Representative, as published July 1, 2017;

(16) 40 C.F.R. 97.620, Establishment of Compliance Accounts, Assurance Accounts, and General Accounts, as published July 1, 2017;

(17) 40 C.F.R. 97.621(a) through (g), (i), and (k) through (l), Recordation of **CSAPR** SO₂ Group 1 Allowance Allocations and Auction Results, as published July 1, 2017;

(18) 40 C.F.R. 97.622, Submission of CSAPR SO₂ Group 1 Allowance Transfers, as published **[by]** July 1, 2017;

(19) 40 C.F.R. 97.623, Recordation of CSAPR SO₂ Group 1 Allowance Transfers, as published July 1, 2017;

(20) 40 C.F.R. 97.624, Compliance with CSAPR SO₂ Group 1 Emissions Limitation, as published July 1, 2017;

(21) 40 C.F.R. 97.625, Compliance with CSAPR SO₂ Group 1 Assurance Provisions, as published July 1, 2017;

(22) 40 C.F.R. 97.626, Banking, as published July 1, 2017;

(23) 40 C.F.R. 97.627, Account Error, as published July 1, 2017;

(24) 40 C.F.R. 97.628, Administrator's Action on Submissions, as published July 1, 2017;

(25) 40 C.F.R. 97.630, General Monitoring, Recordkeeping, and Reporting Requirements, as published July 1, 2017;

(26) 40 C.F.R. 97.631, Initial Monitoring System Certification and Recertification Procedures, as published July 1, 2017;

(27) 40 C.F.R. 97.632, Monitoring System Out-of-Control Periods, as published July 1, 2017;

(28) 40 C.F.R. 97.633, Notifications Concerning Monitoring, as published July 1, 2017;

(29) 40 C.F.R. 97.634, Recordkeeping and Reporting, as published July 1, 2017; and

(30) 40 C.F.R. 97.635, Petitions for Alternative to Monitoring, Recordkeeping, or Reporting Requirements, as published July 1, 2017.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: May 10, 2018

FILED WITH LRC: May 14, 2018 at 2 p.m.

CONTACT PERSON: Chris Ewing, Environmental Scientist, Division for Air Quality, 300 Sower Blvd., Frankfort, Kentucky 40601, phone (502) 782-6604, fax (502) 564-4245, email Christian.Ewing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chris Ewing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the control of sulfur dioxide (SO₂) emissions from electricity generating units (EGUs) subject to the provisions of the Cross-State Air Pollution Rule (CSAPR) SO₂ Group 1 Trading program. This administrative regulation will assist in mitigating interstate transport of SO₂ emissions in downwind states.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to reduce SO₂ emissions from EGUs. This administrative regulation will assist with attaining the 1997 and 2006 fine particulate matter National Ambient Air Quality Standards (NAAQS) and the 1997 ozone NAAQS. The United States Environmental Protection Agency (US EPA) is requiring states to address the interstate transport of SO₂ in their State Implementation Plans (SIPs).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Energy and Environment Cabinet (Cabinet) to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation will address Clean Air Act Section 110 requirements for interstate transport. This administrative regulation reduces SO₂ emissions from EGUs. This administrative regulation will be part of the Kentucky SIP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of KRS 224.10-100(5) by reducing SO₂ emissions, resulting in the protection of human health and the environment. This administrative regulation will address Clean Air Act Section 110 requirements for interstate transport.

(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 language to be consistent with federal regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify language for consistency with federal regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by providing clarity and consistency for language in federal regulations.

(d) How the amendment will assist in the effective administration of statutes: The amendment clarifies language to be consistent with federal regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Owners, operators, and designated representatives of stationary, fossil-fuel-fired boilers or stationary, fossil-fuel-fired combustion turbines serving at any time, on or after January 1, 2005, a generator with nameplate capacity of more than 25 Megawatt electrical (MWe) producing electricity for sale, subject to the provisions of the CSAPR SO₂ Group 1 Trading Program, will be affected by this administrative regulation. This includes 7 organizations: American Electric Power/Kentucky Power, Eastern Kentucky Power Cooperative, Big Rivers Electric Corporation, Louisville Gas & Electric/Kentucky Utilities, Duke Energy Kentucky, Owensboro Municipal Utilities, and Tennessee Valley Authority. These organizations represent a total of 51 affected units.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will have clarification in language that is used in federal regulations.

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

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

sources will have clarity on how to follow state regulations in comparison to related federal regulations.

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

(a) Initially: The Cabinet will not incur any additional costs for the implementation of this administrative regulation initially.

(b) On a continuing basis: The Cabinet will not incur any additional costs for the implementation of this administrative regulation on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Cabinet's current operating budget will be used for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. The requirements of this administrative regulation apply to stationary, fossil-fuel-fired boilers or stationary, fossil-fuel-fired combustion turbines serving at any time, on or after January 1, 2005, a generator with a nameplate capacity of more than 25 MWE producing electricity for sale.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of state or local government operating a unit subject to the provisions of the Cross-State Air Pollution Rule (CSAPR) Sulfur Dioxide (SO₂) Group 1 Trading Program. Henderson Municipal Power & Light (HMP&L), owned by the City of Henderson and, Owensboro Municipal Utilities (OMU), owned by the City of Owensboro, operate units affected by this administrative regulation. However, both of the above utilities are already subject to the requirements of this administrative regulation pursuant to the CSAPR Federal Implementation Plan (FIP).

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 224.10-100(5), 224.20-110, 224.20-120, 42 U.S.C. 7410, and 40 C.F.R. Part 97, Subpart CCCCC CSAPR SO₂ Group 1 Trading Program

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed administrative regulation will not generate revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The Energy and Environment Cabinet's (Cabinet) current operating budget will be used to administer this program for the first year. Costs incurred by HMP&L and OMU will not be more than what is already required by the CSAPR FIP.

(d) How much will it cost to administer this program for subsequent years? The Cabinet's operating budget will be used to administer this program for subsequent years. Expenditures from HMP&L and OMU will not be more than the costs already required under the CSAPR FIP.

Note: If specific dollar estimates cannot be determined, provide

a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate for this administrative regulation is in 40 C.F.R. Part 97, Subpart CCCCC Cross-State Air Pollution Rule (CSAPR) Sulfur Dioxide (SO₂) Group 1 Trading Program and Clean Air Act (CAA) Section 110. On July 6, 2011, the United States Environmental Protection Agency (US EPA) issued a Federal Implementation Plan (FIP) for CSAPR SO₂ emission budgets for affected units. The Energy and Environment Cabinet (Cabinet) is promulgating this administrative regulation to address CAA Section 110 requirements for interstate transport.

2. State compliance standards. This administrative regulation adopts the federal standards for the control of SO₂ emissions from electricity generating units subject to the provisions of the CSAPR SO₂ Group 1 Trading Program.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires states to revise their SIP to reduce the emission of SO₂. Each affected unit will have to hold allocations for the tons of emissions of SO₂ for each control period. The SO₂ Group 1 trading budget is 106,284 tons. The new-unit set aside is 6,377 tons and the variability is 19,131 tons. This administrative regulation will reduce SO₂ emissions from 232,662 tons to 106,284 tons, a reduction of approximately 54 percent.

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 establishes the same requirements as the federal CSAPR SO₂ Group 1 Trading Program and will impose no more stringent requirements than those required by the CSAPR FIP.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards or additional or different responsibilities or requirements are not imposed.

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amended After Comments)

501 KAR 6:030. Kentucky State Reformatory.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein. 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 Kentucky State Reformatory.

Section 1. Incorporation by Reference. (1) "Kentucky State Reformatory policies and procedures", May 15~~[March 14]~~, 2018~~[April 11, 2017]~~, are incorporated by reference. Kentucky State Reformatory policies and procedures include:

KSR 01-00-08 Communication Among the Warden, Management Staff, Department Heads and Inmates (Amended 3/14/18~~[4/11/16]~~)
KSR 02-00-01 Inmate Canteen (Amended 1/12/17)
KSR 02-00-03 Screening Disbursements from Inmate Accounts (Amended 1/12/17)

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KSR 02-00-11	Inmate Accounts (Amended 3/14/18[4/12/17])	KSR 18-01-00	Youthful Offenders (Amended 4/11/17)
KSR 06-00-03	Kentucky Open Records Law and Release of Institutional and Medical Records (Amended 1/12/17)	KSR 18-02-01	Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) (Amended 1/12/17)
KSR 09-00-28	Restricted Areas (Amended 12/14/15)	KSR 19-00-02	Inmate Work Programs (Amended 3/14/18[4/12/17])
KSR 09-00-30	Parole Board (Amended 1/12/17)	KSR 19-00-03	Safety Inspections of Inmate Work Assignment Locations (Amended 3/14/18[12/14/15])
KSR 10-01-02	Restrictive Housing Unit General Operational Procedures (Amended 1/12/17)	KSR 20-00-01	LaGrange Education Center Programming (Amended 5/15/18[3/14/18] [4/12/17])
KSR 10-01-03	Restrictive Housing Unit - Inmate Tracking System and Record System (Amended 1/12/17)	KSR 20-00-06	English as a Second Language (Amended 12/14/15)
KSR 10-01-09	Hold Ticket Inmates (Amended 3/14/18[3/14/16])	KSR 21-00-01	Legal Aide Office and Inmate Law Library Services and Supervision (Amended 3/14/18[4/12/17])
KSR 11-00-01	Meal Planning and Procedure (Amended 3/14/18[4/12/17])	KSR 21-00-02	Library Services (Amended 3/14/18[4/11/16])
KSR 11-00-05	Food Service Department Clothing Issuance, Laundry and Sanitation (Amended 12/14/15)	KSR 22-00-03	Inmate Organizations (Amended 3/14/18[4/12/17])
KSR 11-00-06	Health Standards for Food Service Employees (Amended 1/12/17)	KSR 22-00-07	Inmate Magazine (Amended 1/12/17)
KSR 12-00-03	State and Personal Hygiene Items Issued to Inmates (Amended 3/14/18[12/14/15])	KSR 23-00-03	Religious Programming (Added 4/11/17)
KSR 12-00-07	Inmate Barbershop (Amended 4/11/16)	KSR 24-00-01	Social Services Staff (Added 12/14/15)
KSR 12-00-09	Treatment of Inmates with Body Lice (Amended 3/14/18[12/14/15])	KSR 24-00-02	Substance Abuse and Chemical Dependency Program (Amended 1/12/17)
KSR 13-00-03	Medication for Inmates Leaving Institutional Grounds (Amended 12/14/15)	KSR 24-00-03	Social Services Program (Amended 3/14/18[4/12/17])
KSR 13-00-04	Medical and Dental Care (Amended 5/15/18[3/14/18] [4/12/17])	KSR 25-00-01	Discharge of an Inmate to Hospital or Nursing Home (Amended 12/14/15)
KSR 13-00-05	Medical Records (Amended 4/11/16)	KSR 26-00-01	Volunteer Services Program (Amended 1/12/17)
KSR 13-00-09	Institutional Pharmacy Procedures (Amended 1/12/17)	<p>JAMES ERWIN, Commissioner APPROVED BY AGENCY: May 15, 2018 FILED WITH LRC: May 15, 2018 at 11 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.</p>	
KSR 13-00-10	Requirements for Medical Personnel (Amended 12/14/15)		
KSR 13-00-17	Special Care (Amended 12/14/15)	<p>REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT</p>	
KSR 13-01-01	Death of an Inmate and Notification of Inmate Family About a Critical Medical Emergency (Added 12/14/15)		
KSR 13-02-01	Mental Health Services (Amended 12/14/15)	<p>Contact Person: Amy Barker (1) Provide a brief summary of: (a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of the Kentucky State Reformatory. (b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and to meet American Correctional Association (ACA) standard requirements. (c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operation of the Kentucky State Reformatory. (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to Kentucky State Reformatory employees and the inmate 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 brings the policies and procedures into compliance with ACA standards and updates current practices for the institution. (b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020. (c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky State Reformatory. (d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff, inmates, and visitors information concerning rules and procedures for the effective and orderly management of the institution. (3) List the type and number of individuals, businesses,</p>	
KSR 13-02-03	Suicide Prevention and Intervention Program (Amended 3/14/18[4/11/16])		
KSR 13-02-08	Inmate Observer Program (Amended 1/12/17)	<p>REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT</p>	
KSR 14-00-02	Americans with Disabilities Act and Inmate Program Access (Amended 12/14/15)		
KSR 15-00-06	Inmate Identification Cards (Amended 3/14/18[12/14/15])	<p>Contact Person: Amy Barker (1) Provide a brief summary of: (a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of the Kentucky State Reformatory. (b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and to meet American Correctional Association (ACA) standard requirements. (c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operation of the Kentucky State Reformatory. (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to Kentucky State Reformatory employees and the inmate 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 brings the policies and procedures into compliance with ACA standards and updates current practices for the institution. (b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020. (c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky State Reformatory. (d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff, inmates, and visitors information concerning rules and procedures for the effective and orderly management of the institution. (3) List the type and number of individuals, businesses,</p>	
KSR 15-00-09	Tobacco Free Environment (Amended 12/14/15)		
KSR 15-00-10	Program Services for Special Housing Placement (Amended 3/14/18[4/11/16])	<p>REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT</p>	
KSR 15-01-01	Responsibilities of Staff Assigned to Units A, B & C (Amended 3/14/18[4/11/16])		
KSR 15-01-02	Staff Operational Procedures for Units A, B, & C (Amended 3/14/18[4/12/17])	<p>Contact Person: Amy Barker (1) Provide a brief summary of: (a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of the Kentucky State Reformatory. (b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and to meet American Correctional Association (ACA) standard requirements. (c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operation of the Kentucky State Reformatory. (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to Kentucky State Reformatory employees and the inmate 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 brings the policies and procedures into compliance with ACA standards and updates current practices for the institution. (b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020. (c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky State Reformatory. (d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff, inmates, and visitors information concerning rules and procedures for the effective and orderly management of the institution. (3) List the type and number of individuals, businesses,</p>	
KSR 15-01-03	Inmate Rules for General Population Living Areas (Amended 3/14/18[4/11/16])		
KSR 15-01-06	Honor Housing Criteria and Rules (Amended 1/12/17)	<p>REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT</p>	
KSR 15-01-07	Nursing Care Facility Operational Procedures and Rules (Amended 1/12/17)		
KSR 15-01-08	Outside Detail (Added 3/14/18[4/12/17])	<p>Contact Person: Amy Barker (1) Provide a brief summary of: (a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of the Kentucky State Reformatory. (b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and to meet American Correctional Association (ACA) standard requirements. (c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operation of the Kentucky State Reformatory. (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to Kentucky State Reformatory employees and the inmate 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 brings the policies and procedures into compliance with ACA standards and updates current practices for the institution. (b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020. (c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky State Reformatory. (d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff, inmates, and visitors information concerning rules and procedures for the effective and orderly management of the institution. (3) List the type and number of individuals, businesses,</p>	
KSR 16-00-02	Inmate Correspondence and Mailroom Operations (Amended 3/14/18[4/12/17])		
KSR 16-00-03	Inmate Access to Telephones (Amended 3/14/18[12/14/15])	<p>REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT</p>	
KSR 16-01-01	Inmate Visiting (Amended 3/14/18[4/12/17])		
KSR 17-00-05	Inmate Reception and Orientation (Amended 3/14/18[4/12/17])	<p>Contact Person: Amy Barker (1) Provide a brief summary of: (a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of the Kentucky State Reformatory. (b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and to meet American Correctional Association (ACA) standard requirements. (c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operation of the Kentucky State Reformatory. (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to Kentucky State Reformatory employees and the inmate 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 brings the policies and procedures into compliance with ACA standards and updates current practices for the institution. (b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020. (c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky State Reformatory. (d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff, inmates, and visitors information concerning rules and procedures for the effective and orderly management of the institution. (3) List the type and number of individuals, businesses,</p>	
KSR 17-00-07	Inmate Personal Property (Amended 3/14/18[12/14/15])		
KSR 18-00-04	Inmate Transfers, Admission, and Discharge Procedures (Amended 3/14/18[12/14/15])	<p>REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT</p>	
KSR 18-00-06	Classification (Amended 12/14/15)		
KSR 18-00-07	Kentucky State Reformatory Placement Committee (Amended 12/14/15)	<p>Contact Person: Amy Barker (1) Provide a brief summary of: (a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of the Kentucky State Reformatory. (b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and to meet American Correctional Association (ACA) standard requirements. (c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operation of the Kentucky State Reformatory. (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to Kentucky State Reformatory employees and the inmate 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 brings the policies and procedures into compliance with ACA standards and updates current practices for the institution. (b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020. (c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky State Reformatory. (d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff, inmates, and visitors information concerning rules and procedures for the effective and orderly management of the institution. (3) List the type and number of individuals, businesses,</p>	

organizations, or state and local governments affected by this administrative regulation: 650 employees of the Kentucky State Reformatory and 1,612 inmates, and all visitors to Kentucky State Reformatory.

(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: Staff and inmates of KSR will have to change their actions to comply with any operational changes made by this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the institution.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky State Reformatory budgeted funds.

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

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

(9) TIERING: Is tiering applied? No, tiering was not appropriate in this administrative regulation because the administrative regulations applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendment to this regulation impacts the operation of the Kentucky State Reformatory.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.870 – 61.884, 196.035, 197.020, 197.025, 422.317, 439.510

(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 to this regulation does not create any revenue for the Kentucky State Reformatory.

(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 to this regulation does not create any revenue for the Kentucky State Reformatory.

(c) How much will it cost to administer this program for the first year? No additional cost is anticipated.

(d) How much will it cost to administer this program for subsequent years? No additional cost is anticipated.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Child Care (Amended After Comments)

922 KAR 2:090. Child-care center licensure.

RELATES TO: KRS Chapter 13B, [17.165, 17.500–17.580,] Chapter 157, 158.030, 199.011(3)[(4)], (4), (16), 199.892, 199.894(1), (3), 199.895, 199.896, 199.898, 214.010, 314.011(5), 600.020(1), 620.020(8), 620.030[(4)], 45 C.F.R. 98.2, 42 U.S.C. 601-619, 42 U.S.C. 9857-9858g

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), (6)

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. KRS 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to establish license fees and standards for a child-care center. KRS 199.896(6) requires the cabinet to establish an informal dispute resolution process. This administrative regulation establishes licensure standards for a child-care center and describes the informal dispute resolution process.

Section 1. Definitions. (1) "Applicant" means an individual or entity applying to become a licensee or renew status as a licensee ~~"Address check" means a cabinet search of the 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 199.011(3) and 199.894(1).

(3) "Child" is defined by KRS 199.011(4).

(4) "Child care" means care of a child in a center or home that regularly provides full or part-time care, day or night, and includes developmentally appropriate play and learning activities.

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

(6) "Director" means an individual who meets the education and training requirements established in Section 10 of this administrative regulation.

(7)[(5)] "Finding of fraud" means a suspected intentional program violation referred in accordance with 922 KAR 2:020, Section 4(4)(a)1, that is accepted for investigation and substantiated by the cabinet's Office of Inspector General.

(8) "Health professional" means a person actively licensed as

a:

(a) Physician;

(b) Physician assistant;

(c) Advanced practice registered nurse; or

(d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician or advanced practice registered nurse.

(9) "Infant" means a child who is less than twelve (12) months of age.

(10)[(6)] "Licensee" means the owner or[and] operator of a child-care center to include:

(a) Sole proprietor;

(b) Corporation;

(c) Limited liability company;

(d) Partnership;

(e) Association; or

(f) Organization, such as:

1. Board of education,

2. Private school;

3. Faith-based organization;

4. Government agency; or

5. Institution.

(11)[(7)] "Nontraditional hours" means the hours of:

(a) 7 p.m. through 5 a.m. Monday through Friday; or

(b) 7 p.m. on Friday until 5 a.m. on Monday.

(12)[(8)] "Parent" is defined by 45 C.F.R. 98.2.

(13) "Parental or family participation" means a child-care

center's provision of information or inclusion of a child's parent in the child-care center's activities, including:

- (a) Distribution of a newsletter;
- (b) Distribution of a program calendar; or
- (c) A conference between the provider and a parent.
- (14) "Pediatric abusive head trauma" is defined by KRS 620.020(8).

(15)(9) "Premises" means the building and contiguous property in which child care is licensed.

(16) "Preschool-age" means a child who is older than a toddler and younger than school-age.

(17) "Qualified substitute" means a person who meets the requirements of a staff person established in Section 11 of this administrative regulation.

(18) "School-age" means a child who meets the age requirements of KRS 158.030 or who attends kindergarten, elementary, or secondary education.

(19)(10) "Secretary" is defined by KRS 199.011(16)(4).

(20) "Toddler" means a child between the age of twelve (12) and thirty-six (36) months(11)"Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.

Section 2. Child-care Centers. The following child-care centers shall meet the requirements of this administrative regulation:

(1) A Type I child-care center. This child-care center shall be 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 designated space separate from the primary residence of a licensee; and

(2) A Type II child-care center. This child-care center shall be primary residence of the licensee in which child care is regularly provided for seven (7), but not more than twelve (12), children including children related to the licensee.

Section 3. Exempt Child Care Settings. The following child-care settings shall be exempt from licensure requirements of this administrative regulation,~~[922 KAR 2:140, and] 922 KAR 2:120, and 922 KAR 2:280:~~

(1) Summer camps certified by the cabinet as youth camps ~~that~~[which] serve school-age children;

(2) Kindergarten through grade 12 in private schools while school is in session;

(3) All programs and preschools regulated by the Kentucky Department of Education governed by KRS Chapter 157;

(4) Summer programs operated by a religious organization ~~that~~[which] a child attends no longer than two (2) weeks;

(5) Child care provided while parents are on the premises, other than the employment and educational site of parents;

(6) Child care programs operated by the armed services located on an armed forces base;

(7) Child care provided by educational programs that include parental involvement with the care of the child and the development of parenting skills;

(8) Facilities operated by a religious organization while religious services are being conducted;~~and]~~

(9) A program providing instructional and educational programs ~~that:~~

(a) ~~Operates~~[That operates] for a maximum of twenty (20) hours per week; and

(b) ~~A[That]~~[Which][a] child attends for no more than ten (10) hours per week;

(10) A child-care center that meets requirements of KRS 199.896(19) or (20); and

(11) An after-school program, which is:

- (a) A continuation of the school day during the academic year;
- (b) Operated and staffed by an accredited private or public school under the purview of the Kentucky Department of Education; and
- (c) Not participating in the Child Care Assistance Program in accordance with 922 KAR 2:160.

Section 4. Application. (1) An applicant for a license shall submit to the cabinet a completed OIG-DRCC-01, Initial Child-Care Center License Application.

(2) Approval of an applicant for initial licensure shall result in the issuance of a preliminary license for a probationary period not to exceed six (6) months.

(3) The issuance of a preliminary license, or the issuance or reapproval of a regular license, shall be governed under the provisions of this section and Sections 6 and~~[5 through]~~ 7 of this administrative regulation.

(4) If the applicant for licensure is a:

(a) Corporation or a limited liability company, the application shall include a current certificate of existence or authorization from the Secretary of State; or

(b) Partnership, the application shall include:

- 1. A written statement from each partner assuring that the partnership is current and viable; and
- 2. Proof that each individual is twenty-one (21) years or older by photo identification or birth certificate.

(5) If the status of a corporation, partnership, or ownership of the child-care center changes, the new entity shall submit a completed OIG-DRCC-01.

(6) If ownership of a child-care center changes and the cabinet approves preliminary licensure upon inspection of the child-care center under the new ownership, the effective date on the preliminary license shall be the date of the approved inspection under the new ownership.

(7) The cabinet shall return the OIG-DRCC-01 and accompanying fee to an applicant if the applicant:

(a) Has an ownership interest in a facility that is licensed or regulated by the cabinet, and that is subject to a finding of fraud or is involved in an~~[other]~~ investigation of alleged fraud by:

- 1. The cabinet's Office of Inspector General; or
- 2. An agency with investigative authority; and

(b) Is requesting a:

- 1. Change in ownership; or
- 2. License for a new facility.

(8) An applicant~~[or an applicant's lead representative]~~ shall submit to background checks in accordance with 922 KAR 2:280~~[Section 6(5) of this administrative regulation to confirm compliance with Section 11(7)(j) of this administrative regulation even if the applicant for licensure is not described in Section 6(4) of this administrative regulation].~~

(9) A child may include a person eighteen (18) years of age if the person has a special need for which child care is required.

Section 5. Evacuation Plan. (1) A licensed child-care center shall have a written evacuation plan in the event of a fire, natural disaster, or other threatening situation that may pose a health or safety hazard for a child in care in accordance with KRS 199.895 and 42 U.S.C. 9858c(c)(2)(U).

(2) The cabinet shall post an online template of an evacuation plan that:

- (a) Fulfills requirements of KRS 199.895;
- (b) Is optional for a child-care center's use; and
- (c) Is available to a licensed child-care center without charge.

Section 6. License Issuance. (1) The cabinet shall monitor a child-care center that operates under a preliminary license issued pursuant to Section 4(2) of this administrative regulation.

(2) Upon completion of the probationary period required in Section 4(2) of this administrative regulation, the cabinet shall:

(a) Approve regular licensure for a child-care center operating under a preliminary license; or

(b) If a condition specified in Section 16~~[14]~~ of this administrative regulation exists, deny regular licensure.

(3) A preliminary or regular license shall not be issued unless each background check required by 922 KAR 2:280~~[KRS 199.896(19)]~~ has been completed on behalf of an applicant for licensure.

(4) Background checks in accordance with 922 KAR 2:280 shall apply to:

- (a) An applicant~~[or an applicant's representative]~~:

(b) A director;
(c)(b) An employee~~[or volunteer]~~ who is present during the time a child is receiving care;
(d)(c) Any person with supervisory or disciplinary control over a child in care; or
(e) A(d) Any person in accordance with 42 U.S.C. 9858f and 45 C.F.R. 98.43[~~having unsupervised contact with a child in care~~].
(5)[An individual described in subsection (4) of this section shall:
(a) Submit to background checks described in paragraph (b) of this subsection;
(b) May be employed or work with a child on a probationary basis for up to ninety (90) calendar days, pending completion of a:
1. Child abuse or neglect check using the central registry in accordance with 922 KAR 1:470;
2. Criminal records check required by KRS 199.896(19);
3. Criminal records check for any previous state of residence if the person resided outside the state of Kentucky in the last five (5) years; and
4. An address check of the Sex Offender Registry; and
(c) Not be left alone in the presence of a child until copies of the background checks in accordance with paragraph (b) of this subsection have been received by the licensee.
(6) Upon completion of background checks described in subsection (4)(b) of this section, a licensee shall discharge immediately:
(a) An individual whose name is listed on the central registry established by 922 KAR 1:470;
(b) An individual who has been convicted of, or has entered an Alford plea or a plea of guilty to, a crime in accordance with KRS 17.165;
(c) An individual who is confirmed by an address check of the Sex Offender Registry and supporting documentation as a registered sex offender;
(d) An individual who has been convicted of, or entered an Alford plea or plea of guilty to, a drug-related felony, and five (5) years has not elapsed since the person was fully discharged from imprisonment, probation, or parole;
(e) A director who has been convicted of, or entered an Alford plea or a plea of guilty to, a felony offense involving fraud, embezzlement, theft, or forgery; and
(f) An individual who has been convicted of, or has entered an Alford plea or a plea of guilty to, an offense under a criminal statute of the United States or of another state similar to an offense specified in this subsection.
(7) An individual who has been convicted of, or entered an Alford plea or a plea of guilty to, a nonviolent felony or misdemeanor not specified in this section shall be handled on a case-by-case basis by the licensee with consideration given to the:
(a) Nature of the offense;
(b) Length of time that has elapsed since the event; and
(c) Individual's life experiences after conviction, Alford plea, or guilty plea.
(8) If an applicant for licensure has had a previous ownership interest in a child-care provider ~~that~~[which] has had a prior certification, license, or registration~~[- or permit to operate]~~ denied,~~[suspended,]~~ revoked, or voluntarily relinquished as a result of an investigation or pending adverse action, the cabinet shall grant the applicant a license if:
(a) A seven (7) year period has expired from the:
1. Date of the prior denial~~[- suspension,]~~ or revocation;
2. Date the certification, license, or registration~~[- or permit]~~ was voluntarily relinquished as a result of an investigation or pending adverse action;
3. Last day of legal remedies being exhausted; or
4. Administrative hearing decision; and
(b) The applicant has:
1. Demonstrated compliance with the provisions of this administrative regulation,~~[922 KAR 2:140,]~~ 922 KAR 2:120, 922 KAR 2:280, and KRS 199.896;
2. Completed, since the time of the prior denial,~~[suspension,]~~ revocation, or relinquishment, sixty (60) hours of training in child development and child care practice, approved by the cabinet or its

designee; and
3. Not had an application, certification, license, or registration~~[- or permit]~~ denied, revoked,~~[suspended,]~~ or voluntarily relinquished as a result of an investigation or pending adverse action:
a. For one (1) of the reasons set forth in:
(i) KRS 199.896(19); or
(ii) 922 KAR 2:280[Subsection (6) of this section; or
(iii) ~~Section 11(2) or 11(7)(j) of this administrative regulation];~~
or
b. Due to a disqualification from:
(i) The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or
(ii) Another governmental assistance program for fraud~~[- or] abuse, or criminal conviction related to~~[of] that program.
(6)(9) If a license is granted after the seven (7) year period specified in subsection (5)(a)(i)(a) of this section, the licensee shall serve a two (2) year probationary period during which the child-care center shall be inspected no less than semi-annually~~[on at least a quarterly basis]~~.
(7)(10) A preliminary or regular license shall specify:
(a) A particular premises;
(b) A designated licensee;
(c) Age category of the children in care;
(d) The maximum number of children allowed under center supervision at one (1) time, including a child related to the licensee or an employee, based upon:
1. Available space as determined by the State Fire Marshal's Office in conjunction with the cabinet;
2. Adequacy of program;
3. Equipment; and
4. Staff;
(e) If provided, nontraditional hours;
(f) If provided, transportation; and
(g) A list of services to be provided by the child-care center.
(8)(11) To qualify for a preliminary license, or maintain a regular license, a child-care center shall:
(a) Provide written documentation from the local authority showing compliance with local zoning requirements;
(b) Be approved by the Office of the State Fire Marshal or designee;
(c) Have an approved water and sewage system in accordance with local, county, and state laws;
(d) Provide written proof of liability insurance coverage of at least \$100,000 per occurrence;
(e) Comply with provisions of this administrative regulation,~~[922 KAR 2:140, and]~~ 922 KAR 2:120, and 922 KAR 2:280;
(f) Cooperate with the cabinet, the cabinet's designee, or another agency with regulatory authority during:
1. An investigation of an alleged complaint, including an allegation of child abuse or neglect pursuant to KRS 620.030(4); and
2. Unannounced inspections; and
(g) Have a director who meets the requirements listed in Section 10 of this administrative regulation~~[922 KAR 2:140]~~.
(9)(12) A child-care center shall allow the cabinet or its designee, another agency with regulatory authority, and a parent of an enrolled child unannounced access to the child-care center during the hours of operation.
(10)(13) Denial of access, including any effort to delay, interfere with, or obstruct an effort by a representative of the cabinet or another agency with regulatory authority, to enter the child-care center or deny access to records relevant to the inspection shall result in the cabinet pursuing adverse action in accordance with Section 15, 16, or 17~~[10, 11, or 12]~~ of this administrative regulation.
(11)(14) A regular license shall be issued~~[and reapproved]~~ if the center has met the requirements contained in this administrative regulation,~~[922 KAR 2:140,]~~ 922 KAR 2:120, 922 KAR 2:280, and KRS 199.896(3), (13), (15), (16), (18), and (19).
(12)(15) A preliminary or regular license shall not be sold or

transferred.

(13) [(16)] Changes to a child-care center as listed in 922 KAR 2:110, Section 6(4) shall be:

(a) In writing to the cabinet or its designee; and

(b) Signed by each owner listed on the preliminary or regular license.

(17) The cabinet or its designee shall not charge a fee for acting upon reported changes.

(18) The preliminary or regular license shall be posted in a conspicuous place in the child-care center.

(19) A child-care center shall not begin operation without a preliminary license to operate from the cabinet.

(14) [(20)] A child-care center operating without a preliminary or regular license shall be subject to legal action.

(15) [(24)] The voluntary relinquishment of a preliminary or regular license shall not preclude the cabinet's pursuit of adverse action.

Section 7. Fees. (1) A nonrefundable initial licensing fee of fifty (50) dollars shall be charged according to KRS 199.896(3).

(2) A nonrefundable renewal fee of twenty-five (25) dollars shall be charged in accordance with KRS 199.896(3).

(3) Licensing fees shall be:

(a) Payable to the Kentucky State Treasurer;

(b) Attached to the licensure application; and

(c) Paid by:

1. Cashier's check;

2. Certified check; [or]

3. Business check; or

4. Money order.

Section 8. General. (1) A licensee shall be responsible for the operation of the child-care center pursuant to this administrative regulation, 922 KAR 2:120, and 922 KAR 2:280.

(2) Child-care center staff shall be:

(a) Instructed by the child-care center's director regarding requirements for operation; and

(b) Provided with a copy of this administrative regulation, 922 KAR 2:120, and 922 KAR 2:280.

(3) A volunteer or board member shall comply with the policies and procedures of the child-care center.

(4) Program policies and procedures shall:

(a) Be in writing; and

(b) Include:

1. Staff policies;

2. Job descriptions;

3. An organization chart;

4. Chain of command; and

5. Other procedures necessary to ensure implementation of:

a. KRS 199.898, Rights for children in child-care programs and their parents, custodians, or guardians - posting and distribution requirements;

b. 922 KAR 2:120, Child-care center health and safety standards;

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

d. This administrative regulation.

(5) An activity of a person living in a child-care center that is a dwelling unit shall not interfere with the child-care center program.

(6) In addition to the posting requirement of KRS 199.898(3), a child-care center shall post the following in a conspicuous place and make available for public inspection:

(a) The provider's preliminary or regular license;

(b) Each statement of deficiency and civil penalty notice issued by the cabinet during the current licensure year;

(c) Each plan of correction submitted by the child-care center to the cabinet during the current licensure year;

(d) Information on the Kentucky Consumer Product Safety Program and the program's Web site as specified in KRS 199.897;

(e) A description of services provided by the child-care center, including:

1. Current rates for child care; and

2. Each service charged separately and in addition to the basic

rate for child care;

(f) Minimum staff-to-child ratios and group size established in 922 KAR 2:120; and

(g) Daily planned program.

(7) If a director, employee, volunteer, or any person with supervisory or disciplinary control over, or having unsupervised contact with a child in care is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance with 922 KAR 1:330, the individual shall be removed from direct contact with a child in care:

(a) For the duration of the assessment or investigation; and

(b) Pending completion of the administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.

Section 9. Records. (1) A child-care center shall maintain:

(a) A current immunization certificate for each child in care within thirty (30) days of the child's enrollment, unless an attending physician or the child's parent objects to the immunization of the child pursuant to KRS 214.036;

(b) A written record for each child:

1. Completed and signed by the child's parent;

2. Retained on file on the first day the child attends the child-care center; and

3. To contain:

a. Identifying information about the child, which includes, at a minimum, the child's name, address, and date of birth;

b. Contact information to enable a person in charge to contact the child's:

(i) Parent at the parent's home or place of employment;

(ii) Family physician; and

(iii) Preferred hospital;

c. The name of each person who is designated in writing to pick-up the child;

d. The child's general health status and medical history including, if applicable:

(i) Allergies;

(ii) Restriction on the child's participation in activities with specific instructions from the child's parent or health professional; and

(iii) Permission from the parent for third-party professional services in the child-care center;

e. The name and phone number of each person to be contacted in an emergency involving or impacting the child;

f. Authorization by the parent for the child-care center to seek emergency medical care for the child in the parent's absence; and

g. A permission form for each trip off the premises signed by the child's parent in accordance with 922 KAR 2:120, Section 12;

(c) Daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with 922 KAR 2:160, Section 13, if a child receives services from the child-care center through the Child Care Assistance Program;

(d) A written schedule of staff working hours;

(e) A current personnel file for each child-care center staff person to include:

1. Name, address, date of birth, and date of employment;

2. Proof of educational qualifications;

3. Record of annual performance evaluation;

4. Documentation of compliance with tuberculosis screening in accordance with Section 11(1)(b) of this administrative regulation; and

5. The results of background checks conducted in accordance with 922 KAR 2:280;

(f) A written annual plan for child-care staff professional development;

(g) A written evacuation plan in accordance with Section 5 of this administrative regulation;

(h) A written record of quarterly practiced earthquake drills and tornado drills detailing the date, time, and children who participated in accordance with 922 KAR 2:120, Section 3;

(i) A written record of practiced fire drills conducted monthly detailing the date, time, and children who participated in

accordance with 922 KAR 2:120, Section 3:

(i) A written plan and diagram outlining the course of action in the event of a natural or manmade disaster, posted in a prominent place;

(k) A written record of reports to the cabinet required in Section 12 of this administrative regulation; and

(l) A written record of transportation services provided in accordance with 922 KAR 2:120, Section 12.

(2) A child-care center shall:

(a) Maintain the confidentiality of a child's record and information concerning a child or the child's parent;

(b) Maintain all records for five (5) years; and

(c) Provide the cabinet access and information in the completion of the investigation pursuant to KRS 620.030(4) and (5).

Section 10. Director Requirements and Responsibilities. (1) A director shall:

(a) Be at least twenty-one (21) years of age;

(b) Have a high school diploma, a general equivalency diploma (GED), or qualifying documentation from a comparable educational entity;

(c) Not be employed in a position other than an onsite child care director, or director of multiple facilities, during the hours the child-care center is in operation;

(d) Ensure:

1. Compliance with 922 KAR 2:120, 922 KAR 2:280, and this administrative regulation; and

2. The designation of one (1) adult staff person in charge to carry out the director's duties if the director is not present in the child-care center during operating hours. The director shall be responsible for the actions of the designee during the director's absence;

(e) Manage the staff in their individual job descriptions;

(f) Assure the development, implementation, and monitoring of child-care center plans, policies, and procedures;

(g) Supervise staff conduct to ensure implementation of program policies and procedures;

(h) Post a schedule of daily activities, to include dates and times of activities to be conducted with the children in each classroom;

(i) Conduct, manage, and document in writing recurring staff meetings;

(j) Assess each staff person's interaction with children in care and classroom performance through an annual written performance evaluation;

(k) Assure that additional staff are available during cooking and cleaning hours, if necessary, to maintain staff-to-child ratios pursuant to 922 KAR 2:120;

(l) Assure the health, safety, and comfort of each child;

(m) Notify the parent immediately of an accident or incident requiring medical treatment of a child;

(n) Assure that a person acting as a caregiver of a child in care shall not be left alone with a child, if the licensee has not received the results of the background checks as described in 922 KAR 2:280;

(o) Assure each mandatory record specified in Section 9 of this administrative regulation has not been altered or falsified;

(p) Coordinate at least one (1) annual activity involving parental or family participation; and

(q) Not have had previous ownership interest in a child-care provider that had its certification, license, or registration, **or permit to operate** denied, ~~suspended,~~ or revoked.

(2) The director of a Type I child-care center shall meet one (1) of the following educational requirements:

(a) Master's degree in education or child development field;

(b) Bachelor's degree in education or child development field;

(c) Master's degree or a bachelor's degree in a field other than education or child development, including a degree in pastoral care and counseling, plus twelve (12) clock hours of child development training;

(d) Associate degree in Early Childhood Education and Development;

(e) Associate degree in a field other than Early Childhood Education and Development, plus twelve (12) clock hours of child development training, and two (2) years of verifiable full-time paid experience working directly with children;

(f) A Director's Credential in Early Childhood Development and one (1) year of verifiable full-time paid experience working directly with children in:

1. A school-based program following Department of Education guidelines;

2. An early childhood development program, such as Head Start; or

3. A licensed or certified child-care program;

(g) Child development associate plus one (1) year of verifiable paid experience working directly with children in:

1. A school-based program following Department of Education guidelines;

2. An early childhood development program, such as Head Start; or

3. A licensed or certified child-care program; or

(h) Three (3) years of verifiable full-time paid experience working directly with children in:

1. A school-based program following Department of Education guidelines;

2. An early childhood development program, such as Head Start; or

3. A licensed or certified child-care program.

(3) The director of a Type II child-care center shall:

(a) Meet the requirements in subsection (2) of this section; or

(b) Meet two (2) of the following:

1. Have twelve (12) hours of orientation and child development training;

2. Have one (1) year of verifiable full-time paid experience working directly with children in:

a. A school-based program following Department of Education guidelines;

b. An early childhood development program, such as Head Start; or

c. A licensed or certified child-care program; or

3. Obtain six (6) additional hours of training in child day care program administration.

Section 11. Staff Requirements. (1) Child-care center staff:

(a) Hired after January 1, 2009, who have supervisory power over a minor and are not enrolled in secondary education, shall have a:

1. High school diploma;

2. GED or qualifying documentation from a comparable educational entity; or

3. Commonwealth Child Care Credential as described in 922 KAR 2:250; and

(b) Shall provide, prior to employment and every two (2) years thereafter:

1. A statement from a health professional that the individual is free of active tuberculosis; or

2. A copy of negative tuberculin results.

(2)(a) A child-care center shall not employ a person:

1. With a disqualifying background check result in accordance with 922 KAR 2:280; or

2. Determined by a physician to have a health condition that renders the person unable to care for children.

(b) An individual described in Section 6(4) of this administrative regulation shall report to the licensee if the individual:

1. Meets a disqualifying criterion or has a disqualifying background check result as specified in 922 KAR 2:280;

2. Is the subject of a cabinet child abuse or neglect investigation; or

3. Is determined by a physician to have a health condition that renders the person unable to care for children.

(3) For a child-care center licensed for infant, toddler, or preschool-age children, at least one (1) person on duty and present with the children shall be currently certified by a cabinet-approved training agency in the following skills:

(a) Infant and child cardiopulmonary resuscitation; and

(b) Infant and child first aid.

(4) For a child-care center licensed for school-age children, at least one (1) person on duty and present with the children shall be currently certified by a cabinet-approved training agency in the following skills:

(a) Adult cardiopulmonary resuscitation; and

(b) First aid.

(5) Cardiopulmonary resuscitation (CPR) and first aid training shall be in addition to the fifteen (15) clock hours requirement in subsection (16) of this section.

(6) Child-care centers shall have available in case of need:

(a) One (1) qualified substitute staff person for a Type II child-care center; or

(b) Two (2) qualified substitute staff persons for a Type I child-care center.

(7) Each qualified substitute staff person shall:

(a) Meet the staff requirements of this administrative regulation; and

(b) Provide the required documentation to verify compliance with this administrative regulation.

(8) A qualified substitute who works in more than one (1) licensed child-care center shall provide the required documentation to verify compliance with this administrative regulation at the time of employment with each child-care center.

(9) If the operator of a Type II child-care center is unable to provide care in accordance with this administrative regulation, 922 KAR 2:280, or 922 KAR 2:120, the Type II child-care center shall:

(a) Close temporarily until the operator is able to resume compliance; and

(b) Immediately notify parents of enrolled children of the temporary closure.

(10) The minimum number of adult workers in a child-care center shall be sufficient to ensure that:

(a) Minimum staff-to-child ratios in accordance with 922 KAR 2:120 are followed;

(b) Each staff person under eighteen (18) years of age and each student trainee are under the direct supervision of a qualified staff person who meets the requirements of this section; and

(c) Unless providing care with a qualified staff person, a person under the age of eighteen (18) shall not be counted as staff for the staff-to-child ratio.

(11) Except for medication as prescribed by a physician, a controlled substance shall not be permitted on the premises during hours of operation.

(12) Alcohol shall:

(a) Not be consumed by any person on the licensed child-care center's premises during hours of operation; and

(b) Be kept out of reach and sight of a child in care.

(13) Each staff person shall remain awake while on duty except as specified in 922 KAR 2:120, Section 2(11)(f).

(14) For each adult residing at a Type II child-care center, the results of the following shall be maintained on file at the center:

(a) Background checks conducted in accordance with 922 KAR 2:280; and

(b) A copy of negative tuberculin results or a health professional's statement documenting that the adult is free of tuberculosis. Every two (2) years, the adult shall provide negative tuberculin results or health professional's statement documenting that the adult is free of tuberculosis.

(15) If a new adult begins residing in a Type II child-care center, the adult shall submit to background and health checks within thirty (30) calendar days of residence within the household.

(16) In accordance with KRS 199.896(15) and (16), a staff person with supervisory authority over a child shall complete the following:

(a) Six (6) hours of cabinet-approved orientation within the first three (3) months of employment;

(b) Nine (9) hours of cabinet-approved early care and education training within the first year of employment, including one and one-half (1 1/2) hours of cabinet-approved pediatric abusive head trauma training; and

(c) Fifteen (15) hours of cabinet-approved early care and education training during each subsequent year of employment,

including one and one-half (1 1/2) hours of cabinet-approved pediatric abusive head trauma training completed once every five (5) years.

(17) A staff person's compliance with training requirements of this section shall be verified through the cabinet-designated database maintained pursuant to 922 KAR 2:240.

Section 12. Reports. (1) The following shall be reported to the cabinet or designee and other agencies specified in this section within twenty-four (24) hours from the time of discovery:

(a) Communicable disease, which shall also be reported to the local health department pursuant to KRS 214.010;

(b) An accident or injury to a child that requires medical care initiated by the child-care center or the child's parent;

(c) An incident that results in legal action by or against the child-care center that:

1. Affects a child or staff person; or

2. Includes the center's discontinuation or disqualification from a governmental assistance program due to fraud, abuse, or criminal conviction related to that program;

(d) An incident involving fire or other emergency, including a vehicular accident when the center is transporting a child receiving child care services;

(e) A report of child abuse or neglect that:

1. Has been accepted by the cabinet in accordance with 922 KAR 1:330; and

2. Names a director, employee, volunteer, or person with supervisory or disciplinary control over, or having unsupervised contact with a child in care as the alleged perpetrator; or

(f) An individual specified in Section 6(4) of this administrative regulation meeting a disqualifying criterion or background check result pursuant to 922 KAR 2:280.

(2) An incident of child abuse or neglect shall be reported to the cabinet pursuant to KRS 620.030.

(3) A licensee shall report to the cabinet within one (1) week:

(a) Any resignation, termination, or change of director; and

(b) The name of the acting director who satisfies the requirements of Section 10 of this administrative regulation.

(4)(a) Written notification of the following shall be:

1. Made to the cabinet, in writing, to allow for approval before implementation;

a. Change of ownership;

b. Change of location;

c. Increase in capacity;

d. Change in hours of operation;

e. Change of services in the following categories:

(i) Infant;

(ii) Toddler;

(iii) Preschool-age;

(iv) School-age;

(v) Nontraditional hours; or

(vi) Transportation; or

f. Addition to or reduction of the square footage of a child-care center's premises; and

2. Signed by each owner listed on the preliminary or regular license.

(b) The cabinet or its designee shall not charge a fee for acting upon reported changes.

(5) The death of a child in care shall be reported to the cabinet within one (1) hour.

(6) The cabinet and the parent of a child enrolled in a child-care center shall receive notice as soon as practicable, and prior to, a child-care center's temporary or permanent closure.

Section 13. Annual Renewal[Reapproval]. (1)(a) A regular license shall expire one (1) year from the effective date or last renewal date unless the licensee renews the regular license in accordance with this section and KRS 199.896(3).

(b) A preliminary license shall expire six (6) months from the date of issuance.

(c) A regular license that expires shall lapse and shall not be subject to appeal.

(2) A licensee seeking renewal[reapproval] of a regular license

shall:

(a) Submit one (1) month prior to the anniversary of the regular license's effective date, ~~one (1) month prior to license expiration~~, an OIG-DRCC-06, Child-Care Center License Renewal Form~~[OIG-DRCC-04]~~; ~~and~~

(b) Meet the requirements specified in Sections 4 through 12~~[7]~~ of this administrative regulation; ~~and~~

(c) Pay the nonrefundable renewal fee in accordance with Section 7 of this administrative regulation~~[KRS 199.896(3)]~~.

(3)(2) If requirements of subsection (1) of this section are met, the cabinet shall renew the license in the form of a validation letter.

(4)(3) An application for renewal shall be denied in accordance with Section 16~~[44]~~ of this administrative regulation.

Section 14~~[9]~~. Statement of Deficiency and Corrective Action Plans. (1) If a center is found not to be in regulatory compliance, the cabinet or its designee shall complete a written statement of deficiency in accordance with KRS 199.896(5).

(2) Except for a violation posing an immediate threat as handled in accordance with KRS 199.896(5)(c), a child-care center shall submit a written corrective action plan to the cabinet or its designee within fifteen (15)~~ten (10)]~~ calendar days of the date~~[receipt]~~ of the statement of deficiency to eliminate or correct the regulatory violation.

(3) A corrective action plan shall include:

(a) Specific action undertaken to correct a violation;

(b) The date action was or shall be completed;~~and~~

(c) Action utilized to assure ongoing compliance;

(d) Supplemental documentation requested as a part of the plan; ~~and~~

(e) Signature of the licensee or designated representative of the licensee and the date of signature.

(4) The cabinet or its designee shall review the plan and notify the child-care center within thirty (30) calendar days of receipt of the plan, in writing, of the decision to:

(a) Accept the plan;

(b) Not accept the plan; or

(c) Deny, suspend, or revoke the child-care center's license, in accordance with Section 16~~[44]~~ of this administrative regulation.

(5) A notice of unacceptability shall state the specific reasons the plan is unacceptable.

(6) A child-care center notified of the unacceptability of its plan shall:

(a) Within fifteen~~ten (10)]~~ calendar days of the notification's date~~[notification]~~, submit an amended plan; or

(b) Have its license revoked or denied for failure to:

1. Submit an acceptable amended plan in accordance with KRS 199.896(4); ~~or~~

2. Implement the corrective measures identified in the plan of correction.

(7) The cabinet shall not review or accept more than three (3) corrective action plans from a licensed child-care center in response to the same written statement of deficiency~~[Following two (2) unacceptable plans of correction, in a forty-five (45) calendar day period, the cabinet may deny or revoke an application for licensure or license]~~.

(8) If a licensed child-care center fails to submit an acceptable corrective action plan or does not implement corrective measures in accordance with the corrective action plan, the cabinet shall deny or revoke the center's license.

(9) The administrative regulatory violation reported on a statement of deficiency that poses an immediate threat to the health, safety, or welfare of a child shall be corrected within five (5) working days from the date of the statement of deficiency in accordance with KRS 199.896(5)(c).

Section 15~~[40]~~. Directed Plan of Correction (DPOC) ~~[Intermediate Sanctions]~~.~~[(4)]~~ If the cabinet determines that a child-care center is in violation of this administrative regulation, ~~[922 KAR 2:110, or 922 KAR 2:120, or 922 KAR 2:280, the cabinet may,]~~ based on the severity of the violation, the cabinet:

(1) ~~Shall~~~~(a) Require the provider to participate in additional~~

training;

(b) Increase the frequency of monitoring by cabinet staff;

(c) enter into an agreement with the provider detailing the requirements for remedying a violation and achieving compliance;

(2) ~~Shall~~~~(d)~~ notify or require the provider to notify a parent of a child who may be affected by the situation for which a DPOC~~[an intermediate sanction] has been imposed;~~

(3) Shall increase the frequency of monitoring by cabinet staff;

(4) May require the provider to participate in additional training; ~~and~~

(5) May amend the agreement with the provider if the cabinet identifies an additional violation during the DPOC.~~[(2) An intermediate sanction shall result in a suspension or revocation of the license if a child-care center:~~

(a) ~~Fails to meet a condition of the intermediate sanction; or~~

(b) ~~Violates a requirement of an intermediate sanction.]~~

Section 16~~[44]~~. Basis for Denial, Suspension or Revocation.

(1)~~(a)~~ The cabinet shall deny, suspend, or revoke a preliminary or regular license in accordance with KRS 199.896~~[(4) and (19)]~~ if the applicant for licensure, director, employee, or a person who has supervisory authority over, or unsupervised contact with, a child fails to meet the requirements of this administrative regulation.~~[or those of 922 KAR 2:110 or 922 KAR 2:120, 922 KAR 2:280, or 922 KAR 2:190.~~

(b) A licensee whose regular license is suspended or revoked shall:

1. Receive a new license certificate indicating that the license is under adverse action; and

2. Post the new license certificate in accordance with Section 8(6) of this administrative regulation.

(2)~~[For the purposes of KRS 199.896(19), an applicant who has been found by the cabinet to have abused or neglected a child shall mean an individual who is listed on the central registry described in 922 KAR 1:470.~~

(3) An individual described in Section 6(4) of this administrative regulation shall report to the licensee if:

(a) ~~Convicted of, or entered an Alford or guilty plea to:~~

1. ~~A violent crime or sex crime in accordance with KRS 17.165;~~

~~or~~

2. ~~A crime specified in Section 6(6) of this administrative regulation;~~

(b) ~~The subject of a cabinet child abuse or neglect investigation;~~

(c) ~~Found by the cabinet or a court to have abused or neglected a child;~~

(d) ~~Convicted of, or entered an Alford or guilty plea to, a drug-related felony, and five (5) years have not elapsed since the person was fully discharged from imprisonment, probation, or parole;~~

(e) ~~Placed on the Sex Offender Registry; or~~

(f) ~~determined by a physician to have a health condition that renders the person unable to care for children.~~

(4) Each licensee shall report to the cabinet or its designee if the:

(a) ~~licensee or an individual described in Section 6(4) of this administrative regulation meets a criterion of subsection (3) of this section; or~~

(b) ~~Licensee meets a criterion of subsection (7)(j) of this section.~~

(5)~~]~~ Emergency Action.

(a) The cabinet shall take emergency action in accordance with KRS 199.896(4) by issuing an emergency order that suspends a child-care center's license.

(b) An emergency order shall:

1. Be served to a licensed child-care center in accordance with KRS 13B.050(2); and

2. Specify the regulatory violation that caused the emergency condition to exist.

(c) Upon receipt of an emergency order, a child-care center shall surrender its license to the cabinet.

(d) The cabinet or its designee and the child-care center shall make reasonable efforts to:

1. Notify a parent of each child in care of the center's suspension; and

2. Refer a parent for assistance in locating alternate child care arrangements.

(e) A child-care center required to comply with an emergency order issued in accordance with this subsection may submit a written request for an emergency hearing within twenty (20)~~five (5)~~ calendar days of receipt of the order to determine the propriety of the licensure's suspension in accordance with KRS 199.896(7).

(f) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing in accordance with KRS 13B.125(3).

(g)1. Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming, modifying, or revoking the emergency order to suspend licensure.

2. The emergency order shall be affirmed if there is substantial evidence of an immediate threat to public health, safety, or welfare.

(h) A provider's license shall be revoked if the:

1. Provider does not request a hearing within the timeframes established in paragraph (e) of this subsection; or

2. Condition that resulted in the emergency order is not corrected within thirty (30) calendar days of service of the emergency order~~The emergency order is upheld by the administrative hearing conducted in accordance with KRS Chapter 13B~~.

(3) [(6)] Public information shall be provided in accordance with KRS 199.896(10) and (11), and 199.898(2)(d) and (e).

(4) [(7)] Unless an applicant for a license meets requirements of Section 6(5) [(6)] of this administrative regulation, the cabinet shall deny an applicant for a preliminary or regular license if:

(a) The applicant has had previous ownership interest in a child-care provider that [which] had its certification, license, or registration~~[- or permit to operate]~~ denied~~[- suspended]~~, or revoked;

(b) Denial, investigation, or revocation proceedings were initiated, and the licensee voluntarily relinquished the license;

(c) An appeal of a denial~~[- suspension]~~, or revocation is pending;

(d) The applicant previously failed to comply with the requirements of KRS 199.896,~~[922 KAR 2:140]~~ 922 KAR 2:120, 922 KAR 2:280, 922 KAR 2:190~~[or this administrative regulation, or another administrative regulation effective at the time]~~;

(e) An individual with ownership interest in the child-care center has been discontinued or disqualified from participation in:

1. The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or

2. Another governmental assistance program due to fraud~~[- or]~~ abuse~~[- or criminal conviction related to]~~ that program;

(f) The applicant~~[or the applicant's representative]~~ is the parent, spouse, sibling, or child of a previous licensee whose license was denied~~[- suspended]~~, revoked, or voluntarily relinquished as described in paragraphs (a) through (d) of this subsection, and the previous licensee will be involved in the child-care center in any capacity;

(g) The applicant listed as an officer, director, incorporator, or organizer of a corporation or limited liability company whose child-care center license was denied~~[- suspended]~~, revoked, or voluntarily relinquished as described in paragraph (a) through (d) of this subsection within the past seven (7) years;

(h) The applicant knowingly misrepresents or submits false information on a form required by the cabinet;

(i) The applicant interferes with a cabinet or other agency representative's ability to perform an official duty pursuant to Section 6(8) [(f)] [(6) (11) (f)] or 6(9) [(6) (12)] of this administrative regulation;

(j) The applicant's background check reveals that the applicant is disqualified in accordance with 922 KAR 2:280~~[- 1. Is listed on the:~~

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

b. Sex Offender Registry; or

2. Has been convicted of, or entered an Alford or guilty plea to,

~~a crime specified in Section 6(6) of this administrative regulation, including a felony offense involving fraud, embezzlement, theft, or forgery]; [or]~~

(k) The applicant has been~~licensee is~~ the subject of more than two (2) directed plans of correction~~intermediate sanctions~~ during a three (3) year period; or

(l) The applicant has failed to comply with payment provisions in accordance with 922 KAR 2:190.

(5) [(8)] A child-care center's license shall be revoked if:

(a) A representative of the center interferes with a cabinet or other agency representative's ability to perform an official duty pursuant to Section 6(8) [(f)] [(6) (11) (f)] or 6(9) [(6) (12)] of this administrative regulation;

(b) A cabinet representative, a representative from another agency with regulatory authority, or parent is denied access during operating hours to:

1. A child~~[- or]~~

2. The child-care center; or

3. Child-care center staff;

(c) The licensee is discontinued or disqualified from participation in:

1. The Child Care Assistance Program as a result of an intentional program violation in accordance with 922 KAR 2:020; or

2. A governmental assistance program as a result of fraud~~[- or]~~ abuse~~[- or criminal conviction related to]~~ that program;

(d) The licensee fails to meet a condition of, or violates a requirement of a directed plan of correction~~an intermediate sanction~~ pursuant to Section 15 [(4) (2)] of this administrative regulation;

(e) The applicant or licensee knowingly misrepresents or submits false information on a form required by the cabinet; ~~[or]~~

(f) The licensee is the subject of more than two (2) directed plans of correction~~intermediate sanctions~~ during a three (3) year period; or

(g) The licensee has failed to comply with payment provisions in accordance with 922 KAR 2:190.

(6) [(9)] The cabinet or its designee shall suspend the license if:

(a) A regulatory violation is~~violations are~~ found to~~that~~ pose an immediate threat to the health, safety, and welfare of the children in care as described in KRS 199.896(4); or

(b) The child care-center fails to comply with the approved plan of correction~~corrective active plan~~.

Section 17 [(42)]. Civil Penalty. The cabinet shall assess and enforce a civil penalty in accordance with 922 KAR 2:190.

Section 18 [(43)]. Right of Appeal. (1) If an application has been denied or a licensee receives notice of suspension~~[- or]~~ revocation, or civil penalty, the cabinet shall inform the applicant for licensure or licensee by written notification of the right to appeal the notice of adverse action in accordance with KRS Chapter 13B and 199.896(7).

(2) An adverse action may be appealed by filing form OIG-DRCC-02, Licensed Request for Appeal or Informal Dispute Resolution. The request shall:

(a) Be submitted to the secretary of the cabinet or designee within twenty (20) calendar days of ~~receipt of~~ the notice of adverse action; and

(b) Specify if an applicant for licensure or licensee requests an opportunity to informally dispute the notice of adverse action.

(3) If an applicant for licensure or a licensee files an OIG-DRCC-02 for a hearing, the cabinet shall:

(a) Appoint a hearing officer; and

(b) Proceed pursuant to KRS 13B.050.

(4) If an applicant for licensure or a licensee files a request for a hearing and a request for an informal dispute resolution, the cabinet shall:

(a) Abate the formal hearing pending completion of the informal dispute resolution process; and

(b) Proceed to informal dispute resolution.

Section 19 [(44)]. Informal Dispute Resolution. (1) A request for informal dispute resolution shall:

- (a) Accompany the request for a hearing;
- (b) Identify the licensure deficiency in dispute;
- (c) Specify the reason the applicant for licensure or licensee disagrees with the deficiency; and
- (d) Include documentation that disputes the deficiency.
- (2) Upon receipt of the written request for informal dispute resolution, the regional program manager or designee shall:
 - (a) Review documentation submitted by the applicant for licensure or licensee; and
 - (b) If requested, schedule ~~an~~a first-level informal dispute resolution meeting with the applicant for licensure or licensee.
- (3) The~~first-level~~ informal dispute resolution meeting shall be held within ten (10) calendar days of receipt of the request by the cabinet, unless both parties agree in writing to an extension of time.
- (4) The~~first-level~~ informal dispute resolution meeting shall be conducted by:
 - (a) The regional program manager or designee; and
 - (b) A child care surveyor who did not participate in the survey resulting in the disputed deficiency.
- (5) Within ten (10) calendar days of completion of the~~first-level~~ informal dispute resolution meeting or request, the regional program manager or designee shall:
 - (a) Issue a decision by written notification to the return address specified in the request for informal dispute resolution;
 - (b) If a change is made to the statement of deficiencies, issue an amended statement of deficiencies; and
 - (c) Specify whether the adverse action has been rescinded.
- (6) An applicant or a licensee may:
 - ~~(a) Accept the determination; or~~
 - ~~(b) Proceed to appeal a decision issued by the regional program manager or designee by:~~
 - ~~(a) Proceeding with] a hearing according to KRS 13B.050]; or~~
 - ~~(b) Filing a written request for a second-level informal dispute resolution to the Director of the Division of Regulated Child Care or designee within ten (10) calendar days of receipt of the first level decision. The request shall specify whether the applicant for licensure or licensee requests a meeting with cabinet staff].~~
- (7)~~Upon receipt of the written request for second-level informal dispute resolution, the Director of the Division of Regulated Child Care or designee shall:~~
 - ~~(a) Review the decision issued from the first-level informal dispute resolution;~~
 - ~~(b) Review the documentation described in subsection (1)(d) of this section; and~~
 - ~~(c) If requested, schedule a second-level informal dispute resolution meeting with the applicant for licensure or licensee.~~
 - ~~(8) The second-level informal dispute resolution meeting shall be held within ten (10) calendar days of receipt of the request by the cabinet, unless both parties agree in writing to an extension of time.~~
 - ~~(9) Within ten (10) calendar days of completion of the second-level informal dispute resolution meeting or request, the Director of the Division of Regulated Child Care or designee shall:~~
 - ~~(a) Issue a decision by written notification to the return address specified in the request for second-level informal dispute resolution;~~
 - ~~(b) If a change is made to the statement of deficiencies, issue an amended statement of deficiencies; and~~
 - ~~(c) Specify whether the adverse action has been rescinded.~~
 - ~~(10) If a second-level informal review is requested in lieu of a first-level informal dispute resolution meeting, the Director of the Division of Regulated Child Care or designee shall comply with the provisions of subsection (9)(a) through (c) of this section within ten (10) calendar days of receipt of the request for second-level informal dispute resolution.~~
 - ~~(11) If an applicant for licensure or licensee is satisfied with the decision issued during informal dispute resolution, the request for a hearing shall be withdrawn.~~
 - ~~(12) If an applicant for licensure or licensee is not satisfied with the decision issued from the second-level informal dispute resolution, the hearing previously held in abeyance shall be conducted in accordance with KRS Chapter 13B concerning the~~

deficiencies that were reviewed in the informal review process.

- (13)] A request for informal dispute resolution shall not:
 - (a) Limit, modify, or suspend enforcement action against the applicant for licensure or licensee; or
 - (b) Delay submission of a written plan of correction.
- ~~(8)](14)] Emergency action taken in accordance with Section 16(2)[41(5)] of this administrative regulation shall conform to the requirements of KRS 199.896(4). The informal dispute resolution process shall not restrict the cabinet's ability to issue an emergency order to stop, prevent, or avoid an immediate threat to public health, safety, or welfare under KRS 13B.125(2) and 199.896(4).~~

Section 20[45]. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "OIG-DRCC-01, Initial Child-Care Center License Application", 8/2018[2018]~~[edition 4/2013];[and]~~
- (b) "OIG-DRCC-02, Licensed Request for Appeal or Informal Dispute Resolution",~~[edition] 8/3/12; and~~
- ~~(c) "OIG-DRCC-06, Child-Care Center License Renewal Form", 8/2018[2018].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Inspector General's Office, 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: May 14, 2018

FILED WITH LRC: May 15, 2018 at 8 a.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

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

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes licensure standards for a child-care center, and describes an applicant's and a child-care center's appeal rights and informal dispute resolution processes.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a child-care center's licensure standards, appeal rights, and informal dispute resolution process.
 - (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 licensure standards for a child-care center and related due process.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for a child-care center license and related due process.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation consolidates content from 922 KAR 2:110, which is subject to concurrent repeal; adds exemptions in accordance with 2015 Ky. Acts ch. 16; aligns the administrative regulation with the Child Care and Development Fund's 2014 reauthorization, including more comprehensive background checks for child care providers per the federal law and 2017 Ky. Acts ch. 135; streamlines licensure renewal processes; clarifies due process for emergency suspensions and corrective action; replaces an intermediate sanction with a directed plan of correction; expands payment methods for licensure; and requires a child care provider to post a new license when the provider's license is subject to revocation or suspension to foster awareness by the public entering and using the center. The

amendment also makes technical corrections in accordance with KRS Chapter 13A, including corresponding updates to material incorporated. The amended-after-comments version responds to multiple comments concerning changes to the definition of toddler, background checks, fees, and forms.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to better support the health, safety, and welfare of children in care; respond to Red Tape Reduction comments and related agency reviews; incorporate statutory requirements and changes that have occurred since the administrative regulation's last amendment; and ensure congruency among the administrative regulations governing licensed child-care centers.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes through its update and clarification of child-care center licensure standards.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by preserving and enhancing the quality of child-care center licensure standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An applicant for child-care center licensure or an existing licensed child-care center will be impacted by this administrative regulation. As of November 22, 2017, there were 1,980 Kentucky licensed child-care centers, both Type I and Type II.

(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: Given the new federally mandated background check requirements applicable to licensed child-care centers, the cabinet has attempted to avoid any further impact on regulated entities, but rather, has attempted to clarify provisions of this administrative regulation and be responsive to the recently enacted legislation and the Red Tape Reduction comments and agency reviews.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation should entail no new costs to licensed child-care centers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicant and licensed child-care centers and the children in their care will benefit from improved clarity, greater program integrity, and enhanced quality assurance in the child care community.

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

(a) Initially: The amendment to this administrative regulation will not result in any new initial costs to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will not result in any new continuing costs for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match and maintenance of effort for the block grant, and limited agency funds support the direct implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amended-after-comments version of this administrative regulation incorporates the fees currently prescribed in statute in anticipation of the enactment of 2018 Ky. Acts ch. 136. There is no increase or change in 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. 98.2, 42 U.S.C. 601-619, 42 U.S.C. 9857-9858q

(2) State compliance standards. KRS 194A.050(1), 199.896(2), (6)

(3) Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 98.2, 42 U.S.C. 601-619, 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? This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services is impacted by this administrative regulation. Government units and school districts operating a child care center are impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.896(2), (6), 45 C.F.R. 98.2, 42 U.S.C. 601-619

(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 to this administrative regulation will generate no revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to this administrative regulation will generate no revenue in the 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 in the first year.

(d) How much will it cost to administer this program for subsequent years? There are 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:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Child Care (Amended After Comments)

922 KAR 2:100. Certification of Family Child-Care Homes.

RELATES TO: KRS Chapter 13B, 158.030[~~17.165~~, ~~17.500~~—~~17.580~~], 186.020, 189.125, 194A.050(1), 199.011(3)[(2)], (4), 199.894(1), (5), 199.895, 199.896(18), 199.897, 199.898, 199.8982, 214.010, 214.036, 311.646, 314.01(5), 527.070(1),

600.020, 620.020(8), 620.030, 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 42 U.S.C. 9857-9858g

STATUTORY AUTHORITY: KRS 194A.050(1), 199.8982(1)(f)

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. KRS 199.8982(1)(f) requires the cabinet to promulgate administrative regulations to establish standards for the issuance, monitoring, release of information, renewal, denial, revocation, and suspension of a certificate of operation, and to impose minimum staff-to-child ratios for a family child-care home. The statute authorizes the cabinet to establish minimum safety requirements for operation of a certified family child-care home. This administrative regulation establishes minimum requirements intended to protect the health, safety, and welfare of children cared for by certified family child-care home providers.

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

(2) "Assistant" means a person:

(a) Who meets the requirements listed in Section 2(6) and Section 10(6), (7), and (8) ~~and (9)~~ of this administrative regulation; and

(b) Whose work is either paid or unpaid.

(2) ~~(3)~~ "Cabinet" is defined by the KRS 199.011(3) and 199.894(1)(2).

(3) ~~(4)~~ "Child" is defined by KRS 199.011(4).

(4) ~~(5)~~ "Corporal physical discipline" is defined by KRS 199.896(18).

(5) ~~(6)~~ "Developmentally appropriate" means suitable for the specific age range and abilities of a child.

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

(7) ~~(8)~~ "Health professional" means a person currently licensed as a:

(a) Physician;

(b) Physician ~~Physician's~~ assistant;

(c) Advanced practice registered nurse ~~or practitioner~~; or

(d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(8) ~~(9)~~ "Home" means the private primary residence of the certified family child-care home provider and contiguous property.

(9) ~~(10)~~ "Infant" means a child who is less than twelve (12) months of age.

(10) ~~(11)~~ "Parent" is defined by 45 C.F.R. 98.2.

(11) ~~(12)~~ "Parental or family participation" means a family child-care home's provision of information or inclusion of a child's parent in the child-care home's activities such as:

(a) Distribution of a newsletter;

(b) Distribution of a program calendar;

(c) A conference between the provider and the parent; or

(d) Other activity designed to engage a parent in the program's activities.

(12) ~~(13)~~ "Pediatric abusive head trauma" is defined by KRS 620.020(8).

(13) ~~(14)~~ "Premises" means the building and contiguous property in which child care is certified.

(14) ~~(15)~~ "Preschool-age" means a child who is older than a toddler and younger than school-age.

(15) ~~(16)~~ "Provider" means an owner, operator, or person who:

(a) Cares for a child in the provider's own home;

(b) Is not required to be licensed under 922 KAR 2:090; and

(c) Meets the requirements of Section 2 of this administrative regulation.

(16) ~~(17)~~ "Related" means having one (1) of the following relationships with the provider:

(a) Child;

(b) Grandchild;

(c) Niece;

(d) Nephew;

(e) Sibling;

(f) Step-child; or

(g) Child in legal custody of the provider.

(17) ~~(18)~~ "School-age child" means a child who meets the age requirements of KRS 158.030 or who attends ~~attending~~ kindergarten, elementary, or secondary education.

(18) ~~(19)~~ "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.

(20) "Toddler" means a child between the age of twelve (12) months and thirty-six (36) ~~twenty-four (24)~~ months.

Section 2. Certification Process. (1) The cabinet or its designee shall be responsible for certifying a family child-care home.

(2) An applicant for certification shall:

(a) Show proof by photo identification or birth certificate that the individual is at least eighteen (18) years of age;

(b) Obtain commercial liability insurance of at least \$50,000 per occurrence; and

(c) Submit within ninety (90) days of initiation of the application process:

1. A completed OIG-DRCC-03, Initial Certification Application for Family Child-Care Home;

2. A nonrefundable certification fee of ten (10) dollars pursuant to KRS 199.8982(1)(b);

3. Written documentation from the local authority showing the child-care home is in compliance with local zoning requirements;

4. Documentation of the requirements of KRS 199.8982(1)(a)1 through 3 and 5;

5. Background checks completed in accordance with 922 KAR 2:280; and

6. A physician's statement documenting that the family child-care home provider's health is satisfactory for operation of a family child-care home, including that the provider is free of active tuberculosis ~~A DCC-157, Certified Family Child-Care Home Central Registry Check, to complete:~~

a. ~~A child abuse or neglect check using the central registry in accordance with 922 KAR 1:470; and~~

b. ~~An address check of the Sex Offender Registry;~~

6. ~~A completed criminal records check required by KRS 17.165(5); and~~

7. ~~A criminal records check for any previous state of residence completed once if:~~

a. ~~The applicant resided outside the state of Kentucky in the last five (5) years; and~~

b. ~~No criminal records check has been completed for the applicant's previous state of residence.~~

(3) An ~~initial~~ applicant for certification shall have a:

(a) High school diploma, general equivalency diploma (GED), or documentation from a comparable educational entity; or

(b) Commonwealth Child Care Credential in accordance with 922 KAR 2:250.

(4) An applicant shall be currently certified by an agency approved in accordance with 922 KAR 2:240 in infant and child:

(a) Cardiopulmonary resuscitation (CPR); and

(b) First aid.

(5) An adult living in the home of the applicant, present during the hours of operation, or having unsupervised contact with a child in care, and the applicant's assistant shall ~~submit to the cabinet~~:

(a) Complete background checks in accordance with 922 KAR 2:280 ~~A criminal records check pursuant to KRS 17.165(5) by the Kentucky State Police or the Administrative Office of the Courts within one (1) year prior to application;~~

(b) ~~A DCC-157 to complete:~~

1. ~~A child abuse or neglect check using the central registry in accordance with 922 KAR 1:470; and~~

2. ~~An address check of Sex Offender Registry;~~

(c) ~~A criminal records check completed once for any previous state of residence if:~~

1. ~~The adult resided outside the state of Kentucky in the last~~

five (5) years; and

2. ~~No criminal records check has been completed for the adult's previous state of residence~~; and

(b) ~~Submit (d)~~ a copy of negative tuberculin results or a health professional's statement documenting that the adult is free of active tuberculosis.

(6) ~~If an adult other than an adult listed on the initial application begins living in the provider's home, present during the hours of operation or having unsupervised contact with a child in care, the adult shall submit to background and health checks within thirty (30) calendar days of residence within the household [An applicant or assistant who has been convicted of, or entered an Alford or guilty plea to, a non-violent felony or misdemeanor may be approved on a case-by-case basis with consideration given to the:~~

(a) ~~Nature of the offense;~~

(b) ~~Length of time that has elapsed since the event; and~~

(c) ~~Applicant's life experiences after the conviction, Alford plea, or guilty plea.~~

(7) Upon receipt of a completed application for certification, and a nonrefundable certification fee pursuant to KRS 199.8982(1)(b), cabinet staff shall:

(a) Review and process the application; and

(b) Conduct an unannounced inspection of the home pursuant to KRS 199.8982(1)(b), including review of the evacuation plan in accordance with Section 18(7) of this administrative regulation.

(8) If the requirements of 922 KAR 2:280, subsections (1) through (7) of this section, ~~Section 3~~, and Sections 10 through 19 of this administrative regulation have been met, an applicant shall be certified as described in KRS 199.8982.

(9) Within three (3) months of submission to the cabinet of a complete OIG-DRCC-03, an applicant shall:

(a) Demonstrate completion of six (6) hours of cabinet-approved training in accordance with KRS 199.8982(1)(a)6; and

(b) Develop and implement a written plan for obtaining nine (9) hours of annual cabinet-approved training as required in Section 10(1) of this administrative regulation.

(10)(a) A family child-care home certificate shall:

1. ~~(a)~~ Be displayed in a prominent place, as required by KRS 199.8982(1)(c);

2. ~~(b)~~ Contain the:

a. ~~1.~~ Name and address of the child care provider;

b. ~~2.~~ Maximum number of unrelated children who may be served;

c. ~~3.~~ Identification number; and

d. ~~4.~~ Effective and expiration dates; and

3. ~~(e)~~ Be valid for only the:

a. ~~1.~~ Name of the individual authorized on the certificate to operate a family child-care home; and

b. ~~2.~~ Residential address printed on the certificate.

(b) A certified family child-care home whose certificate is suspended or revoked shall:

1. Receive a new certificate indicating that the provider is under adverse action; and

2. Post the new certificate in accordance with paragraph (a) of this subsection.

(11) A change of location shall require:

(a) A ten (10) calendar day notice;

(b) A completed OIG-DRCC-03;

(c) An inspection of the new home; and

(d) Continued compliance with this administrative regulation.

Section 3. Renewal of Certification. (1) A family child-care certification shall expire [be renewed every] two (2) years from the date of issuance unless the certificate holder meets the requirements of subsection (2) of this section. A certificate that expires shall lapse and shall not be subject to appeal.

(2) A family child-care home provider shall submit one (1) month prior to expiration of the provider's certification:

(a) A completed OIG-DRCC-04, Certified Family Child-Care Home Renewal Form [OIG-DRCC-03];

(b) A nonrefundable renewal fee of ten (10) dollars every two (2) years pursuant to KRS 199.8982(1)(b);

(c) A physician's statement documenting that the family child-

care home provider's health is satisfactory for continued operation of a family child-care home; and

(d) Proof that the family child-care home provider continues to meet the minimum requirements specified in Sections 2, 3, and 10 through 19 of this administrative regulation.

(3) The cabinet shall:

(a) Review and process the OIG-DRCC-03 submitted in accordance with subsection (2) of this section [application];

(b) Conduct an unannounced inspection of the home pursuant to KRS 199.8982(1)(b); and

(c) Approve the family child-care home within fifteen (15) calendar days of receipt of the OIG-DRCC-03 submitted in accordance with subsection (2) of this section [application] if the requirements in Sections 2, 3, and 10 through 19 of this administrative regulation are met.

(4) ~~[To the extent funds are available,]~~ The cabinet ~~shall~~ may conduct an annual unannounced inspection of the home pursuant to KRS 199.8982(1)(b) and 42 U.S.C. 9858c(c)(2)(K) [annually as a condition of certification renewal].

Section 4. Statement of Deficiency and Corrective Action Plans. (1) If the cabinet finds a provider noncompliant with Sections 2, 3, or 10 through 19 of this administrative regulation, the cabinet or its designee shall complete a written statement of deficiency.

(2) Except for a violation posing an immediate threat, a family child-care home shall submit a written corrective action plan to the cabinet or its designee within ten (10) calendar days from receipt of the statement of deficiency to eliminate or correct the regulatory violation.

(3) A corrective action plan shall include:

(a) Specific action undertaken to correct a violation;

(b) The date action was or ~~shall~~ will be completed; ~~and~~

(c) Action utilized to assure ongoing compliance;

(d) Supplemental documentation requested as a part of the plan; and

(e) Signature of the provider and the date of signature.

(4) The cabinet or its designee shall review the plan and notify a family child-care home within thirty (30) calendar days from receipt of a plan, in writing, of the decision to:

(a) Accept the plan;

(b) Not accept the plan; or

(c) Deny, suspend, or revoke the family child-care home's certification in accordance with Section 5, 6, 7, or 8 of this administrative regulation.

(5) A notice of unacceptability shall state the specific reasons a plan was not accepted.

(6) A family child-care home notified of an unaccepted plan shall:

(a) Submit an amended plan within fifteen (15) [ten (10)] calendar days of notification; or

(b) Have its certification revoked or denied for failure to:

1. Submit an acceptable amended plan; or

2. Implement corrective measures identified in the corrective action plan.

(7) If a family child-care home fails to submit an acceptable corrective action plan or does not implement corrective measures in accordance with the corrective action plan [Following two (2) unacceptable plans of correction in a forty-five (45) calendar day period], the cabinet shall deny [an application for certification] or revoke a provider's certification.

(8) The cabinet shall not review or accept more than three (3) corrective action plans from a family child-care home in response to the same written statement of deficiency.

(9) An administrative regulatory violation reported on a statement of deficiency that poses an immediate threat to the health, safety, or welfare of a child shall be corrected by the family child-care home provider within five (5) working days of notification.

(10) ~~(9)~~ The voluntary relinquishment of a family child-care home's certification shall not preclude the cabinet's pursuit of adverse action.

Section 5. Denial of Application for Certification. (1) An

application for initial certification~~[or renewal of certification]~~ as a family child-care home shall be denied if the applicant, an assistant, or an adult residing in the household:

- (a) ~~Has abused or neglected a child according to a check of the central registry in accordance with 922 KAR 1:470;~~
- (b) has a history of behavior that may impact the safety or security of a child in care including:

- (a) ~~[4.] A disqualifying criterion or background check result in accordance with 922 KAR 2:280[criminal conviction of, or an Alford plea or a plea of guilty to, a sex crime or violent crime in accordance with KRS 17.165;~~

- 2. ~~A conviction for, or an Alford plea or a plea of guilty to, a drug-related felony, and (5) five years has not elapsed since the person was fully discharged from imprisonment, probation, or parole]; or~~

- (b) ~~[3.] Other behavior or condition indicating inability to provide reliable care to a child[; or~~
- (c) ~~is placed on the Sex Offender Registry].~~

(2) An application for certification as a family child-care home provider shall be denied if the applicant or certificate holder:

- (a) Fails to comply with the minimum certification standards specified in Sections 10 through 19 of this administrative regulation and KRS 199.8982;

- (b) Knowingly misrepresents or submits false information on the application or other form required by the cabinet or its designee;

- (c) Refuses, during the hours of operation, access by:

- 1. A parent of a child in care, the cabinet, the cabinet's designee, or another agency with regulatory authority to:

- a. A child in care; or
- b. The provider's premises; or

- 2. The cabinet, the cabinet's designee, or another agency with regulatory authority to the provider's records;

- (d) Is placed on a directed plan of correction~~[intermediate sanction]~~ more than two (2) times in a three (3) year period; or

- (e) Has been discontinued or disqualified from participation in:

- 1. The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or

- 2. Another governmental assistance program due to fraud,~~[or]~~ abuse,~~or criminal conviction related to~~ that program.

- (3) Effect of previous denial or revocation.

- (a) If an applicant has had a previous child care registration, certification, or license~~[, or permit to operate]~~ subject to denial,~~[suspension,]~~ revocation, or voluntary relinquishment pending an investigation or adverse action, the cabinet shall grant the applicant a certificate to operate a family child-care home if:

- 1. A seven (7) year period has expired from the:

- a. Date of the prior notice of denial~~[, suspension,]~~ or revocation; or

- b. Date the certification, license, or registration~~[, or permit]~~ was voluntarily relinquished as a result of an investigation or a pending adverse action];

- c. ~~Last day of legal remedies being exhausted; or~~

- d. ~~Date of the Final Order from an administrative hearing]; and~~

- 2. The applicant has:

- a. The proven ability to comply with the provisions of this administrative regulation and KRS 199.8982;

- b. Completed, since the time of the prior denial or revocation, sixty (60) hours of cabinet-approved training in developmentally appropriate child care practice; and

- c. Not had an application, registration, certificate, or license~~[, or permit]~~ to operate as a child care provider denied or revoked for:

- (i) A disqualifying criterion or background check result in accordance with 922 KAR 2:280~~[Conviction of, or an Alford plea or a plea of guilty to, a sex crime or violent crime in accordance with KRS 17.165;~~

- (ii) ~~Abuse or neglect of a child according to a child abuse and neglect check of the central registry in accordance with 922 KAR 1:470;~~

- (iii) ~~Placement on the Sex Offender Registry;~~

- (iv) ~~Conviction of, or an Alford or guilty plea to, a drug-related felony, and five (5) years has not elapsed since the person was~~

fully discharged from imprisonment, probation, or parole]; or

- (ii) Discontinuation or disqualification~~(v) Has been discontinued or disqualified]~~ from participation in~~[; 4.]~~ the Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020~~[;]~~ or~~[2.]~~ another governmental assistance program due to fraud,~~[or]~~ abuse,~~or criminal conviction related to~~ that program.

- (b) If a certificate is granted after the seven (7) year period specified in paragraph (a) of this subsection, the provider shall serve a two (2) year probationary period during which the home shall be inspected on at least a quarterly basis.

Section 6. Directed Plan of Correction (DPOC)~~[Intermediate Sanctions]~~. (1) If the cabinet determines that a certified family child-care home provider is in violation of this administrative regulation or 922 KAR 2:280~~[the cabinet may,]~~ based on the severity of the violation, the cabinet:

- (a) ~~Shall~~Require the provider to participate in additional training;

- (b) ~~Increase the frequency of monitoring by cabinet staff;~~

- (c) ~~enter into an agreement with the provider directing~~detailing the requirements for remedying a violation and achieving compliance; ~~or]~~

- (b) ~~Shall~~~~(d)]~~ notify or require the provider to notify a parent of a child who may be affected by the situation for which a DPOC~~[an intermediate sanction]~~ has been imposed;

- (c) Shall increase the frequency of monitoring by cabinet staff to verify the implementation of the DPOC;

- (d) May require the certified family child-care home to participate in additional training; and

- (e) May amend the agreement with the certified family child-care home if the cabinet identifies an additional violation during the DPOC period.

- (2) A DPOC~~[An intermediate sanction]~~ shall result in a suspension or revocation of certification or shall be modified to impose additional requirements if a certified family child-care home provider:

- (a) Fails to meet a condition of the DPOC~~[intermediate sanction]; or~~

- (b) Violates a requirement of the DPOC~~[an intermediate sanction]~~.

Section 7. Suspension. The cabinet shall take emergency action in accordance with KRS 13B.125~~[, by issuing an emergency order that results in suspension of the operation of a certified family child-care home]~~. (1) An emergency order issued pursuant to this section shall:

- (a) Be served to a certified family child-care home provider in accordance with KRS 13B.050(2); and

- (b) Specify the regulatory violation that caused the emergency condition~~[to exist]~~.

- (2) Upon receipt of an emergency order, a provider shall surrender the certificate of operation to the cabinet.

- (3) The cabinet or its designee and the provider shall make reasonable efforts to:

- (a) Notify a parent of each child in care of the suspended provider; and

- (b) Refer a parent for assistance in locating alternate child care arrangements.

- (4) A certified family child-care home required to comply with an emergency order issued in accordance with this section may submit a written request for an emergency hearing within twenty (20)~~[five (5)]~~ calendar days of receipt of the order to determine the propriety of the certification's suspension.

- (5) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing in accordance with KRS 13A.125(3).

- (6)(a) Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming or reversing~~[, modifying, or revoking]~~ the emergency order to suspend certification.

- (b) The emergency order shall be affirmed if there is substantial evidence of an immediate threat to public health,

safety, or welfare.

(7) A provider's certification shall be revoked if the[

(a) ~~Provider does not request a hearing within the timeframes established in subsection (6) of this section;~~

(b) ~~The emergency order is upheld by the administrative hearing conducted in accordance with KRS Chapter 13B; or~~

(c) ~~The condition that resulted in the emergency order is not corrected within thirty (30) calendar days of service of the emergency order.~~

Section 8. Revocation.(1) A family child-care home provider's certification shall be revoked if a provider:

(a) Knowingly misrepresents or submits false information on the application or other form required by the cabinet or its designee;

(b) Interferes with a cabinet representative's ability to perform an official duty;

(c) Refuses, during the hours of operation, access by:

1. A parent of a child in care, the cabinet, the cabinet's designee, or another agency with regulatory authority to:

a. A child in care; or

b. The provider's premises; or

2. The cabinet, the cabinet's designee, or another agency with regulatory authority to the provider's records;

(d) Is convicted of, or enters an Alford or guilty plea to, a criminal charge that threatens the health, safety, or welfare of a child in care;

(e) Is unable to operate a family child-care home due to a medical condition;

(f) ~~Does not~~~~is unable to continue to~~ meet the requirements of KRS 199.8982(1) or Sections 2, 3, and Sections 10 through 19 of this administrative regulation;

(g) Is placed on a directed plan of correction~~intermediate sanction~~ more than two (2) times in a three (3) year period; or

(h) Has been discontinued or disqualified from participation in:

1. The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or

2. Another governmental assistance program due to fraud, ~~or~~ abuse, ~~or criminal conviction related to~~ that program.

(2)(a) If the cabinet determines that a condition of subsection (1) of this section exists, the cabinet or its designee shall send a written notice of its intention to revoke the certificate to the family child-care home~~revocation delivered~~ by personal service delivery or through certified mail~~at least thirty (30) calendar days prior to the effective date of the revocation~~.

(b) Subsequent to the notice provided in accordance with paragraph (a) of this subsection, a family child-care home's failure to request an appeal pursuant to Section 9 of this administrative regulation shall result in the final determination revoking the home's certification.

(3) The notice of revocation shall:

(a) Explain the reason for the revocation;

(b) Specify that the child care provider shall cease operation as a certified family child-care home upon revocation;

(c) Advise the family child-care home provider of the right to request an appeal on an OIG-DRCC-05, Certified Family Child-Care Home Request for Appeal, prior to the effective date of the revocation;

(d) Specify that revocation shall be stayed if an appeal is requested; and

(e) Require the family child-care home provider to surrender the certificate of operation to cabinet staff when the revocation becomes effective.

(4) If a provider's certification has been revoked, the cabinet or its designee and the provider shall make reasonable efforts to:

(a) Notify a parent of each child in care; and

(b) Refer the parent for assistance in locating alternate child care arrangements.

Section 9. Appeal of Denials,~~Intermediate Sanctions,~~ Suspension, and Revocation. (1) If the cabinet denies certification,~~imposes an intermediate sanction,~~ suspends

certification, or revokes certification, the family child-care home provider may request an appeal by completing an OIG-DRCC-05 within twenty (20) calendar days of receipt of the notice of adverse action.

(2) Upon request of the appeal, the provider shall be afforded a hearing in accordance with KRS Chapter 13B.

(3) If a final order from an administrative hearing does not uphold a suspension, the provider may resume providing child care.

Section 10. Standards for the Provider. (1)(a) A provider shall complete annually at least nine (9) hours of cabinet-approved early care and education training beginning with the second year of operation, including one and one-half (1 1/2) hours of cabinet-approved pediatric abusive head trauma training in accordance with KRS 199.8982(2):

1. Within the second year of employment or operation in child care; and

2. Every subsequent five (5) years of employment or operation in child care.

(b) A provider or assistant's compliance with the training in accordance with paragraph (a) of this subsection or subsection ~~(8)~~~~(9)~~ of this section ~~shall~~~~may~~ be verified through the cabinet-designed database maintained pursuant to 922 KAR 2:240.

(2) A provider shall not provide care for more unrelated children than the number authorized on the certificate of operation.

(3) A provider shall have an assistant present if the~~a~~ provider cares for more than:

a Four (4) infants, including the provider's own or related infants; ~~or~~

~~b~~~~the provider shall have an assistant present.~~ ~~(4) A provider shall not care for more than~~ Six (6) children under the age of six (6) years old, including the provider's own or related children.

~~(4)~~~~(5)~~ The maximum number of unrelated children in the care of a certified family child-care home provider shall not exceed six (6) at any one (1) time. A provider may care for four (4) related children in addition to six (6) unrelated children for a maximum child care capacity of ten (10) at any one (1) time.

~~(5)~~~~(6)~~ If a provider operates the in-home child care business for twenty-four (24) consecutive hours, the provider shall:

(a) Receive an eight (8) hour period of respite after working sixteen (16) consecutive hours during a twenty-four (24) hour period; and

(b) Employ an assistant during the period of respite.

~~(6)~~~~(7)~~ Prior to being left alone with a child, an assistant shall be certified by a cabinet-approved agency in infant and child:

(a) CPR; and

(b) First aid.

~~(7)~~~~(8)~~ An assistant shall be:

(a) Eighteen (18) years of age or older;

(b) Under ~~direct~~ supervision of a provider;

(c) Used for providing care in a certified family child-care home; and

(d) Used in the absence of the certified provider.

~~(8)~~~~(9)~~ An assistant used ~~in the absence of the family child-care home provider~~ in excess of fourteen (14) calendar days during a one (1) year period shall demonstrate completion of at least nine (9) hours of cabinet-approved training, including:

a Six (6) hours of cabinet-approved training in accordance with KRS 199.8982(1)(a)6; and

b Pediatric abusive head trauma training pursuant to KRS 199.8982(2), in accordance with subsection (1) of this section.

~~(9)~~~~(10)~~ If a provider, an assistant, or a member in a provider's household is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance with 922 KAR 1:330, the individual shall be removed from direct contact with a child in care:

(a) For the duration of the~~family-in-need-of-services assessment or~~ investigation; and

(b) Pending completion of an administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.

~~(10)~~~~(11)~~ During hours of operation, a provider and another

person in the home shall:

(a) Be free of the influence of alcohol or a controlled substance except for use of a controlled substance as prescribed by a physician; and

(b) Prohibit smoking or vaping in the presence of children in care.

~~(11)~~~~(42)~~ During a provider's absence, an assistant shall be physically present with a child in care~~at the home~~ during hours of operation.

~~(12)~~~~(43)~~ A provider shall:

(a) Not be employed outside of the home during regular hours of operation; and

(b) Maintain daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with 922 KAR 2:160, Section 13, if a child receives services from the provider through the Child Care Assistance Program.

Section 11. The General Requirements of the Family Child-Care Home Environment. (1) A provider's home and each play area used for child care shall:

(a) Be free from risk of harm in accordance with the requirements of this administrative regulation; and

(b) Have adequate:

1. Heating and cooling;
2. Light; and
3. Ventilation.

(2) Each floor level used for child care shall have at least one (1):

- (a) Unblocked exit to the outside;
- (b) Smoke detector;
- (c) Fire extinguisher; and
- (d) Carbon monoxide detector if the home:
 1. Uses fuel burning appliances; or
 2. Has an attached garage.

~~(3)~~~~A new applicant or a provider who changes location shall have at least two (2) unblocked exits to the outside on each floor level used for child care.~~

~~(4)~~ The areas of the home that are accessible to children in care shall be free from items harmful to children including the following items:

- (a) Cleaning supplies, poisons, paints, and insecticides;
- (b) Knives, scissors, and sharp objects;
- (c) Power tools, lawn mowers, hand tools, nails, and other equipment;
- (d) Matches, cigarettes, lighters, combustibles, and flammable liquids;
- ~~(e)~~~~Alcoholic beverages;~~
- ~~(f)~~ Plastic bags; and
- ~~(f)~~~~(g)~~ Litter and rubbish.

(4) Alcohol shall:

(a) Not be consumed by any person on the certified family child-care home's premises during hours of operation; and

(b) Be kept out of reach and sight of a child in care.

(5) In accordance with KRS 527.070(1), firearms and ammunition shall be stored away from the presence of children, in separate locked containers, which, in order to be opened, require a:

- (a) Key; or
 - (b) Combination.
- (6) Electrical outlets not in use shall be covered.
- (7) An electric fan, floor furnace, or freestanding heater or fireplace shall:

- (a) Be out of the reach of a child; or
 - (b) Have a safety guard to protect a child from injury.
- (8) A certified family child-care home shall have:
- (a) At least one (1) accessible and working~~land-line~~ telephone on each level used for child care while a child in care is present on that level~~unless the cabinet has been notified that the telephone is temporarily out of service~~; and

(b) A list of emergency numbers posted on each level used for child care or maintained in the contacts off~~by~~ each telephone, including numbers for the:

1. Police;
2. Fire station;
3. Emergency medical care and rescue squad; and
4. Poison control center.

(9) Equipment and toys shall be:

(a) Designated by the manufacturer as developmentally appropriate to the age of children in care;

(b) In sufficient quantity for the number of children in care; and

(c) Safe, sound, clean, and in good repair.

(10) Stairs and steps used for children in care shall be:

- (a) Solid;
- (b) Safe; and
- (c) Railed.

(11) If an infant or toddler is in the care of a provider, indoor stairs with more than two (2) steps shall be blocked.

(12) Exclusive of the bathroom and storage area, an indoor area, including furnishings, used for child care shall contain at least thirty-five (35) square feet per child for:

- (a) Play; and
- (b) Activities that meet the developmental needs of the children in care.

(13) An outdoor play area shall be free of unavoidable danger or risk.

(14) Each child in an outdoor play area shall be under the direct supervision of the provider or assistant.

(15) Outdoor stationary play equipment shall be:

- (a) Securely anchored;
- (b) Developmentally appropriate; and
- (c) Safe.

(16) A trampoline shall not be accessible to a child in the care of a provider.

(17) A swimming pool on the premises shall:

- (a) Be maintained and free of debris and body waste;
- (b) Have a water filtering system or be emptied daily;
- (c) Be supervised when in use; and
- (d) Be inaccessible to a child~~children~~ when not in use.

(18) An above-ground pool shall have:

- (a) A stationary wall no less than four (4) feet tall; and
- (b) Hand holds or foot holds that are inaccessible when the pool is not in use.

(19) A fire drill shall be:

- (a) Conducted during hours of operation at least monthly; and
- (b) Documented.

(20) An earthquake drill and a tornado drill shall be:

- (a) Conducted during hours of operation at least quarterly; and
- (b) Documented.

(21) A family child-care home shall:

- (a) Be clean;
- (b) Be uncluttered;
- (c) Be free of insects and rodents;
- (d) Have a water supply that is:

1. Potable;
2. Adequate; and
3. From an approved public water supply; and
- (e) Have bathrooms, including toilets, sinks, and potty chairs

that are:

1. Sanitary; and
2. In good working condition.

(22) Windows, doors, and outer openings shall be screened to prevent the entrance of vermin.

(23) Indoor and outdoor garbage shall be stored in a waterproof container with a tight-fitting cover.

(24) Playpens and play yards shall:

- (a) Meet the federal standards as issued by the Consumer Product Safety Commission, including 16 C.F.R. 1221;
- (b) Be manufactured for commercial use; and
- (c) Not be used for sleeping or napping.

Section 12. Care Requirements for a Provider. (1) A provider shall ensure the health, safety, and comfort of each child.

(2)(a) Care for a child with a special need shall be consistent with the nature of the need as documented by the child's health professional.

(b) A child may include a person eighteen (18) years of age if the person has a special need for which child care is required.

(3) Television or video viewing by a child shall be limited to:

- Two (2) hours daily;
- The planned program activities; and
- Developmentally appropriate child-related content, as designated by standardized content guidelines.

(4) A child shall:

- Wash hands with liquid soap and warm running water:
 - ~~[(a)]~~ Before and after eating or handling food;
 - ~~[(b)]~~ After toileting or diaper change;
 - ~~[(c)]~~ After handling animals;
 - ~~[(d)]~~ After wiping or blowing nose;
 - After touching an item or an area of the body~~[items]~~ soiled with body fluids or waste; and
 - ~~[(f)]~~ After outdoor and indoor play time; or
- Use hand sanitizer or hand-sanitizing wipes if liquid soap and warm running water are not available in accordance with paragraph (a) of this subsection. The child shall wash the child's hands as soon as practicable once liquid soap and warm running water are available.

(5) A provider and an assistant shall:

- Wash hands with liquid soap and warm running water:
 - Before and after diapering a child;
 - Before and after feeding a child;
 - After toileting or assisting a child with toileting;
 - After handling animals;
 - Before dispensing medication;
 - After caring for a sick child;~~and~~
 - After wiping or blowing a child's or own nose; and
 - After smoking or vaping; or
- Use hand sanitizer or hand-sanitizing wipes if liquid soap and warm running water are not available in accordance with paragraph (a) of this subsection. The provider or assistant shall wash the provider or assistant's hands as soon as practicable once liquid soap and warm running water are available.

(6) A provider shall assure that a child does not share:

- ~~[(1)]~~ Cups;
- ~~[(2)]~~ Eating utensils;
- ~~[(3)]~~ Wash cloths;
- ~~[(4)]~~ Towels; and
- ~~[(5)]~~ Toiletry items.

(7)~~[(6)]~~ An infant shall sleep and nap on the infant's back unless the infant's health professional signs a waiver that states the infant requires an alternate sleeping position.

(8)~~[(7)]~~ Rest time shall be provided for each child who is not school-age and who is in care for more than four (4) hours.

(9)~~[(8)]~~ Rest time shall include adequate space specified by the child's age as follows:

- For an infant:
 - An individual non-tiered crib that meets Consumer Product Safety Commission standards established in 16 C.F.R. 1219-1220;
 - A firm crib mattress in good repair with a clean tight-fitted sheet that is changed:
 - Weekly; or
 - Immediately if it is soiled or wet;
 - No loose bedding, such as a bumper or a blanket; and
 - No toys or other items except for the infant's pacifier; or
- For a toddler or preschool-age child:
 - An individual bed, a two (2) inch thick waterproof mat, or cot in good repair; and
 - Bedding that is in good repair and is changed:
 - Weekly; or
 - Immediately if it is soiled or wet.

(10)~~[(9)]~~ Rest time shall not exceed two (2) hours for a preschool-age child unless the child is attending nontraditional hours or is sick.

(11)~~[(10)]~~ A child who does not sleep shall be permitted to play quietly and be visually supervised.

(12)~~[(11)]~~ If overnight care is provided, a provider or an assistant shall:

- Remain awake until every child in care is asleep; and
- Sleep on the same floor level of the home as an infant or

toddler.

(13)~~[(12)]~~ A certified family child care home shall provide a daily planned program:

(a) That is available to a parent of a child in care or the cabinet upon request~~[Posted in writing in a conspicuous location];~~

(b) Of activities that are~~[individualized and]~~ developmentally appropriate for each child served;

(c) That provides experience to promote the individual child's physical, emotional, social, and intellectual growth and well-being; and

(d) That offers a variety of creative activities, such as~~[including]:~~

- Art or music;
- Math or numbers~~[Music];~~
- Dramatic play;
- Stories and books;
- Science or nature;
- Block building or stacking;
- Tactile or sensory activity;
- Multi-cultural exposure~~[Culture];~~
- Indoor or outdoor play in which a child makes use of both small and large muscles;

10. A balance of active and quiet play, including group and individual activity; and

11. An opportunity for a child to:

- Have some free choice of activities;
- If desired, play apart from the group at times; and
- Practice developmentally appropriate self-help procedures in respect to:

- Clothing;
- Toileting;
- Hand-washing; and
- Eating.

(14)~~[(13)]~~ Except for a school-aged child whose parent has given written permission and whose whereabouts are known, a child shall not be permitted off the premises of a family child-care home without a caregiver.

(15)~~[(14)]~~ Use of corporal physical discipline shall be prohibited pursuant to KRS 199.896(18).

(16)~~[(15)]~~ A child shall be released from a family child-care home to:

- The child's custodial parent;
- The person designated in writing by the parent to receive the child; or

(c) In an emergency, a person designated over the telephone by the parent.

Section 13. Toilet and Diapering Requirements. (1) A toilet room shall:

- Have an adequate supply of toilet paper; and
- Be cleaned and disinfected~~[sanitized]~~ daily.

(2) A sink shall be:

(a) Located near or in close proximity~~[or immediately adjacent]~~ to toilets;

(b) Equipped with hot and cold running water that allows for hand washing;

(c) Equipped with hot water at a minimum temperature of ninety (90) degrees Fahrenheit and a maximum of 120 degrees Fahrenheit;

(d) Equipped with liquid soap and single use, disposable hand drying material;

(e) Equipped with an easily cleanable, covered waste receptacle; and

(f) Near or in close proximity~~[Immediately adjacent]~~ to a changing area used for infants and toddlers.

(3) Each toilet shall:

- Be kept in clean condition;
- Be kept in good repair;
- Be in a lighted room; and
- Have ventilation.

(4) Toilet training shall be coordinated with the child's parent.

(5) An adequate quantity of freshly laundered or disposable diapers and clean clothing shall be available.

- (6) If a toilet training chair is used, the chair shall be:
 - (a) Emptied promptly; and
 - (b) ~~Disinfected~~**[Sanitized]** after each use.
- (7) Diapers or clothing shall be:
 - (a) Changed when soiled or wet;
 - (b) Stored in a covered leak proof container temporarily; and
 - (c) Washed or disposed of at least once a day.
- (8) The proper methods of diapering and hand-washing shall be ~~available~~**[posted]** at each diaper changing area.
- (9) If a child is being diapered, the child shall:
 - (a) Not be left unattended; and
 - (b) Be placed on a surface that is:
 - 1. Clean;
 - 2. Padded;
 - 3. Free of holes, rips, tears, or other damage;
 - 4. Nonabsorbent;
 - 5. Easily cleaned; and
 - 6. Free of items not used for diaper changing.
- (10) Unless another cleaning method is authorized by the child's parent or prescribed by a physician, individual disposable washcloths shall be used to thoroughly clean the affected area of ~~a~~**[the]** child.
- (11) A provider or an assistant shall disinfect the diapering surface after each child is diapered.
- (12) If a provider or an assistant wear disposable gloves, the gloves shall be changed and disposed of after each child is diapered.

Section 14. Food Requirements. (1) A provider and an assistant shall:

- (a) Use sanitary procedures when preparing and serving food;
- (b) Refrigerate perishable food and beverages; and
- (c) Serve:
 - 1. Breast milk or iron-fortified formula to a child;
 - a. Age birth to twelve (12) months; or
 - b. Beyond twelve (12) months of age as documented by the parent or the child's physician;
 - 2. Pasteurized whole milk to a child age twelve (12) months to twenty-four (24) months; or
 - 3. Pasteurized skim or low fat one (1) percent milk to a child age twenty-four (24) months to school-age.
- (2) Water shall be:
 - (a) Available to a child in care; and
 - (b) Served in addition to meal requirements if a child requests throughout the day.
- (3) A certified family child-care home shall offer each child the same food items unless the child's parent or health professional documents a dietary restriction that necessitates an alternative food item for the child.
- (4) Second servings shall be available to a child.
- (5) Food shall not be:
 - (a) Used for:
 - 1. Reward; or
 - 2. ~~Discipline~~**[Punishment]**; or
 - (b) Withheld until all other food items are consumed.
- (6) Meals shall:
 - (a) Be served in an amount appropriate to the age of the child;
 - (b) Include appropriate types of food according to the age of the child;~~and~~
 - (c) Not be served during television or video viewing;
 - (d) Be served every two (2) to three (3) hours; and
 - (e) Be served to a child:
 - 1. Seated with sufficient room to manage food and tableware;
- ~~and~~
- 2. Supplied with individual eating utensils designed for use by a child.
- (7) Breakfast shall include:
 - (a) Milk;
 - (b) ~~A~~ whole grain or ~~an~~ enriched grain bread; and
 - (c) Fruit, vegetable, or 100 percent juice.
- (8) A snack shall include two (2) of the following:
 - (a) Milk;
 - (b) Protein source;

- (c) Fruit, vegetable, or 100 percent juice; or
- (d) ~~A~~ whole grain or ~~an~~ enriched grain bread.
- (9) Lunch and dinner shall include:
 - (a) Milk;
 - (b) Protein source;
 - (c) 1. Two (2) vegetables;
 - 2. Two (2) fruits; or
 - 3. One (1) fruit and one (1) vegetable; and
 - (d) ~~A~~ whole grain or ~~an~~ enriched grain bread.
- (10) A weekly menu shall be:
 - (a) Prepared;
 - (b) Dated;
 - (c) Available to a parent of a child in care or the cabinet upon request~~[Posted in a conspicuous place]~~; and
 - (d) Kept on file for thirty (30) calendar days.
- (11) Substitutions to a~~posted~~ weekly menu shall be noted on the day the meal is served.
- (12) Unless provided as part of the fee for child care or the provider is a participant in the food program, an infant's formula shall be prepared, labeled, and provided by the parent.
- (13) Each child's bottle shall be:
 - (a) Labeled;
 - (b) Covered; and
 - (c) Refrigerated.
- (14) The refrigerator shall:
 - (a) Be in working order; and
 - (b) Maintain a product temperature at or below forty-five (45) degrees Fahrenheit.
- (15) Except if thawed for preparation or use, frozen food shall be kept at a temperature of zero degrees Fahrenheit as verified by a thermometer in the freezer.
- (16) While bottle-feeding an infant, the:
 - (a) Child shall be held; and
 - (b) Bottle shall not be:
 - 1. Propped;
 - 2. Left in the mouth of a sleeping infant; or
 - 3. Heated in a microwave.
- (17) A certified family child-care home shall meet requirements of subsections (1)(c) and (7) through (9) of this section if the provider participates in the Child and Adult Food Care Program and meets meal requirements specified in 7 C.F.R. 226.20.

Section 15. Medication and First Aid. (1) Medication, including medicine that requires refrigeration, shall be stored in a locked container or area with a lock unless the medication is:

- (a) A first aid supply. A first aid supply shall be maintained in accordance with subsection (4) of this section;
- (b) Diaper cream, sunscreen, or toothpaste. Diaper cream, sunscreen, or toothpaste shall be inaccessible to a child in care;
- (c) An epinephrine auto-injector. A family child-care home shall comply~~[in accordance]~~ with KRS 199.8951, including:
 - 1. An epinephrine auto-injector shall be inaccessible to a child in care;
 - 2. A certified family child-care home provider shall have training on the administration of an epinephrine auto-injector if the provider maintains an epinephrine auto-injector for a child;
 - 3. A certified family child-care home shall seek emergency medical care for a child if an auto-injector is administered to a child; and
 - 4. A certified family child-care home shall report to the child's parent and the cabinet in accordance with subsection (6) of this section and Section 19(10) of this administrative regulation if an epinephrine auto-injector is administered to a child; or
- (d) An emergency or rescue medication for a child in care, such as medication to respond to diabetic or asthmatic condition, as prescribed by the child's physician. Emergency or rescue medication shall be inaccessible to a child in care.
- (2) Prescription and nonprescription medication shall be administered to a child in care:
 - (a) With a~~daily~~ written request of the child's parent or the child's prescribing health professional; or
 - (b) In accordance with KRS 311.646.
- (3) Prescription and nonprescription medications shall be:

- (a) Labeled; and
- (b) Administered according to directions or instructions on the label.

(4) A provider shall:

(a) Maintain first aid supplies that are easily accessible for use in an emergency, and these supplies shall be inaccessible to the children in care; and

(b) Wash superficial wounds with soap and water before bandaging.

(5) First aid supplies shall include a fully-equipped first aid kit containing the following non-expired items:

- (a) ~~Liquid soap;~~
- (b) Adhesive bandages;
- (c) ~~(e)~~ Sterile gauze;
- (d) ~~(d)~~ Medical tape;
- (e) ~~(e)~~ Scissors;
- (f) ~~(f)~~ Thermometer;
- (g) ~~(g)~~ Flashlight;
- (h) Cold pack;
- (i) First aid book;
- (j) Disposable gloves; and
- (k) CPR mouthpiece.

(6) A provider shall provide immediate notification of a medical emergency to a child's:

- (a) Parent; or
- (b) Emergency contact~~Family physician~~, if the parent is unavailable.

(7) A quiet, separate area that is easily supervised shall be provided for a child too sick to remain with other children.

(8) A provider and an assistant shall:

- (a) Be able to recognize symptoms of childhood illnesses;
- (b) Be able to provide basic first aid; and
- (c) Maintain a child care program that assures affirmative steps are taken to protect children from abuse or neglect pursuant to KRS 600.020(1).

Section 16. Animals. (1) An animal shall not be allowed in the presence of a child in care:

- (a) Unless:
 1. The animal is under the supervision and control of an adult;
 2. Written parental consent has been obtained; and
 3. The animal is certified as vaccinated against rabies; or
 - (b) Except in accordance with subsection (3) of this section.
- (2) A parent shall be notified in writing if a child has been bitten or scratched by an animal.

(3) An animal that is considered undomesticated, wild, or exotic shall not be allowed at a certified family child-care home unless the animal is:

- (a) A part of a planned program activity led by an animal specialist affiliated with a zoo or nature conservatory; and
- (b) In accordance with 301 KAR 2:081 and 301 KAR 2:082.

Section 17. Transportation. (1) If transportation is provided or arranged by the certified family child-care home provider, the provider shall:

- (a) Have written permission from a parent to transport his or her child;
- (b) Have a car or van equipped with seat belts;
- (c) Require that a child:
 1. Be restrained in an appropriate safety seat meeting state and federal motor vehicle safety standards in accordance with KRS 189.125 and 49 C.F.R. 571.213;
 2. Remain seated while the vehicle is in motion; and
 3. If under thirteen (13) years of age, be transported in the back seat;
- (d) ~~Have a valid driver's license issued by the Division of Motor Vehicles;~~
- (e) Have emergency and identification information about each child in the vehicle if children are being transported; and
- (f) Conform to state laws pertaining to vehicles, driver's license, and insurance pursuant to KRS 186.020.

(2) A child shall not be left unattended:

- (a) At the site of aftercare delivery; or

(b) In a vehicle.

(3) A child shall not be left in a vehicle while it is being repaired.

(4) The back of a pickup truck shall not be used to transport a child.

(5) Firearms, ammunition, alcohol, or illegal substances shall not be transported in a vehicle transporting children.

(6) A vehicle shall not transport children and hazardous materials at the same time.

(7) A vehicle transporting a child shall have the headlamps on.

(8) If the driver is not in the driver's seat, the:

- (a) Engine shall be turned off;
- (b) Keys shall be removed; and
- (c) Emergency brake shall be set.

(9) A driver of a vehicle transporting a child for a certified provider shall:

- (a) Be at least twenty-one (21) years old;
- (b) Complete:
 1. The background checks described in Section 2(2)(c)5 or 2(5) of this administrative regulation; and
 2. An annual check of the:
 - a. Kentucky driver history records in accordance with KRS 186.018; or
 - b. Driver history records through the state transportation agency that issued the driver's license;
 - (c) Hold a current driver's license that has not been suspended or revoked during the last five (5) years; and
 - (d) Not caused an accident which resulted in the death of a person.

(10) Based on the harm, threat, or danger to a child's health, safety, and welfare, the cabinet shall pursue an adverse action in accordance with Section 5, 6, 7, or 8 of this administrative regulation:

- (a) For a violation of this section; or
- (b) If the provider:
 1. Fails to report an accident in accordance with Section 19(10)(a) of this administrative regulation; or
 2. Transports more passengers than the vehicle's seating capacity and safety restraints can accommodate.

Section 18. Records. (1) A provider shall maintain:

- (a) A current immunization certificate for each child in care within thirty (30) days of the child's enrollment, unless an attending physician or the child's parent objects to the immunization of the child pursuant to KRS 214.036;
- (b) A written record for each child:
 1. Completed and signed by the child's parent;
 2. Retained on file on the first day the child attends the family child-care home; and
 3. To contain:
 - a. Identifying information about the child, which includes, at a minimum, the child's name, address, and date of birth;
 - b. Contact information to enable the provider to contact the child's:
 - (i) Parent at the parent's home or place of employment;
 - (ii) Family physician; and
 - (iii) Preferred hospital;
 - c. The name of each person who is designated in writing to pick-up the child;
 - d. The child's general health status and medical history including, if applicable:
 - (i) Allergies;
 - (ii) Restriction on the child's participation in activities with specific instructions from the child's parent or health professional; and
 - (iii) Permission from the parent for third-party professional services in the family child-care home;
 - e. The name and phone number of each person to be contacted in an emergency situation involving or impacting the child;
 - f. Authorization by the parent for the provider to seek emergency medical care for the child in the parent's absence; and
 - g. A permission form for each trip away from the family child-care home signed by the child's parent in accordance with Section 17(1) of this administrative regulation; and

(c) Daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with 922 KAR 2:160, Section 13, if a child receives services from the provider through the Child Care Assistance Program.

(2) A certified family child-care home provider shall maintain the confidentiality of a child's records.

(3) The cabinet shall provide, upon request, public information pursuant to KRS 199.8982(1)(d) and (e).

(4) A certified family child-care home provider shall:

(a) Report an incident of suspected child abuse or neglect pursuant to KRS 620.030(1); and

(b) Provide the cabinet access and information in the completion of the investigation pursuant to KRS 620.030(4).

(5) A certified family child-care home provider shall maintain a written record of:

(a) Quarterly practiced earthquake drills and tornado drills detailing the date, time, and participants in accordance with Section 11(20) of this administrative regulation;

(b) Monthly practiced fire drills detailing the date, time, and participants in accordance with Section 11(19) of this administrative regulation; and

(c) Reports to the cabinet that are required in accordance with Section 19(10) of this administrative regulation.

(6) A certified family child-care home provider shall keep all records for five (5) years.

(7)(a) A certified family child-care home provider shall have a written evacuation plan in the event of fire, natural disaster, or other threatening situation that may pose a health or safety hazard to a child in care in accordance with KRS 199.895.

(b) The cabinet shall post an online template of an evacuation plan that:

1. Fulfills requirements of KRS 199.895;

2. Is optional for an applicant or a family child-care home's use; and

3. Is available to an applicant or a family child-care home without charge.

Section 19. Certified Family Child-Care Home Program. The certified family child-care home provider shall:

(1) Develop written information that specifies the:

(a) Rate for child care;

(b) Expected frequency of payment for the program;

(c) Hours of operation; and

(d) Policy regarding:

1. Late fees;

2. Holidays;

3. Vacation;

4. Illness; and

5. Emergency pick up;

(2) Make available a copy of the certification standards to each parent;

(3) Provide each parent with the name, address, and telephone number of the cabinet for the purpose of registering a complaint if the parent believes the family child-care home provider is not meeting the standards;

(4) Post and provide to each parent a copy of children and parent rights, as required by KRS 199.898;

(5) Allow a parent, the cabinet, the cabinet's designee, or another agency with regulatory authority access to the family child-care home at any time a child is in care;

(6) Communicate with each child's parent about the child's:

(a) Development;

(b) Activities;

(c) Likes; and

(d) Dislikes;

(7) Make available to a parent upon request~~Post in a prominent area in the home~~;

(a) The staff to child ratios described in Section 10 of this administrative regulation;

(b) The planned program of activities;

(c) Each statement of deficiency issued by the cabinet during the current certification period;

(d) Each plan of correction submitted by the certified family child-care home to the cabinet during the current certification period; and

(e) Daily schedule including any trips outside the family child-care home;

(8) Coordinate at least one (1) annual activity involving parental or family participation;

(9) Maintain a written child care agreement with each child's parent, including the name of each person designated by the parent to pick up the child; and

(10) Report:

(a) The following to the cabinet within twenty-four (24) hours from the time of discovery:

1. A communicable disease, which shall also be reported to the local health department pursuant to KRS 214.010;

2. An accident or injury to a child that requires medical care;

3. An incident that results in legal action by or against the family child-care home that:

a. Affects:

(i) A child in care;

(ii) The provider;

(iii) An assistant; or

(iv) A member of the provider's household; or

b. Includes the provider's discontinuation or disqualification from a governmental assistance program due to fraud, ~~or~~ abuse, or criminal conviction related to~~of~~ that program;

4. An incident involving fire or other emergency, including a vehicular accident when the provider is transporting a child receiving child care services; or

5. A report of child abuse or neglect that:

a. Has been accepted by the cabinet in accordance with 922 KAR 1:330; and

b. Names the alleged perpetrator as the:

(i) Provider;

(ii) Provider's assistant; or

(iii) Member of the provider's household;

(b) The death of a child to the cabinet within one (1) hour; ~~or~~

(c) Temporary or permanent closure as soon as practicable to the cabinet and the parent of a child in the family child-care home; or

(d) A child care staff member meeting a disqualifying criterion or background check result in accordance with 922 KAR 2:280.

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ~~["DCC-157, Certified Family Child-Care Home Central Registry Check", edition 4/13;~~

~~(b) "OIG-DRCC-03, Initial Certification Application for Family Child-Care Home", 8/2018[2018] edition 7/13]; and~~

(b) "OIG-DRCC-04, Certified Family Child-Care Home Renewal Form", 8/2018[2018]; and

(c) "OIG-DRCC-05, Certified Family Child-Care Home Request for Appeal", 2018[edition 8/3/12].

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

ADRIA JOHNSON, Commissioner

SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 15, 2018 at 8 a.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

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

(1) Provide a brief summary of:

(a) What this administrative regulation does: This

administrative regulation establishes standards for a certified family child-care home.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish minimum standards for certified family child-care homes.

(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 standards for certification as a family child-care home.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for a certified family child-care home.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation clarifies numerous provisions and eliminates others due to public comments received and agency reviews conducted as a result of the Red Tape Reduction initiative, including feeding and meal requirements and access to hygiene products. In addition, the administrative regulation assures more consistent terminology use, clarifies due process for emergency suspensions and correction action, replaces intermediate sanctions with directed plans of correction, updates and clarifies renewal requirements, aligns the administrative regulation with the Child Care and Development Fund's 2014 federal reauthorization and other concurrent regulatory changes, requires hand-washing by staff after smoking or vaping, and incorporates epi-pen allowances authorized by 2016 Ky. Acts ch. 122. Lastly, the amendment also makes technical corrections in accordance with KRS Chapter 13A, including conforming corrections to incorporated material and notice requirements. The amended-after-comments version address multiple comments pertaining to environment, health-related topics, fees, and forms.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to better support the health, safety, and welfare of children in care; reduce "red tape" for providers; incorporate statutory requirements and changes that have occurred since the administrative regulation's last amendment; and ensure congruency among the administrative regulations governing certified family child-care homes.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by clarifying and enhancing minimum requirements to foster provider integrity and to protect the health, safety, and welfare of children cared for by certified family child-care home providers.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to this administrative regulation will assist in the effective administration of the statutes by preserving and enhancing the quality of certified family child-care home standards in a manner congruent with recognized practice and other provider types' standards, and supportive of integrity in the child care community.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An applicant for a certified family child-care home or an existing provider will be impacted by this administrative regulation. As of last November 22, 2017, there were 263 certified family child-care homes operating in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Given the new federally mandated background check requirements applicable to certified family child-care homes, the cabinet has attempted to avoid any further impact on regulated entities, but rather, has attempted to clarify provisions

of this administrative regulation and be responsive to the recently enacted legislation and the Red Tape Reduction comments and agency reviews.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The administrative regulation will result in no new or additional cost to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Certified family child-care homes and children in their care will benefit from the clarity and specificity provided in this administrative regulation and new permissions afforded.

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

(a) Initially: The amendment to this administrative regulation will not result in any new initial costs to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will not result in any new continuing costs for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match and maintenance of effort for the block grant, and limited agency funds support the direct implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amended-after-comments version of this administrative regulation incorporates the fees currently prescribed in statute in anticipation of the enactment of 2018 Ky. Acts ch. 136. There is no increase or change in 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. 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 42 U.S.C. 9857-9858g

(2) State compliance standards. KRS 194A.050(1), 199.8982(1)(f)

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

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services 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), 199.8982(1)(f), 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-

6084, 42 U.S.C. 9857-9858g

(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 to this administrative regulation will generate no revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to this administrative regulation will generate no revenue in the 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 in the first year.

(d) How much will it cost to administer this program for subsequent years? There are 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:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(Amended After Comments)

922 KAR 2:120. Child-care center health and safety standards.

RELATES TO: KRS Chapter 151, 158.030, Chapter 186, 189.125, 199.011(3), 199.894(1), 199.896(2), (18), (19), 199.898, 211.350-211.380, Chapter 217, 227.220, 311.646, Chapter 318, 314.011(5), 527.070(1), 620.030, 7 C.F.R. 226.20, 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 42 U.S.C. 9857-9858g

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to 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. KRS 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations and standards for child-care centers. This administrative regulation establishes health and safety standards for child-care centers.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(3) and 199.894(1).

(2) "Corporal physical discipline" is defined by KRS 199.896(18).

(3) "Developmentally appropriate" means suitable for the specific age range and abilities of a child.

(4) "Director" means an individual:

(a) Who meets the education and training requirements as specified in 922 KAR 2:090[2:110], Section 10[4];

(b) Whose primary full-time job responsibilities are to ensure compliance with 922 KAR 2:090, 922 KAR 2:280[922-KAR-2:110], and this administrative regulation; and

(c) Who is responsible for directing the program and managing the staff at the child-care center.

(5) "Health professional" means a person currently licensed as a:

(a) Physician;

(b) Physician[Physician's] assistant;

(c) Advanced practice registered nurse[practitioner]; or

(d) Registered nurse as defined in KRS 314.011(5) under the supervision of a physician or advanced practice registered nurse.

(6) "Infant" means a child who is less than twelve (12) months of age.

(7) "Licensee" means the owner or[and] operator of a child-care center to include:

(a) Sole proprietor;

(b) Corporation;

(c) Limited liability company;

(d) Partnership;

(e) Association; or

(f) Organization, such as:

1. Board of education;

2. Private school;

3. Faith-based organization;

4. Government agency; or

5. Institution.

(8) "Nontraditional hours" means the hours of:

(a) 7 p.m. through 5 a.m. Monday through Friday; or

(b) 7 p.m. on Friday until 5 a.m. on Monday.

(9) "Parent" is defined in 45 C.F.R. 98.2.

(10) "Premises" means the building and contiguous property in which child care is licensed.

(11) "Preschool-age" means a child who is older than a toddler and younger than school-age.

(12) "Protective surface" means loose surfacing material not installed over concrete, which includes the following:

(a) Wood mulch;

(b) Double shredded bark mulch;

(c) Uniform wood chips;

(d) Fine sand;

(e) Coarse sand;

(f) Pea gravel, except for areas used by children under three (3) years of age;

(g) Certified shock absorbing resilient material; or

(h) Other material approved by the cabinet or designee.

(13) "Related" means having one (1) of the following relationships with the operator of the child-care center:

(a) Child;

(b) Grandchild;

(c) Niece;

(d) Nephew;

(e) Sibling;

(f) Stepchild; or

(g) Child in legal custody of the operator.

(14) "School-age child" means a child who meets the age requirements of KRS 158.030 or who attends[attending] kindergarten, elementary, or secondary education.

(15) "Toddler" means a child between the age of twelve (12) months and thirty-six (36)[~~twenty-four (24)~~] months.

(16) "Transition" means the changing from one (1) child care arrangement to another.

(17) "Transition plan" means a document outlining the process to be used in moving a child from one (1) child care arrangement to another.

(18) "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.

(19) "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. Child Care Services. (1) Services described in this administrative regulation shall be maintained during all hours of operation that child care is provided.

(2) Minimum staff-to-child ratios and group size for an operating child-care center shall be maintained as follows:

Age of Children	Ratio	Maximum Group Size*
Infant	1 staff for 5 children	10
Toddler <u>12 to 24 months</u>	1 staff for 6 children	12
Toddler <u>24 to 36 months</u> [Preschool-age 2 to 3 years]	1 staff for 10 children	20
Preschool-age 3 to 4 years	1 staff for 12 children	24
Preschool-age 4 to 5 years	1 staff for 14 children	28
School-age 5 to 7 years	1 staff for 15 children	30
School-age 7 and older	1 staff for 25 children (for before and after school)	30
	1 staff for 20 children (full day of care)	30

*Maximum Group Size shall be applicable only to Type I child-care centers.

(a) In a Type I child-care center, a group size shall:

1. Be separately maintained in a defined area unique to the group; and
2. Have specific staff assigned to, and responsible for, the group.

(b) The age of the youngest child in the group shall determine the:

1. Staff-to-child ratio; and
2. Maximum group size.

(c) This subsection and subsection (9) of this section shall not apply during traditional[normal] school hours to a center:

1. Providing early childhood education to mixed-age groups of children whose ages range from two and one-half (2 1/2) years to six (6) years; and
2. Accredited by or affiliated with a nationally-recognized education association that has criteria for group size and staff-to-child ratios contrary to the requirements of this subsection.

(d) If a child related to the director, employee, or person under the supervision of the licensee is receiving care in the center, the child shall be included in the staff-to-child ratio.

(3)(a) Each center shall maintain a child-care program that assures each child will be:

1. Provided with adequate supervision at all times by a qualified staff person who ensures the child is:
 - a. Within scope of vision and range of voice; or
 - b. For a school-age child, within scope of vision or range of voice; and
2. Protected from abuse or neglect.

(b) The program shall include:

1. A procedure to ensure compliance with and inform child care staff of the laws of the Commonwealth pertaining to child abuse or neglect set forth in KRS 620.030; and
2. Written policy that specifies that the procedures that were taught at the orientation training shall be implemented by each child-care center staff member.

(4) The child-care center shall provide a daily planned program:

- (a) Posted in writing in a conspicuous location with each age group and followed;
- (b) Of activities that are individualized and developmentally appropriate for each child served;
- (c) That provides experience to promote the individual child's physical, emotional, social, and intellectual growth and well-being; and

(d) Unless the child-care center is a before- or after-school program that operates part day or less, that offers a variety of creative activities including the following:

1. Art or music;
2. Math or numbers[Musie];
3. Dramatic play;
4. Stories and books;
5. Science or nature;

6. Block building or stacking;
7. Tactile or sensory activity;
8. Multi-cultural exposure[Culture];
9. Indoor or outdoor play in which a child makes use of both small and large muscles;
10. A balance of active and quiet play, including group and individual activity;
11. An opportunity for a child to:
 - a. Have some free choice of activities;
 - b. If desired, play apart from the group at times; and
 - c. Practice developmentally appropriate self-help procedures in respect to:
 - (i) Clothing;
 - (ii) Toileting;
 - (iii) Hand-washing; and
 - (iv) Eating; and
12. Use of electronic viewing and listening devices if the:
 - a. Material is appropriate to the child using the equipment;
 - b. Material does not include any violence, adult content viewing, or inappropriate language;
 - c. Viewing or individual listening is limited to two (2) hours per day;
 - d. Viewing or listening is discussed with parents prior to viewing or listening; and
 - e. Viewing or listening is designed as an educational tool.
- (5) A child who does not wish to use the electronic devices during the planned program shall be offered other appropriate activities.
- (6) Regularity of routines shall be implemented to afford the child familiarity with the daily schedule of activity.
- (7) Sufficient time shall be allowed for an activity so that a child may progress at their own developmental rate.
- (8) A child shall not be required to stand or sit for a prolonged period of time:
 - (a) During an activity;
 - (b) While waiting for an activity to start; or
 - (c) As discipline[punishment].
- (9) If school-age care is provided:
 - (a) A separate area or room shall be provided in a Type I child-care center; and
 - (b) Each child shall be provided a snack after school.
- (10) A child shall not be subjected to:
 - (a) Corporal physical discipline pursuant to KRS 199.896(18);
 - (b) Loud, profane, threatening, frightening, humiliating, or abusive language; or
 - (c) Discipline that is associated with:
 1. Rest;
 2. Toileting; or
 3. Food.
- (11) If nontraditional hours of care are provided:
 - (a) Including time spent in school, a child shall not be permitted to spend more than sixteen (16) hours in the child-care center during one (1) twenty-four (24) hour period;
 - (b) At least one (1) staff member shall be assigned responsibility for each sleeping room;
 - (c) A child present for an extended period of time during waking hours shall receive a program of well-balanced and constructive activity that is developmentally appropriate for the child;
 - (d) A child sleeping three (3) hours or more shall sleep in:
 1. Pajamas; or
 2. A nightgown;
 - (e) If a child attends school from the child-care center, the child shall be offered breakfast; and
 - (f) Staff shall:
 1. If employed by a Type I child-care center, remain awake while on duty; or
 2. If employed by or is the operator of a Type II child-care center, remain awake until every child in care is asleep.
- (12)(a) Care for a child with a special need shall be consistent with the nature of the need as documented by the child's health professional.
- (b) A child may include a person eighteen (18) years of age if

the person has a special need for which child care is required.

Section 3. General Requirements. (1) Electronic viewing and listening devices shall only be used in the center as a part of the child's planned program of activity described in Section 2(4) of this administrative regulation.

(2) Activity areas, equipment, and materials shall be arranged so that the child's activity can be given adequate supervision by staff.

(3) Computer equipment shall be equipped with a monitoring device which limits access by a child to items inappropriate for a child to view or hear.

(4) A child shall:

(a) Be helped with personal care and cleanliness based upon their developmental skills; ~~and~~

(b) Wash his or her hands with liquid soap and warm running water:

1. a. Upon arrival at the center; or
- b. Within thirty (30) minutes of arrival for school-age children;
2. Before and after eating or handling food;
3. After toileting or diaper change;
4. After handling animals;
5. ~~After wiping or blowing nose;~~

6. ~~After touching an item or an area of the body~~~~items~~ soiled with body fluids or wastes; and

~~6.7.] After outdoor or indoor play time; and~~

~~(c) Use hand sanitizer or hand-sanitizing wipes if liquid soap and warm running water are not available in accordance with paragraph (b) of this subsection. The child shall wash the child's hands as soon as practicable once liquid soap and warm running water are available.~~

(5) Staff shall:

- (a) Maintain personal cleanliness;
- (b) Conform to hygienic practices while on duty; ~~and~~
- (c) Wash their hands with liquid soap and running water:

1. Upon arrival at the center;
2. After toileting or assisting a child in toileting;
3. Before and after diapering each child;
4. After wiping or blowing a child's or own nose;
5. After handling animals;
6. After caring for a sick child;
7. Before and after feeding a child or eating;
8. Before dispensing medication; ~~and~~
9. ~~After smoking or vaping; and~~
10. If possible, before administering first aid; and

~~(d) Use hand sanitizer or hand-sanitizing wipes if liquid soap and warm running water are not available in accordance with paragraph (c) of this subsection. The staff shall wash the staff's hands as soon as practicable once liquid soap and warm running water are available.~~

(6) A staff person suspected of being infected with a communicable disease shall:

(a) Not perform duties that may allow for the transmission of the disease until the infectious condition can no longer be transmitted; and

(b) Provide a statement from a health professional, if requested.

~~(7) [Except in accordance with subsection (8) of this section,]~~
The following shall be inaccessible to a child in care:

- (a) Toxic cleaning supplies, poisons, and insecticides;
- (b) ~~[Knives and sharp objects;~~
- (c) ~~Matches, cigarettes, lighters, and flammable liquids; and~~
- ~~(c)(d) Plastic bags;~~
- ~~(e) Litter and rubbish;~~
- ~~(f) Bar soap; and~~
- ~~(g) Personal belongings and medications of staff.~~

(8) The following shall be inaccessible to a child in care unless under direct supervision and part of planned program of instruction:

- (a) Knives and sharp objects;
- (b) Litter and rubbish; ~~and~~
- (c) ~~Bar soap; and~~
- ~~(d) Plastic bags not used for personal belongings.~~

(9) In accordance with KRS 527.070(1), firearms and

ammunition shall be stored separately in a locked area outside of the designated child care area.

(10) Smoking ~~or vaping~~ shall:

- (a) Be permitted in accordance with local ordinances;
- (b) Be allowed only in outside designated areas; and
- (c) Not be permitted in the presence of a child.

(11) While bottle feeding ~~a child~~~~an infant~~, the:

- (a) Child shall be held; and
- (b) ~~Bottle or beverage container~~ shall not be:
 1. Propped;
 2. Left in the mouth of a sleeping ~~child~~~~infant~~; or
 3. Heated in a microwave.

(12) A fire drill shall be:

- (a) Conducted during hours of operation at least monthly; and
- (b) Documented.

(13) An earthquake drill and a tornado drill shall be:

- (a) Conducted during hours of operation at least quarterly; and
- (b) Documented.

Section 4. Premises Requirements. (1) The premises shall be:

- (a) Suitable for the purpose intended;
- (b) Kept clean and in good repair; and
- (c) Equipped with:

1. A working~~land line~~ telephone accessible to a room used by a child; and

2. A list of emergency numbers posted by the telephone or maintained in the telephone's contact, including numbers for the:

- a. Police;
- b. Fire station;
- c. Emergency medical care and rescue squad; and
- d. Poison control center.

(2) A child-care center shall be in compliance with the State Fire Marshal and the local zoning laws.

(3) Fire and emergency exits shall be kept clear of debris.

(4) A working carbon monoxide detector shall be required in a licensed child-care center that is in a home if the home:

- (a) Uses fuel burning appliances; or
- (b) Has an attached garage.

(5) The building shall be constructed to ensure the:

- (a) Building is:
 1. Dry;
 2. ~~Adequately heated;~~
 3. ~~Ventilated; and~~
 3. ~~4.] Well lit, including clean light fixtures that are:~~
 - a. In good repair in all areas; and
 - b. Shielded or have ~~shatter-proof~~~~shattered—proof~~ bulbs installed; and

(b) Following are protected:

1. Windows;
2. Doors;
3. Stoves;
4. Heaters;
5. Furnaces;
6. Pipes; and
7. Stairs.

(6) Exclusive of the kitchen, bathroom, hallway, and storage area, there shall be a minimum of thirty-five (35) square feet of space per child.

(7) Measures shall be utilized to control the presence of:

- (a) Rodents;
- (b) Flies;
- (c) Roaches; and
- (d) Other vermin.

(8) An opening to the outside shall be effectively protected against the entrance of vermin by:

- (a) Self-closing doors;
- (b) Closed windows;
- (c) Screening;
- (d) Controlled air current; or
- (e) Other effective means.

(9) Floors, walls, and ceilings shall be smooth, in good repair, and constructed to be easily cleaned.

(10) The water supply shall be:

- (a) Potable;
- (b) Protected from contamination;
- (c) Adequate in quality and volume;
- (d) Under sufficient pressure to permit unrestricted use; and
- (e) Obtained from an approved public water supply or a source approved by the local health department.

(11) Groundwater supplies for a child-care center caring for:

- (a) More than twenty-five (25) children shall meet the specifications of the Energy and Environment Cabinet, [for Environmental and Public Protection] Division of Water[, established in KRS Chapter 151; or

(b) Twenty-five (25) children or less shall secure approval from the:

1. Energy and Environment Cabinet [for Environmental and Public Protection]; or
2. Local health department.

(12) Sewage shall be properly disposed by a method approved by the:

- (a) Energy and Environment Cabinet [for Environmental and Public Protection]; or
- (b) Cabinet.

(13) All plumbing shall comply with the State Plumbing Code established in KRS Chapter 318.

(14) Solid waste shall be kept in a suitable receptacle in accordance with local, county and state law, as governed by KRS 211.350 to 211.380.

(15) If a portion of the building is used for a purpose other than child care:

- (a) Necessary provisions shall be made to avoid interference with the child-care program; and
- (b) A separate restroom shall be provided for use only by those using the building for its child care purpose.

(16) The temperature of the inside area of the premises shall be sixty-five (65) to eighty-two (82) degrees Fahrenheit:

~~(a) Sixty-five (65) to seventy-five (75) degrees Fahrenheit during the winter; or~~

~~(b) Sixty-eight (68) to eighty-two (82) degrees Fahrenheit during the summer months.~~

(17) Outdoor activity shall be restricted based upon:

- (a) Temperature;
- (b) Weather conditions; or
- (c) Weather alerts, advisories, and warnings issued by the National Weather Service.

(18) A kitchen shall not be required if:

- (a) The only food served is an afternoon snack to school-age children; and
- (b) Adequate refrigeration is maintained.

(19) The Department of Housing, Buildings and Construction, State Fire Marshal's Office, and cabinet shall be contacted concerning a planned new building, addition, or major renovation prior to construction.

(20) An outdoor play area shall be:

- (a) Except for an after-school child-care program[, located on the premises of a public or state-accredited nonpublic school, and] fenced for the safety of the children;

(b) A minimum of sixty (60) square feet per child, separate from and in addition to the thirty-five (35) square feet minimum pursuant to subsection (6) of this section;

(c) Free from:

1. Litter;
 2. Glass;
 3. Rubbish; and
 4. Flammable materials;
- (d) Safe from foreseeable hazard;
- (e) Well drained;
- (f) Well maintained;
- (g) In good repair; and
- (h) Visible to staff at all times.

(21) A protective surface shall:

- (a) Be provided for outdoor play equipment used to:
 1. Climb;
 2. Swing; and
 3. Slide; and

(b) Have a fall zone equal to the height of the equipment.

(22) If a child-care center does not have access to an outdoor play area, an indoor space shall:

- (a) Be used as a play area;
- (b) Have a minimum of sixty (60) square feet per child, separate from and in addition to the thirty-five (35) square feet minimum pursuant to subsection (6) of this section;

(c) Include equipment for gross motor skills; and

~~(d) Be well-ventilated;~~

~~(e) Be heated; and~~

~~(f) Have a protective surface of at least two (2) inches thick around equipment intended for climbing.~~

(23) Fences shall be:

- (a) Constructed of safe material;
- (b) Stable; and
- (c) In good condition.

(24) Supports for climbing apparatus and large equipment shall be securely fastened to the ground.

(25) Crawl spaces, such as tunnels, shall be short and wide enough to permit access by adults.

(26) A sandbox shall be:

- (a) Constructed to allow for drainage;
- (b) Covered when not in use;
- (c) Kept clean; and
- (d) Checked for vermin prior to use.

(27) Bodies of water that shall not be utilized include:

- (a) Portable wading pools;
- (b) Natural bodies of water; and
- (c) Unfiltered, nondisinfected containers.

(28) A child-care center shall have enough toys, play apparatus, and developmentally appropriate materials to provide each child with a variety of activities during the day, as specified in Section 2 of this administrative regulation.

(29) Storage space shall be provided:

(a) In the form of:

1. Shelves; or
 2. Other storage device accessible to the children; and
- (b) In sufficient quantity for each child's personal belongings.

(30) Supplies shall be stored so that the adult can reach them without leaving a child unattended.

Section 5. Infant and Toddler Play Requirements. (1) Inside [~~Infant and toddler inside~~] areas for infants and toddlers under twenty-four (24) months of age shall:

- (a) Be separate from an area used by an older child;
- (b) Not be an exit or entrance; and
- (c) Have adequate crawling space for an infant or toddler away from general traffic patterns of the center.

(2) Except in accordance with subsection (3) of this section or Section 2(2)(c) of this administrative regulation, an infant or toddler under twenty-four (24) months of age shall not participate in an activity with an older child for more than one (1) hour per day.

(3) If a toddler is developmentally appropriate for a transition to a preschool age group, a [~~A~~] toddler may participate in an activity with an older child for more than one (1) hour per day if:

(a) [~~The toddler is in transition to the pre-school age group;~~

~~(b) The toddler is thirty-two (32) [twenty-one (21)] [months or older;~~

~~(c)] Space for the toddler is available in the preschool-age group;~~

~~(b)] [(d)] The staff-to-child ratios and group sizes are maintained based on the age of the youngest child;~~

~~(c)] [(e)] The center has a procedure for listing a transitioning toddler on attendance records, including a specific day and time the toddler is with either age group; and~~

~~(d)] [(f)] The child care center has obtained the signature and approval of the toddler's parent on the toddler's transition plan.~~

(4) If a child-care center provides an outdoor play area for an infant or toddler under twenty-four (24) months of age, the outdoor area shall be:

- (a) Shaded; and

(b) A separate area or scheduled at a different time than an older child.

(5) Playpens and play yards shall:

- (a) Meet federal standards as issued by the Consumer Product Safety Commission, including 16 C.F.R. 1221;
- (b) Be manufactured for commercial use; and
- (c) Not be used for sleeping or napping.

Section 6. Sleeping and Napping Requirements. (1) An infant shall sleep or nap on the infant's back unless the infant's health professional signs a waiver that states the infant requires an alternate sleeping position.

(2) Rest time shall be provided for each child who is not school-age and who is in care for more than four (4) hours.

(3) Rest time shall include adequate space specified by the child's age as follows:

(a) For an infant:

- 1. An individual non-tiered crib that meets Consumer Product Safety Commission standards established in 16 C.F.R. 1219-1220;
- 2. A firm crib mattress in good repair with a clean tight-fitted sheet that shall be changed:

- a. Weekly; or
- b. Immediately if it is soiled or wet;
- 3. No loose bedding, such as a bumper or a blanket; and
- 4. No toys or other items except the infant's pacifier; or

(b) For a toddler or preschool-age child:

- 1. An individual bed, a two (2) inch thick waterproof mat, or cot in good repair; and
- 2. Bedding that is in good repair and is changed:

- a. Weekly; or
- b. Immediately if it is soiled or wet.

(4) Rest time shall not exceed two (2) hours for a preschool-age child unless the child is attending the child-care center during nontraditional hours.

(5) A child who does not sleep shall be permitted to play quietly and shall be visually supervised.

(6) Cots, equipment, and furnishings used for sleeping and napping shall be spaced twelve (12) inches apart to allow free and safe movement by a person.

(7) If cots or mats are used, floors shall be free from:

- (a) Drafts;
- (b) Liquid substances;
- (c) Dirt; and
- (d) Dampness.

(8)(a) Cots or mats not labeled for individual use by a child shall be **cleaned[disinfected]**[sanitized] after each use.

(b) Cots or mats labeled for individual use by a child shall be:

1. Cleaned[disinfected]:

1.] at least weekly; and[or]

2. Disinfected immediately if it is soiled or wet.

(9) Individual bedding shall be stored in a sanitary manner.

Section 7. First Aid and Medicine. (1) First aid supplies shall:

(a) Be available to provide prompt and proper first aid treatment;

(b) Be stored out of reach of a child;

(c) Be periodically inventoried to ensure the supplies have not expired[are current];

(d) If reusable, be:

- 1. Sanitized; and
- 2. Maintained in a sanitary manner; and

(e) Include:

- 1. Liquid soap;
- 2. Adhesive bandages;
- 3. Sterile gauze;
- 4. Medical tape;
- 5. Scissors;
- 6. A thermometer;
- 7. Flashlight;
- 8. Cold pack;
- 9. First aid book;
- 10. Disposable gloves; and
- 11. A cardiopulmonary resuscitation mouthpiece protector.

(2) A child showing signs of an illness or condition that may be communicable shall not be admitted to the regular child-care program.

(3) If a child becomes ill while at the child-care center:

(a) The child shall be placed in a supervised area isolated from the rest of the children;

(b) The parent shall be contacted immediately; and

(c) Arrangements shall be made to remove the child from the child-care center as soon as practicable.

(4) Prescription and nonprescription medication shall be administered to a child in care:

(a) 1. With a[daily] written request of the child's parent or the child's prescribing health professional; and

2. [(b)] According to the directions or instructions on the medication's label; or

(b) In accordance with KRS 311.646.

(5) The child-care center shall keep a written record of the administration of medication, including:

- (a) Time of each dosage;
- (b) Date;
- (c) Amount;
- (d) Name of staff person giving the medication;
- (e) Name of the child; and
- (f) Name of the medication.

(6) Medication, including refrigerated medication, shall be:

(a) Stored in a separate and locked place, out of the reach of a child unless the medication is:

1. A first aid supply and is maintained in accordance with subsection (1) of this section;

2. Diaper cream, sunscreen, or toothpaste. Diaper cream, sunscreen, or toothpaste shall be inaccessible to a child;

3. An epinephrine auto-injector. A licensed child-care center shall comply[In accordance] with KRS 199.8951, including:

a. An epinephrine auto-injector shall be inaccessible to a child;

b. A child-care center shall have at least one (1) person onsite who has received training on the administration of an epinephrine auto-injector if the child-care center maintains an epinephrine auto-injector;

c. A child-care center shall seek emergency medical care for a child if an auto-injector is administered to the child; and

d. A child-care center shall report to the child's parent and the cabinet in accordance with 922 KAR 2:090, Section 12(1)(b) if an epinephrine auto-injector is administered to a child; or

4. An emergency or rescue medication for a child in care, such as medication to respond to diabetic or asthmatic condition, as prescribed by the child's physician. Emergency or rescue medication shall be inaccessible to a child in care;

(b) Kept in the original bottle; and

(c) Properly labeled.

(7) Medication shall not be given to a child if the medication's expiration date[on the bottle] has passed.

Section 8. Kitchen Requirements. (1) The kitchen shall:

(a) Be clean;

(b) Be equipped for proper food:

- 1. Preservation;
- 2. Storage;
- 3. Preparation; and
- 4. Service;

(c) Be adequately ventilated to the outside air; and

(d) Except in a Type II child-care center when a meal is not being prepared, not be used for the activity of a child.

(2) A child-care center required to have a food service permit shall be in compliance with 902 KAR 45:005 and this administrative regulation.

(3) Convenient and suitable sanitized utensils shall be:

- (a) Provided; and
- (b) Used to minimize handling of food during preparation.

(4) A cold-storage facility used for storage of perishable food in a nonfrozen state shall:

- (a) Have an indicating thermometer or other appropriate temperature measuring device;
- (b) Be in a safe environment for preservation; and

- (c) Be forty (40) degrees Fahrenheit or below.
- (5) Frozen food shall be:
 - (a) Kept at a temperature of zero degrees Fahrenheit or below; and
 - (b) Thawed:
 - 1. At refrigerator temperatures;
 - 2. Under cool, potable running water;
 - 3. As part of the cooking process; or
 - 4. By another method in accordance with the Department of Public Health's food safety standards and permits, established in KRS Chapter 217.
 - (6) Equipment, utensils, and surfaces contacting food shall be:
 - (a) Smooth;
 - (b) Free of breaks, open seams, cracks, and chips;
 - (c) Accessible for cleaning; and
 - (d) Nontoxic.
 - (7) The following shall be clean and sanitary:
 - (a) Eating and drinking utensils;
 - (b) Kitchenware;
 - (c) Food contact surfaces of equipment;
 - (d) Food storage utensils;
 - (e) Food storage containers;
 - (f) Cooking surfaces of equipment; and
 - (g) Nonfood contact surfaces of equipment.
 - (8) A single-service item shall be:
 - (a) Stored;
 - (b) Handled and dispensed in a sanitary manner; and
 - (c) Used only once.
 - (9) Bottles shall be:
 - (a) Individually labeled;
 - (b) Promptly refrigerated;
 - (c) Covered when not in use; and
 - (d) Consumed within one (1) hour of being heated or removed from the refrigerator.

- Section 9. Food and Meal Requirements. (1) Food shall be:
- (a) Clean;
 - (b) Free from:
 - 1. Spoilage;
 - 2. Adulteration; and
 - 3. Misbranding;
 - (c) Safe for human consumption;
 - (d) Withheld from service or discarded if the food is hermetically sealed, nonacidic, or low-acidic food that has been processed in a place other than a commercial food-processing establishment;
 - (e) Obtained from a source that is in compliance with the Department of Public Health's food safety standards and permits, established in KRS Chapter 217;
 - (f) Acceptable if from an established commercial food store;
 - (g) Served in a quantity that is developmentally appropriate for the child with additional portions provided upon request of the child; and
 - (h) Protected against contamination from:
 - 1. Dust;
 - 2. Flies;
 - 3. Rodents and other vermin;
 - 4. Unclean utensils and work surfaces;
 - 5. Unnecessary handling;
 - 6. Coughs and sneezes;
 - 7. Cuts in skin;
 - 8. Communicable disease;
 - 9. Flooding;
 - 10. Drainage; and
 - 11. Overhead leakage.
 - (2) Food shall not be:
 - (a) Used for reward;
 - (b) Used for discipline;
 - (c) Withheld until all other foods are consumed; or
 - (d) Served while viewing electronic devices.
 - (3) A serving of milk shall consist of:
 - (a) Breast milk or iron-fortified formula for a child;
 - 1. Age birth to twelve (12) months; or

- 2. Beyond twelve (12) months of age as documented by the parent or the child's physician;
 - (b) Pasteurized whole milk for children ages twelve (12) months to twenty-four (24) months; or
 - (c) Pasteurized low fat one (1) percent or fat-free skim milk for children ages twenty-four (24) months to school-age.
- (4) Formula or breast milk provided by the parent shall be prepared and labeled.
- (5) A child-care center may participate in the Child and Adult Care Food Program (CACFP).
- (6) A serving of bread shall only consist of whole or enriched grain.
- (7) Drinking water shall be freely available to a child throughout the day.
- (8) Food shall be stored on:
 - (a) Clean racks;
 - (b) Clean shelves;
 - (c) Other clean surfaces; or
 - (d) If maintained in a sanitary condition, in nonabsorbent labeled containers a minimum of six (6) inches off the floor.
- (9) Fruits and vegetables shall be washed before cooking or serving.
- (10) Meat salads, poultry salads, and cream-filled pastries shall be:
 - (a) Prepared with utensils that are clean; and
 - (b) Refrigerated unless served immediately.
- (11) An individual portion of food served to a child or adult shall not be served again.
- (12) Wrapped food that is still wholesome and has not been unwrapped may be reserved.
- (13) Meals shall be:
 - (a) Served every two (2) to three (3) hours; and
 - (b) Served to a child:
 - 1. Seated with sufficient room to manage food and tableware; and
 - 2. Supplied with individual eating utensils designed for use by a child.
- (14) All children shall be offered the same food items unless the child's parent or health professional documents a dietary restriction that necessitates an alternative food item for the child.
- (15) A child-care center shall serve:
 - (a) 1. Breakfast; or
 - 2. A mid-morning snack;
 - (b) 1. Lunch; or
 - 2. A mid-afternoon snack; and
 - (c) If appropriate, dinner.
- (16) A weekly menu shall be:
 - (a) Prepared;
 - (b) Dated;
 - (c) Posted in advance in a conspicuous place;
 - (d) Kept on file for thirty (30) days; and
 - (e) Amended in writing with any substitutions on the day the meal is served.
- (17) Breakfast shall include:
 - (a) Milk;
 - (b) Bread; and
 - (c) 1. Fruit;
 - 2. Vegetable; or
 - 3. 100 percent juice.
- (18) A snack shall include two (2) of the following:
 - (a) Milk;
 - (b) Protein;
 - (c) Bread; or
 - (d) 1. Fruit;
 - 2. Vegetable; or
 - 3. 100 percent juice.
- (19) Lunch and dinner shall include:
 - (a) Milk;
 - (b) Protein;
 - (c) Bread; and
 - (d) 1. Two (2) vegetables;
 - 2. Two (2) fruits; or
 - 3. One (1) fruit and one (1) vegetable.

(20) A child-care center shall meet requirements of subsections (3), (15), and (17) through (19) of this section if the child-care center participates in the Child and Adult Food Care Program and meets meal requirements specified in 7 C.F.R. 226.20.

Section 10. Toilet, Diapering, and Toiletry Requirements. (1) A child-care center shall have a minimum of one (1) toilet and one (1) lavatory for each twenty (20) children. Urinals may be substituted for up to one-half (1/2) of the number of toilets required for a male toilet room.

(2) A toilet room shall:

(a) 1. Be provided for each gender; or

2. A plan shall be implemented to use the same toilet room at separate times;

(b) Have a supply of toilet paper; and

(c) Be cleaned and ~~disinfected~~[sanitized] daily.

(3) A sink shall be:

(a) Located in or immediately adjacent to toilet rooms;

(b) Equipped with hot and cold running water that allows for hand washing;

(c) Equipped with hot water at a minimum temperature of ninety (90) degrees Fahrenheit and a maximum of 120 degrees Fahrenheit;

(d) Equipped with liquid soap;

(e) Equipped with hand-drying blower or single use disposable hand drying material;

(f) Equipped with an easily cleanable waste receptacle; and

(g) Immediately adjacent to a changing area used for infants and toddlers.

(4) Each toilet shall:

(a) Be kept in clean condition;

(b) Be kept in good repair;

(c) Be in a lighted room; and

(d) Have ventilation to outside air.

(5) Toilet training shall be coordinated with the child's parent.

(6) An adequate quantity of freshly laundered or disposable diapers and clean clothing shall be available.

(7) If a toilet training chair is used, the chair shall be:

(a) Used over a surface that is impervious to moisture;

(b) Out of reach of other toilets or toilet training chairs;

(c) Emptied promptly; and

(d) ~~Disinfected~~[Sanitized] after each use.

(8) Diapers or clothing shall be:

(a) Changed when soiled or wet;

(b) Stored in a covered container temporarily; and

(c) Washed or disposed of at least once a day.

(9) The proper methods of diapering and hand-washing shall be posted at each diaper changing area.

(10) When a child is diapered, the child shall:

(a) Not be left unattended; and

(b) Be placed on a surface that is:

1. Clean;

2. Padded;

3. Free of holes, rips, tears, or other damage;

4. Nonabsorbent;

5. Easily cleaned; and

6. Free of any items not used for diaper changing.

(11) Unless allergic, individual disposable washcloths shall be used to thoroughly clean the affected area of the child.

(12) Staff shall disinfect the diapering surface after each child is diapered.

(13) If staff wears disposable gloves, the gloves shall be changed and disposed after each child is diapered.

(14) Combs, towels or washcloths, brushes, and toothbrushes used by a child shall be:

(a) Individually stored in separate containers; and

(b) Plainly labeled with the child's name.

(15) Toothbrushes shall be:

(a) Individually identified;

(b) Allowed to air dry; and

(c) Protected from contamination.

(16) Toothpaste used by multiple children shall be dispensed

onto an intermediate surface, such as waxed paper, to avoid cross contamination.

Section 11. Toys and Furnishings. (1) All toys~~[equipment]~~ and furniture contacted by a child shall be:

(a) Kept clean and in good repair; and

(b) Free of peeling, flaking, or chalking paint.

(2) Indoor and outdoor equipment shall:

(a) Be clean, safe, and in good repair;

(b) Meet the physical, developmental needs, and interests of children of different age groups;

(c) Be free from sharp points or corners, splinters, protruding nails or bolts, loose or rusty parts, hazardous small parts, lead-based paint, poisonous material, and flaking or chalking paint; and

(d) Be designed to guard against entrapment or situations that may cause strangulation.

(3) Toys shall be:

(a) Used according to the manufacturer's safety specifications;

(b) Durable; and

(c) Without sharp points or edges.

(4) A toy or another item that is~~[Toys and other items that are]~~ considered a mouth contact surface~~[surfaces]~~ by a child not toilet trained shall be sanitized daily by:

(a) 1. Scrubbing in warm, soapy water using a brush to reach into crevices;

2.~~[(b)]~~ Rinsing in clean water;

3.~~[(e)]~~ Submerging in a sanitizing solution for at least two (2) minutes; and

4.~~[(d)]~~ Air dried; or

(b) Cleaning in a dishwasher if the toy or other item is dishwasher safe.

(5) Tables and chairs shall be of suitable size for children.

(6) Chairs appropriate for staff shall be provided to use when feeding, holding, or playing with a child.

Section 12. Transportation. (1) A center shall document compliance with KRS Chapter 186 and 603 KAR 5:072 pertaining to:

(a) Vehicles;

(b) Drivers; and

(c) Insurance.

(2) A center providing or arranging transportation service shall:

(a) Be licensed and approved by the cabinet or its designee prior to transporting a child;

(b) Have a written plan that details the type of transportation, staff schedule, transportation schedule, and transportation route; and

(c) Have written policies and procedures, including emergency procedures practiced monthly by staff who transports children.

(3) Prior to transporting a child, a center providing transportation services of a child shall notify the cabinet or its designee in writing of the:

(a) Type of transportation offered;

(b) Type of vehicle used for transportation;

(c) Plan for ensuring staff perform duties relating to transportation properly;

(d) Full insurance coverage for each vehicle;

(e) Agency policy and procedures relating to an emergency plan for evacuating the vehicle;

(f) Contracts, agreements, or documents detailing arrangements with any third party for services; and

(g) Safety procedures for:

1. Transporting a child;

2. Loading and unloading a child; and

3. Providing adequate supervision of a child.

(4) A vehicle used to transport children shall be equipped with:

(a) A fire extinguisher;

(b) First aid supplies as described in Section 7 of this administrative regulation;

(c) Emergency reflective triangles; and

(d) A device to cut the restraint system, if necessary.

(5) Transportation provided by licensed public transportation or a school bus shall comply with subsections (1) and (2) of this

section.

(6) A vehicle used to transport children shall meet the following requirements:

(a) For a twelve (12) or more passenger vehicle, the child-care center shall maintain[display] a current certification of inspection from the Transportation Cabinet[on the designated window].

(b) A vehicle that requires traffic to stop while loading and unloading a child shall be equipped with a system of:

1. Signal lamps;
2. Identifying colors; and
3. Cautionary words.

(c) A vehicle shall be equipped with seat belts for each occupant to be individually secured.

(d) A vehicle shall not transport children and hazardous materials at the same time.

(7) The appropriate car safety seat meeting federal and state motor vehicle safety standards in 49 C.F.R. 571.213 and KRS 189.125 shall be used for each child.

(8) A daily inspection of the vehicle shall be performed prior to the vehicle's use and documented for the following:

(a) Tire inflation consistent with tire manufacturer's recommended air pressure[Tires];

(b) Working lights, signals, mirrors, gauges, and wiper blades;

(c) Working safety restraints;

(d) Adequate fuel level; and

(e) Cleanliness and good repair[free of debris].

(9)(a) The staff-to-child ratios set forth in Section 2(2) of this administrative regulation shall apply to vehicle transport, if not inconsistent with special requirements or exceptions in this section.

(b) An individual who is driving with a child in the vehicle shall supervise no more than four (4) children under the age of five (5).

(10) Each child shall:

- (a) Have a seat;
- (b) Be individually belted or harnessed in the seat; and
- (c) Remain seated while the vehicle is in motion.

(11) A child shall not be left unattended:

- (a) At the site of aftercare delivery; or
- (b) In a vehicle.

(12) If the parent or designee is unavailable, a prearranged written plan shall be completed to designate where the child can be picked up.

(13) A child shall not be picked up or delivered to a location that requires crossing the street or highway unless accompanied by an adult.

(14) A vehicle transporting a child shall have the headlamps on.

(15) If a vehicle needs to be refueled, it shall be refueled when not being used to transport a child. If emergency refueling or repair is necessary during transporting, all children shall be removed and supervised by an adequate number of adults while refueling or repair is occurring.

(16) If the driver is not in the driver's seat, the:

- (a) Engine shall be turned off;
- (b) Keys shall be removed; and
- (c) Emergency brake shall be set.

(17) Transportation services provided shall:

- (a) Be recorded in writing and include:
 1. The first and last name of the child transported; and
 2. The time each child gets on and the time each child gets off;
- (b) Be completed by a staff member other than the driver; and
- (c) Be kept for five (5) years.

(18) A driver of a vehicle transporting a child for a center shall:

- (a) Be at least twenty-one (21) years old;
- (b) Complete:
 1. The background checks as described in 922 KAR 2:280[2:440]; and

2. An annual check of the:

- a. Kentucky driver history records in accordance with KRS 186.018; or
- b. Driver history records through the state transportation agency that issued the driver's license;
- (c) Hold a current driver's license which has not been suspended or revoked during the last five (5) years; and
- (d) Not caused an accident which resulted in the death of a

person.

(19) Firearms, ammunition, alcohol, or illegal substances shall not be transported in a vehicle transporting children.

(20)(a) Based on the harm, threat, or danger to a child's health, safety, and welfare, the cabinet shall revoke a center's privilege to transport a child or pursue an adverse action in accordance with Section 14, 15, 16, or 17[9, 10, 11, or 12] of 922 KAR 2:090:

1. For a violation of this section; or
2. If the center:
 - a. Fails to report an accident in accordance with 922 KAR 2:090[2:440], Section 12[6]; or
 - b. Transports more passengers than the vehicle's seating capacity and safety restraints can accommodate.

(b) Revocation of a center's privilege to provide transportation services in accordance with paragraph (a) of this subsection shall:

1. Apply to each site listed under the licensee; and
2. Remain effective for no less than a twelve (12) month period.

(21) A parent may use the parent's vehicle to transport the parent's child during a field trip.

Section 13. Animals. (1) An animal shall not be allowed in the presence of a child in care:

(a) Unless:

1. The animal is under the supervision and control of an adult;
2. Written parental consent has been obtained; and
3. The animal is certified as vaccinated against rabies; or

(b) Except in accordance with subsection (3) of this section.

(2) A parent shall be notified in writing if a child has been bitten or scratched by an animal.

(3) An animal that is considered undomesticated, wild, or exotic shall not be allowed at a child-care center unless the animal is:

- (a) A part of a planned program activity led[lead] by an animal specialist affiliated with a zoo or nature conservatory; and
- (b) In accordance with 301 KAR 2:081 and 301 KAR 2:082.

(4) This section shall not apply to wild animals on the outer property of the child-care center which are expected to be found outdoors, such as squirrels and birds, if they are not:

- (a) Disturbed; or
- (b) Brought indoors.

ADRIA JOHNSON, Commissioner

SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 15, 2018 at 8 a.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

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

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes health and safety standards for child-care centers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards regarding health and safety for child-care centers.

(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 minimum health and safety standards for child-care centers as condition of their licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the health and safety standards for child-care centers.

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

(a) How the amendment will change this existing administrative

regulation: The amendment to this administrative regulation clarifies numerous provisions and eliminates others due to public comments received and agency reviews conducted as a result of the Red Tape Reduction initiative, including feeding and meal requirements, multi-aged children in a classroom, and access to hygiene and health products. In addition, the administrative regulation assures more consistent terminology use, aligns the administrative regulation with the Child Care and Development Fund's 2014 reauthorization and other concurrent regulatory changes, requires hand-washing by staff after smoking and vaping, and incorporates epi-pen allowances authorized by 2016 Ky. Acts ch. 122. Lastly, the administrative regulation makes technical corrections in accordance with KRS Chapter 13A. The amended-after-comment version includes changes to standards for care of toddlers and technical correction or clarification to terminology used.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to clarify health and safety requirements of licensed child-care centers, make the administrative regulations governing licensed child-care centers congruent, and be responsive to provider and agency inputs resulting from the Red Tape Reduction initiative.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorized statutes by further clarifying and specifying health and safety standards for licensed child-care centers.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its provision of enhanced health and safety measures for licensed child care providers in a manner responsive to recent context, congruent with recognized practice, and supportive of integrity in the child care community.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An applicant for child-care center licensure or an existing licensed child-care center will be impacted by this administrative regulation. As of November 22, 2017, there were 1,980 Kentucky licensed child-care centers, both Type I and Type II.

(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: Given the new federally mandated background check requirements applicable to licensed child-care centers, the cabinet has attempted to avoid any further impact on regulated entities, but rather, has attempted to clarify provisions of this administrative regulation and be responsive to the recently enacted legislation and the Red Tape Reduction comments and agency reviews.

(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 impose no new or additional cost on providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensed child-care centers and children in their care will benefit from the clarity and specificity provided in this administrative regulation and new permissions afforded.

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

(a) Initially: The amendment to this administrative regulation will not result in any new initial costs to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will not result in any ongoing costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match and maintenance of effort for the block grant, and limited agency funds support the implementation of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation,

if new, or by the change if it is an amendment: There is no increase in fees or funding required as a result of this amendment.

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

(9) TIERING: Is tiering applied? This administrative regulation does not establish any fees, or directly or indirectly increased any fees.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 7 C.F.R. 226.20, 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 42 U.S.C. 9857-9858q

(2) State compliance standards. KRS 194A.050(1), 199.896(2)

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

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services is impacted by this administrative regulation. A local government or a school district operating a licensed child-care center, in whole or in part, will be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.896(2), 7 C.F.R. 226.20, 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 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? The amendment to this administrative regulation will generate no revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to this administrative regulation will generate no revenue in the 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 in the first year.

(d) How much will it cost to administer this program for subsequent years? There are 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:

PROPOSED AMENDMENTS

PERSONNEL BOARD
(Amendment)

101 KAR 1:325. Probationary periods.

RELATES TO: KRS 18A.005, 18A.0751(1)(e), (4)(e), 18A.111
 STATUTORY AUTHORITY: KRS 18A.005, 18A.075(1),
 18A.0751(1)(e), (4)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075(1) requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751(1)(e) requires the Personnel Board to promulgate comprehensive administrative regulations for the classified service governing probation. KRS 18A.0751(4)(e) authorizes the Personnel Board to promulgate administrative regulations to establish an initial probationary period in excess of six (6) months for specific job classifications. This administrative regulation establishes the requirements relating to probationary periods.

Section 1. Initial Probationary Period. (1) The initial probationary period shall be computed from the effective date of appointment to the corresponding date in the sixth or final month, depending upon the length of initial probationary period, except as established in KRS 18A.111.

(2) The following job classifications shall require an initial probationary period in excess of six (6) months:

Title Code	Job Classification	Length of Initial Probationary Period
20000538	Golf Course Superintendent I	9 months
20000539	Golf Course Superintendent II	9 months
20000558	Parks Golf Professional	9 months
20000677	State Park Ranger I	9 months
20000562	Resort Park Manager I	12 months
20000563	Resort Park Manager II	12 months
20000564	Resort Park Manager III	12 months
20000568	Parks Program Services Supervisor	9 months
20000569	Parks Camping/Boat Dock Manager	9 months
20000570	Park Business Manager I	12 months
20000571	Park Business Manager II	12 months
20000572	Park Manager I/Historic Site Manager	12 months
20000573	Park Manager II	12 months
20000574	Park Manager III	12 months
20000609	Conservation Officer Recruit	12 months
20000616	Veterans Benefits Field Rep I	9 months
20000618	Veterans Benefits Regional Administrator	9 months
20000672	Facilities Security Sergeant	12 months
20000673	Facilities Security Lieutenant	12 months
20000676	State Park Ranger Recruit	12 months
20000680	Facilities Security Officer II	12 months
20000683	Mounted Patrol Officer Recruit	12 months
20000687	Police Telecommunicator I	12 months
20000688	Police Telecommunicator II	12 months
20000689	Police Telecommunications Shift Supervisor	12 months
20000690	Police Telecommunications Supervisor	12 months
20000692	CVE Inspector I	12 months
20000694	CJIS (Criminal Justice Information System) Compliance Specialist I	12 months
20000695	CJIS Compliance Specialist II	12 months
20000696	CJIS Compliance Specialist III	12 months

20000697	CJIS Compliance Supervisor	12 months
20000698	Transportation Operations Center Specialist I	12 months
20000703	Polygraph Examiner II	12 months
20000704	Polygraph Examiner I	12 months
20000713	Driver's Test Administrator	12 months
[20000716]	Fish and Wildlife Telecommunicator-I	12 months]
20000813	Boiler Inspector I	12 months
20000820	Fire Protection Systems Inspector	12 months
20000821	Industrial Hygienist I	12 months
20000834	OSH Compliance Officer I	12 months
20000852	OSH Safety Consultant I	12 months
20000856	Industrial Hygienist Consultant I	12 months
[20000872]	Financial Institutions Examiner III	12 months
20000873	Financial Institutions Examiner IV	12 months
20000874	Financial Institutions Examiner Specialist	12 months]
20000888	Insurance Fraud Investigator I	12 months
20000889	Insurance Fraud Investigator II	12 months
20000890	Insurance Fraud Investigator Supervisor	12 months
20000938	Forensic Firearms and Toolmark Examiner I	12 months
20000940	Forensic Chemist I	12 months
20000941	Forensic Chemist II	12 months
20000943	Forensic Biologist I	12 months
20000944	Forensic Biologist II	12 months
20000953	Forensic Computer Examiner I	12 months
20000954	Forensic Computer Examiner II	12 months
20000955	Forensic Computer Examiner III	12 months
20000963	Therapy Program Assistant	9 months
20000974	Audiologist I	12 months
20001001	Patient Aide I	9 months
20001037	Medical Investigator I	12 months
20001038	Medical Investigator II	12 months
[20001104]	KSB/KSD (Kentucky School for the Blind/Kentucky School for the Deaf) Administrator-I	12 months]
20001105	KSB/KSD Administrator III	12 months
[20001106]	KSB/KSD Administrator IV	12 months]
20001107	KSB/KSD Administrator V	12 months
[20001108]	KSB/KSD Administrator VI	12 months]
20001122	Disability Adjudicator I	12 months
20001125	Social Service Worker I	9 months
20001132	Field Services Supervisor	12 months
20001135	Juvenile Facility Superintendent I	12 months
20001136	Juvenile Facility Superintendent III	12 months
20001137	Facilities Regional Administrator	12 months
20001138	Youth Services Program Supervisor	12 months
20001139	Juvenile Facility Superintendent II	12 months
20001140	Family Services Office Supervisor	12 months
20001142	Human Rights Specialist	12 months
20001157	Administrative Hearing Officer I	12 months
20001159	Human Rights Enforcement Branch Manager	12 months

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20001162	Human Rights Compliance Supervisor	12 months
20001163	Human Rights Housing Compliance Supervisor	12 months
20001164	Human Rights Accommodations Compliance Supervisor	12 months
20001165	Human Rights Compliance Enforcement Officer II	12 months
20001166	Probation and Parole Officer I	12 months
20001171	Youth Worker I	12 months
20001174	Youth Worker Supervisor	12 months
20001175	Juvenile Services District Supervisor	12 months
20001184	Service Region Administrator	12 months
20001185	Service Region Administrator Associate	12 months
20001186	Service Region Clinical Associate	12 months
20001788	Revenue Field Auditor I	12 months
20001807	Revenue Auditor I	12 months
20001841	Criminal Intelligence Analyst I	12 months
20001842	Criminal Intelligence Analyst II	12 months
20001882	Public Advocate Investigator I	12 months
20001895	Environmental Administrative Hearing Officer	12 months
20001899	Mitigation Specialist I	12 months
20001904	Investigator I	12 months
21000900 [20000870]	Financial Institutions Examiner I	12 months
21000901 [20000871]	Financial Institutions Examiner II	12 months
21002025	Highway Technician Assistant I	12 months
21002026	Highway Technician Assistant II	12 months
21002027	Highway Technician I	12 months
21002028	Highway Technician II	12 months
21002029	Highway Technician III	12 months
21002030	Highway Technician IV	12 months
21002031	Highway Technician Superintendent I	12 months
21002032	Highway Technician Superintendent II	12 months
21002326	Apprentice I	12 months
21002327	Apprentice II	12 months

(3) If the length of the initial probationary period for a job classification is changed, an employee serving an initial probationary period on the effective date of the change shall serve the shorter of the initial probationary periods. If an employee is appointed, the employee's appointing authority shall advise the employee of the period of his initial probation.

Section 2. Promotional Probationary Period. (1) An employee who satisfactorily completes the promotional probationary period shall be granted status in the position to which he has been promoted. Unless an employee receives notice prior to the end of his promotional probationary period that he has failed to satisfactorily complete the promotional probationary period and that he is being reverted, the employee shall be deemed to have served satisfactorily and shall acquire status in the position to which he has been promoted.

(2) An employee who fails to satisfactorily complete a promotional probationary period shall be reverted to his former position or to a position in the same job classification as his former position. A written notification shall be sent to the employee to advise the employee of the effective date of reversion. A copy of the notice of reversion shall be forwarded to the Secretary of Personnel on the same date notice is delivered to the employee.

(3) Except as established in KRS 18A.111, the promotional

probationary period shall be computed from the effective date of promotion to the corresponding date in the appropriate month following promotion as established in KRS 18A.005(27).

(4) The promotional probationary period shall be the same length as the initial probationary period for each job classification.

Section 3. Probationary Period Upon Reinstatement. (1) An employee who is reinstated to a position in the classified service no later than twelve (12) months after the beginning of a break in the classified service shall be reinstated with status. This shall include an employee ordered reinstated pursuant to KRS 18A.111(3), unless the board rules otherwise.

(2) An employee who is reinstated to the classified service more than twelve (12) months after a break in service, except an employee ordered reinstated pursuant to KRS 18A.111(3), shall serve an initial probationary period.

STAFFORD EASTERLING, General Counsel

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2018, at 9:00 a.m. Eastern Time at the Kentucky Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m., June 30, 2018. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Stafford Easterling, General Counsel, Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 695-5799, email stafford.easterling@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stafford Easterling

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation sets forth the classifications for which an initial probationary period in excess of six (6) months is required.

(b) The necessity of this administrative regulation: To establish the appropriate probationary periods for classifications throughout state government.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.0751(4)(e) requires the Personnel Board to promulgate an administrative regulation listing the job classifications for which an initial probationary period in excess of six (6) months is required. It also makes clear that a promotional probationary period shall mirror the initial promotional period for a particular job classification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth the classifications for which an initial probationary period in excess of six (6) months is required.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment establishes the positions of Apprentice I and Apprentice II, with a twelve-month probationary period because of the need for increased observation. The proposed amendment would increase the initial probationary period for the Family Services Office Supervisor, Field Services Supervisor, Service Region Administrator Associate, Services Region Clinical Associate, Service Region Administrator, Forensic

Computer Examiner I, Forensic Computer Examiner II, Forensic Computer Examiner III, OSH Compliance Officer I, Industrial Hygienist I, Industrial Hygienist Consultant I and OSH Safety Consultant I from six months to twelve months. Clerical corrections to the Title Code for Financial Institutions Examiner I and Financial Institutions Examiner II. With the abolishment of Financial Institutions Examiner III, Financial Institutions Examiner IV, Financial Institutions Examiner Specialist, Fish and Wildlife Telecommunicator I, KSB/KSD (Kentucky School for the Blind/Kentucky School for the Deaf) Administrator I, KSB/KSD Administrator IV and KSB/KSD Administrator VI.

(b) The necessity of the amendment to this administrative regulation: The Secretary of the Personnel Cabinet, in consultation with the respective agencies, has recommended changes in the duration of the initial probationary period for the enumerated classifications.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment consists of changes to the list of classifications for which an initial probationary period in excess of six (6) months is required. It also makes clear that a promotional probationary period shall mirror the initial promotional period for a particular job classification.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment would establish a twelve-month probationary period for the newly-created Apprentice I and Apprentice II positions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state employees appointed to the listed classifications, and the state government agencies that employ them.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

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

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

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

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

(9) TIERING: Is tiering applied? No. This regulation must apply equally to all classified employees in all state agencies with classified employees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Personnel Cabinet, the Cabinet for Health and Family Services; the Kentucky State Police, and the Labor Cabinet.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.0751 and KRS 18A.111

(3) Estimate the effect of this administrative regulation on the

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Not applicable

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Not applicable

(c) How much will it cost to administer this program for the first year? Not applicable

(d) How much will it cost to administer this program for subsequent years? Not applicable

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: It is not anticipated that this administrative regulation will have a fiscal impact.

PUBLIC PROTECTION CABINET Board of Auctioneers (Amendment)

201 KAR 3:045. Recordkeeping and accounting.

RELATES TO: KRS 330.110(5)

STATUTORY AUTHORITY: KRS 330.050 (8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 330.050(8) authorizes the Board of Auctioneers to promulgate administrative regulations with the approval of the executive director of the Kentucky Real Estate Authority in accordance with KRS Chapter 13A as required to fulfill the duties and functions assigned to the board~~[concerning recordkeeping and accounting]~~. This administrative regulation establishes requirements to protect the public through adequate recordkeeping and accounting by licensees.

Section 1. Proceeds of a personal property auction not disbursed to the seller[owner] on auction day shall be deposited in an auction escrow account by the auctioneer or auction firm no later than three (3) banking days following the date of auction or sale of the goods, whichever occurs first.

Section 2. Auctioneers and auction firms shall use federally insured depositories in the Commonwealth of Kentucky.

Section 3. Proceeds due from the sale of goods, other than real property, shall be disbursed to the seller[owner] no later than thirty (30) days after the date of each auction, unless the auction consisted of both personal property and real property for the same seller, in which case the proceeds due from the sale of the personal property may be disbursed to the seller in conjunction with the real property closing and settlement if the real property closing and settlement occurs within sixty (60) days following the date of the auction.

Section 4. Funds from a real estate auction shall be held in escrow until settlement in accordance with the agreement of sale.

Section 5. If the seller's[owner's] goods are not sold in a single auction, proceeds due shall be disbursed to the seller[owner] within thirty (30) days after each auction for goods, other than real property, or in accordance with the agreement of sale for the sale of real property. Notice shall be given to the seller[owner] of the tentative date of auction of the remaining goods.

Section 6. (1) The auction escrow account or accounts shall be

separate from any individual or office account and used solely for the preservation and guarantee of money belonging to others consisting of auction proceeds and real property contract deposits[until disbursed at settlement].

(2) Funds for any other purpose shall not be commingled with the auction escrow account.

(3) Escrow funds shall only be disbursed at settlement or withdrawn by agreement in writing by all parties, by an order of a court of competent jurisdiction or, in the case of real property contract deposits held by a broker, in accordance with KRS Chapter 324 and 201 KAR Chapter 11.

(4) ~~Moneys due to the auctioneer or auction firm shall not be withdrawn from the auction escrow account until final settlement is made with the owner.[Section 7. Auction records, including lists of buyers and their addresses, and clerk sheets showing the items sold including the buyers' numbers or names and the selling prices, and the final settlement papers, shall be retained for a period of five (5) years from the date of settlement. These business records shall be available for inspection by the board or its designees.]~~

JOE GRIBBINS, Chair

H.E. CORDER II, Executive Director

DAVID DICKERSON, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2018 at 9:00 a.m., at the Kentucky Board of Auctioneers, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 p.m. on June 30, 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: Ryan Morrison, General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave. Suite B, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-1538, email Ryan.Morrison@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ryan Morrison

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes recordkeeping and accounting requirements for licensees of the Kentucky Board of Auctioneers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure consistent recordkeeping and accounting procedures for auctioneers in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 330.050(8) authorizes the board to promulgate administrative regulations with the approval of the executive director of the Kentucky Real Estate Authority in accordance with KRS Chapter 13A as required to fulfill the duties and functions assigned to the board by Chapter 330 of the Kentucky Revised Statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Board of Auctioneers is charged with the responsibility of licensing and regulating auctioneers and auction house operators in Kentucky. This administrative regulation protects licensees and consumers by setting forth clear recordkeeping and accounting requirements.

(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 addresses grammatical errors and updates required recordkeeping and accounting procedures for auctions that consist of both personal property and real property proceed distributions. The amendment also clarifies auction escrow account practices and removes Section 7, which has been superseded by statute.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify and modernize recordkeeping and accounting procedures for auctioneers.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment falls within the board's authority to promulgate administrative regulations to fulfill the duties and functions it is assigned by Chapter 330 of the Kentucky Revised Statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists the effective administration of Chapter 330 of the Kentucky Revised Statutes by clarifying recordkeeping and accounting procedures for licensees, which further protects consumers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Auctioneers is affected by this administrative regulation. Board licensees and auction consumers will be affected by this amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Kentucky Board of Auctioneer licensees will be required to comply with all aspects of the disbursement and escrow account practices set forth in this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will impose no new costs on 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 clarifies compliance requirements for both licensees and consumers regarding the disbursement of auction proceeds and the use of escrow accounts.

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

(a) Initially: There is no initial cost to implement this amendment.

(b) On a continuing basis: There is no cost to implement 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: There is no funding necessary to implement this amendment.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this amendment applies to all licensees of the Kentucky Board of Auctioneers equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

regulation. KRS 330.050(8) authorizes the board to promulgate administrative regulations with the approval of the executive director of the Kentucky Real Estate Authority in accordance with KRS Chapter 13A as required to fulfill the duties and functions assigned to the board by KRS 330.

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 first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for subsequent years.

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

(d) How much will it cost to administer this program for subsequent years? There is no cost 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 (+/-): No impact.

Expenditures (+/-): No impact.

Other Explanation: None.

**PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Board of Auctioneers
(Amendment)**

201 KAR 3:090.[Administrative] Fees[for Applications and Services].

RELATES TO: KRS 330.050(6), 330.060, 330.070, 330.095, 330.192

STATUTORY AUTHORITY: KRS 330.050(8), 330.060(3)(b)[(a)], 330.070, 330.192

NECESSITY, FUNCTION, AND CONFORMITY: KRS 330.050(8) authorizes the Board of Auctioneers to promulgate administrative regulations with the approval of the executive director of the Kentucky Real Estate Authority in accordance with KRS Chapter 13A as required to fulfill the duties and functions assigned to the board by KRS Chapter 330. KRS 330.060(3)(b)[(a)] requires the board to establish an examination fee by administrative regulation. KRS 330.070 requires the board to promulgate administrative regulations concerning license fees and replacement fees, and authorizes the board to establish fees for deferral of continuing education or a change of address, ~~late fees for continuing education completion, fees associated with pocket licenses, and change of address fees~~. KRS 330.192 authorizes the board to promulgate administrative regulations concerning the auctioneer's education, research, and recovery fund. This administrative regulation establishes ~~necessary~~ fees associated with acquiring and maintaining auctioneer licenses.

Section 1. Licensure[Application, Renewal, and Examination] Fees. (1) The initial license fee for each new applicant with the Kentucky Board of Auctioneers shall be \$125. Payment of the fee shall accompany the Auctioneer License Application.

~~(2)[The license renewal fee shall be paid as of June 30th of each year.~~

~~(a)] The license renewal fee shall be \$125[if paid by June 30th of each year]. A late fee of \$125 shall be added to the renewal fee during the six (6) month grace period following the expiration date of the license.](b) The license renewal fee during the six (6) month~~

~~grace period after June 30th shall be \$125, in addition to a late fee of \$125.]~~

~~(3) The examination fee for each applicant shall be \$125. Payment of the fee shall accompany the Auctioneer Examination Application.[The license renewal and late fees for an apprentice auctioneer shall be equal to the fees established in subsection (2) of this section].~~

~~(4) The licensing fee for a reciprocal applicant shall be determined by the applicant's state of licensure, pursuant to the reciprocity agreement between the board and the proper authority for licensing auctioneers in the applicant's state. Payment of the fee shall accompany the Auctioneer Reciprocal License Application.[The examination fee shall be \$125 for each new applicant with the board].~~

Section 2. Late Continuing Education Completion Fee. A licensee who has failed to complete the required continuing education credits during the license year~~[in the time period established by KRS 330.070] may[shall] remit a fee of \$300, and the continuing education reporting requirement shall be deferred to the next annual renewal.~~~~[and in addition, shall complete twice the amount of continuing education credits established by statute within the following year.]~~

Section 3. Replacement Fee[of License or Pocket License]. ~~(1)] The fee for replacement of a license or a pocket license shall be fifteen (15) dollars.[(2) The fee for replacement of a pocket license shall be fifteen (15) dollars.]~~

Section 4. Reactivation Fees[of License. The fee to] To reactivate a license that[which] has previously been placed in escrow status, a licensee shall pay:

(1) A reactivation fee of \$125; and

(2) The annual renewal recovery fee of thirty (30) dollars.

(3) Reactivation fees shall not apply to any individual seeking to reactivate a license following a period of military service, who shall request reinstatement of licensure within sixty (60) days of the individual's honorable discharge from the service or return from military duty, and the board shall grant the request.[shall be \$125. In addition, the licensee shall have completed the continuing education credits established by KRS 330.070 for the current year, and the licensee shall have paid the renewal recovery fee established in Section 6 of this administrative regulation.]

Section 5. Change of Address and License Verification Fees.

(1) The fee for a Residential change of address shall be fifteen (15) dollars.

(2) The fee for a change of principal~~[Business Change of Address]~~ shall be fifteen (15) dollars.

(3) There shall be no fee for the following changes:

(a) Placing license into escrow; and

(b) Change of name.

(4) The fee for a duplicate license shall be fifteen (15) dollars.

(5) The fee for a letter of good standing shall be five (5) dollars.

Upon request, the board shall provide documentation directly to the auctioneer licensing authority in another jurisdiction.

(6) Change and license verification requests shall be submitted on the Information Update and License Documentation form.

Section 6. Recovery Fees[Education, Research, and Recovery Fund]. The following fees shall be assessed for the auctioneer's education, research, and recovery fund established by KRS 330.192:

(a) The initial recovery fee for[The Kentucky Board of Auctioneers shall assess] each new applicant[an initial recovery fee of] shall be thirty (30) dollars; and

(b) The renewal recovery fee for each licensee shall be[and may assess a renewal recovery fee, of] thirty (30) dollars per year[for the Education, Research, and Recovery Fund].

Section 7. Complaints. Complaints against a licensee shall be filed on the Complaint Form, and shall not require a fee.

Section 8. Incorporation by Reference:

(1) The following material is incorporated by reference:

(a) "Auctioneer License Application", May 2018;

(b) "Auctioneer Examination Application", May 2018;

(c) "Auctioneer Reciprocal License Application", May 2018;

(d) "Information Update and License Documentation Form", May 2018; and

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Auctioneers, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601 Monday through Friday, 8 a.m. to 4:30 p.m.

JOE GRIBBINS, Chair

H.E. CORDER, Executive Director

DAVID DICKERSON, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 9:00 a.m., at the Kentucky Board of Auctioneers, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 p.m. on June 30, 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: Ryan Morrison, General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave. Suite B, Frankfort, Kentucky 40601, (502) 782-0562, email Ryan.Morrison@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ryan Morrison

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amended administrative regulation clarifies the fees required to obtain and maintain licensure as an auctioneer in Kentucky.

(b) The necessity of this administrative regulation: This amended administrative regulation is necessary to clarify and simplify the regulatory regime governing auctioneers in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 330.050(8) authorizes the board to promulgate administrative regulations with the approval of the executive director of the Kentucky Real Estate Authority in accordance with KRS Chapter 13A as required to fulfill the duties and functions assigned to the board by KRS Chapter 330. KRS 330.060(3)(b), KRS 330.070, and KRS 330.192 all require the board to establish fees by administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Board of Auctioneers is charged with the responsibility of licensing and regulating auctioneers and auction house operators in Kentucky. This amended administrative regulation clarifies the structure and payment of fees for auctioneer applicants and licensees in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the fee structure governing auctioneer applications, renewals, exams, continuing education deferrals, license replacements, reactivations, exemptions, and changes of address. It also incorporates by reference forms required under KRS Chapter 330.

(b) The necessity of the amendment to this administrative

regulation: This amendment is necessary to clarify the auctioneer licensing fee structure and for technical and grammatical purposes.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment sets fees as required and permitted by the authorizing statutes in KRS Chapter 330.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies and simplifies the fee structure for all auctioneers and applicants.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Auctioneers is affected by this administrative regulation. New applicants and current board licensees will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amended administrative regulation will require entities identified in question (3) to pay all fees applicable to their situation in a timely manner.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amended administrative regulation codifies fees that were previously collected as a matter of policy by the Kentucky Board of Auctioneers from regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amended administrative regulation codifies fees and incorporates forms that were previously collected as a matter of policy. This will clarify and simplify fee structures and rules for regulated entities and applicants.

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

(a) Initially: There is no initial cost to implement this amendment.

(b) On a continuing basis: There is no cost to implement this 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: There is no funding necessary to implement this amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This amendment neither directly nor indirectly increases any fees; it clarifies the circumstances under which fees are to be paid.

(9) TIERING: Is tiering applied? Tiering is not applied because this amendment applies similarly to similarly situated applicants and 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 Auctioneers will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 330.050(8) authorizes the board to promulgate administrative regulations with the approval of the executive director of the Kentucky Real Estate Authority in accordance with KRS Chapter 13A as required to fulfill the duties and functions assigned to the board by KRS Chapter 330. KRS 330.060(3)(b), KRS 330.070, and KRS 330.192 all require the board to establish fees by administrative regulation.

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

the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The total revenue from fees for the Kentucky Board of Auctioneers 2017 was \$353,071.10. This administrative regulation simplifying and codifying the fees is not anticipated to have a significant effect on that amount.

(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 to the current administrative regulation is not expected to change total revenue to the Kentucky Board of Auctioneers for subsequent years.

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

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

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

Revenues (+/-): No impact.

Expenditures (+/-): No impact.

Other Explanation: None.

**GENERAL GOVERNMENT CABINET
Board of Optometric Examiners
(Amendment)**

201 KAR 5:090 Annual renewal fees.

RELATES TO: KRS 320.280

STATUTORY AUTHORITY: KRS 320.240(4), 320.280(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.280(1) authorizes the Kentucky Board of Optometric Examiners to promulgate an administrative regulation to require that optometrists annually secure a renewal certificate upon payment of a fee. ~~requires that optometrists annually secure a renewal certificate upon payment of a fee of not more than \$200. This administrative regulation prescribes the renewal fee.]~~

Section 1. The annual renewal fee for an optometrist shall be ~~\$250~~[\$200].

JONATHAN L. SHREWSBURY, O.D., President

APPROVED BY AGENCY: May 9, 2018

FILED WITH LRC: May 10, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2018, at 9:30 a.m., at the Board offices, 2365 Harrodsburg Road, Suite A240, Lexington, Kentucky 40504. Individuals interested in attending this hearing shall notify this agency in writing by five (5) 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 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 June 30, 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. Send notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Connie Calvert, Board Administrator, Kentucky Board of Optometric Examiners, 2365 Harrodsburg Road, Suite A240, Lexington, Kentucky 40601, phone (859) 246-

2744, fax (859) 246-2746, email connie.calvert@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Connie Calvert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation increases the renewal license fee from \$200 to \$250.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to increase the annual renewal fee to meet the costs of board expenses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 320.280(1) by increasing the renewal license fee in order to meet the expenditures of the board.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation will fund the statutory responsibilities of the board.

(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: It will increase the renewal fee from \$200 to \$250.

(b) The necessity of the amendment to this administrative regulation: The amendment is required to fund the statutory duties of the board.

(c) How the amendment conforms to the content of the authorizing statutes: The statutes authorize the board to regulate the profession of Optometry. The increase of the renewal fee funds the statutory duties imposed on the board.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will fund the effective administration KRS Chapter 320 imposes on the board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 840 licensed optometrists currently licensed in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The licensees will a minimal increase in cost of practicing optometry.

(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 optometrists will have to pay an additional \$50 each year to renew their license to practice optometry in Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost for each of the entities: Not applicable.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Optometrists licensed by the board will assist in funding the board in protecting the public from unlicensed practitioners and incompetent practitioners.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: This amendment will not substantially increase costs.

(b) On a continuing basis: Same as above.

(6) The source of funding for the implementation and enforcement of this administrative regulation: The regulation increases the renewal fee from \$200 to \$250.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: The increase in fee is \$50 per year to renew a license. The total renewal will increase from \$200 to \$250.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation increases the annual renewal fee for a license from \$200 to \$250.

(9) TIERING: Is tiering applied? Tiering was not applied as the increase of \$50.00 falls on all licensees equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation: KRS 320.280(1).

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

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

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

(c) How much will it cost to administer this program for the first year? The cost should not change.

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

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

Revenues (+/-)

Expenditures (+/-)

Other Explanation:

GENERAL GOVERNMENT
Board of Optometric Examiners
(Amendment)

201 KAR 5:130. Controlled substances.

RELATES TO: KRS 218A.172, 218A.202, 218A.205(3)

STATUTORY AUTHORITY: KRS 218A.205(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3) requires the board to promulgate administrative regulations on: prescribing standards for controlled substances; a procedure to temporarily suspend, limit, or restrict a license if unrestricted practice poses a danger to the health, welfare, or safety of patients or the public; a procedure for the expedited review of complaints pertaining to controlled substances; and penalties for convictions of offenses related to controlled substances. This administrative regulation establishes the requirements relating to controlled substances in the practice of optometry.

Section 1. Authorization to Prescribe Controlled Substances.~~[Prescribing Standards.—(1)]~~ A Kentucky licensed optometrist authorized to prescribe controlled substances for humans shall:

(1)~~[(a)]~~ Have a current and valid DEA number;

(2) Have submitted to the board a fingerprint-supported criminal record check by the Department of Kentucky State Police and Federal Bureau of Investigation for initial licensure to practice; and

(3)~~[(b)]~~ Register and maintain such registration with Kentucky All Schedule Prescription Electronic Reporting (KASPER).~~;~~

Section 2. Professional Standards for Prescribing Controlled Substances. (1) A Kentucky licensed optometrist authorized to prescribe controlled substances for humans shall:

(a)~~[(e)]~~ Prescribe controlled substances only for the examination or treatment [or relief of pain] for a condition of the eye and its appendages;

(b)~~[(d)]~~ Prescribe only Schedule II limited to hydrocodone combination products as defined in KRS 218A.010, Schedule III, IV, or V controlled substances; and

(c)~~[(e)]~~ Prescribe controlled substances for a quantity

therapeutically sufficient, up to seventy-two (72) hours. ~~;~~

(2) Prior to prescribing any controlled substance, a Kentucky licensed optometrist shall:

(a)~~[(f)]~~ Examine the patient face-to-face and in-person ~~[prior to prescribing a controlled substance];~~

(b) Obtain a medical history and conduct a physical examination of the patient, as appropriate to the patient's medical complaint, and document the information in the patient's medical record;

(c)~~[(g)]~~ Verify the fact that the patient that is prescribed a controlled substance is who the patient claims to be; and

(d)~~[(h)]~~ Establish a documented diagnosis through the use of accepted medical practices. ~~;~~ and

(3) Prior to prescribing a Schedule II controlled substance, a Kentucky licensed optometrist shall also:

(a) Query the electronic monitoring system established in KRS 218A.202 for all available data on the patient for the twelve (12) month period immediately preceding the patient encounter and appropriately utilize that data in the evaluation and treatment of the patient;

(b) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence;

(c) Discuss treatment objectives and further diagnostic examinations required; and

(d) Obtain written consent for the treatment.

(4) The requirements set forth within subsection (3) shall not apply when:

(a) A licensed Kentucky optometrist prescribes or administers a controlled substance immediately prior to, during, or within the fourteen (14) days following an operative or invasive procedure, if the prescribing or administering is medically related to the operative or invasive procedure and the medication usage does not extend beyond the fourteen (14) days;

(b) A licensed Kentucky optometrist prescribes or administers a controlled substance necessary to treat a patient in an emergency situation; or

(c) A licensed Kentucky optometrist prescribes or administers a controlled substance for the following:

1. Administration in a hospital or long-term-care facility if the hospital or long-term-care facility with an institutional account, or a practitioner in those hospitals or facilities where no institutional account exists, queries the electronic monitoring system established in KRS 218A.202 for all available data on the patient or resident for the twelve (12) month period immediately preceding the query within the twelve (12) hours of the patient's or resident's admission and places a copy of the query in the patient's or resident's medical records during the duration of the patient's stay at the facility;

2. In a single dose to relieve the anxiety, pain, or discomfort experienced by a patient submitting to a diagnostic test or procedure;

3. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federalwide assurance number from the United States Department of Health and Human Services, Office for Human Research Protections, where the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health; or

4. Within seven (7) days of an initial prescribing or dispensing as set forth within this section if the prescribing or dispensing:

a. Is done as a substitute for the initial prescribing or dispensing; and

b. Requires the patient to dispose of any remaining unconsumed medication. ~~[(i)]~~ Keep accurate, readily accessible medical records which shall include:

1. History and eye examination;

2. Diagnostic, therapeutic, and laboratory results;

3. Evaluations and consultations;

4. Treatment objectives;

5. Discussions of risk, benefits, and limitations of treatments;

- 6. Treatments;
 - 7. Medication including date, type, dosage, and quantity prescribed; and
 - 8. Instructions and agreements.]
- (5)(2) A Kentucky licensed optometrist authorized to prescribe controlled substances for humans shall not:
- (a) Dispense any controlled substances;
 - (b) Write a prescription for a controlled substance that is refillable; and
 - (c) Prescribe:
 1. With the intent or knowledge that a medication will be used, or is likely to be used, for other than a medicinal or an accepted therapeutic purpose; or
 2. With the intent to evade any law with respect to sale, use, or disposition of the medication.

Section 3. Professional Standards for Documentation. A Kentucky licensed optometrist authorized to prescribe controlled substances shall keep accurate, readily accessible, and complete medical records which include:

- (1) Medical history and eye examination;
- (2) Diagnostic, therapeutic, and laboratory results;
- (3) Evaluations and consultations;
- (4) A written plan stating treatment objectives and further diagnostic examinations required;
- (5) Discussion of risk, benefits, and limitations of treatments;
- (6) Treatments;
- (7) Medications, including date, type, dosage, and quantity prescribed;
- (8) Instructions and agreements; and
- (9) Written consent for treatment if the patient is prescribed a Schedule II controlled substance.

Section 4[2]. Temporary Suspension, Limit, or Restriction of License. (1) The board may, without benefit of a hearing, temporarily suspend, limit, or restrict the license of an optometrist authorized to prescribe controlled substances if the board finds on the basis of reasonable evidence that the licensee has violated a statute or administrative regulation the board is empowered to enforce, or[and] continued unrestricted practice by the licensee would constitute the substantial likelihood of[a] danger to the health, welfare, or safety of the licensee's patients or of the general public.

(2) The temporary suspension, limit, or restriction of a license shall take effect upon receipt by the licensee of written notice, delivered by certified mail or in person, specifying the statute or administrative regulation violated. At the time the temporary suspension, limit, or restriction order issues, the board shall schedule a disciplinary hearing to be held in accordance with the provisions of KRS Chapter 13B within ten (10) days.

Section 5[3]. Complaints. (1) The board shall consider all written complaints and sufficient anonymous complaints pertaining to the improper, inappropriate, or illegal prescribing of controlled substances. An anonymous complaint shall be considered sufficient if it is accompanied by sufficient corroborating evidence as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the complaint is meritorious.

(2) Upon receipt of a complaint pertaining to the improper, inappropriate, or illegal prescribing of controlled substances, the board[shall]:

- (a) May send a copy of the complaint to the Office of the Attorney General, the Department of the Kentucky State Police, and the Cabinet for Health and Family Services within three (3) business days to the extent otherwise allowed by law;
- (b) Shall commence an investigation within seven (7) business days of the complaint;[and]
- (c) Shall produce a charging decision within 120 days of the complaint, unless an extension for a definite time period is requested in writing by a law enforcement agency due to an ongoing criminal investigation; and[;]
- (d) Shall obtain the services of a specialist in the treatment of pain and a specialist in drug addiction to evaluate information

received regarding a licensee's prescribing practices related to controlled substances if the board or its staff does not possess such expertise to ascertain if the licensee under investigation is engaging in improper, inappropriate or illegal practices.

Section 6[4]. Penalties. (1) Pursuant to the provisions of KRS 218A.205 (3):

(a) A licensee or applicant convicted of a felony offense in any state related to[prescribing] a controlled substance after July 20, 2012 shall, at a minimum, have a permanent ban[lifetime revocation] on prescribing any and all controlled substances;

~~(b)[The board shall impose restrictions short of a permanent ban from prescribing controlled substances on a licensee convicted of a misdemeanor offense related to the prescribing of controlled substances.]~~ A licensee or applicant who has been convicted of any misdemeanor offense[after July 20, 2012] relating to prescribing or dispensing controlled substances in any state shall have his or her authority to prescribe controlled substances suspended for at least three (3) months, and shall be further restricted as determined by the board; and

(c) A licensee or applicant disciplined by a licensing board of another state related to the improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall, at a minimum, have the same disciplinary action imposed by the licensing board of the other state.

(2) A licensee or applicant who is authorized to prescribe controlled substances shall be subject to discipline by the board if:

- (a) A licensee who is required to register for an account with KASPER fails to do so or does not maintain continuous registration[during the licensee's term of licensure]; or
- (b) A licensee or applicant fails to report to the board, within thirty (30) days of the action:
 1. Any conviction involving controlled substances; or
 2. Disciplinary action taken by another licensure board involving controlled substances.

(3) For purposes of this section, a conviction of a misdemeanor or felony offense relating to a controlled substance means any conviction or plea to a criminal charge, regardless of adjudication or the title of the offense named in the plea or judgment of conviction, that is determined from all available facts to have been based upon or resulted from, in whole or part, an allegation of conduct involving the improper, inappropriate, or illegal prescribing, dispensing, distribution, possession, or use of a controlled substance.

(4) Any violation of the professional standards established in this administrative regulation shall constitute a violation of KRS 218A.205, which may result in the imposition of disciplinary sanctions by the board pursuant to KRS 320.310.

(5) Pursuant to the provisions of KRS 218A.205(3)(g)[(f)], the board shall submit all disciplinary actions to the National Practitioner Data Bank of the United States Department of Health and Human Services either directly or through a reporting agent.

JONATHAN L. SHREWSBURY, O.D., President

APPROVED BY AGENCY: May 9, 2018

FILED WITH LRC: May 10, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2018 at 9:30 a.m. in the Board office, 2365 Harrodsburg Road, Suite A240, Lexington, Kentucky 40504. Individuals interested in attending this hearing shall notify the agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends, will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of day on June 30, 2018. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Connie Calvert, Kentucky Board of Optometric Examiners, 2365 Harrodsburg Road, Suite A240, Lexington, Kentucky 40504, phone 859-246-2744, fax 859-246-2746, email connie.calvert@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Connie Calvert

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the requirements relating to controlled substances in the practice of optometry.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the professional standards for controlled substances in the practice of optometry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 218A.205(3), the Board is required to promulgate administrative regulations which establish the mandatory prescribing and dispensing standards related to controlled substances. The regulation is also required to include the diagnostic, treatment, review and other protocols and standards. This administrative regulation complies with these statutory requirements.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation sets forth the specific requirements and standards relating to controlled substances in the practice of optometry. It clarifies the handling of complaints, provides specific requirements, and establishes clear guidelines for potential violations that do not otherwise exist within the enabling 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: These amendments are necessary so that the administrative regulation is now consistent with the statutory requirements set forth in KRS Chapter 218A as it relates to controlled substances. The amendments now include the authority of an optometrist to prescribe Schedule II-combination controlled substances, which is in light of amendments made during the 2016 legislative session. Other amendments include the listing of what must be done before an optometrist is authorized to prescribe controlled substances, the written standards that must be met before a prescription is written by an optometrist, and the handling of violations of these standards.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the statutory requirements established throughout KRS 218A.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to KRS 218A.205(3), the Board is required to promulgate administrative regulations which establish the mandatory prescribing and dispensing standards related to controlled substances. The regulation is also required to include the diagnostic, treatment, review and other protocols and standards. These amendments thereby bring the regulation into compliance with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: These amendments provide the necessary information to comply with KRS 218A.205. All standards and protocols relating to controlled substances and the practice of optometry are included within these amendments, which previously did not exist in the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensed optometrists in Kentucky must comply with this regulation. As of May 2018, there are 841 optometrists who possess a license to practice in Kentucky. Additionally, there are additional requirements on the Kentucky Optometric Board of Examiners.

(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: For those Kentucky licensed optometrists who prescribe controlled substances, additional action must be taken in order to comply with this regulation and the other requirements set forth within KRS 208A. Kentucky optometrists who prescribe Schedule II controlled substances must query KASPER, as well as have certain discussions and documentation within a patient's file. All Kentucky optometrists who prescribe controlled substances must submit an appropriate background check and maintain the adequate registration with KASPER. The Kentucky Optometric Board of Examiners will have to retain a specialist as it relates to controlled substances if the Board does not otherwise possess certain knowledge as it reviews a potential complaint. Additionally, the Board must now how certain standards to applicants for licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs associated with these amendments to any impacted entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Optometrists who comply with the regulation amendments will also remain in compliance with the statutory requirements set forth within KRS 208A. The Board of Examiners will have clear processes outlined for the handling of applicants and licensees as it relates to compliance with controlled substance protocols and standards, and the Board will also have clear directives with the handling of complaints against an optometrist that is received by the Board.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All licensed optometrists are held to the same standards based upon their prescribing authority.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 218A.172, 218A.202, 218A.205(3)

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

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

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

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Professional Licensing
Kentucky Board of Licensure for
Long-term Care Administrators
(Amendment)

201 KAR 6:020. Other requirements for licensure.

RELATES TO: KRS 216A.070(1)(a), 216A.080(1)(a), (b), (c), (d), (e)

STATUTORY AUTHORITY: KRS 216A.070(3), 216A.080(1)(d), (e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070 requires the Kentucky Board of Licensure for Long-Term Care Administrators to promulgate administrative regulations to develop, impose, and enforce standards for licensure which shall be met by an individual in order to receive a license. KRS 216A.080 authorizes (1)(d) and (e) authorize the board to promulgate administrative regulations to establish examination requirements and other requirements for applicants seeking licensure to be met if the requirements are uniform and applied to each applicant for a license. KRS 216A.080(1)(d) requires an applicant to pass an examination approved by the board. This administrative regulation establishes requirements for examination and licensure and sets limits on the taking of the examination.

Section 1. Examination. (1) The examination administered and verified by the National Association of Long-Term Care Administrator Boards (NAB) shall serve as the board approved examination required by KRS 216A.080(d).

Section 2. Requirements. An applicant for a license as a long-term care administrator shall, in addition to meeting all of the requirements set forth in provided by KRS 216A.080(1):

(1) Have satisfactorily completed a course of study for, and have been awarded a baccalaureate degree from, an accredited college or university accredited by an agency recognized by the United States Department of Education;

(2)(a) ~~Pass the written examination administered and verified by the National Association of Long-Term Care Administrator Boards; and~~

(b) Submit to the Board of Licensure for Long-Term Care Administrators documentation of a passing NAB exam score, as defined by NAB for the period in which the exam was completed. Passing scores may be from up to two (2) years before or one (1) year following the filing of an application for licensure or reinstatement; the National Association of Long-Term Care Administrator Boards.

1. ~~This score shall not be less than seventy-five (75) percent of the scaled score.~~

2. ~~The examination shall be passed within:~~

a. ~~Two (2) years before filing an application for licensure or reinstatement; or~~

b. ~~One (1) year after filing an application for licensure or reinstatement; and]~~

(3)(a) ~~Except as provided in paragraph (b) and (c) of this subsection, Have six (6) months of continuous management experience in a long-term care facility. If part-time, not less than 1,000 hours of management experience within a twenty-four (24) month period, with that experience to be completed in a long-term care facility. This experience shall be completed up to no more than] two (2) years before or one (1) year following in advance of] the date of application or within one (1) year after the filing of the application]. The management experience shall include evidence of responsibility for:~~

1. Personnel management;
2. Budget preparation;
3. Fiscal management;
4. Public relations; and
5. Regulatory compliance and quality improvement.

(b) ~~An internship, that is at least 1,000 hours in length, which is a part of a degree in long-term care administration or a related field; or, shall satisfy the experience requirement established in~~

~~this subsection.]~~

(c) ~~A bachelor's or master's degree from an academic program accredited by NAB[the National Association of Long-Term Care Administrator Boards upon the applicant's graduation and] which was awarded within two (2) years of the date of the application;~~

(4) ~~Submit two (2) professional letters of reference; and~~

(5) ~~Submit an Application for Licensure. [shall satisfy the experience requirement established in this subsection.~~

~~Section 2. (1) The examination for licensure established by KRS 216A.080(1)(d) shall be the examination prepared by the National Association of Long-Term Care Administrator Boards.~~

(2) ~~An applicant shall not sit for the examination more than four (4) times within twelve (12) months.]~~

Section 3. Qualification. An applicant currently holding a Health Services Executive (HSE) qualification from NAB shall be considered to have met the requirements of Section 2 of this administrative regulation. Applicants shall submit documentation of a current HSE qualification from NAB.

Section 4[3]. Any application not completed within one (1) year of the date of application shall be deemed[mandatorily withdrawn as] incomplete and withdrawn.

Section 5[4]. Notification. A licensee shall provide the board with written notification within thirty (30) days of the occurrence of any of the following:

- (1) Change of home address;
- (2) Change of employer;
- (3) Conviction of a felony or misdemeanor;

(a) ~~A licensee providing notice of a conviction shall provide a copy of the judgment in the case.~~

(b) ~~A plea of nolo contendere or an Alford plea shall not absolve the licensee of an obligation to report a conviction; or~~

(4) ~~Immediate Jeopardy or Substandard Level of Care notice received from the Cabinet for Health and Family Services by the long-term care facility at which the licensee serves as the administrator of record. A licensee providing notice of a citation shall provide a copy of the inspection report and submitted plan of correction. [Section 5. An applicant for licensure shall complete and submit an Application for Licensure.]~~

Section 6. Incorporation by Reference. (1) "Application for Licensure", May 2018[January 2014], is incorporated by reference.

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

GREG WELLS, Board Chair

APPROVED BY AGENCY: May 7, 2018

FILED WITH LRC: May 11, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2018, at 2:00 p.m., local time, at the Kentucky Board of Licensure for Long-term Care Administrators, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received in writing five (5) workdays prior to the hearing date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in writing five (5) workdays prior to the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on June 30, 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 listed below.

CONTACT PERSON: R. Quincy Ward, Board Counsel, Office of Legal Services, Public Protection Cabinet, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969, email quincy.ward@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: R. Quincy Ward

(1) Provide a brief summary of: This administrative regulation establishes the requirements to obtain a Kentucky license as a long-term care administrator.

(a) What this administrative regulation does: This administrative regulation implements KRS 216A.080, which sets forth the basic requirements for licensure and authorizes the board to establish other requirements through the promulgation of administrative regulations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform criteria for licensure.

(c) How does this administrative regulation conform to the content of the authorizing statutes? KRS 216A.070 grants the Board the authority to develop standards by which individuals may receive licenses as long-term care administrators. KRS 217A.080 authorizes the board to set uniform requirements for applications for licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs applicants of the requirements, application form, and materials to be submitted when seeking licensure.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds the Health Service Executive (HSE) qualification as an acceptable means of meeting the academic, examination, and work experience requirements of the administrative regulation. Currently, the administrative regulation requires a baccalaureate degree from an accredited college or university, a passing score on an examination administered by the National Association of Long-Term Care Administrator Boards (NAB), and six (6) months of continuous management experience in a long-term care facility although this management experience is met if the above degree is from an academic program accredited by NAB. The HSE qualification requires rigorous academic standards and incorporates examination requirements that meet or exceed those contained in the existing administrative regulation. An HSE qualification exceeds the requirements contained in the existing administrative regulation. By facilitating the application process for such individuals, the board can attract highly qualified professionals seeking licensure as long-term care administrators in Kentucky. The amendment also contains grammatical corrections and restructures the administrative regulation to make it more user-friendly.

(b) The necessity of the amendment to this administrative regulation: Currently, this administrative regulation does not recognize the HSE qualification as an appropriate means to satisfy the academic, examination, and work experience requirements for licensure. As the HSE qualification contains requirements more rigorous than those in the existing administrative regulation, there is no justifiable need for the board to require an applicant with a HSE qualification to show satisfactory proof of an academic background, a passing examination score, or obtain additional work experience before qualifying for a license.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 216A.070 authorizes the board to promulgate administrative regulations that ensure individuals will comply with the requirements of KRS Chapter 216A. KRS 216A.080(1)(e) authorizes the board to develop uniform standards for licensure by promulgation of administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: By recognizing the HSE qualification as appropriate basis for obtaining licensure, the board can attract

highly skilled professionals to the long-term care industry in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board estimates that approximately fifty (50) persons will seek licensure within the next fiscal year. Those carrying the HSE qualification will ensure faster processing of their applications and issuance of licenses. It is not anticipated that this amendment will directly impact long-term care facilities in Kentucky. However, facilitating licensing for highly skilled professionals with the HSE qualification will enhance the long-term care industry in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation will facilitate licensing for those applicants with the HSE qualification.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board does not anticipate any additional cost to the applicants affected by this amendment. The board does not anticipate changing the existing application fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will facilitate licensing for those applicants having ACHCA certification and HSE qualification. Additionally, it will assist the board in attracting highly skilled professionals to the long-term care industry in Kentucky.

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

(a) Initially: Costs incurred for processing applications are not expected to increase due to this amendment.

(b) On a continuing basis: Costs incurred for processing applications are not expected to increase on a continuing basis due to this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board is self-funded by fees submitted by licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is 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 fees and shall not increase fees.

(9) Tiering: Is tiering applied? Tiering is not applied because the requirements established in this administrative regulation apply equally to all applicants for licensure.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

The Kentucky Board of Licensure for Long-Term Care Administrators is an administrative body created by KRS 216A.040.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216A.070 and KRS 216A.080.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will not have any effect on the expenditures and revenues of state and local government agencies. The board is self-funded through the collection of fees from licensees and applicants. It is not anticipated that this amendment will adversely

impact the board.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The revenue generated will depend on the number of applicants. It is anticipated that approximately fifty (50) applicants will apply for licensure in the first year. However, the number of those applicants with the HSE qualification is undetermined.

(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? Any revenue generated by this amendment in subsequent years depends on the number of licensure applicants with the HSE qualification. At present, there is insufficient data to quantify any potential increase in applicants with the HSE qualification.

(c) How much will it cost to administer this program for the first year? None. The board is already processing applications for licensure. There is no anticipated additional cost in the first year resulting from this amendment.

(d) How much will it cost to administer this program for subsequent years? None. The board is already processing applications for licensure. There is no anticipated additional cost in subsequent years resulting from this 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 Professional Licensing
Board of Licensure for Long-term Care Administrators
(Amendment)**

201 KAR 6:050. Licensure by endorsement.

RELATES TO: KRS 216A.130

STATUTORY AUTHORITY: KRS 216A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070(3) authorizes the Board of Licensure for Long-term Care Administrators to promulgate administrative regulations necessary for the proper performance of its duties. KRS 216A.130 authorizes the board to issue a license to a long-term care administrator possessing a license issued by another state. This administrative regulation establishes the requirements for issuance of a license by endorsement.

Section 1. An applicant[applying] for licensure by[via] endorsement shall submit [cause to be submitted] to the board:

(1) A completed Application for Licensure;

(2) A completed Endorsement Form;

(3) Verification that the applicant:

(a) Meets all current requirements for licensure as established by KRS 216A.130; [or]

(b) Is currently designated as a certified long-term care administrator by the American College of Health Care Administrators (ACHCA); or

(c) Currently holds a Health Services Executive qualification from the National Association of Long Term Care Administrator Boards.

(4) Payment of the fee for licensure by endorsement as established by 201 KAR 6:060; and

(5) Documentation from the appropriate long-term care licensing authority in the endorsing jurisdiction confirming the license[other state's board verifying that the license issued by that other state]:

(a) Is active;

(b) Is valid;

(c) Is in good standing;

(d) Does not have an unresolved complaint pending against it; and

(e) Has not been subject to disciplinary action during the five (5) years immediately preceding the application.

Section 2. Incorporation by Reference. (1) "Endorsement Form", May 2018[The following material] is incorporated by reference[:

(a) "Application for Licensure", January 2014; and

(b) "Endorsement Form", January 2014].

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

GREG WELLS, Board Chair

APPROVED BY AGENCY: May 7, 2018

FILED WITH LRC: May 11, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2018, at 2:00 p.m., local time, at the Kentucky Board of Licensure for Long-term Care Administrators, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received in writing five (5) workdays prior to the hearing date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in writing five (5) workdays prior to the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m., June 30, 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 listed below.

CONTACT PERSON: R. Quincy Ward, Board Counsel, Office of Legal Services, Public Protection Cabinet, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969, email quincy.ward@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: R. Quincy Ward

(1) Provide a brief summary of: This administrative regulation establishes the requirements to obtain a Kentucky license as a Long-Term Care Administrator by reciprocity for those persons similarly licensed in other states.

(a) What this administrative regulation does: This administrative regulation implements KRS 216A.130, which authorizes the board to establish the qualifications for reciprocal licensing so long as the reciprocal state maintained a system of qualifications and examinations for licensing that were substantially equivalent to those in the Commonwealth at the time the license was issued by the reciprocal state.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform criteria for licensure by reciprocity. The portability of licensure is essential to attract qualified professionals to the long-term care industry in the Commonwealth.

(c) How does this administrative regulation conform to the content of the authorizing statutes? KRS 216A.070 requires the board to develop standards to ensure that applicants meet the minimum qualifications for licensure. KRS 216A.130 authorizes the board to develop standards for licensure by reciprocity.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs applicants of the requirements, application form, and materials to be submitted when seeking licensure by reciprocity.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds the Health Service Executive (HSE) qualification as an acceptable means of establishing "substantial equivalency" for purposes of reciprocal licensure. Currently, this administrative regulation permits an applicant licensed in another state to show proof that the applicant meets either the criteria for licensure under KRS 216A.130 or the applicant is currently designated as a certified long-term care administrator by the American College of Health Care Administrators (ACHCA). This shows that the applicant has been issued a license in another state with substantially equivalent requirements as Kentucky. Like the ACHCA certification, the HSE qualification meets or exceeds most states' qualifications, including Kentucky's, for licensure as long-term care administrators. Adding the HSE qualification as a means to show that the reciprocal license is substantially equivalent to Kentucky's licensing requirements will facilitate highly qualified professionals obtaining licensure as long-term care administrators in Kentucky.

(b) The necessity of the amendment to this administrative regulation: Currently, this administrative regulation does not recognize the HSE qualification. When reviewing an application for licensure by reciprocity, the board must determine whether the other state's licensing requirements are substantially equivalent to Kentucky's. The HSE qualification, administered by the National Association of Long-Term Care Administrator Boards (NAB), is widely viewed as a benchmark distinction for highly skilled professionals in the long-term care industry. The requirements for a HSE qualification exceed Kentucky's licensing requirements for long-term care administrators. Therefore, there is no need for the board to review an applicant currently holding the HSE qualification and licensed in another state to determine if the reciprocal state's licensing requirements are substantially equivalent.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 216A.070 authorizes the board to promulgate administrative regulations that ensure individuals will comply with the requirements of KRS Chapter 216A. KRS 216A.080(1)(e) authorizes the board to develop uniform standards for licensure by promulgation of administrative regulations. KRS 216A.130 authorizes the board to develop standards for licensure by reciprocity.

(d) How the amendment will assist in the effective administration of the statutes: By recognizing the HSE qualification as an appropriate basis to grant reciprocal licensing, the board can better facilitate portability of reciprocal licensing and attract highly skilled professionals to Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board estimates that fifty (50) persons will seek reciprocal licensure within the next fiscal year. Those carrying the HSE qualification will ensure faster processing of their applications and issuance of licenses. Facilitating portability of reciprocal licensing for highly skilled professionals with the HSE qualification will enhance the long-term care industry in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation will facilitate reciprocal licensing for those applicants with the HSE qualification. These applicants will not have any additional steps when applying other than showing proof of a HSE qualification.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board does not anticipate any additional cost to the applicants affected by the administrative regulation other than the already existing cost to apply for a license.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will facilitate reciprocal licensing for those applicants having the HSE qualification. These applicants will not have to take any additional steps when applying other than showing proof of their HSE

qualification.

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

(a) Initially: Costs incurred for processing applications are not expected to increase due to this amendment.

(b) On a continuing basis: Costs incurred for processing applications are not expected to increase on a continuing basis due to this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board is self-funded by fees submitted by licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is 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 fees and shall not increase fees.

(9) Tiering: Is tiering applied? Tiering is not applied because the requirements established in this administrative regulation apply equally to all applicants for licensure.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensure for Long-Term Care Administrators is an administrative body created by KRS 216A.040.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216A.070, KRS 216A.080, and KRS 216A.130.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not have any effect on the expenditures and revenues of state and local government agencies. The board is self-funded through the collection of fees from licensees and applicants. It is not anticipated that this amendment will adversely impact the board.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The revenue generated will depend on the number of applicants. It is anticipated that approximately fifty (50) applicants will apply for licensure in the first year. However, the number of those applicants with the HSE qualification is undetermined.

(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? Any revenue generated by this amendment in subsequent years depends on the number of licensure applicants with the HSE qualification. At present, there is insufficient data to quantify any potential increase in applicants with the HSE qualification.

(c) How much will it cost to administer this program for the first year? None. The board is already processing applications for licensure by reciprocity.

(d) How much will it cost to administer this program for subsequent years? None. The board is already processing applications for licensure by reciprocity.

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

**GENERAL GOVERNMENT CABINET
Board of Cosmetology
(Amendment)**

201 KAR 12:010. Administrator's duties.

RELATES TO: KRS [317A.030,] 317A.040, 317A.050
STATUTORY AUTHORITY: KRS 317A.060[317A.040]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.040 requires the employment of an administrator to administer the provisions of KRS Chapter 317A and the policies and administrative regulations of the board[coordinate the examinations, inspections, and supervise the general office functions of the agency]. This administrative regulation clarifies the authority and establishes duties of the board administrator.

Section 1. Duties. (1) The administrator shall:

(a) Serve as the board's liaison officer and coordinate all administrative matters of the board.

(b) Assist the board in hiring proctors to conduct examinations.

(c) Make staffing decisions, including filling merit positions from the merit register pursuant to and accordance with KRS Chapter 18A and KAR Title 101 of the Kentucky Administrative Regulations, and shall be considered the designated appointing authority for the purposes of filling merit positions, and taking disciplinary actions in accordance with applicable law.

(2) The administrator may:

(a) Inspect any establishment licensed or issued a permit by the board;

(b) Investigate a reported violation of KRS Chapter 317A or any administrative regulation promulgated by the board; and

(c) On behalf of the board, require the production of:

1. A license;

2. The attendance of a witness; or

3. The production of records, documents, and material relating to licensed activity by the board.[serve as the board's liaison officer and coordinator in all administrative matters.

~~Section 2. The administrator shall have full powers to inspect any establishment licensed by this board or investigate any reported illegal practice.~~

~~Section 3. The administrator shall have the power for and on behalf of the board to issue subpoenas for licenses, for the attendance of witnesses, and the production of such records, documents, and material as may be necessary in the conduct of board meetings.~~

~~Section 4. The administrator shall assist the members of the board in the giving and supervising of examinations.~~

~~Section 5. The administrator shall fill all merit positions from the merit register as required by the Department of Personnel statutes and rules and administrative regulations. Any or all dismissals of employees shall be made by the majority decision of the board with notification to be made by the administrator. Any suspension or disciplinary action may be made by the appointing authority of the board.]~~

R. KAY SWANNER, Board Chair

APPROVED BY AGENCY: May 11, 2018

FILED WITH LRC: May 11, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2018, at 9:30 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 June 30, 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 the authority and duties of the KBC administrator.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set out the parameters of the KBC administrator's authority and duties with the administration of the KBC. It also delegates staffing decisions for the board to the administrator.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment clarifies the authority and establishes the duties of the KBC administrator as to the day-to-day operations of the KBC, and includes the delegation of staffing decisions as recently authorized by the passage of House Bill 260.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Recent amendments to KRS Chapter 317A require clarification of the KBC administrator's authority to carry out the functions of the KBC and to implement internal staffing decisions for KBC employees. This amendment sets out the necessary authority for the KBC administrator to carry out the day-to-day operations of the KBC and its staff.

(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 administrative regulation to clarify the authority and duties of the KBC administrator.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the statutory authority of the board administrator in accordance with the recent amendments to KRS 317A resulting from House Bill 260.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment clarifies the authority and duties of the KBC administrator in light of recent amendments to KRS Chapter 317A.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that the KBC administrator has the necessary authority to carry out the functions and day-to-day operations of the KBC.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment clarifies the authority and duties of the KBC administrator. It is not anticipated to impact individuals, businesses, organizations, or state or local governments.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not impact those entities identified in question (3). It neither establishes nor changes any existing requirement for the public or licensees of the board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated cost to the public or licensees because of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment clarifies the KBC administrator's authority and duties to ensure uniformity and consistency of the KBC in carrying out its statutory functions.

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

(a) Initially: No funds are necessary initially to implement this amendment.

(b) On a continuing basis: No 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: No funds are necessary to implement this amendment or the existing administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No change or increase in fees is anticipated because 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 this amendment applies only to the KBC's internal operation and has no impact on the public or the KBC's licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of 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.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. This amendment sets out the authority and duties of the KBC administrator. It has no impact on the expenditures and revenues of any state or local government agency.

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

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

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

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

GENERAL GOVERNMENT CABINET Board of Cosmetology (Amendment)

201 KAR 12:030. Licensing, permits, and examinations.

RELATES TO: KRS 317A.020, 317A.050, 317A.060[317A.062, 317A.100, 317B.025]

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 requires[and 317B.020 require] the board to promulgate

administrative regulations governing licenses in cosmetology, esthetics, and nail technology,[and esthetics,] including the operation of schools and salons of cosmetology, esthetics, and nail technology[, and esthetics]. This administrative regulation establishes procedures for examinations and licensing.

Section 1. Fees. License and permit fees are set forth in 201 KAR 12:260.

Section 2. Prior Felony Convictions. An applicant for any license, permit, or examination issued or conducted by the board convicted of a prior felony shall include with their application:

(1) A signed letter of explanation from the applicant;

(2) A certified copy of the judgment and sentence from the issuing court; and

(3) A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole.

Section 3[2]. Reciprocal Licensing. (1) A license issued by another state shall be considered comparable if the laws of that state require at a minimum:

(a) 1,500 hours of curriculum for cosmetology;

(b) 450[600] hours of curriculum for nail technology;

(c) 750[1,000] hours of curriculum for esthetics; or

(d) 750[1,000] hours of curriculum for instructors.

(2) An[~~out of state~~] applicant licensed in another state[who meets the requirements of KRS 317A.100(1) or 317B.040(1)] may be licensed by reciprocity by submitting the Out of State Transfer Application and the following:

(a) Proof of a passing score on a board-approved nationally recognized theory and practical exam.[Two (2) or more years documentation of tax records corresponding to the out of state license to demonstrate work history];

(b) Current certification[Certification] of the out of state license from the issuing state board;

(c) Diploma or certified testing documents proving 12th grade equivalency education;

(d) Payment of the applicable license and endorsement fees required by 201 KAR 12:260;

(e) A copy of the applicant's government-issued photo identification;

(f)[If convicted of a prior felony:

1. A typed and signed letter of explanation from the applicant;

2. Judgment of sentence; and

3. A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole; and

(g)] A two (2)[inch] by two (2) inch passport sized photo of the applicant taken within the past six (6) months.

(3) An applicant from a state whose licensing requirements fail to meet subsection (1) of this Section[An out of state applicant who meets the requirements of KRS 317A.100(2) or (3)] shall apply for a reciprocal license by submitting:

(a)[~~Submit the~~] Documentation required by subsection (2)(a)[~~through (e) and (2)(e)~~] through (f)[~~(g)~~] of this section; and

(b)[~~Pay the applicable license and endorsement fees required by 201 KAR 12:260; and~~

(c) If required by the board, pay] Payment of the applicable examination fees established in 201 KAR 12:260.

(4) Active duty military and family members shall apply for a reciprocal license by submitting:[using the Military Transfer Application and including the following:]

(a) All documents required by subsection 2(a) through (f) of this Section;[Certification of a current license from the out of state licensing agency;]

(b) The Military Transfer Application;

(c)[(b)] A copy of the[military] sponsor's active-duty orders listing the applicant as sponsor or an accompanying family member; and

(d)[(e)] Payment of a twenty-five (25) dollar license fee.;

(d) Diploma or certified testing documents proving 12th grade equivalency education;

(e) A copy of applicant's government-issued photo identification;

(f) If convicted of a prior felony:

1. A typed and signed letter of explanation from the applicant;
 2. Judgment of sentence; and
 3. A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole; and
- (g) A two (2) inch by two (2) inch passport photo of the applicant taken within the past six (6) months.]

(5) All requests for certification of hours or a license[issued by the board] shall use[be requested from the board using] the Certification Request Form accompanied by[that includes] a copy of the applicant's government-issued photo identification, and payment of the fee as set forth in 201 KAR 12:260.

Section 4[3]. Permits[Threading Permit]. (1) Any person who engages in the practice of threading, makeup artistry, or lash extensions shall first obtain a[threader] permit from the board by submitting a completed[completing the Threading] Permit Application and paying the fee established in 201 KAR 12:260.

(2) The applicant shall include with the[Threading] Permit Application:

(a)[Payment of the fee required in subsection (1) of this section;

(b)] A copy of applicant's government-issued photo identification.];

(b) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months.

(c) Proof of completion of a board-approved sanitation course within the (1) year period preceding the application.

(d) Lash extension permits shall additionally require proof of completion of board- approved national certification program.[(e) If convicted of a prior felony:

1. A typed and signed letter of explanation from the applicant;
 2. Judgment of sentence; and
 3. A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole; and
- (d) A two (2) [inch] by two (2) inch passport photo of the applicant taken within the past six (6) months.]

Section 5[4]. Examination Registration. (1) Applicants shall register[with the board] as follows:

(a) A student of a licensed cosmetology school shall register with the board at least eight (8) months prior to graduation for the requested[apprentice] cosmetologist examination date;

(b) A nail technician student shall register with the board at least forty-five (45)[seventy-five (75)] days prior to graduation for the requested nail technician examination date; and

(c) An esthetician student shall register with the board at least four (4) months[six (6)] months prior to graduation for the requested esthetician examination date.

(2) A completed Application for Examination or Out of State Application for Examination shall be received in the Board office no later than ten (10) business days prior to the examination date to be scheduled for either the theory test or the practical demonstration component of the exam. Each exam component shall be scheduled using a separate application and payment of the fee set forth in 201 KAR 12:260[A person shall not take the board's examination unless the board has received a completed Application for Examination or Out of State Application for Examination at least ten (10) business days prior to the beginning examination date].

(3)[An applicant shall submit the following with the Application for Examination:

(a) If convicted of a prior felony:

1. A typed and signed letter of explanation from the applicant;
2. Judgment of sentence; and
3. A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole; and

(b)] All examination applicants shall submit a two (2)[inch] by two (2) inch passport photo of the applicant taken within the past six (6) months.

(4) Theory examination dates shall be valid for ninety (90) days from student notification.

(5) A passing score for the theory examination, proper

application, and payment of fees shall be required prior to being scheduled for the practical examination.[(4) —Apprentice cosmetologists shall complete the Affidavit of Apprenticeship included with the Application for Examination when applying to take the Cosmetology examination.]

(6)[(5)] An applicant with curriculum hours obtained in another state shall include with the Out of State Application for Examination the following:

(a)[4.] Certification of curriculum hours from the state licensing board or agency where the hours were obtained, if the state requires the reporting of curriculum hours; or

(b)[2.] Certification of the valid licensing status of the school attended from the state board or licensing authority and an official transcript certified by the school.];

(b) Payment of the applicable license fees as set forth in 201 KAR 12:260;

(c) Diploma or certified testing documents proving 12th grade equivalency education;

(d) A copy of applicant's government issued photo identification;

(e) If convicted of a prior felony:

1. A typed and signed letter of explanation from the applicant;
2. Judgment of sentence; and
3. A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole; and

(f) A two (2) inch by two (2) inch passport photo of the applicant taken within the past six (6) months].

(7)[(6)] Examination applicants shall wear a full set of solid color medical scrubs and bring all instruments and supplies as listed on the board Web site for the practical examination. White colored scrubs or other clothing is prohibited.

Section 6[5]. Examination Components. (1) The examination shall consist of a theory[written] test and a practical demonstration taken from the curriculum requirements specified in 201 KAR 12:082.

(2) The practical demonstration shall be performed on a:

(a) Mannequin head and hand for the cosmetology practical examination;

(b) Mannequin head for the esthetician practical examination; or

(c) Mannequin hand for the nail technician practical examination.

(3) The applicant shall provide a mannequin head or hand as needed for an examination.

Section 7[6]. Grading. (1) A minimum passing grade of seventy (70) percent on[for both] the theory test[written examination] and the practical demonstration shall be required for the[apprentice] cosmetologist, esthetician, and nail technician[, and esthetician] examinations.

(2) A minimum passing grade of eighty (80) percent on the theory test[written examination] and eighty-five (85) percent on the practical demonstration shall be required for all instructor examinations.

Section 8[7]. Practice before Examination Prohibited. A student engaging in the practice of cosmetology, esthetics, or nail technology[, or esthetics] prior to the board examination shall be ineligible to take the examination for a period of one (1) year from the date of the unauthorized practice.

Section 9[8]. License Application. (1) An applicant who passes the[state board] examination shall have ninety (90) days following the examination to apply for a license.

(2) Failure to apply for a license as required by subsection (1) of this section shall require payment of the appropriate restoration and licensing fees set forth in[under] 201 KAR 12:260 before a license may be issued.

(3) An applicant who fails to apply for a license within one (1) year of passing the examination shall retake the examination and pay the appropriate examination fee set forth in[under] 201 KAR 12:260.

Section 10[9]. Retaking Examinations.~~[Any applicant who:]~~ (1) Any applicant who fails either the theory test or the practical demonstration~~[Fails the state board examination]~~ may retake that portion of the examination upon submitting a new Examination~~[Retake]~~ Application with a two (2)~~[inch]~~ by two (2) inch passport photo of the applicant taken within the ~~preceding~~~~[past]~~ six (6) months, and paying the examination fee required by 201 KAR 12:260.~~;~~

(a) After three (3) failed attempts, the examinee shall be required to wait six (6) months before retaking either portion of the examination.

(b) If, after three (3) additional failed attempts, the examinee does not receive a passing score then the individual shall be required to take an eighty (80) hour brush-up course in theory studies at a school licensed by the board.

(2) An applicant~~[is]~~ caught cheating or impersonating another shall not be allowed to retake the examination for a minimum of one (1) year from the date of the original examination.~~;~~~~and]~~

(3) Any applicant who fails~~[Fails]~~ to report for the examination on the date specified by the board shall submit a new examination application~~[Application for Examination]~~ and pay the examination fee~~[as required by 201 KAR 12:260]~~ prior to being rescheduled for examination. The board may waive the examination fee for good cause shown. "Good cause" includes:

(a) An illness or medical condition of the applicant that prohibits the applicant from reporting~~for~~~~[to]~~ the examination; or

(b) A death, illness, or medical condition in the applicant's immediate family that prohibits the applicant from reporting~~for~~~~[to]~~ the examination ~~[site].~~

(4) Documents and certificates submitted with an Application for Examination are valid for one (1) year following the date of submission after which time applicants shall submit updated documents and a new examination application~~[certificates with the Examination Retake Application].~~

Section 11[40]. Duplicate Licenses, Renewal, and Restoration.

(1) If a license is lost, destroyed, or stolen after issuance, a duplicate license may be issued. The licensee shall submit a statement verifying the loss of the license using the Duplicate License Application that includes a copy of a government-issued photo identification, and pay the duplicate license fee listed in 201 KAR 12:260. Each duplicate license shall be marked "duplicate".

(2) The annual license renewal period is July 1 through July 31. All licenses and permits shall be renewed using the Renewal Application or by using the board's online portal and payment of the fee set forth 201 KAR 12:260.

(3)[2] To restore an expired license or permit, a License Restoration Application shall be submitted to the board~~[along]~~ with~~[a copy of a government-issued photo identification, and]~~ payment of the restoration and license fees set forth in 201 KAR 12:260 and the following~~;~~

(a) For an expired individual license or permit, a copy of a government-issued photo identification;

(b) For an expired salon license or limited facility permit, a new Salon or Permit Application; or

(c) For an expired school license, a new School Application.

Section 12[44]. Salon and Facility Applications. (1) Each person, firm, or corporation applying for a license to operate a new or relocating beauty salon, nail salon, esthetic salon, or limited~~[threading]~~ facility shall submit the Salon Application or Limited~~[Threading]~~ Facility Application with required copies of state identification and driver's licenses, pay the applicable fee set forth in 201 KAR 12:260, and be inspected by the board inspector a minimum of five (5) business days prior to opening for business.

(2) A new or relocating salon or~~[threading]~~ facility shall comply with all applicable city, county, state zoning, building, and plumbing laws, administrative regulations, and codes.

(3) A salon or facility may be located on the premises of a nursing home or assisted living facility if the salon or facility meets all requirements of this section.

(4) Any salon or facility located in a residence shall have a separate~~[dedicated]~~ outside entrance for business purposes

only~~[separate from that of the residence]~~. This subsection shall not apply to a nursing home or assisted living facility if the home or facility has obtained a salon license from the board.

(5) A salon or facility shall not open for business prior to issuance of its~~[a]~~ license or permit.

(6) A change in~~[to]~~ the ownership, management~~[owner, manager]~~, or location of a licensed salon or~~[threading]~~ facility shall require a new Salon Application, Limited~~[or Threading]~~ Facility Application, or Manager Change Form~~[to be submitted to the board]~~ and payment of the license or change fee as set forth in~~[under]~~ 201 KAR 12:260.

(7) Salons shall maintain a board licensed manager at all times.

Section 13[42]. Cosmetology School Licenses. (1) Each person, firm, or corporation applying for a license to operate a school of cosmetology shall submit a~~[Cosmetology]~~ School Application and the applicable fee set forth in 201 KAR 12:260.

(2) The~~[Cosmetology]~~ School Application shall be accompanied by:

(a) A proposed student contract listing all financial charges to enrolling students;

(b) A proposed floor plan drawn to scale by a draftsman or architect~~[architects]; and~~

(c) Proof of five (5) years of residency in the Commonwealth~~;~~~~and~~

~~(d) If an applicant is convicted of a prior felony:~~

~~1. A typed and signed letter of explanation from the applicant;~~

~~2. Judgment of sentence; and~~

~~3. A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole.]~~

(3) Each school shall comply with city, county, and state zoning, building, and plumbing laws, administrative regulations and codes.

(4) Prior to license issuance and following the receipt of a completed application with all accompanying materials, the board inspector and board administrator shall conduct an inspection~~[An inspection of the school prior to license issuance shall be:~~

~~(a) Conducted by the board inspector and two (2) board members; or~~

~~(b) The board inspector, one (1) board member, and the board administrator.]~~

(5)(a) The inspection shall be completed within twelve (12) months of the date that the school application and all accompanying materials are received~~[is submitted]~~ unless the board extends the time period for good cause. "Good cause" includes:

1. An illness or medical condition of the applicant that prohibits the applicant from completing the final preparations; or

2. A death, illness, or medical condition in the applicant's immediate family that prohibits the applicant from completing the final preparations.

(b) Requests for an extension of time shall be submitted in writing to the board and include the following:

1. The reason for the extension and the term of the request; and

2. Supportive documentation of the extension request.

(6) A license to operate a cosmetology school shall be valid only for the location and person, firm, or corporate owner named on the application. A cosmetology school license shall not be transferable from one (1) location to another or from one (1) owner to another.

(7) The cosmetology school license shall contain:

(a) The name of the proposed school; and

(b) A statement that the proposed school may operate educational programs beyond secondary education.

(8) Licensed schools shall maintain a board licensed instructor as school manager at all times.

Section 14[43]. Change in School Ownership or Management.

(1) The owners, firm, or corporation operating a licensed cosmetology school shall submit to the board a new~~[Cosmetology]~~ School Application or a Manager Change Form and payment of the

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applicable fee set forth in 201 KAR 12:260 no later than thirty (30) business days prior to selling, transferring, or changing ownership or changing school managers.

(2) A prospective owner(s) or manager shall meet all qualifications of KRS Chapter 317A[~~KRS Chapter 317B;~~] and 201 KAR Chapter 12, and obtain[~~have the~~] approval of the board prior to[~~before~~] assuming operation of the school.

Section 15[44]. Classification as School. Any person, establishment, firm, or corporation that accepts, directly or indirectly, compensation for teaching any subject of cosmetology as defined in KRS 317A.010 [~~shall be classified as a cosmetology school and~~] shall comply with KRS Chapter 317A[~~Chapter 317B;~~] and 201 KAR Chapter 12.

Section 16[45]. Owner and Manager Student Prohibited. An owner, partner, stockholder, corporate officer, or a manager of a licensed[~~cosmetology~~] school shall not be enrolled as a student in the school.

Section 17[46]. Board Member Disclosure. A board member shall disclose to the board a financial interest in a salon or school when submitting an application for a salon or school license.

Section 18[47]. Demonstration Permits. Professional services performed outside a licensed facility shall have approval of the board and display the proper permit. Permits may be obtained by completing the Demonstration Permit Application and paying the applicable fee set forth in 201 KAR 12:260.

Section 19[48]. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Out of State Transfer Application", March 2018[~~October 2017~~];
- (b) "Military Transfer Application", March 2018[~~October 2017~~];
- (c) "Certification Request Form" March 2018[~~October 2017~~];
- (d) "[~~Threading~~] Permit Application", March 2018[~~October 2017~~];
- (e) "Application for Examination", March 2018[~~October 2017~~];
- (f) "Out of State Application for Examination", March 2018[~~October 2017~~];
- (g) "~~Examination Retake Application~~", October 2017];
- (g)[(h)] "Duplicate License Application", March 2018[~~October 2017~~];
- (h) "Renewal Application", March 2018;
- (i) "[~~License~~] Restoration Application", March 2018[~~October 2017~~];
- (j) "Salon Application", March[~~February~~] 2018;
- (k) "Limited[~~Threading~~] Facility Permit Application", March 2018[~~October 2017~~];
- (l) "Manager Change Form", March 2018[~~October 2017~~];
- (m) "[~~Cosmetology~~] School Application", March 2018[~~October 2017~~] and
- (n) Demonstration Permit Application", February 2018[~~October 2017~~].

(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: May 11, 2018

FILED WITH LRC: May 11, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2018, at 10:00 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 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 June 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for all examinations, licenses, and permits provided by the Kentucky Board of Cosmetology (KBC).

(b) The necessity of this administrative regulation: This amendment is necessary to set out the procedures to apply for examinations, permits, and licenses issued by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment details the necessary steps for persons to apply for examinations, permits, and licenses issued by the board as authorized by KRS 317A.050.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment provides a method for any interested person to apply for and receive a permit or license to practice cosmetology, esthetics, or nail technology, and to open a licensed salon, facility, or school in the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: Currently, the subjects of examinations, licenses, and permits are under two chapters of statutory authority. With the passage of House Bill 260, all subjects are consolidated in KRS Chapter 317A. Additionally, House Bill 260 authorized the board to utilize nationally recognized testing. This amendment incorporates those recently enacted changes.

(b) The necessity of the amendment to this administrative regulation: This amendment is needed to establish guidelines for national testing processes as well as guidelines for new individual and facility permits and licenses due to legislative changes. Additionally, this amendment provides edited digital forms that will make the application process easier.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides the necessary steps to apply for a board examination, permit, and license as authorized by KRS 317A.050.

(d) How the amendment will assist in the effective administration of the statutes: Through one concise administrative regulation, this amendment will facilitate the public's ability to apply for and receive the necessary examination, permit, and license to practice or teach cosmetology, esthetics, or nail technology in the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 62 licensed cosmetology schools, approximately 10,000 cosmetology students, approximately 25,000 licensees, and nearly 6,000 salons affected by this amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not impose any new requirements on those entities identified in question (3) above. Rather, it will facilitate the steps necessary for those persons to apply to take a board examination and to obtain a permit or license.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3): There is no anticipated cost because of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will simplify the process for applicants and licensees to apply for board examinations, permits, licenses, and renewals. This amendment incorporates changes necessary due to the passage of House Bill 260.

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

(a) Initially: Some expenditure will be necessary to implement new permits and licenses brought about by the passage of House Bill 260. Those costs cannot be assessed until the number of applicants for these new permits and licenses is known. It is anticipated that the fees collected for these new licenses and permits will offset the additional expenditure necessary.

(b) On a continuing basis: While initial outlays will decrease following the first year of implementation, administering new permits and licenses will have some continuing cost. Funds necessary for the implementation of new permits and licenses brought about by House Bill 260 are expected to be offset by fees collected.

(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 collecting fees for examinations, permits, and licenses. Funds necessary for the implementation and enforcement of this administrative regulation are derived from the fees collected for KBC services.

(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: Although this amendment pertains to examinations, permits, and licenses, whether the accompanying fees set forth in 201 KAR 12:260 will require modification is likely to depend on the number of applications received.

(8) State whether this administrative regulation established any fees or directly or indirectly increased any fees: This amendment implements requirements for new licenses and permits and does not establish any associated fees. All fees for existing and new licenses and permits issued by the KBC are set out in 201 KAR 12:260.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this amendment apply equally to all applicants, permittees, and licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(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? Some new permits and licenses established by this amendment are created because of recent legislative changes. The revenue to be generated from these new permits and licenses is presently unknown. It is anticipated that these new permits and licenses will generate some additional revenue for the KBC in the first year, however, it is also anticipated that such revenue will be offset by the expenses of processing the new permits and licenses, and conducting necessary 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? Some new permits and licenses established by this amendment are created because of recent legislative changes. The revenue to be generated from these new permits and licenses is presently unknown. It is anticipated that these new permits and licenses will generate additional revenue in subsequent years, although the amount of additional revenue will be determined by the number of applicants and licenses. It is anticipated that the expenses of processing the new permits and licenses and inspections necessary for the newly permitted and licensed facilities will offset the additional revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? Costs associated with implementing and overseeing the new permits and licenses in this amendment are presently unknown. However, those anticipated costs are expected to be offset by the fees collected for the newly created permits and licenses.

(d) How much will it cost to administer this program for subsequent years? Once the number of applicants for the new permits and licenses is established in the first year, the expected costs for subsequent years can be assessed. It is anticipated that the additional costs associated with implementing these new permits and the fees collected will offset licenses.

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

Revenues (+/-): Increase.

Expenditures (+/-): Increase.

Other Explanation: At this time, it is unclear how many applicants will avail themselves of the new permit and license opportunities. The expected increase in revenue and expenditures associated with the new permits and licenses contained in this amendment can be better assessed after the first year. To the extent the first year of issuing the new licenses and permits pursuant to this amendment sets a quantifiable baseline, at that time the amount of annual revenue and expenditures from these new permits and licenses can be better assessed.

GENERAL GOVERNMENT Kentucky Board of Cosmetology (Amendment)

201 KAR 12:140. School Equipment.

RELATES TO: KRS 317A.060, 317A.082, 317A.090 [317A.050(7)(a), 317A.060(1)(b), 317B.020(3)(e), 317B.025(6).]

STATUTORY AUTHORITY: KRS 317A.060[~~—317A.090, 317B.020(3)(e)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.050 [(7)(a) and 317B.025(6) require] requires licensed schools of cosmetology, esthetics, and nail technology[~~and esthetics schools~~] to meet the requirements established in administrative regulations relating to equipment, supplies, and facilities. This administrative regulation establishes the necessary physical requirements for[~~equipment, supplies, and space for instruction that are necessary for~~] licensed schools[~~cosmetology and esthetics schools~~].

Section 1. Equipment and Supplies. (1) A licensed school of cosmetology, esthetics, and nail technology shall have all equipment and supplies needed to meet the curriculum outlined in 201 KAR 12:082.

(2) A licensed school of esthetics shall have the following:

(a) A private student or client changing area;

(b) A minimum of one (1) fully equipped facial machine in the esthetics area;

(c) A minimum of one (1) sink in the clinic area with hot and cold running water;

(d) A minimum of one (1) steamer for hot towels; and

(e) A Sharps container. [A licensed school of cosmetology shall have the following equipment:

(a) Shampoo bowls;

(b) Facial chairs;

(c) Dryers;

- (d) Manicure tables;
- (e) Styling chairs;
- (f) Curling irons;
- (g) Facial supplies;
- (h) Covered containers for:

- 1. Hairpins;
- 2. Clips; and
- 3. Rollers;

- (i) Mannequins for use in practicing:

- 1. Iron curling;
- 2. Finger waving; and
- 3. Other related subjects; and

- (j) Necessary supplies including:

- 1. Shampoos;
- 2. Color preparations;
- 3. Permanent waves;
- 4. Cosmetics; and
- 5. Manicuring equipment.]

(3)(2) All equipment and supplies shall be available for student use and practice. (3) A licensed school offering an esthetics course shall meet the requirements of 201 KAR 12:415.

Section 2. Physical Characteristics. (1) A licensed school shall be physically located as to be entirely separated and shall not have a connection with from any beauty salon or barber shop, or any other place of business.

(2) [Section 3.] A licensed school shall not be approved and shall not operate if it: maintain, at minimum, the following:

(a) [(1) Has space of less than] Thirty-six (36) square feet per student in the clinical area [for each student involved on the floor of the clinical area at any one (1) time];

(b) [(2) Has a space less than] Eighteen (18) square feet per student in the mannequin or nail table area [for each student involved on the floor of the mannequin area at any one (1) time]; [and]

(c) [(3) Does not have] A reasonable amount of area allotted for training of students in all other areas; [other than those previously mentioned.]

(d) [Section 4. All schools licensed by this board shall have] A separate room [to be used] for demonstration and study with all necessary charts and equipment to carry out the curriculum. This room shall have necessary charts and equipment to carry out the curriculum. This room shall also contain a blackboard, charts relating to the curriculum, classroom chairs with armrests, or desks for students' use; and

(e) Booths or partitions in the clinical area that permit observation of students. [Section 5. Every school shall maintain a separate lavatory and toilet for male and female students.

Section 6. Lockers shall be provided by the schools for student use.

Section 7. Booths or partitions in the [work department] shall be sufficiently low to permit observation of students while they are working.

Section 8. Every school shall have a reference library composed of the books recommended and set forth in the administrative regulations as well as any other literature and materials pertinent to the teaching and study of cosmetology, including the informational copy of the Kentucky State Board of Hairdressers and Cosmetologists statutes and administrative regulations.

Section 9. (1) Each school of cosmetology shall furnish a supply or dispensing room in which each student shall obtain actual experience for a period of time as indicated by the course of instruction.

(2) The supply room shall contain the following:

- (a) A supply of clean towels or linens;
- (b) A lavatory, or sink;
- (c) Bottles and containers distinctly and correctly labeled;
- (d) A large wet sterilizer;

- (e) A large dry sterilizer;
- (f) Soap;
- (g) Covered waste containers;
- (h) Closed storage space for supply of clean towels or linens;
- (i) Covered containers for used towels or linens;
- (j) A stove;
- (k) Pressing combs;
- (l) Irons; and
- (m) All other solutions, and preparations used.]

R. KAY SWANNER, Board Chair

APPROVED BY AGENCY: May 11, 2018

FILED WITH LRC: May 11, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 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 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 June 30, 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 sets forth the physical requirements for licensed schools of cosmetology, esthetics, and nail technology.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure compliance by licensed schools with the curricula required by 201 KAR 12:082.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is being amended to clarify the necessary equipment, supplies, and minimum physical requirements for licensed schools pursuant to KRS 317A.060 and 317A.090.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the necessary equipment, supplies, and minimum physical requirements for schools to obtain licensure and comply with requirements for licensed schools set out in KRS Chapter 317A and 201 KAR Chapter 12.

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

(a) How the amendment will change this existing administrative regulation: Previously, the various requirements for licensed schools were contained in multiple administrative regulations. This amendment incorporates all the requirements pertaining to equipment, supplies, and physical specifications for licensed schools into one administrative regulation. It also eliminates duplicative and unnecessary language in the existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to simplify and accurately reflect the requirements for licensing of schools of cosmetology, esthetics, and nail technology, and establish compliance standards for licensed schools to remain in good standing.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment sets out the minimum physical requirements for licensed schools of cosmetology, esthetics, and nail technology to ensure delivery of course curricula, as authorized by KRS 317A.060 and 317A.090. In

addition, this amendment eliminates references to KRS Chapter 317B, which has been repealed by the recent passage of House Bill 260.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide one administrative regulation that sets out the minimum physical requirements for the licensing of schools of cosmetology, esthetics, and nail technology, and establish compliance standards for licensed schools to remain in good standing, as authorized by KRS 317A.050 and 317A.090.

(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 in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment does not impose any new requirement nor change any existing requirement for licensed schools. Rather, it incorporates all existing requirements into one administrative regulation and eliminates duplicative and unnecessary language 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): This amendment does not impose any additional cost upon those entities listed in response to question (3). It does not establish any new requirement nor change any existing requirement to open or maintain a licensed school.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment provides greater clarity for individuals or entities seeking to open a licensed school and for licensed schools to remain in good standing.

(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 Kentucky Board of Cosmetology is entirely self-funded through the collection of fees for services it provides. Current funding will not change because of this amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fee is created or increased directly or indirectly by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as this amendment applies equally to all members of the public and licensees of the KBC.

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, 317A.060, 317A.090.

(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 Kentucky Board of Cosmetology is entirely self-funded through the collection of fees for services it provides. Current KBC revenue and expenditures are not anticipated to change 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? This amendment will not generate any revenue for the state of local government 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 amendment will not generate any revenue for the state of local government in subsequent years.

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

GENERAL GOVERNMENT CABINET Board of Cosmetology (Amendment)

201 KAR 12:190. Complaint and disciplinary process[Investigations and complaints].

RELATES TO: KRS 317A.070, 317A.140, 317A.145

STATUTORY AUTHORITY: KRS 317A.145

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.145[4] authorizes[requires] the board to[receive—and] investigate complaints and, where appropriate, take disciplinary action for violations of KRS Chapter 317A and the administrative regulations promulgated by the board. KRS 317A.070 allows a licensee or applicant to request a hearing to review the board's decision to refuse to issue or renew a license or permit, or to take disciplinary action against a license or permit. This administrative regulation details the board's complaint and disciplinary process[requires the board to receive and relating to a licensee's business or professional practices and illegal practices. This administrative regulation establishes the requirements relating to investigations and complaints].

Section 1. Definitions[Definition]. (1) "Complaint" means any writing received by the board alleging conduct by an individual or entity that may constitute[which contains the name of the complainant and alleges] a violation of KRS Chapter 317A or 201 KAR Chapter 12.

(2) "Respondent" means the person or entity against whom a complaint has been made[by a licensee relating to the licensee's business or professional practice].

Section 2. Complaint Committee. The board may appoint a committee of no more than two (2) board members to review complaints, initiate investigations, participate in informal proceedings to resolve complaints, and make recommendations to the board for disposition of complaints. The board staff and board counsel may assist the committee.

Section 3. Complaint Procedures. (1) Complaints shall be submitted on the board's Complaint Form, signed by the person making the complaint, and describe with sufficient detail the alleged violation(s) of KRS Chapter 317A, or the administrative regulations promulgated by the board. The Complaint Form shall be made available on the board's Web site.

(2) A copy of the complaint shall be provided to the respondent. The respondent shall have ten (10) days from the date of receipt to submit a written response. The complaints committee or the board administrator may extend these timelines as appropriate.

(3) The complaint committee shall review the complaint, the response, and any other relevant information or material available, and recommend that the board:

- (a) Dismiss the complaint;
- (b) Order further investigation;
- (c) Issue a written admonishment for a minor violation;
- (d) Issue a notice of disciplinary action informing the respondent of the following:

- 1. The statute(s) or administrative regulation(s) violated;
- 2. The factual basis for the disciplinary action;
- 3. The penalty to be imposed; and
- 4. The licensee's or permittee's right to request a hearing.

(4) A written admonishment shall not be considered disciplinary action by the board but may be considered in any subsequent disciplinary action against the licensee or permittee. A copy of the written admonishment shall be placed in the licensee or permittee's file at the board office.

(5) If the board determines that a person or entity is engaged in the unlicensed practice of cosmetology, esthetics practices, or nail technology, the board may:

(a) Issue to the person or entity a written request to voluntarily cease the unlicensed activity; or

(b) Seek injunctive relief in a court of competent jurisdiction pursuant to KRS 317A.020(7).

(6) Any board member who has participated in the investigation of a complaint or who has substantial personal knowledge of facts concerning the complaint, which could influence an impartial decision, shall disqualify himself or herself from participating in the adjudication of the complaint.

Section 4. Settlement by Informal Proceedings. (1) The board, through its complaints committee or counsel, may, at any time during this process, resolve the matter through informal means, including an agreed order of settlement or mediation.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the respondent and board chair, or the chair's designee.

Section 5. Hearings. (1) A written request for a hearing shall be filed with the board within thirty (30) days of the date of the board's notice that it intends to refuse to issue or renew a license or permit, to deny, suspend, probate, or revoke a license or permit, or to impose a fine on a licensee or permittee.

(2) If no request for a hearing is filed, the board's refusal to issue or renew a license or permit, or the board's notice of disciplinary action, shall become effective upon the expiration of the time to request a hearing. (The board or other board personnel shall receive all complaints against a person or salon licensed under the provisions of KRS Chapter 317A and 201 KAR Chapter 12 relating to the licensee's business or professional practices.

Section 3. The board shall make available to the public its Complaint Form, which shall be used by any person filing a complaint against a licensee.

Section 4. Each complaint received by the board concerning a licensed person or salon shall be investigated.

Section 5. The board may, at any time, on its own volition or on the basis of information available, conduct an investigation or inspection and file a complaint against a person or salon licensed under the provisions of KRS Chapter 317A and 201 KAR Chapter 12.

Section 6. A complaint that alleges that a licensee or salon has violated a provision of KRS Chapter 317A or 201 KAR Chapter 12 shall be sent to the licensee or salon before the complaint is placed on the board agenda. The licensee shall be provided ten (10) days after the complaint is mailed to file a written response to the complaint.

Section 7. The complaint and the response, if any is received, shall be placed on the board agenda for consideration at the next board meeting, or as soon thereafter as is practicable, following

receipt of the written response or the expiration of the ten (10) days provided for a response, whichever occurs first.

Section 8. The board members shall review the complaint and any response received and shall take action as it deems necessary.

Section 9. Any board member who has participated in the investigation of a complaint or who has substantial personal knowledge of facts concerning the complaint which could influence an impartial decision by the board member shall disqualify himself or herself from participating in the adjudication of the complaint.]

Section 6[40]. Incorporation by Reference. (1) "Complaint Form", April 2018[October 2013], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at 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: May 11, 2018

FILED WITH LRC: May 11, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2018, at 10:30 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 June 30, 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 sets forth the Kentucky Board of Cosmetology (KBHC)'s complaint and disciplinary process for submitting complaints and, where appropriate, for the KBC to take disciplinary action against a licensee.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide a uniform and consistent process to receive, investigate, and where appropriate, to take disciplinary action against persons and entities licensed by the KBC.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation implements a complaint and disciplinary processed as required by KRS 317A.145.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Currently, disciplinary matters are referenced in multiple administrative regulations. By combining complaints and disciplinary matters in one administrative regulation, this amendment ensures uniformity, clarity, and consistency in the process of receiving, investigating, and taking disciplinary action when appropriate. It also provides for method of issuing a private admonishment for minor violations.

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

(a) How the amendment will change this existing administrative regulation: This amendment incorporates all matters pertaining to complaints and disciplinary matters into one administrative

regulation. It also adds the option for the KBC to issue a private admonishment for minor violations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide a uniform, clear, and consistent method for receiving and investigating complaints against persons and entities licensed by the KBC.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment updates the existing administrative regulation to provide guidelines for processing complaints and, where appropriate, for taking disciplinary action against licensees of the KBC.

(d) How the amendment will assist in the effective administration of the statutes: By providing a uniform, clear, and consistent method for receiving and investigating complaints, and taking disciplinary action when appropriate, the KBC can better meet its statutory charter to protect public health and safety and ensure the ethical practice of cosmetology in the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 38,000, licensees, permittees, and students affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment modifies the existing process by which the public may file complaints against persons and entities licensed by the board. It does not impose any new requirements on those regulated 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): There is no anticipated cost to licensees because of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment establishes a uniform, clear, and consistent method for processing complaints and issuing disciplinary action against licensees. Benefits include a better understanding for the public of the method by which the KBC issues disciplinary actions while safeguarding licensees against meritless complaints.

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

(a) Initially: This amendment modifies existing practices of the KBC and does not establish any new requirement. No additional funds are necessary initially to implement this amendment.

(b) On a continuing basis: This amendment modifies existing practices of the KBC and does not establish any new requirement. No additional funds are necessary on a continuing 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 self-funded through fees it collects for services it provides to the public and to licensees. Funding necessary for processing complaints and related disciplinary actions is derived from the KBC's fees.

(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 from 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 administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation applies equally to all KBC licensees, permittees, and applicants.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Cosmetology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A.145.

(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 existing administrative regulation sets out a process for receiving and investigating complaints against KBC licensees and does not establish any fee or cost. This amendment modifies existing processes and procedures but similarly does not establish any fee or cost. This amendment is not anticipated to impact the expenditures and revenues of the KBC.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any revenue for state or local government in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any revenue for state or local government in subsequent years.

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

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

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

Revenues (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other Explanation: Not applicable.

GENERAL GOVERNMENT CABINET Board of Cosmetology (Amendment)

201 KAR 12:230. Code of ethics.

RELATES TO: KRS 317A.060[317B.020(3)(k)]

STATUTORY AUTHORITY: KRS 317A.060[317B.020(3)(k)]

NECESSITY, FUNCTION AND CONFORMITY: KRS 317A.060[317B.020(3)(k)] requires the board to establish a code of ethics for all persons and entities issued a license or permit[licensed] by the board. This administrative regulation establishes the required code of ethics.

Section 1. Code of Ethics. A licensee or permittee shall:

(1) Provide competent professional services to the consumer;

(2)[~~Wear a lab coat or smock with an insignia or badge indicating the licensee's name and the designation as a licensed esthetician;~~

(3) Provide a clear explanation of the services offered and the cost of those services;

(3) [(4)] Follow appropriate disinfection and sanitation requirements as established in KRS Chapter 317A[317B] and the administrative regulations promulgated thereunder;

(4) [(5)] Follow proper health profile procedures before application of the product;

(5) [(6)] Perform a thorough service[skin] evaluation and consultation for each client to determine if the procedure or product is appropriate before application;

(6) [(7)] Discuss and outline realistic expectations with the client after the evaluation; and

(7) [(8)] Treat all clients with courtesy and respect.

R. KAY SWANNER, Board Chair

APPROVED BY AGENCY: May 11, 2018

FILED WITH LRC: May 11, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2018, at 11:00, at Kentucky Board of Cosmetology (KBC). 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 June 30, 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 sets forth the code of ethics to be maintained by all those issued licenses and permits by the Kentucky Board of Cosmetology (KBC).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide a code of ethics as required by KRS 317A.060.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment removes references in the administrative regulation to KRS Chapter 317B, which was recently repealed by House Bill 260.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment updates the administrative regulation to cite its correct authorizing statute.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the administrative regulation to cite its correct authorizing statute.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove references to KRS Chapter 317B, which was recently repealed by House Bill 260.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment removes references to recently repealed statutes in the administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: The amendment corrects the administrative regulation to reflect its correct statutory authority.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation establishes a code of ethics that applies to approximately 38,000 applicants, permittees, and licensees of the KBC.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment does not impose any new requirements on those regulated 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): There is no anticipated cost to those entities identified in question (3) because of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Complying with an established code of ethics safeguards public health and safety and protects

against the incompetent and unethical practice of cosmetology.

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

(a) Initially: There is no anticipated cost to the KBC initially because of this amendment.

(b) On a continuing basis: There is no anticipated cost to the KBC on a continuing basis because of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary for 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: This amendment does not establish or increase any fee or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fee is created or increased directly or indirectly by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation applies equally to all persons and entities regulated by the KBC.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 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. This amendment is not anticipated to affect the expenditures or revenues of a state or local government agency.

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

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

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

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

GENERAL GOVERNMENT CABINET Board of Barbering (Amendment)

201 KAR 14:180. ~~Fees~~[License fees, examination fees, renewal fees, and expiration fees].

RELATES TO: KRS[317.440(8)] 317.450

STATUTORY AUTHORITY: KRS 317.440(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.440(2) requires the Board of Barbering to establish fees by [for licenses within the limits established by KRS 317.450. This] administrative regulation. This administrative regulation establishes fees for examinations, permits, and licenses issued by the

board[relating to barbering licenses].

Section 1. Initial licensing fees shall be as follows:

- (1) Apprentice[Probationary] license: fifty (50) dollars;
- (2) Barber license: fifty (50) dollars;
- (3) Barber school license: \$500[Endorsement: \$250];
- (4) Barber shop license: \$100[fifty (50) dollars];
- (5) Endorsement: \$250[Barber school license: \$150];
- (6) Teacher of barbering license: \$100; and
- (7) Independent contract owner: fifty (50) dollars.

Section 2. Examination fees shall be as follows:

- (1) Apprentice [Probationary] examination: \$200[\$150];
- (2) Barber examination: \$200[\$150]; and
- (3) Teacher of barbering examination: \$250[\$150].

Section 3. Renewal fees shall be as follows:

- (1)[Probationary licensee renewal: fifty (50) dollars;
- (2)Barber[renewal]: fifty (50) dollars;
- (3) Teacher of barbering[renewal]: \$100[fifty (50) dollars];
- (4) Barber shop[renewal]: fifty (50) dollars;
- (5) Barber school[renewal]: \$200[\$150]; and
- (6) Independent contract owner: fifty (50) dollars.

Section 4. (1) The~~[late]~~ fee for renewal of a license that has been expired for five (5) years or less[more than one (1) day and not more than five (5) years from the expiration date of the last license issued by the board] shall be the lapse fee defined in KRS 317.410(9) in addition to the late fee set forth below[as follows]:

- (a)[Probationary licensee late fee: twenty-five (25) dollars;
- (b)Barber[late] fee: twenty-five (25) dollars;
- (c)Teacher of barbering[late] fee: \$100[twenty-five (25) dollars];
- (d)Barber shop[late] fee: twenty-five (25) dollars;
- (e)Barber school[late] fee: \$100[twenty-five (25) dollars];
- and
- (f)Independent contract owner: twenty-five (25) dollars.

(2) ~~The total cost of renewal of a license governed by subsection (1) of this section shall include the renewal fee and the:~~
 (a) ~~Late fee established by subsection (1) of this section; and~~
 (b) ~~Lapse fee defined by KRS 317.410(8).]~~

Section 5. Miscellaneous fees shall be as follows:

- (1) Duplicate license: ten (10) dollars;
- (2) Certification of license: fifty (50) dollars; and
- (3) Demonstration permit: \$100; and
- (4) Student permit card: fifteen (15) dollars.

Section 6. All fees received by the Kentucky Board of Barbering shall be non-refundable.

~~[Section 7. Certification and demonstration fees shall be applicable when a certification is issued to an event promoter for a period not to exceed seventy-two (72) hours for the purpose of promotional events such as trade shows, product demonstrations, equipment showcases, and educational seminars and training.]~~

Section 7. If a license or permit is lost, destroyed, or stolen after issuance, a duplicate license may be issued. The applicant shall submit to the board a Duplicate License Request form to verify the loss of the license or permit. Each duplicate license or permit shall be marked "duplicate."

Section 8. Incorporation by Reference. (1) The "Duplicate License Request", May 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Barbering, 312 Whittington Parkway, Suite 110, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 pm.

SONJA MINCH, Administrator

APPROVED BY AGENCY: May 3, 2018

FILED WITH LRC: May 11, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on June 22, 2018, at 10:30 a.m. Eastern Time at the Kentucky Board of Barbering, 312 Whittington Parkway Suite 110, Louisville, Kentucky 40222. 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 11:59 p.m., June 30, 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: Sonja Minch, Administrator, Kentucky Board of Barbering, 312 Whittington Parkway Suite 110, Louisville, Kentucky 40222, phone (502) 429-7148, fax (502) 429-7149, email boardofbarbering@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sonja Minch

(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 Barbering (KBB).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a fee schedule for all persons and entities seeking a permit or license from the KBB.

(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 317.

(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 and renewal of licenses and permits, board exams, and other miscellaneous fees of the KBB.

(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 KBB is entirely self-funded through fees it collects for the various applications, permits, and licenses it offers to the public. As the board's licensing fees have not been changed since 2010, they no longer are commensurate with the expenses that the KBB incurs to provide these services. This amendment brings fees in line with expenses.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to generate sufficient revenue to meet the KBB's operating expenses and meet the increasing demand for licenses and permits.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment sets forth all KBB fees based on the current statutory requirements in KRS Chapters 317.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides a single administrative regulation setting forth all fees for applications, permits, and licenses issued by the KBB.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 6,000 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 fee schedule contained in the current administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment modifies the fees for licenses, permits, and examinations issued and administered by the board. The existing license fees have not been changed since 2010. An adjustment to the KBB fee schedule is necessary to meet the KBB's expected operating expenses to issue licenses and permits, and to inspect barber shops and barber schools throughout the Commonwealth. These adjusted fees represent a midpoint when compared to comparable 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 and permittees will benefit from faster processing times, enhanced web based services, and streamlined access to KBB services.

(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 KBB is entirely self-funded through fees it collects for permits and licenses. There are no funds necessary to implement this amendment as it updates an existing 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 317. This amendment establishes a new fee for a student permit card and modifies remaining fees in the administrative regulation. The increase to existing fees brings the KBB's fee schedule to a midpoint when compared to surrounding states.

(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 Barbering (KBB).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317.440.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The KBB 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 sufficiently fund the KBB's operating expenses and meet the increased demand for permits and licenses. The KBB also intends to launch new initiatives in the near future to facilitate access to its services such as the use of online applications.

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment is expected to result in increased revenue in subsequent years, which will be used to fund new initiatives and meet the increased demand for permits and licenses.

(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 and is expected to be offset by the concomitant expenditures for processing applications, administering exams, and issuing licenses. It is anticipated that the increase in fees from this amendment will result in an approximate 25% increase in revenue. Much of this anticipated increase in revenue is expected to be offset by anticipated operating expenses.

PUBLIC PROTECTION CABINET

Board of Licensure for Professional Art Therapists (Amendment)

201 KAR 34:060. Qualifying experience under supervision.

RELATES TO: KRS[309.130(3), ~~309.1305(5)~~], 309.1315, 309.133, 309.134

STATUTORY AUTHORITY: KRS 309.1315[(1), (4), (12), (16), 309.134(1)(b)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.1315[(1), (12), and (16) ~~require~~] requires the board to promulgate administrative regulations necessary to carry out the provisions of KRS 309.130 to 309.1399, to approve the level of supervision for a person seeking licensure, and to establish requirements for supervision and qualifications of supervisors[~~KRS 309.1315(4) requires the board to process applications. KRS 309.134(1)(b) requires an applicant to obtain a board-approved supervisor of record.~~] This administrative regulation establishes[~~the~~] supervision requirements[~~for supervision~~] and[~~the~~] qualifications necessary to be a board-approved supervisor[~~and a supervisor of record~~].

Section 1. Definitions. (1)[~~"Board-approved qualified mental health professional" means a licensed marriage and family therapist, licensed psychologist, licensed psychiatrist, licensed professional clinical counselor, or licensed clinical social worker.~~]

(2)[~~"Direct client contact hours" means hours spent providing art therapy services to a client[with services performed] in an individual, couple, family, or group format.~~]

(2)[(3)] "Face-to-face supervision" means supervision that is either:

(a) ~~Two (2)-way interactive~~[Interactive], simultaneous video and audio[~~media~~]if at least two (2)[~~direct meetings per month~~] hours of supervision per month are conducted in person[~~with the supervisor and supervisee physically present in the same room~~]; or

(b) All[~~the~~] supervision is conducted in person[~~meetings take place with the supervisor and supervisee physically present in the same room~~].

(3)[(4)] "Group supervision" means the supervision of no more than[~~a group of~~] six (6) supervisees at the same time[~~individuals or less~~].

(4)[(5)] "Individual supervision" means case consultation between the supervisor and the supervisee that is restricted to the supervisee's cases.

(5)[(6)] "Supervisee" means a licensed professional art therapy associate who works with clients under board-approved supervision.

(6)[(7)] "Supervision" means the educational process of utilizing a partnership between a supervisor and a supervisee aimed at enhancing the professional development of the supervisee in the practice of professional art therapy[to meet the requirements of KRS 309.134].

(7)[(8)] "Supervisor of record"["Supervisor"] means a board-approved licensed professional art therapist who meets the requirements established in Section 2 of this administrative regulation [or qualified mental health professional who controls, oversees, guides, and takes responsibility for the practice of professional art therapy of a supervisee in accordance with this administrative regulation].

(9) "Supervisor of record" means an approved licensed professional art therapist in the Commonwealth of Kentucky who meets the requirements established in Section 2 of this administrative regulation].

Section 2. [~~Requirements to be a board~~]Board-approved Supervisors[supervisor]. (1) To be eligible as a board-approved supervisor, a licensed professional art therapist[~~that is a supervisor~~] shall have a minimum of four (4) years of licensed experience in the practice of art therapy[A board-approved qualified mental health professional that is a supervisor shall have a minimum of four (4) years of independent experience].

(2) The following shall render an applicant ineligible for board-approved supervisor status[~~A supervisor shall not have~~]:

(a) An unresolved citation filed against him or her by a licensing[~~the~~] board or similar agency;

(b) A disciplinary action that resulted in the suspension or probation of a license; or

(c) A previous or current dual[~~existing personal~~] relationship with a supervisee as defined by 201 KAR 34:040.

(3) In order to obtain board-approved supervisor status, an applicant[~~a supervisor~~] shall submit:

(a) A Board Approved Supervisor Application; and

(b) Proof of completion of the Board-Approved Supervisor Examination.

Section 3. Examination. (1) [complete three (3) hours of board-approved supervisor training which shall be completed within one (1) year of the supervisor seeking board approval.

(a) The Board-Approved Supervisor Examination[~~board-approved supervisor training~~] shall cover:

(a)[1-] Kentucky law governing the practice of art therapy contained in both KRS Chapter 309 and 201 KAR Chapter 34, theories of supervision, ethical issues involved in supervision, and supervisor responsibilities; and

(b)[2-] Documentation in a supervision log that includes supervision times as well as the planning and treatment utilized[~~treatment and planning that is employed~~].

(b)[(2)] To take the examination, an applicant shall submit to the board:

(a) An Application for Examination Continuing Education Credit form, available on the board's Web site; and

(b) Payment of thirty (30) dollars in the form of a check or money order made payable to the Kentucky State Treasurer.

(3) Upon receipt of the application and fee, the board will send the applicant the exam to complete and return within thirty (30) days of receipt.

(4) The board will notify the applicant of the examination results and, if a passing score is obtained, the board shall send the applicant a certificate confirming board-approved supervisor status and the receipt of three (3) hours continuing education credit.

Section 4. Expiration and Grace Period. (1) Board-approved supervisor status shall expire three (3) years from the date of approval.

(2) To renew, a board-approved supervisor shall submit:

(a) A Board-Approved Supervisor Application; and

(b) Proof of a passing score on the Board-Approved Supervisor

Examination taken within ninety (90) days of the board-approved supervisor's expiration date.

(3) A board-approved supervisor may continue supervising for ninety (90) days after the expiration date while awaiting approval of a renewal application.

(4) Failure to renew in accordance with this administrative regulation shall result in termination of board-approved supervisor status.[~~Supervisor training shall be an onsite or online course which shall be conducted by an instructor who is a licensed professional art therapist or board-approved qualified mental health professional and who has demonstrated proficiency in the curriculum established in this administrative regulation.~~

(c) To maintain board-approved supervisor status, a supervisor shall retake the board-approved supervisor training every three (3) years.

(4) Supervisory experience obtained in Kentucky with a supervisor who has not completed the course required by subsection (3) of this section shall not be accepted by the board.(5)]

Section 5. Prohibition. A board-approved supervisor[A licensed professional art therapist] shall not serve as a supervisor of record for more than six (6) licensed professional art therapist associates[with whom he or she has a supervisory agreement] at the same time.

Section 6. Reciprocity[(6)(a)] An applicant for licensure with[~~receiving~~] supervision obtained outside of Kentucky shall demonstrate that his or her out-of-state supervisor has[~~been independently licensed in a clinical practice for four (4) years following licensure as a professional art therapist or with one (1) of the groups approved by the board as of the time of the supervision.~~

(c) The out-of-state supervisor shall have the substantially equivalent qualifications at the time of the supervision as those[~~to those prescribed for a supervisor~~] established in this administrative regulation. [(7) To be recognized as a supervisor, a licensed professional art therapist or board-approved qualified mental health professional who meets the requirements of this section shall request in writing to become a supervisor in Kentucky and provide a copy of the supervisory training certificate.]

Section 7[3]. Supervisory Agreement[~~for Licensed Professional Art Therapist Associate Supervision~~]. (1) Prior to beginning supervision, a licensed professional art therapist associate applicant[~~supervisee~~] shall submit to the board[~~enter into~~] a Supervisory Agreement[~~supervisory agreement~~] with a supervisor of record[and submit it to the board for approval].

(2) The[~~At a minimum, the~~] Supervisory Agreement shall include [address] the following:

(a) The name [and license number] of the supervisee;

(b) The name and license number of the supervisor of record;

(c) [The name and license number of other supervisors;

(d)]The agency, institution, or organization where the supervised experience will be obtained[~~received~~]; and

(d)[(e)] A detailed description of the nature of the practice including:

1. The type of clients who will be seen;

2. An accurate assessment of client problems leading to proficiency in applying professionally recognized nomenclature and developing a plan for treatment which meets currently recognized standards in the profession;

3. The therapies and treatment modalities that will be used including the prospective length of treatment;

4. Problems that will be treated;

5. The nature, duration, and frequency of the supervision, including the:

a. Number of hours of supervision per week;

b. Amount of group and individual supervision;

c. Ethical considerations for the use of internet, social networking, and electronic media for the transmission of case information; and

d. Number of hours of face-to-face supervision, including how that supervision shall be obtained; and

~~(e)(f) The conditions or procedures for termination of the supervision;~~

~~(g) A statement that[:~~

~~1. The supervisor of record understands that he or she shall be held accountable to the board for the care given to the supervisee's clients; and~~

~~2. The supervisor of record and other supervisors shall meet the criteria established in Section 2 of this administrative regulation;~~

~~(h) An individualized job description that:~~

~~1. Describes in detail how the requirements of this administrative regulation will be met; and~~

~~2. Is on office or agency letterhead that is signed by the executive director, the agency director, or the individual who heads the office; and~~

~~(i)(3) A copy of the[each] supervisor's current[supervisory training] certificate as a board-approved supervisor shall be[that is] attached to the Supervisory Agreement.~~

~~(4)(3) Changes to that portion of the Supervisory Agreement that describes the nature of the practice and experience that the supervisee is to obtain[as required by this administrative regulation] shall be submitted to the board for approval.~~

~~(5)(4) If the supervisee changes his or her supervisor of record, a new Supervisory Agreement shall be submitted to the board for approval.~~

~~(6)(5) A supervisee shall submit a completed supervisory agreement for each supervisor of record. [A supervisee shall notify the board by letter of changes of supervisors who are not the supervisor of record, but who are identified in the supervisory agreement and attach a copy of the supervisor's supervisory training certificate.]~~

Section 8[4]. Notice to Client. A licensed professional art therapy associate practicing under a supervisor of record[the supervision of a licensed professional art therapist or a board-approved qualified mental health professional] shall notify in writing each client of the associate or by posting a notification which shall include:

(1) The name, office address, telephone number, and license number of the supervisor of record; and

(2) A statement that the supervisee is licensed by the board.

Section 9[5]. Experience under supervision. (1) Experience under supervision shall consist of:

(a) On average, at least two (2) meetings and four (4) hours total of face-to-face supervision each month[At least sixty (60) percent of the required experience in direct client contact hours];

(b) Direct responsibility for a specific individual or group of clients; and

(c) Broad exposure and opportunity for skill development with a variety of dysfunctions, diagnoses, acuity levels, and population groups.

(2) For[The board may for] extenuating circumstances beyond the supervisor's or supervisee's control, such as in cases of disability, illness, or undue hardship, the board may, upon written request by the supervisor and supervisee, grant a limited waiver from the monthly meeting and face-to-face supervision[requirement of two (2) monthly direct in person meetings to satisfy the face-to-face supervision] requirements of this section[upon written request by the supervisor and supervisee].

(3) In extenuating circumstances, if a licensed professional art therapist associate is without supervision, the associate may continue working for up to ninety (90) calendar days under the supervision of a clinical supervisor while a board-approved supervisor is sought and a new supervisory agreement is submitted to the board.

(a) Extenuating circumstances include situations such as death or serious illness of the board-approved supervisor, a leave of absence by the supervisor, or termination of the supervisor's employment.

(b) The supervisee shall notify the board of these extenuating circumstances within ten (10) days of the occurrence and shall submit, in writing, a plan for resolution of the situation within thirty

(30) calendar days of the change in status of board-approved supervision. The written plan shall include:

1. The name of the temporary supervisor;

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

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

4. A telephone number for the temporary supervisor.

Section 10[6]. Supervision Requirements. (1)[A minimum of seventy-five (75) percent of the supervision hours shall be provided by a licensed professional art therapist who has been recognized as a board-approved supervisor under Section 2 of this administrative regulation.

(2) A board-approved qualified mental health professional who has been recognized as a board-approved supervisor under Section 2 of this administrative regulation may provide up to a maximum of twenty-five (25) percent of supervision hours.

(3) Supervision shall relate specifically to the qualifying experience and shall focus on:

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

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

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

(d) Ethical problems in the practice of art therapy; and

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

(2)(4)(a) Supervision shall total a minimum of 100 hours and 1,000 client contact hours which shall include individual supervision of no less than one (1) hour for every ten (10) hours of client contact.

(3)(b) A supervisee shall not obtain more than twenty-five (25) hours of the required supervision by group supervision. [(e) Group supervision shall not be permitted in groups of more than six (6) supervisees.]

Section 11[7]. Documentation Requirements. (1) The supervisor of record[board-approved supervisor] and licensed professional art therapy associate shall maintain copies of [the] completed supervision log(s)[log], which shall document:

(a) The frequency and type of supervision provided; and

(b) The method of supervision utilized, such as observation, dialogue and discussion, and instructional techniques employed.

(2) Documentation shall distinguish between individual and group[identify modality of] supervision.

Section 12. A licensed professional art therapist engaged in board-approved supervision pursuant to this administrative regulation shall be referred to as "licensed professional art therapist supervisor" and may use the acronym "LPAT-S".[Section 8. Temporary Supervision. (1) In extenuating circumstances, if a licensed professional art therapist associate is without supervision, the associate may continue working for up to ninety (90) calendar days under the supervision of another clinical supervisor while a board-approved supervisor is sought and a new supervisory agreement is submitted to the board. Extenuating circumstances include situations such as death or serious illness of the board-approved supervisor, a leave of absence by the supervisor, or the termination of the supervisor's employment.

(2) The supervisee shall notify the board of these extenuating circumstances within ten (10) days of the occurrence and shall submit, in writing, a plan for resolution of the situation within thirty (30) calendar days of the change in status of board-approved supervision. The written plan shall include:

(a) The name of the temporary supervisor;

(b) Verification of the credential held by the temporary supervisor;

(c) An email address and a postal address for the temporary supervisor and the supervisee; and

(d) A telephone number for the temporary supervisor.]

Section 13[9]. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Supervisory Agreement", May 2018; and
- (b) "Board-Approved Supervisor Application", May 2018.

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m. [Evaluation by the Board. The period of supervised experience required by KRS 309.133(1) and 309.134 shall be evaluated by the board according to one (1) of the following methods:~~

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

~~(2) Documentation for an applicant for licensure as a licensed professional art therapist that establishes that an individual has been licensed art therapist in another jurisdiction at the clinical level and has been engaged in the active practice of professional art therapy work in that jurisdiction for at least five (5) years immediately preceding the filing of an application for licensure as a professional art therapist with the board pursuant to 201 KAR 34:025 shall meet the requirement for supervision established in this administrative regulation.]~~

MARYBETH ORTON, Chair

APPROVED BY AGENCY: May 10, 2018

FILED WITH LRC: May 11, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2018, at 3:00 p.m., local time, at the Kentucky Board of Licensure for Professional Art Therapists, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received in writing five (5) workdays prior to the hearing date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in writing five (5) workdays prior to the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m., June 30, 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: Quincy Ward, Board Counsel, Office of Legal Services, Public Protection Cabinet, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969, email quincy.ward@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Quincy Ward

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes supervisory licensee status, the supervision process and requirements for reporting supervision hours for licensed professional art therapist associates.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the supervision process and requirements for reporting supervision hours for licensed professional art therapist associates.

(c) How does this administrative regulation conform to the content of the authorizing statutes? KRS 309.134 requires the board to establish supervision for licensed professional art therapist associates. KRS 309.1315(12) requires the board to establish and approve supervision requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs licensees of the requirements for

supervision and the process for reporting supervision goals for licensed professional art therapist associates.

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

(a) How the amendment will change this existing administrative regulation: The amendment will clarify that licensees must submit an application initially and for renewal of board-approved supervisor status. The renewal period is three (3) years.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify the process by which licensees can obtain and maintain board-approved supervisor status.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 309.1315(12) requires the board to establish supervision requirements and qualifications of supervisors.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist licensees and associates in understanding the process for obtaining board-approved supervisor status and the requirements for board approved supervision of associates.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 50 persons will seek licensure as professional art therapists or professional art therapist associates in the next fiscal year. All associates must comply with the provisions of this administrative regulation as well as those licensees applying for board-approved supervisor status.

(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 clarifies the existing practice for licensed professional art therapists to obtain board-approved supervisor status. Associates must continue to obtain a board-approved supervisor and submit a proposed supervisory agreement with the application for an associate's license. This amendment also clarifies that all board-approved supervisors must renew every three (3) years to continue supervision.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board does not anticipate that this amendment will add any cost to the board or to licensees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will assist licensed professional art therapists and licensed professional art therapist associates in understanding the process for obtaining and renewing board-approved supervisor status. The amendment also removes redundant and duplicative language in the administrative regulation.

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

(a) Initially: This amendment will not result in any initial cost for implementation.

(b) On a continuing basis: This amendment will not result in any cost on a continuing basis for implementation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board is entirely self-funded through fees paid by the licensees and applicants for licensure as licensed professional art therapists, licensed professional art therapist associates, and board-approved supervisors.

(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 result in any increased fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulation does not currently establish a fee for obtaining board-approved supervisor status. However, the board has developed an examination to ensure competency to act as a

supervisor and that examination will satisfy the training necessary for board-approved supervisors to renew approved status every three years. The examination will be revised and updated to ensure that it accurately gauges a supervisor's knowledge of subject matter and continued competence to supervise. Board examination fees are already set by 201 KAR 34:020 at ten (10) dollars per credit hour of continuing education. This amendment grants three (3) hours of continuing education credit for those who successfully pass the examination and receive board-approved supervisor status. While the amendment does not directly establish a fee, it incorporates the existing fee structure for continued education credit through successful completion of board examinations.

(9) Tiering: Is tiering applied? No. Tiering is not applied because the requirements in this administrative regulation apply equally to all licensees and applicants.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.1315 and KRS 309.134.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment incorporates an existing practice by the board for licensees to request and obtain board-approved supervisor status. This amendment establishes an examination requirement for applicants to successfully complete in order to obtain initial and renewed board-approved supervisor status. There are some additional costs expected in the time expended by board members and staff to develop, modify, and grade examinations to be completed by applicants. There are also expected costs in the expenditure of administrative resources by board staff.

(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 incorporates the existing fee structure from 201 KAR 34:020 for applying continuing education credit for successful completion of board examinations. As this amendment grants three (3) hours of continuing education credit for completing the board-approved supervisor examination, the total cost per applicant is \$30.00. The total revenue generated by this amendment depends on the number of applicants, which may vary from year to year. An initial estimate is approximately 20-25 applicants will apply initially for board-approved status. It is anticipated that the revenue generated by these fees will be offset by the additional expenditures in time, expense, and resources described above in paragraph 3.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The revenue for subsequent years will depend on the number of licensed professional art therapists that apply each year for either initial or renewed board-approved supervisor status in subsequent years. An initial estimate is approximately 20-25 applicants will apply each year either for initial or renewed board-approved supervisor status.

(c) How much will it cost to administer this program for the first year? There is no anticipated additional cost resulting from this amendment in the first year as this amendment incorporates an existing practice by the board.

(d) How much will it cost to administer this program for subsequent years? There is no anticipated additional cost resulting from this amendment in subsequent years as this amendment incorporates an existing practice by the board.

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

regulation.

Revenues (+/-): Small increase.

Expenditures (+/-): Small increase.

Other Explanation: Given the small number of licensees, it is difficult to predict exact revenue and expenditures, neither is expected to increase meaningfully.

PUBLIC PROTECTION CABINET Department of Professional Licensing Kentucky Board of Licensure for Private Investigators (Amendment)

201 KAR 41:100. Verification of limited[240—hour] employees.

RELATES TO: KRS 329A.025, KRS 329A.070

STATUTORY AUTHORITY: KRS 329A.025, 329A.070{(a)}

NECESSITY, FUNCTION AND CONFORMITY: KRS 329A.025(2) and 329A.070(9) require[329A.070—states] the board[shall] to establish a fee and a method of verification of the number of hours worked by a limited[an] employee who works[working] under the direction of a[the] private investigator or private investigating firm licensed by the board[works, to ensure the employee does not exceed 240 hours of work per year]. This administrative regulation establishes a fee and method[process] for this verification.

Section 1. Definition. "Limited Employee" means a person who engages in "private investigating" for a licensed private investigator or licensed private investigating firm as defined by KRS 329A.010(4) for less than 240 hours per year[pursuant to the limitation authorized by KRS 309.070(9)].

Section 2. Registration of Limited Employees. (1) Within five (5) business days of hiring, a licensee of the board[A—private investigator or private investigator firm] shall file with the board a Limited Employee Registration form for[listing provide the name and address of] each employee who works for that licensee[private investigator or private investigator firm] under the[licensee] exemption in[of] KRS 329A.070(9). The Limited Employee Registration form shall be[The licensee shall file with the board an Employee Registration form] accompanied by payment of a twenty (20) dollar fee per[for each] employee registered.

(2) The board shall assign[employee shall be assigned] the limited employee a tracking number[by the board] that the licensee shall use on all reporting forms.

(3) A licensee shall file a Limited Employee Registration form with the Board to update an employee's information, if changed, or upon termination of employment.

(4)(a) Each licensee shall maintain a daily log listing the dates and hours worked for each limited employee[The daily log shall include the dates and hours worked by the employee].

(b) Within five (5) business days of the board's request[Upon a request by the board], the licensee shall provide the daily log to the board[within five (5) business days of the date the log is requested].

(5)[(4)] A[an] limited employee may[perform] work for more than one (1) licensee during a one (1) year period. Each licensee employing that person shall comply with the requirements of this administrative regulation[provide the required information to the board].

Section 3. Annual[Quarterly] Reports. [(4)] Between December 1st and December 31st each year, the licensee shall submit to the board an Annual Employee Report listing each registered employee and the number of hours each employee worked during that year[file a Quarterly Report with the board for each employee working under the licensee, even if no hours were worked during the reporting quarter].

(2)(a) The report shall be completed for the following quarterly dates:

1. March 31;

2. June 30;
3. September 30; and
4. December 31st.

(b) The report shall be submitted to the board by the last day of the month following the quarter's ending date.

(3) The reports shall be subject to review by the board].

Section 4. [Notification of Maximum Hours. (1) If an employee reaches the maximum 240 hours of work with a licensee prior to the end of the year, that licensee shall notify the board that the employee is ineligible to work for that licensee under the KRS 329A.070(9) exception for the remainder of the year.

(2) If an employee reaches the maximum 240 hours with that licensee before the quarter expires, the licensee shall notify the board within five (5) business days and cause the employee to immediately cease working in that capacity.

Section—5.] Registration Renewal. (1) Employee registration [The notification of an employee working pursuant to this administrative regulation] shall expire [be valid for] one (1) year from the date of issuance. To renew, a licensee shall submit an Employee Registration form listing each registered employee to be renewed and payment of the twenty (20) dollar fee per employee registered [A renewal application shall be received by the board] no later than forty-five (45) days prior to the expiration date [before the one (1) year time period expires].

(2) Failure to timely submit fee payment or the Employee Registration form automatically suspends the employee's licensure exemption under KRS 329A.070(9) until such time as both payment and a completed Employee Registration form are received and processed by the board [An employee's ability to work shall be renewed upon:

(a) The licensee's payment of the twenty (20) dollar renewal fee; and

(b) Submission of a completed Employee Registration form].

Section 5[6]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Limited Employee Registration", 5/2018 edition [KPI-08, 01/2011 edition]; and

(b) "Annual Limited Employee [Quarterly] Report", 5/2018 edition [KPI-09, 1/2011 edition].

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

BILLY RAY COURSEY, Chair

APPROVED BY AGENCY: May 9, 2018

FILED WITH LRC: May 11, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 25, 2018, at 9:00 a.m., local time, at the Kentucky Board of Licensure for Private Investigators, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) workdays prior to the hearing date, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m., June 30, 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: R. Quincy Ward, Board Counsel, Office of Legal Services, Public Protection Cabinet, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601. phone (502) 564-7760, fax (502) 564-3969, email quincy.ward@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: R. Quincy Ward

(1) Provide a brief summary of: This administrative regulation establishes the process for verification of the number of hours worked by an employee under the direction of a licensee pursuant to KRS 329A.070(9).

(a) What this administrative regulation does: This administrative regulation implements KRS 329A.070(9), which requires the board to establish a method of verification of the number of hours worked by a limited employee of a licensee engaged in private investigating under the direction of the licensee. KRS 329A.070(9) exempts such an employee from the licensure requirements of KRS Chapter 329A so long as the licensee registers the limited employee with the board and the registered employee works less than 240 hours per year for the licensee.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a verification process as required by KRS 329A.070(9).

(c) How does this administrative regulation conform to the content of the authorizing statutes? This administrative regulation establishes a process for licensees to register employees working under their direction pursuant to KRS 329A.070(9) and for the board to verify the number of hours each registered employee works on an annual basis.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs licensees on the process to register employees working under their direction pursuant to KRS 329A.070(9) and the requirements for annual reporting of the hours worked by each registered employee.

(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 modifies the existing quarterly reporting requirements for licensees to an annual reporting requirement. The procedures for initially registering and terminating an employee are unchanged. This amendment also removes the existing requirement for licensees to notify the board once an employee reaches the 240 hour limitation. Finally, this amendment updates incorporated forms to better facilitate reporting on an annual basis.

(b) The necessity of the amendment to this administrative regulation: This amendment modifies the reporting requirement from a quarterly to an annual basis. Out of a total population of 566 private investigators or licensed private investigating firms licensed by the board, there currently are 101 registered employees working under the direction of 29 licensees. On average, licensees report less than sixty (60) hours worked by registered employees. Annual reporting by this relatively small population of licensees will sufficiently capture the necessary information to monitor compliance with the 240 hour limitation in KRS 329A.070(9).

(c) How the amendment conforms to the content of the authorizing statutes: KRS 329A.070(9) requires the board to implement a process of verifying the number of hours worked by registered employees under the direction of licensees. This amendment modifies the time period for licensees to report hours worked by registered employees. It also removes the requirement that licensees notify the board once registered employees reach the 240-hour limitation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ease licensees' reporting requirements and the corresponding administrative burden on board staff. An annual reporting cycle will sufficiently capture the necessary information to monitor compliance with the 240 hour limitation. Additionally, removal of the notification requirement is warranted since it is not required by statute and has not shown to be of any practical benefit to the board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There currently are 566 private investigators and private investigating firms licensed by the board; however, only 29 currently have registered employees with the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment does not add or increase any existing requirement for those regulated entities identified in question (3). Rather, it relaxes the reporting requirement for registered employees from a quarterly to an annual basis and removes a notification requirement once a registered employee reaches the 240-hour limitation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board does not anticipate any additional cost to the regulated entities identified in response to question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will relax the reporting requirements for licensees with registered employees while still allowing the board to effectively monitor compliance with the 240-hour limitation of the statute.

(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 board to implement this amendment on an initial basis.

(b) On a continuing basis: There is no additional cost to the board to implement this 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: The board is self-funded by fees submitted by licensees and applicants. This amendment does not change the existing twenty (20) dollar fee for licensees to register employees.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The existing administrative regulation established a twenty (20) dollar fee for the initial registration of an employee. This amendment does not modify that fee.

(9) Tiering: Is tiering applied? Tiering is not applied because the requirements established in this administrative regulation apply equally to all licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensure for Private Investigators will be affected 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 329A.070(9).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The board is self-funded through the collection of fees from licensees and applicants. This amendment is not anticipated to affect the existing expenditures and revenues of the board or any state or local government.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The revenue generated depends on the number of licensees registering limited employees each year, which currently stands at 29 licensees with 101 limited employees, for an estimated annual revenue of \$580.00.

(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? Any revenue generated by this amendment in subsequent years depends on the number of limited employees registered with the board. At present, there 29 licensees with 101 limited employees. Assuming that number continues, the board estimates approximately \$580.00 in revenue on a yearly basis.

(c) How much will it cost to administer this program for the first year? None. The board is already processing applications for licensure. There is no anticipated additional cost in the first year resulting from this amendment.

(d) How much will it cost to administer this program for subsequent years? None. The board is already processing applications for licensure. There is no anticipated additional cost in subsequent years resulting from this 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: In the event reduced reporting requirements make this line of work more attractive and result in additional registrations or licensees, there may be a small increase in revenue for the board, but it is not likely to be significant.

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

301 KAR 1:130. Live bait for personal use.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.450, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 50 C.F.R. 17.11

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area. 50 C.F.R. 17.11 establishes federally threatened or endangered fish species. This administrative regulation establishes the requirements for the taking of live bait for personal use.

Section 1. Definitions. (1) "Different body of water" means a body of water that is separate and not contiguous to another body of water, including a man-made reservoir that is separated from a downstream river by a dam, but does not include a river, stream, or creek that is separated by a low-level dam.

(2) "Live bait" means the organisms established in paragraphs (a) through (h) of this subsection if they are alive:

(a) Live bait fishes;

(b) Crayfish;

(c) Salamanders;

(d) Frogs, except bullfrogs;

(e) Tadpoles;

(f) Native lampreys;

(g) Asiatic clams (Genus Corbicula); or

(h) Other aquatic invertebrate organisms, except for mussels[~~live bait fishes, crayfish, salamanders, frogs except bullfrogs, tadpoles, native lampreys, Asiatic clams (Genus Corbicula), and other aquatic invertebrate organisms except mussels~~].

(3) "Live bait fishes" means:

(a) Rough fishes, except Asian carp and federally threatened or endangered species, as established in 50 C.F.R. 17.11[blackside dace, palezone shiner, relict darter, Cumberland darter, and tuxedo darter]; or

(b) Redear sunfish less than six (6) inches in length.

(4) "Sport fisherman" means a person holding a valid resident or nonresident fishing license and includes a person who is license exempt pursuant to KRS 150.170.

Section 2. Equipment. (1) Any other organisms not defined as

live bait pursuant to Section 1 of this administrative regulation shall be returned immediately to the water.

(2) Live bait for personal use shall only be taken as established in paragraphs (a) through (d) of this subsection.

(a) The maximum size seine for:

1. Take in the Ohio and Mississippi Rivers and Barkley and Kentucky Lakes shall be:

- a. Thirty (30) feet long;
- b. Six (6) feet deep; and
- c. With bar mesh no larger than one-fourth (1/4) of an inch; or

- a. Ten (10) feet long;
- b. Four (4) feet deep; and
- c. With bar mesh no larger than one-fourth (1/4) of an inch.

(b) The maximum size for a minnow trap shall be:

1. Three (3) feet long;
2. Eighteen (18) inches in diameter; and
3. With openings no larger than one (1) inch.

(c) The maximum size for a dip net shall be three (3) feet in diameter.

(d) The maximum size for a cast net shall be twenty (20) feet in diameter with one (1) inch bar mesh, except take shall be prohibited in the following bodies of water:

1. Lakes with a surface area of less than 500 acres; and
2. Hatchery Creek in Russell County, a tributary to the Cumberland River located below Wolf Creek Dam.

Section 3. Bait. (1) A mussel, except for an Asiatic clam, shall not be taken or used as bait.

(2) A sport fisherman shall not possess bait in an amount greater than the following:

- (a) 500 live bait fishes;
- (b) 500 crayfish;
- (c) Twenty-five (25) dusky salamanders of the genus *Desmognathus*;
- (d) Five (5) frogs, except bullfrogs;
- (e) Five (5) tadpoles;
- (f) 100 native lampreys; or
- (g) 500 aquatic invertebrates other than mussels, excluding Asiatic clams.

Section 4. Possession and Movement of Live Bait for Personal Use. (1) A person possessing live wild-caught shad or herring shall:

- (a) Only use live wild-caught shad, herring, mooneye, or goldeye in the water body from which they were collected; and
- (b) Not transport live wild-caught shad, herring, mooneye, or goldeye from the body in which they were collected to:

1. A different body of water; or
2. The same body of water if it involves transporting the shad, herring, mooneye, or goldeye via a Kentucky roadway.

(2) A person may possess or transport live shad, herring, mooneye, or goldeye if the person legally purchased the shad, herring, mooneye, or goldeye from a licensed bait dealer and possesses a valid receipt of the purchase that includes the:

- (a) Species of fish;
- (b) Quantity of fish;
- (c) Amount of the transaction; and
- (d) Date of purchase.

(3) Prohibited aquatic species, as established in 301 KAR 1:122, shall not be possessed or used as live bait.

FRANK JEMLEY, Acting Commissioner

REGINA STIVERS, Acting Secretary

APPROVED BY AGENCY: May 3, 2018

FILED WITH LRC: May 11, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 25, 2018 at 10:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to

attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through June 30, 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 the requirements for the taking of live bait for personal use.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the fish populations of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area. 50 C.F.R. 17.11 establishes federally threatened or endangered fish species.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025(1) and 50 C.F.R. 17.11 by regulating the amount of live bait, the size or types of devices used for taking live bait, and the places where the taking of live bait is permitted.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds live-caught mooneye and goldeye to the list of species which cannot be transported live from one body of water to another. The federal C.F.R. is referenced to cover all federally threatened and endangered species that are prohibited from being used as live bait. Definitions of live bait and live bait fishes were cleaned up for better understanding.

(b) The necessity of the amendment to this administrative regulation: Mooneye and goldeye are similar in appearance to herring, which can be confused with young Asian carp. This amendment will help prevent the accidental movement of live Asian carp from one body of water to another.

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

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

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: All individuals who collect live bait for personal use could be affected by this amendment. Currently, the number of people who collect live bait for personal use in Kentucky is unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Anglers will not be able to transport live-caught mooneye or goldeye as bait from one body of water to another.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in

question (3): There will be no additional costs to those entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anglers will not be responsible for the accidental movement of the invasive Asian carp from one body of water to another.

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

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

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

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

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applied to this regulation because all people who collect live bait for personal use must abide by the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources' Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) and 50 C.F.R. 17.11.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 2:176. Deer control tags, deer destruction permits, and landowner designees.

RELATES TO: KRS 150.010, 150.175, 150.360, 150.390,

150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.105, 150.170(7)

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 150.105 authorizes the commissioner with the approval of the commission to destroy or bring under control wildlife causing damage. KRS 150.170(7) authorizes landowners, their spouses or dependent children, or a designee to destroy wildlife causing damage. It also authorizes the department to promulgate administrative regulations that establish procedures for the designee appointment process. This administrative regulation establishes the requirements for the issuance of deer control tags and deer destruction permits and establishes the requirements for the landowner designee appointment process.

Section 1. Definitions. (1) "Deer control tag" means a tag issued by the department that authorizes a hunter to take antlerless deer during an open deer season pursuant to 301 KAR 2:172.

(2) "Deer destruction permit" means written authorization from the department to take deer outside the hunting season framework established in 301 KAR 2:172.

(3) "Deer food plot" means a crop or cultivated plants grown to attract and feed deer.

(4) "Department representative" means a department employee who is qualified and authorized by the commissioner to assess deer damage.

(5) "Designee" means a person who has been designated by a landowner to remove wildlife causing damage on the landowner's property.

(6) "Landowner" means the person who has title to a particular property.

Section 2. Qualifying for Deer Control Tags. (1) A landowner with fewer than 1,000 contiguous acres shall qualify for deer control tags if:

(a) Deer hunting occurred on the property during the previous deer season;

(b) Standard deterrent measures recommended by a department representative have proven ineffective or are impractical; and

(c) A department representative certifies deer damage to crops, gardens, property, or wildlife habitat.

(2) A landowner with 1,000 contiguous acres or more shall qualify for deer control tags if:

(a) Deer hunting occurred on the property during the previous deer season; and

(b) Deer seasons and bag limits as established in 301 KAR 2:172 are determined by a department representative to be inadequate to control deer populations on the property[; and

~~(c) The landowner agrees to:~~

~~1. Follow the deer management practices recommended by the department; and~~

~~2. Supply the department with weight, age, and condition data of deer taken from the property].~~

(3) A department representative shall make an on-site inspection of each property for which a request for deer control tags has been made, unless the property:

(a) Has been previously inspected by the department and the landowner affirms that deer damage still exists; or

(b) Is immediately adjacent to property assessed by a department representative as having severe deer damage.

(4) A landowner whose property is immediately adjacent to property assessed by a department representative as having severe deer damage shall be issued deer control tags upon request of the landowner.

(5) The department shall not issue deer control tags to a landowner whose only damage is to a deer food plot.

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Section 3. Applying for Deer Control Tags. (1) A landowner shall request deer control tags by contacting the department through:

- (a) A conservation officer; or
- (b) The private lands biologist for the county in which the property is located.

(2) If required by Section 2 of this administrative regulation, a department representative shall visit the property and assess the nature and extent of deer damage.

(3) A request for an assessment shall be made on or before September 30 to be eligible for current year deer control tags.

(4) A request for an assessment made after September 30 shall be considered for the following year.

Section 4. Number of Tags Issued. (1) The department shall determine the number of deer control tags to be issued for each property based on the recommendation of the department representative.

(2) Except as established in Section 2(2) or (4) of this administrative regulation, the department shall not issue a deer control tag if:

(a) The county deer season is adequate to achieve the desired reduction in deer numbers; or

(b) Crop or environmental damage is not present.

Section 5. Transfer of Deer Control Tags. (1) Deer control tags shall be issued in the landowner's name.

(2) A landowner:

(a) May transfer a deer control tag to another person; and

~~(b) [Shall not issue more than five (5) deer control tags to an individual; and~~

~~(c) [Shall require hunters to sign a deer control tag when an antlerless deer is harvested]~~at the time of transfer.

Section 6. Use of Deer Control Tags. (1) A deer control tag shall not be valid except on the property for which it was issued.

(2) A deer control tag shall expire after the license year for which it was issued.

(3) A person who uses a deer control tag:

(a) Shall have in possession a valid:

1. ~~[A valid]~~ Deer control tag; and

2. ~~[A valid]~~ Hunting license and current deer permit, unless exempt from license or permit requirements pursuant to KRS 150.170;

(b) May use deer control tags during archery, crossbow, modern gun, both youth deer seasons, or muzzle-loader seasons to take antlerless deer; and

~~(c) [Shall not take more than five (5) deer per license year with deer control tags; and~~

~~(d) [Shall comply with]~~abide by the provisions of 301 KAR 2:172, except that:

1. Antlered deer shall not be taken; and

2. The deer control tag shall remain attached to the carcass until final processing or disposal.

(4) Deer taken with a deer control tag shall not count toward the zone bag~~[annual]~~ limit as established in 301 KAR 2:172.

Section 7. Deer Destruction Permits. (1) The department may issue a deer destruction permit:

(a) To a person authorized by the commissioner to remove deer that are or may become a public safety or environmental threat or that have entered a permitted captive cervid facility;

(b) To a landowner or the designee:

1. Who continues to experience damage after using~~[being issued]~~ deer control tags; or

2. Whose property cannot be hunted legally and deer are posing a public safety or environmental threat; or

(c) To a captive cervid facility permit holder or applicant:

1. Whose fence meets the fencing and holding requirements in 301 KAR 2:083; and

2. Who has attempted to remove wild deer using nonlethal methods or statewide deer seasons as established in 301 KAR 2:172.

(2) A deer destruction permit shall specify the:

(a) ~~[The]~~ Number and sex of deer to be destroyed;

(b) ~~[The]~~ Method of destruction;

(c) ~~[The]~~ Name of the person who will destroy the deer; and

(d) ~~[The]~~ Dates during which the destruction will take place.

(3) A deer destruction permit shall not be issued without the recommendation of a department representative and the approval of the commissioner.

(4) A person who uses a deer destruction permit shall:

(a) Attach to each carcass a disposal permit provided by the department;

(b) Not remove the disposal permit until the carcass is processed or disposed of; and

(c) If an antlered deer was taken, relinquish the antlers to the department.

(5) A deer destruction permit shall not be used except as specified on the permit.

(6) A person who receives a deer destruction permit shall:

(a) Complete a Wildlife Destruction Permit Reporting Form issued by the department; and

(b) Submit the completed form to the department at # 1 Sportsman's Lane, Frankfort, Kentucky 40601, ATTN: Wildlife Destruction Permit Report, within fourteen (14) days after the expiration date designated on the destruction permit.

Section 8. Designee Procedures and Requirements. (1) A landowner may appoint a designee to kill wildlife causing damage on the landowner's land.

(2) The landowner and designee shall complete and submit to the department a Wildlife Damage Designee Form.

(3) The department shall have thirty (30) days upon receipt of the Wildlife Damage Designee Form to approve or deny a designee.

Section 9. Denial or Revocation or Deer Control Tags or Destruction Permits and Appeal Procedures. (1) The department shall revoke a deer control tag or destruction permit or deny a future tag or permit to a person who fails to comply with the requirements of this administrative regulation.

(2) An individual whose request for a permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

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

(a) "Wildlife Damage Designee Form", 2015 edition; and

(b) "Wildlife Destruction Permit Reporting Form", 2016 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8:00~~[8]~~ a.m. to 4:30 p.m. Eastern time.

FRANK JEMLEY, Acting Commissioner

REGINA STIVERS, Acting Secretary

APPROVED BY AGENCY: May 3, 2018

FILED WITH LRC: May 11, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 25, 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 June 30, 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 the requirements for the issuance of deer control tags and deer destruction permits, and establishes the requirements for the landowner designee appointment process for the removal of wildlife causing damage.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to allow for increased harvest during the season in localized areas, for out-of-season removal of deer where necessary, and to establish the process for appointing landowner designees.

(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, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.105 authorizes the commissioner with the approval of the commission to destroy or bring under control wildlife causing damage. KRS 150.170(7) authorizes landowners, their spouses or dependent children, or an appointed designee to destroy wildlife causing damage. It also authorizes the department to promulgate administrative regulations that establish procedures for the landowner designee process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the administration of the statutes by establishing requirements to assist landowners experiencing deer damage on their property. This regulation also defines the process for a landowner to appoint a designee to destroy or bring under control deer populations causing damage in localized areas.

(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 gives more flexibility to landowners on how they issue deer control tags to their hunters and how the hunters utilize the deer control tags.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove undue burden on landowners who are attempting to alleviate deer damage on their property.

(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: Any landowner experiencing deer damage will potentially be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Landowners who allow other hunters to harvest deer on their property with deer control tags will now be able to issue more tags per hunter. Hunters will only have to sign the control tag if harvesting an antlerless deer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be a cost associated with the amendment.

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

less hurdles in the issuance and transfer of tags to help alleviate deer damage.

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

(a) Initially: This administrative regulation amendment will result in no initial change in cost to the Kentucky Department of Fish and Wildlife Resources to administer.

(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 funding source 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 as amended.

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

(9) TIERING: Is tiering applied? Tiering was not used because all landowners must follow the same requirements when attempting to control deer on their property.

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), 150.105 and 150.170(7).

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 5:002. Definitions for 401 KAR Chapter 5.

RELATES TO: KRS 224.1-010[224.04-040], 224.1-070[224.04-070], 224.1-400[224.04-400], 224.70-100, 224.70-120, 224.99-010, 40 C.F.R. 35, 116, 122, 130, 131, 133, 136, 141, 401-471, 15 U.S.C. 2601 - 2629, 33 U.S.C. 1251 - 1387, 42 U.S.C. 6901-6992k, 7401 - 7671q, 9601, 11023[, EO-2008-507, 2008-531]

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.10-110, 224.16-050, 224.16-060, 224.70-110, 40 C.F.R. 116, 122, 130, 131, 136, 401-471, 15 U.S.C. 2601 - 2629, 33 U.S.C. 1251 - 1387[~~, EO 2008-507, 2008-531~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of all water pollution.~~[EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.]~~ This administrative regulation establishes definitions for terms used in 401 KAR Chapter 5. These definitions are not more stringent than the federal counterparts.

Section 1. Definitions. (1) "Activity" means, in 401 KAR 5:050 through 401 KAR 5:080 and if used in conjunction with "facility", a KPDES point source, or other activity, including land or related appurtenances, that is subject to regulation under the KPDES program.

(2) "Administrator" is defined by 40 C.F.R. 122.2[~~, effective July 1, 2008~~].

(3) "Agricultural wastes handling system" means a structure or equipment that conveys, stores, or treats manure from an animal feeding operation prior to land application.

(4) "Alternative effluent limitations" is defined by 40 C.F.R. 125.71(a)[~~, effective July 1, 2008~~].

(5) "Animal feeding operation" or "AFO" is defined by 40 C.F.R. 122.23(b)[means a lot or facility, other than an aquatic animal production facility, that meets one (1) of the following descriptions:

(a)1. "Large animal feeding operation" as defined in subsection (71) of this section; or

2. "Medium animal feeding operation" as defined in subsection (83) of this section; and

(b) If:

1.a. Animals other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in a twelve (12) month period; and

b. Crops, vegetation forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(c) Two (2) or more animal feeding operations under common ownership are considered to be a single animal feeding operation because they adjoin each other or if they use a common area or system for the disposal of wastes].

(6) "Applicable standards and limitations" means all standards and limitations to which a discharge or a related activity is subject pursuant to KRS Chapter 224 and 401 KAR Chapters 4 through 11, including effluent limitations, water quality standards, standards of performance, or toxic effluent standards.

(7) "Application" means the documentation[document] submitted by an applicant to the cabinet that provides information used by the cabinet to make a final determination to issue or deny a permit or certification[in the issuance of a permit or approval].

(8) "Approved POTW pretreatment program", "POTW pretreatment program", or "program" means a program administered by a POTW that meets the criteria established in 401 KAR 5:055[5:057] and that has been approved by the cabinet.

(9) "Aquaculture project" is defined by 40 C.F.R. 122.25(b)(1)[~~, effective July 1, 2008~~].

(10) "Authorized representative" means a person responsible for the overall operation of a facility or an operational unit or part of a facility, such as the plant manager, superintendent, or person of equivalent responsibility, with express permission to act on behalf of the owner or operator of a facility that is subject to the regulations established in 401 KAR Chapter 5.

(11)[(40)] "Available" means located within the planning area and:

(a) Located within one and zero-tenths (1.0) mile of a regional facility for a WWTP with an average daily design capacity larger than 1,000 gpd; or

(b) For new construction if the distance is one and zero-tenths (1.0) mile or more, where it is cost-effective to connect as

determined by a twenty (20) year present worth cost analysis.

(12)[(44)] "BAT" means best available technology economically achievable.

(13)[(42)] "Best management practices" or "BMPs" means:

(a) For agriculture operations, as defined by KRS 224.71-100[(3)]; or

(b) For all other purposes:

1. Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the commonwealth; and

2. Treatment requirements, operating procedures, practices to control site run-off, pollution of surface water and groundwater from nonpoint sources, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(14)[(43)] "Biochemical oxygen demand", "BOD", or "BOD₅" is defined by 40 C.F.R. 133.101(d)[~~, effective July 1, 2008~~].

(15)[(44)] "BPT" means best practicable technology currently available.

(16)[(45)] "Building sewer" means that part of the drainage system that extends from the end of the building drain, beginning two (2) feet outside the building wall, and conveys its discharge to a downstream manhole, sewer line, pump station, or sewage disposal system.

(17)[(46)] "Bypass" means the intentional diversion of sewage or waste-streams from a portion of a facility or industrial user's treatment facility.

(18)[(47)] "Carbonaceous biochemical oxygen demand" or "CBOD" means BOD, not including the nitrogenous oxygen demand of the wastewater.

(19)[(48)] "Certified operator" means an individual who holds an active certified operator's certificate issued in accordance with 401 KAR 11:050.

(20)[(49)] "cfm" means cubic feet per minute.

(21)[(20)] "Chronic toxicity" means lethality, reduced growth or reproduction or other harmful effect sustained by either indigenous aquatic organisms or representative indicator organisms used in toxicity tests due to long-term exposures, relative to the life span of the organisms or a significant portion of their life span, due to toxic substances or mixtures of toxic substances.

(22)[(24)] "Combined sewer" or "combined sewer line" means a sewer or sewer line designed to carry stormwater[storm-water] runoff as well as sanitary wastewater.

(23)[(22)] "Combined sewer overflow" or "CSO" means the flow from a combined sewer in excess of the interceptor or regulator capacity that is discharged into a receiving water without going to a POTW.

(24)[(23)] "Concentrated animal feeding operation" or "CAFO" is defined by 40 C.F.R. 122.23(b)(2)[means one (1) of the following:

(a) "Large concentrated animal feeding operation" as defined in subsection (72) of this section;

(b) "Medium concentrated animal feeding operation" as defined in subsection (84) of this section; or

(c) "Small concentrated animal feeding operation" as defined in subsection (150) of this section].

(25)[(24)] "Consolidation sewer" means a conduit, without direct sanitary connections that intercepts and transports combined sewer storm overflows to a treatment facility or a single combined sewer overflow point.

(26)[(25)] "Continuous facility discharge" means a discharge that occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(27)[(26)] "Conventional pollutant" is defined by 40 C.F.R. 401.16[means biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC), total suspended solids (TSS), ammonia (as N), bromide, chlorine (total residual), color, fecal coliform, fluoride, nitrate, kjeldahl nitrogen, oil and grease, E. coli, or phosphorus].

(28)[(27)] "Criteria" means elements of state water quality standards expressed as constituent concentrations, levels, or narrative statements, that represent a quality of water that supports

a particular use[specific concentrations or ranges of values, or narrative statements of water constituents that represent a quality of water expected to result in an aquatic ecosystem protective of designated uses of surface waters. Criteria are derived to protect legitimate uses such as aquatic life, domestic water supply, and recreation and to protect human health].

(29)[(28)] "Date of program approval" means September 30, 1983, the effective date of the administrator's approval of Kentucky's KPDES regulatory program pursuant to 33 U.S.C. Section 1342.

(30)[(29)] "Day" means a twenty-four (24) hour period.

(31)[(30)] "Design flow" means the long-term daily average flow the wastewater treatment plant can treat and remain in compliance with the overall performance requirements during its design life.

(32)[(31)] "Direct discharge" means the discharge of a pollutant into waters of the commonwealth if the discharge is not included under the definition of indirect discharger and does not include a discharge of animal waste onto land by land application if the discharge does not reach the waters of the commonwealth.

(33)[(32)] "Disappearing stream" means an intermittent or perennial surface stream that terminates and drains underground through caves, fractures, or swallets in the stream bed.

(34)[(33)] "Discharge" or "discharge of a pollutant" means the addition of a pollutant or combination of pollutants to waters of the commonwealth from a point source.

(35)[(34)] "Discharge monitoring report" or "DMR" means the report including any subsequent additions, revisions, or modifications, for the reporting of self-monitoring results by KPDES permittees.

(36)[(35)] "Division" means the Kentucky Division of Water, within the Department for Environmental Protection, Energy and Environment Cabinet.

(37)[(36)] "Domestic" means relating to household wastes or other similar wastes. It is used to distinguish municipal, household, or commercial water or wastewater services from industrial water or wastewater services.

(38)[(37)] "Domestic sewage" means sewage devoid of industrial or other wastes and that is typical of waste received from residential facilities. It may include wastes from commercial developments, schools, restaurants, and other similar developments.

(39)[(38)] "Draft permit" means a document prepared pursuant to 401 KAR 5:075 indicating the cabinet's preliminary decision to issue or deny, modify, revoke and reissue, revoke, or reissue a permit. It includes a notice of intent to revoke a permit and a notice of intent to deny a permit as provided in 401 KAR 5:075. It does not include a proposed permit; a denial of a request for modification, revocation, and reissuance; or a denial of a request for revocation.

(40)[(39)] "Effluent ditch" means that portion of a treatment system that is a discrete, person-made conveyance, either totally owned, leased or under valid easement by the discharger that transports a discharge to surface waters of the commonwealth.

(41)[(40)] "Effluent limitation" is defined by KRS 224.1-010[224.01-010(12)].

(42)[(41)] "Effluent limitations guideline" is defined by 40 C.F.R. 122.2[~~effective July 1, 2008~~].

(43)[(42)] "Environmental Protection Agency", "EPA", or "U.S.EPA" means the U.S. Environmental Protection Agency.

(44)[(43)] "E. coli" or "Escherichia coli" means an aerobic and facultative anaerobic gram negative, nonspore forming, rod shaped bacterium that can grow at forty-four and five tenths (44.5) degrees Celsius, that is ortho-nitrophenyl-B-D-galactopyranoside (ONPG) positive, and Methylumbelliferyl glucuronide (MUG) positive. It is a member of the indigenous fecal flora of warm-blooded animals.

(45)[(44)] "Exceptional water" means a surface water categorized as exceptional by the cabinet pursuant to 401 KAR 10:030.

(46)[(45)] "Excessive infiltration" means a high groundwater period induced peak infiltration rate that:

(a) Results in an operational problem and permit violation at the WWTP or results in recurring overflows from the sewer system

or the WWTP; and

(b) Does not include:

1. An overflow that results from blockages, power failures or other temporary mechanical failures, or flood waters entering the sewer system directly; or

2. A resulting overflow if an overflow occurs at a KPDES permitted overflow point that is in compliance with its permit requirements.

(47)[(46)] "Excessive inflow" means a rainfall induced peak inflow rate that:

(a) Results in operational problems and permit violations at the WWTP or results in recurring overflows from the sewer system or the WWTP; and

(b) Does not include:

1. A combined sewer system if an overflow occurs at a KPDES permitted overflow point that is in compliance with its permit requirements; or

2. An overflow that results from blockages, power failures or other temporary mechanical failures, or flood waters entering the sewer system directly.

(48)[(47)] "Facility" means:

(a) In 401 KAR 5:005 or[401-KAR] 5:006, a sewage system as defined by[~~in~~] KRS 224.1-010[224.01-010] except for septic tanks, pretreatment facilities regulated by an approved pretreatment program or intermunicipal agreement, and disposal wells as used in 401 KAR 5:090; or

(b) In 401 KAR 5:050 through[401-KAR] 5:080 and if used in conjunction with activity, any KPDES point source, or any other facility, including land or related appurtenances, that is subject to regulation under the KPDES program.[(48)] "Fecal coliform" means the portion of the coliform group of bacteria that are present in the intestinal tract or the feces of warm-blooded animals. It includes organisms that are capable of producing gas from lactose broth in a suitable culture medium within twenty-four (24) hours at forty-four and five tenths (44.5) degrees plus or minus two tenths (0.2) degrees C[~~].~~

(49) "Flood relief sewer" means a conduit, without direct sanitary connections, that is used to transport sewage if a flood control structure or overflow detention basin is in operation.

(50) "Force main" means a conduit used to transport sewage from a pump discharge to a sewer line, pump station, or WWTP.

(51) "General permit" means a:

(a) "General permit" as defined by 40 C.F.R. 122.2; or

(b) A KPDES permit issued pursuant to 401 KAR 5:055 authorizing a category of discharges or non-discharging facilities under KRS Chapter 224 within a geographical area[~~issued pursuant to 401-KAR-5:055~~].

(52) "GPD" or "gpd" means gallons per day.

(53) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table and perched water zones below the B soil horizon including water circulating through fractures, bedding planes, and solution conduits.

(54) "Industrial wastewater treatment plant" or "IWWTP" means a privately owned WWTP with more than ninety (90) percent of the influent flow from sources of industrial waste.

(55) "Infiltration" is defined by 40 C.F.R. 35.2005[35.905, effective July 1, 2008].

(56) "Inflow" is defined by 40 C.F.R. 35.2005[35.905, effective July 1, 2008].

(57) "Injection" means a type of land application in which the waste is placed directly beneath the land surface.

(58) "Interference" is defined by 40 C.F.R. 403.3(k)[~~effective July 1, 2008~~].

(59) "Intermediate facility" means an intermediate WWTP or a sewer line of 2,500 feet to 5,000 feet in length including appurtenances.

(60) "Intermediate nonpublicly-owned treatment works" means a facility with a design flow rate of between 10,000 gpd and 49,999 gpd of wastewater containing only conventional pollutants and that is not a POTW.

(61) "Intermediate WWTP" means a WWTP with an average daily design capacity of 10,000 to 49,999 gpd.

(62) "Interstate agency" means an agency of which Kentucky

and one (1) or more states is a member established by or under an agreement or compact, or any other agency, of which Kentucky and one (1) or more other states are members, having substantial powers or duties pertaining to the control of pollution as determined and approved by the secretary or administrator pursuant to 33 U.S.C. 1251 – 1387 or KRS Chapter 224.

(63) "Karst" means the type of geologic terrain underlain by carbonate rocks where significant solution of rock has occurred due to flowing groundwater.

(64) "Kentucky Intersystem Operational Permit" or "KISOP" means a permit issued pursuant to 401 KAR 5:005 for operating a sewer system that has more than 5,000 linear feet of sewer line that discharges to a sewer system, or a WWTP that is owned by another person.

(65) "Kentucky No Discharge Operational Permit" or "KNDOP" means a permit issued pursuant to 401 KAR 5:005 for operating a WWTP that does not have a discharge to a stream, including agricultural waste handling systems and spray irrigation systems.

(66) "Kentucky Pollutant Discharge Elimination System" or "KPDES" means the Kentucky program for issuing, modifying, revoking and reissuing, revoking, monitoring and enforcing permits to discharge, and imposing and enforcing pretreatment requirements.

(67) "KPDES permit" means a Kentucky Pollutant Discharge Elimination System permit issued to a facility, including a POTW, or activity pursuant to KRS Chapter 224 for the purpose of operating the facility or activity.

(68) "Land application" means the uniform placement of animal waste on or in the soil by spraying or spreading on the surface, incorporation into the soil, or injection directly beneath the surface.

(69) "Land application area" is defined by 40 C.F.R. 122.23(b)(3) ~~effective July 1, 2008~~.

(70) "Land treatment" or "land disposal" means the application or incorporation of a pollutant onto or into the soil.

(71) "Large animal feeding operation" means an AFO that stables or confines as many as or more than the numbers of animals specified in any of the following categories:

- (a) 700 mature dairy cows, whether milked or dry;
- (b) 1,000 veal calves;
- (c) 1,000 cattle other than mature dairy cows or veal calves.

Cattle includes heifers, steers, bulls, or cow or calf pairs;

- (d) 2,500 swine each weighing fifty-five (55) pounds or more;
- (e) 10,000 swine each weighing less than fifty-five (55) pounds;
- (f) 500 horses;
- (g) 10,000 sheep or lambs;
- (h) 55,000 turkeys;
- (i) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;

(j) 125,000 chickens other than laying hens, if the AFO uses other than a liquid manure handling system;

(k) 82,000 laying hens, if the AFO uses other than a liquid manure handling system;

(l) 30,000 ducks, if the AFO uses other than a liquid manure handling system; or

(m) ~~(4)~~ 5,000 ducks, if the AFO uses a liquid manure handling system.

(72) "Large concentrated animal feeding operation" is defined by 40 C.F.R. 122.23(b)(4) ~~effective, July 1, 2008~~.

(73) "Large facility" means a WWTP with an average daily design capacity of 50,000 GPD or more, or a sewer line of more than 5,000 feet in length including appurtenances.

(74) "Large nonpublicly-owned treatment works" means a facility that has a design flow rate of greater than or equal to 50,000 gpd of wastewater containing only conventional pollutants and that is not a POTW.

(75) "Large WWTP" means a WWTP with an average daily design capacity of 50,000 GPD or more.

(76) "Long-term CSO control plan" means a control plan that complies with the Combined Sewer Overflow Control Policy issued by the U.S. EPA in the "Federal Register" on April 19, 1994 (59 FR 18688).

(77) "Manure" is defined by 40 C.F.R. 122.23(b)(5) ~~effective, July 1, 2008~~.

(78) "Maintenance replacement" means replacement of:

(a) Existing component parts with component parts that have similar characteristics and capacity; or

(b) A section of sewer or force main with the same size, alignment, and slope; and

(c) ~~The term~~ Does not include replacement of an entire WWTP with a new WWTP.

(79) "Major facility" means a KPDES facility or activity;

(a) Classified as a major ~~[KPDES]~~ facility by the cabinet in cooperation with the regional administrator; or

(b) That scores greater than or equal to eighty (80) on the U.S. EPA NPDES Permit Rating Worksheet.

Designation as a major industry as used in KRS 224.70-120 ~~is~~ does not indicate automatic classification as a major facility.

(80) "Major industry" means a fee category as established in 401 KAR 5:310 for an industry that generates and discharges process-related wastewater while engaged in commercial activities including resource recovery, manufacturing, products distribution, or wholesale and retail trade. Each ~~industry~~ has a design flow rate of greater than or equal to 50,000 gpd of process wastewater containing conventional, nonconventional, or thermal pollutants. A major industry designation is not a criterion for classification as a major facility.

(81) "Major municipal separate storm sewer outfall" or "major outfall" is defined by 40 C.F.R. 122.26(b)(5) ~~effective, July 1, 2008~~.

(82) "Measurement" means the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

(83) ~~"Medium animal feeding operation means an AFO that stables or confines the type and number of animals within any of the following ranges:~~

- (a) 200 to 699 mature dairy cows, whether milked or dry;
- (b) 300 to 999 veal calves;
- (c) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls, or cow or calf pairs;
- (d) 750 to 2,499 swine each weighing fifty-five (55) pounds or more;
- (e) 3,000 to 9,999 swine each weighing less than fifty-five (55) pounds;

(f) 150 to 499 horses;

(g) 3,000 to 9,999 sheep or lambs;

(h) 16,500 to 54,999 turkeys;

(i) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;

(j) 37,500 to 124,999 chickens, other than laying hens, if the AFO uses other than a liquid manure handling system;

(k) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;

(l) 10,000 to 29,999 ducks, if the AFO uses other than a liquid manure handling system; or

(m) 1,500 to 4,999 ducks if the AFO uses a liquid manure handling system.

(84) "Medium concentrated animal feeding operation is defined by 40 C.F.R. 122.23(b)(6) ~~effective, July 1, 2008~~.

(84) ~~(85)~~ "µg/l" means micrograms per liter, same as ppb, assuming unit density.

(85) ~~(86)~~ "mgd" or "MGD" means million gallons per day.

(86) ~~(87)~~ "Milligrams per liter" or "mg/l" means the milligrams of substance per liter of solution and is equivalent to parts per million in water, assuming unit density.

(87) ~~(88)~~ "Minor industry" means a fee category as established in 401 KAR 5:310 for an industry that generates and discharges process-related wastewater while engaged in commercial activities and has a design flow rate of less than 50,000 gpd of process wastewater containing conventional, nonconventional, or thermal pollutants.

(88) ~~(89)~~ "Minor modification to a WWTP" means ~~is~~ a modification that does not change the WWTP average daily design hydraulic or organic treatment capacity of the WWTP or discharge location.

(89) ~~(90)~~ "Mixing zone" means a domain of a water body contiguous to a treated or untreated wastewater discharge with

quality characteristics different from those of the receiving water. The discharge is in transit and progressively diluted from the source to the receiving system. The mixing zone is the domain where wastewater and receiving water mix.

(90)(91) "Municipal separate storm sewer system" or "MS4" is defined by 40 C.F.R. 122.26(b)(8), effective July 1, 2008.

(91)(92) "Municipality" means a city, district, or other public body created by or under the Kentucky Revised Statutes and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency pursuant to 33 U.S.C. 1288.

(92)(93) "National Pollutant Discharge Elimination System" or "NPDES" is defined by 40 C.F.R. 122.2, effective July 1, 2008.

(93)(94) "National pretreatment standard", "pretreatment standard", or "standard" is defined by 40 C.F.R. 403.3(l), effective July 1, 2008.

(94)(95) "Natural Resources Conservation Service" or "NRCS" means the organization created pursuant to 7 U.S.C. 6962 in the U.S. Department of Agriculture.

(95)(96) "New discharger" is defined by 40 C.F.R. 122.2[means, as used in 401 KAR 5:060 through 5:080, a building, structure, facility or installation:

- (a) 1. From which there is or may be a discharge of pollutants;
2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
3. That has never received a finally effective NPDES or KPDES permit for discharges at that site; and
4. That is not a new source.

(b) This definition includes an indirect discharger that commences discharging into the waters of the commonwealth after August 13, 1979. It also includes any existing mobile point source that begins discharging at a site for which it does not have a permit].

(96)(97) "New source" is defined by 40 C.F.R. 122.2[means as used in 401 KAR 5:060 through 5:080, a building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

- (a) After promulgation of U.S. EPA's standards of performance pursuant to 33 U.S.C. 1316 that are applicable to the source; or
- (b) After publication of U.S. EPA's standards of performance pursuant to 33 U.S.C. 1316 that are applicable to the source, but only if the federal standards are promulgated within 120 days of publication].

(97)(98) "Nonpoint" means any source of pollutants not defined by a point source.

(98)(99) "Nutrient management plan" means the plan for an individual operation developed for the purpose of recycling nutrients from animal waste onto cropland or pasture.

(99)(100) "Operator" means a person involved in the operation of a facility or activity.

(100)(101) "Other wastes" means sawdust, bark or other wood debris, garbage, refuse, ashes, offal, tar, oil, chemicals, acid drainage, wastes from agricultural enterprises, and other foreign substances not included within the definitions of industrial wastes and sewage that may cause or contribute to the pollution of waters of the commonwealth.

(101)(102) "Outfall" means, for municipal separate storm sewers, a point source at the point where a municipal separate storm sewer discharges to waters of the Commonwealth, but does not include open conveyances connecting two (2) municipal separate storm sewers, or pipes, tunnels, or other conveyances that connect segments of the same stream or other waters of the Commonwealth and are used to convey waters of the Commonwealth.

(102)(103) "Outstanding state resource water" means a surface water designated by the cabinet as an outstanding state resource water pursuant to 401 KAR 10:031.

(103)(104) "Overburden" means material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally-occurring surface materials that are not disturbed by mining operations.

(104)(105) "Overflow" means any intentional or unintentional diversion of flow from a facility.

(105)(106) "Owner" means a person who has legal ownership of a facility or activity regulated pursuant to 401 KAR Chapter 5.

(106)(107) "Package WWTP" means a factory-built WWTP that is transported to and assembled or set in place at the site.

(107)(108) "Permit" means, as used in 401 KAR 5:005 or 5:006:

(a)[As used in 401 KAR 5:005 or 401 KAR 5:006,] A document issued by the cabinet that authorizes the permittee to construct, modify, or operate a facility; or

(b)[As used in 401 KAR 5:050 through 5:080,] A KPDES permit.

(108)(109) "Plan of study" means a report that contains the following information required for a regional facility plan by 401 KAR 5:006, Section 2[4]:

- (a) Planning area maps;
- (b) A discussion of the need for sewer service in the area;
- (c) Population projections; and
- (d) An estimation of the twenty (20) year cost by category.

(109)(110) "Planning area" means the geographic area proposed to be served by a regional planning agency in a projected twenty (20) year period.

(110)(111) "Point source" is defined by 33 U.S.C. 1362(14). The term does not include agricultural stormwater[storm-water] run-off or return flows from irrigated agriculture.

(111) "Pollutant" is defined by KRS 224.1-010.

(112) "POTW" means publicly owned[publicly-owned] treatment works as defined in KRS 224.1-010[224.01-010].

(113) "POTW treatment plant" is defined by 40 C.F.R. 403.3(r), effective July 1, 2008].

(114) "Pretreatment" is defined by 40 C.F.R. 403.3(s), effective July 1, 2008].

(115) "Pretreatment requirement" is defined by 40 C.F.R. 403.3(r), effective July 1, 2008].

(116) "Pretreatment standard" means a national pretreatment standard.

(117) "Primary responsibility" means:

(a) Personal, first-hand responsibility to conduct or actively oversee and direct procedures and practices necessary to ensure that the wastewater treatment plant or wastewater collection system is operated in accordance with accepted practices and with KRS Chapter 224 and 401 KAR Chapters 5 and 11, and

(b) Having the authority to conduct the procedures and practices necessary to ensure that the wastewater system or any portion thereof is operated in accordance with accepted practices, laws, and administrative regulations of the commonwealth, or to supervise others in conducting these practices.

(118) "Privately owned[Privately-owned] treatment works" is defined by 40 C.F.R. 122.2, effective July 1, 2008].

(119) "Production area" means, for animal feeding operations, the area defined by 40 C.F.R. 122.23(b)(8), effective July 1, 2008].

(120) "Professional engineer" or "engineer" is defined by KRS 322.010(2).

(121) "Project priority list" means the list developed by the cabinet pursuant to KRS Chapter 224A that includes a priority ranking of applicants for the construction of wastewater treatment works under 33 U.S.C. 1313(e)(3)(H).

(122) "Proposed permit" means a KPDES permit prepared after the close of the public comment period and, if applicable, any public hearing and administrative appeals that are[is] sent to U.S. EPA for review before final issuance by the cabinet. A proposed permit is not a draft permit.

(123) "Public water system" is defined by 40 C.F.R. 141.2, effective July 1, 2008].

(124) "Publicly owned treatment works" or "POTW" is defined by KRS 224.1-010.

(125) "RCRA" means the Resource Conservation Recovery Act as amended, 42 U.S.C. 6901 - 6992k.

(126)(125) "Recommencing discharger" means a source that recommences discharge after terminating operations.

(127)(126) "Recurring discharge" means, as it relates to a sewer system overflow, a discharge that occurs two (2) or more times in a twelve (12) month period.

(128)(127) "Regional administrator" means the regional

administrator of the Region IV office of the U.S. EPA or the authorized representative of the regional administrator.

(129)[(128)] "Regional facility" means a facility that is:

(a) Owned by a city, county, or other public body created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220; and

(b) Designated by a regional facility plan or water quality management plan to provide wastewater collection, transportation, or treatment services for a specific area.

(130)[(129)] "Regional facility plan" means a type of water quality management plan addressing point sources of pollution for the purpose of areawide waste treatment management planning prepared by the designated regional planning agency pursuant to 33 U.S.C. 1251 - 1387 to control point sources of pollution within a planning area.

(131)[(130)] "Regional planning agency" means a governmental agency, such as a city, county, or other public body created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220, that has been designated pursuant to 33 U.S.C. 1288 and 40 C.F.R. 130 to provide planning for the treatment of wastewater and for controls and recommendations relating to wastewater for a particular area; and those existing agencies that have developed plans pursuant to 33 U.S.C. 1281, 1285, 1288, and 1313(e) to provide planning related to wastewater collection, transportation, or treatment for a particular area.

(132)[(131)] "Regional sewage collection system" means a sewage collection system designated by a regional planning agency that is owned by a city, county, or other public body that was created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220.

(133)[(132)] "Run-off coefficient" means the fraction of total rainfall that will appear at a conveyance as run-off.

(134)[(133)] "SARA" means the Superfund Amendments and Reauthorization Act, 42 U.S.C. 9601 – 9675.

(135)[(134)] "Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements leading to compliance with KRS Chapter 224 and 401 KAR Chapters 4 through 11.

(136)[(135)] "SDWA" means Safe Drinking Water Act, 42 U.S.C. 300f – 300j-26.

(137)[(136)] "Secondary treatment" means that degree of treatment that results in an effluent quality that meets the minimum requirements of 401 KAR 5:045.

(138)[(137)] "Service area" means that geographic area currently being served by a regional facility.

(139)[(138)] "Seven-Q-ten" or "7Q₁₀" means that minimum average flow that occurs for seven (7) consecutive days with a recurrence interval of ten (10) years.

(140)[(139)] "Sewage" means the water-carried human or animal wastes from residences, buildings, or other places together with industrial wastes or groundwater, surface water, stormwater, [underground, surface, storm] or other water, as may be present.

(141)[(140)] "Sewage sludge" is defined by 40 C.F.R. 122.2[; effective July 1, 2008].

(142)[(141)] "Sewer line" means a device used for collecting, transporting, pumping, or disposing of sewage, but not a building sewer that serves an individual building. A sewer line begins at the junction of two (2) building sewers that serve different buildings. Sewer lines include gravity sewer lines, pump stations, and force mains.

(143)[(142)] "Sewer line extension" means a proposed construction project which extends a sewer system; it includes gravity sewer lines, pump stations, and force mains.

(144)[(143)] "Sewer system" means the network of sewer lines, pump stations, and force mains that discharge to a common WWTP.

(145)[(144)] "SIC" means standard industrial classification.

(146)[(145)] "Significant industrial user" or "SIU" is defined by 40 C.F.R. 403.3(v)[; effective July 1, 2008].

(147)[(146)] "Silvicultural point source" is defined by 40 C.F.R. 122.27.27(b)(1)[; effective July 1, 2008].

(148)[(147)] "Sinkhole" means a naturally occurring topographic depression in a karst area. Its drainage is subterranean and serves as a recharge source for groundwater. It

is formed by the collapse of a conduit or the solution of bedrock.

(149)[(148)] "Site" means, as used in 401 KAR 5:060 through 5:080, the land or water area where a facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(150)[(149)] "Sludge requirements" is defined by 40 C.F.R. 403.7(a)(ii)[; effective July 1, 2008].

(151)[(150)] "Small concentrated animal feeding operation" is defined by 40 C.F.R. 122.23(b)(9)[; effective July 1, 2008].

(152)[(151)] "Small facility" means a WWTP with an average daily design capacity less than 10,000 GPD or a sewer line of less than 2,500 feet in length including appurtenances.

(153)[(152)] "Small nonpublicly-owned treatment works" means a facility that has a design flow rate of less than 10,000 gpd of wastewater containing only conventional pollutants and that is not a POTW.

(154)[(153)] "Small WWTP" means a WWTP with an average daily design capacity of less than 10,000 gpd.

(155)[(154)] "Source" means a building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(156)[(155)] "Stormwater"["Storm water"] is defined by 40 C.F.R. 122.26(b)(13)[; effective July 1, 2008].

(157)[(156)] "Stormwater"["Storm water"] discharge associated with industrial activity" is defined by 40 C.F.R. 122.26(b)(14)[; effective July 1, 2008].

(158)[(157)] "Stormwater"["Storm water"] discharge associated with small construction activity" is defined by 40 C.F.R. 122.26(b)(15)[; effective July 1, 2008], except that:

(a) Waters of the "United States" means waters of the Commonwealth of Kentucky; and

(b) "Director" means "cabinet" if "director" refers to the director of an approved state program.

(159)[(158)] "Supernatant" means the water that accumulates in the upper portion of a lagoon and contains not greater than two and zero-tenths (2.0) percent total solids by dry weight analysis.

(160)[(159)] "Surface mining operation" means only those facilities required to have a permit by 405 KAR Chapters 7 through 26.

(161)[(160)] "Surface waters" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. Lagoons used for waste treatment and effluent ditches that are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface waters of the commonwealth.

(162)[(161)] "Total dissolved solids" or "TDS" is defined by 40 C.F.R. 122.2[; effective July 1, 2008].

(163)[(162)] "Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources.

(164)[(163)] "Total suspended solids" or "TSS" means the total suspended solids (nonfilterable residue) as determined by use of the method specified in 40 C.F.R. 136.

(165)[(164)] "Toxic pollutant" is defined by 40 C.F.R. 122.2[means, as used in 401 KAR 5:060 through 5:080, a pollutant listed as being toxic in 401 KAR 5:080].

(166)[(165)] "UIC" means Underground Injection Control.

(167)[(166)] "Underground injection control well" means a well used for the emplacement of fluids into the subsurface.

(168)[(167)] "Upset" is defined by 40 C.F.R. 122.41(n)[; effective July 1, 2008].

(169)[(168)] "USGS" means the U.S. Geological Survey.

(170)[(169)] "Variance" means a mechanism or provision pursuant to 401 KAR Chapter 5 that allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines.

(171)[(170)] "Wastewater system" means a sewage system as defined by [in] KRS 224.1-010[224.01-010(25)].

(172)[(171)] "Wastewater treatment plant" or "WWTP" means a facility used for the treatment and disposal of sewage.

~~(173)~~~~(172)~~ "Water" or "Waters of the Commonwealth" is defined by KRS ~~224.1-010~~~~(224.01-010)~~~~(33)~~.

~~(174)~~~~(173)~~ "Water quality management plan" or "WQM plan" means:

(a) A plan consisting of initial plans produced in accordance with 33 U.S.C. 1288 and 1313 and certified and approved updates to those plans; or

(b) A state or areawide waste treatment management plan developed and updated in accordance with 33 U.S.C. 1281, 1285j, 1288, and 1313e and 40 C.F.R. Part 130.

~~(175) "Water quality criteria" means the elements of state water quality standards, expressed as constituent concentrations, levels, or narrative statements, that represent a quality of water that supports a particular designated use.~~

~~(176)~~~~(174)~~ "Water quality standard" means~~[an administrative regulation promulgated by the cabinet establishing]~~ the designated use of a surface water ~~of the commonwealth~~ and the water quality criteria ~~and antidegradation requirements~~ necessary to maintain and protect that designated use ~~as established in 401 KAR Chapter 10.~~

~~(177)~~~~(175)~~ "Well" or "water well" ~~[means:~~
~~{a}]~~ for 401 KAR 5:005, ~~is[as]~~ defined by KRS 223.400(7).

~~(178)~~~~(176)~~ "Wellhead protection area" means:

(a) The surface and subsurface area surrounding a water well, well field, or spring, supplying a public water system, through which pollutants are reasonably likely to move toward and reach the water well, well field, or spring; or

(b) An area defined as a wellhead protection area in ~~an approved wellhead protection~~~~a county water supply~~ plan.

~~(179)~~~~(177)~~ "Wetlands" is defined by 40 C.F.R. 122.2[, effective July 1, 2008.

~~Section 2. Incorporation by Reference. (1) "Combined Sewer Overflow Control Policy", 59 Fed. Reg. 18688, April 19, 1994, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m].~~

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2018 at 6:00 p.m. Eastern Time at the Department for Environmental Protection, Training Room A, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions used in 401 KAR Chapter 5.

(b) The necessity of this administrative regulation: This

administrative regulation is necessary to provide clarity and consistency to terms that have special meaning in 401 KAR Chapter 5.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of water pollution. 401 KAR Chapter 5 establishes administrative regulations for the issuance of permits to construct, modify, and operate facilities which discharge pollutants to waters of the Commonwealth. This regulation provides definitions for terms used in 401 KAR Chapter 5.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides clarity and consistency for terms used throughout 401 KAR Chapter 5.

(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 references to C.F.R. and KRS to make them consistent throughout 401 KAR Chapters 4 through 11, makes grammatical changes to several definitions, removes C.F.R. "effective dates" to be consistent with all other Division of Water regulations and because each administrative regulation already has an effective date as established by the LRC and KRS, adds definitions for "authorized representative", "pollutant", "publicly owned treatment works (POTW)", and "water quality criteria", adds "large laying hens using other than a liquid system" to the definition of "Large animal feeding operation", clarifies the definitions of "general permit", "major industry", and "water quality standard", and removes definitions for "fecal coliform" and "medium animal feeding operation".

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to clarify terms that were previously undefined, make definitions consistent with federal regulations, correct references to federal regulations and state statutes, and make regulations consistent throughout 401 KAR Chapters 4 through 11.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-110 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and provide for the prevention, abatement, and control of water pollution, which is regulated in part by 401 KAR Chapter 5. This administrative regulation clarifies terms used throughout 401 KAR Chapter 5.

(d) How the amendment will assist in the effective administration of the statutes: This amendment corrects references to C.F.R. and KRS to make them consistent throughout 401 KAR Chapters 4 through 11, makes grammatical changes to several definitions, removes C.F.R. "effective dates" to be consistent with all other Division of Water regulations and because each administrative regulation already has an effective date as established by the LRC and KRS, adds definitions for "authorized representative", "pollutant", "publicly owned treatment works (POTW)", and "water quality criteria", adds "large laying hens using other than a liquid system" to the definition of "Large animal feeding operation", clarifies the definitions of "general permit", "major industry", and "water quality standard", and removes definitions for "fecal coliform" and "medium animal feeding operation". These amendments brings clarity and consistency to terms used throughout 401 KAR Chapter 5.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 10,000 individuals, businesses, and organizations that have, or apply for, KPDES permits. After analysis of the current types of permits, the regulation is expected to impact the following number of entities:

a. Individuals: Approximately 1200 construction, KPDES, or KNDOP permits for family residences are affected by this administrative regulation, but no new impacts are expected.

b. Businesses: Approximately 5900 KPDES permits for construction or industrial-related stormwater discharges, sanitary wastewater, commercial or industrial-related wastewater, and

KNDOPs related to Animal Feeding Operations, are affected by this administrative regulation, but no new impacts are expected.

c. Organizations: Approximately 100 KPDES permits for civic, non-profit, professional, or religious organizations, and KNDOPs related to sanitary wastewater treatment, are affected by this administrative regulation, but no new impacts are expected.

d. State or Local Government: Approximately 1640 KPDES permits for construction or industrial-related stormwater, sanitary wastewater, and municipal wastewater for state or local government entities, and KNDOPs related to sanitary wastewater treatment, are affected by this administrative regulation, but no new impacts are expected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will continue using the definitions to interpret regulatory requirements in 401 KAR Chapter 5.

(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 contains definitions and will not result in additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected entities will be better able to understand and apply the terms used throughout 401 KAR Chapter 5 due to improved consistency between state and federal regulations.

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

(a) Initially: This amendment will not result in additional costs.

(b) On a continuing basis: This amendment will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing permit fees, General Funds, and EPA funds. This amendment does not change funding sources.

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

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

(9) TIERING: Is tiering applied? This administrative regulation establishes definitions that do not require tiering.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation affects units of state or local government that have a KPDES discharge, KNDOP, or KISOP permit.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 224.10-110, 224.16-050, 224.16-060, 224.70-110, 40 C.F.R. 116, 122, 130, 131, 136, 401-471, 15 U.S.C. 2601 - 2629, 33 U.S.C. 1251 – 1387

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue.

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

years? This administrative regulation will not generate revenue.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: This administrative regulation establishes definitions for 401 KAR Chapter 5. It will not result in additional costs or revenue.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 116, 122, 130, 131, 136, 401-471, 15 U.S.C. 2601 - 2629, 33 U.S.C. 1251 – 1387

2. State compliance standards. KRS 224.10-100(5), 224.10-110, 224.16-050, 224.16-060, 224.70-110

3. Minimum or uniform standards contained in the federal mandate. Kentucky is an NPDES delegated state. All NPDES delegated states must have compatible state regulations.

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

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

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Amendment)

401 KAR 5:005. Permits to construct, modify, or operate a facility.

RELATES TO: KRS 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. 144.26, 26 U.S.C. 501(c)(3), 42 U.S.C. 300f-300j[~~EO 2008-507, 2008-534~~]

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.10-110, 224.16-050, 224.16-060, 224.70-100, 224.70-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. KRS 224.10-110 requires the cabinet to establish programs for the construction, modification, or extension of water treatment systems.[~~EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.~~] This administrative regulation establishes administrative procedures for the issuance of permits for the construction, modification, and operation of facilities authorized by KRS Chapter 224 and establishes conditions for construction of facilities under 401 KAR Chapter 5. This[The] administrative regulation also establishes a schedule of fees to recover the costs of issuance for certain classes of permits.[~~There is not a federal law or regulation relating to construction requirements for wastewater treatment plants or the operational requirements for no-discharge operations; therefore, this administrative regulation is not more stringent than the federal requirements.~~]

Section 1. Applicability. (1) This administrative regulation shall apply to an owner and an operator of a sewage system, except:

(a)1. A septic tank with a subsurface discharge;
 2. ~~[(b)]~~ A pretreatment facility regulated by a pretreatment program or intermunicipal agreement, approved pursuant to 401 KAR 5:055~~[5:057]~~; or

3. ~~[(e)]~~ An authorization by permit or rule that is prepared to assure that underground injection will not endanger a drinking water supply, pursuant to the Safe Drinking Water Act, 42 U.S.C.300f-300j, and that are issued pursuant to a state or federal Underground Injection Control program; and

~~[(d)]~~ An underground injection control well that is permitted pursuant to 40 C.F.R. 144 if ~~the permit~~:

1. ~~[The permit]~~ Is protective of public health and welfare; and

2. ~~[The permit]~~ Prevents the pollution of ground and surface waters.

(2) Unless exempted pursuant to subsection (3)(b) of this section or paragraph (a) of this subsection, a person shall not construct, modify, or operate a facility without having received a permit from the cabinet.

(a) A construction or modification permit shall not be required for maintenance replacement for components of an existing facility or for changes that do not affect the treatment processes of the facility, but shall be required for replacement of an entire wastewater treatment plant (WWTP).

(b) The operational permit provisions of Section 27 of this administrative regulation shall be satisfied by those facilities that have a valid KPDES permit.

(3) This subsection shall apply to an agricultural waste handling system, industrial WWTP, or a ~~stormwater[storm-water]~~ WWTP.

(a) The following requirements shall apply to an agricultural waste handling system:

1. An agricultural waste handling system that conveys, stores, or treats manure from a concentrated animal feeding operation shall obtain a:

a. ~~[Obtain-a]~~ Permit to construct or modify the facility, pursuant to Sections 2 and 24 of this administrative regulation; and

b. ~~[Obtain-a]~~ KPDES permit; and

2. All other agricultural waste handling systems shall obtain a:

a. ~~[Obtain-a]~~ Permit to construct, modify, or operate the facility pursuant to Sections 2, 24, 25, 27, and 30(1)(~~h~~) and (~~i~~) of this administrative regulation; and

b. ~~[Obtain-a]~~ Kentucky No Discharge Operational Permit (KNDOP).

(b) The following shall apply to industrial wastewater treatment plants (IWWTPs):

1. An IWWTP with a closed loop system or a system that uses spray irrigation for disposal shall:

a. Obtain a KNDOP permit;

b. Comply with Sections 2, 25, 27, and 30(1)(e) through (h) of this administrative regulation; and

c. Not be required to obtain a permit to construct or modify the facility;

2. An IWWTP with a discharge to the waters of the Commonwealth shall:

a. Comply with Section 4(2) of this administrative regulation~~[the Five Mile Limit Policy]~~;

b. Obtain a KPDES permit to discharge into the waters of the Commonwealth;

c. Comply with any other applicable standard or requirement of 401 KAR Chapter 5; and

d. Not be required to obtain a permit to construct or modify the facility; and

3. A sewer line that conveys wastewater to an IWWTP shall not be required to obtain a construction permit.

(c) The following requirements shall apply to a WWTP that collects, conveys, or treats only ~~stormwater[storm-water]~~:

1. A permit to construct or modify the facility shall not be required for a ~~WWTP[WTP]~~ that collects, conveys, or treats only ~~stormwater[storm-water]~~ and discharges into the waters of the Commonwealth.

a. These facilities shall comply with 401 KAR 5:037~~[5:035]~~ through 5:080 and 401 KAR 10:026 through 10:031.

b. 401 KAR 5:060 establishes if these facilities shall obtain a

KPDES permit.

2. A ~~WWTP[WTP]~~ that collects, conveys, or treats only ~~stormwater[storm-water]~~ and does not discharge into the waters of the Commonwealth shall obtain an operational permit pursuant to Sections 2, 25, 27, and 30(1)(e) through (h) of this administrative regulation.

Section 2. Application Submittal. (1) An application to construct, modify, or operate a facility, or renew the operational permit for a facility shall be submitted on the applicable forms established in this subsection and shall include the applicable supporting information pursuant to Section 3 of this administrative regulation, applicable construction permit fees pursuant to Section 5 of this administrative regulation, applicable modification or operating permit fees, and plans and specifications for the proposed construction or modification pursuant to Section 6 of this administrative regulation.

(a) For construction of a sewer line extension, the applicant shall submit a completed Construction Permit Application for Clean Water Collection System, DEP No. 7071-S1 (4/2018)~~[Sewer Line Extension]~~.

(b) For construction of a WWTP or WWTP with a sewer line with a direct discharge, the applicant shall submit or shall have submitted:

1. The completed KPDES applications pursuant to 401 KAR 5:060; and

2. A completed Construction Permit Application for Wastewater Treatment Plant, DEP No. 7071-W1 (4/2018).

(c) For a WWTP construction project without a discharge other than an agricultural waste handling system, the applicant shall submit:

1. A completed Construction Permit Application for Wastewater Treatment Plant, DEP No. 7071-W1 (4/2018)~~[Form W-4]~~; and

2. A completed Kentucky No Discharge Operational Permit Application, DEP 7033-ND (3/2018)~~[Form ND]~~.

(d) For an operational permit or renewal of a Kentucky No Discharge Operational Permit (KNDOP) other than an agricultural waste handling system, the applicant shall submit a completed Kentucky No Discharge Operational Permit for Closed Loop and Spray Irrigation Systems Application, DEP 7033-ND (3/2018)~~[Form ND]~~.

~~(e)[4-]~~ For construction, renewal, modification, or operation of agricultural waste handling systems that do not discharge and do not intend to discharge, the applicant shall submit a completed Kentucky No Discharge Operational Permit Application for Agricultural Wastes Handling Systems, Short Form B, DEP 7033-B-ND (3/2018). ~~[2- For a construction approval, an applicant shall also submit a completed Site Survey Request.]~~

(f) For construction of minor modifications to a WWTP, the applicant shall submit a completed Construction Permit Application for Wastewater Treatment Plant, DEP 7071-W1 (3/2018).

(g) For WWTP construction projects with a discharge for an individual residence, the applicant shall submit a completed notice of intent for coverage under a general permit issued pursuant to 401 KAR 5:055.

(h) For operational permits or renewals of operational permits for publicly owned sewer systems that have at least 5,000 linear feet of sewer line and that discharge to a sewer system or a WWTP that is owned by another person, the applicant shall submit a completed Kentucky Inter-System Operational Permit Application, DEP 7103 (3/2018).

(2) Signatures.

(a) An application and all reports required by the permit shall be signed as established in 40 C.F.R. 122.22(a) through (c). ~~[An application and all reports required by the permit shall be signed by the responsible corporate officer or the person having primary responsibility for the overall operation of the facility.]~~

1. For a municipality, state, federal, or other public agency, the signee shall be a principal executive officer or ranking elected official or the designee.

2. An application or report may be signed by a duly authorized representative, if the authorization has been made in writing by the responsible person].

(b) Certification. A person signing a document in accordance with paragraph (a) of this subsection shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision. The information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for known violations."

Section 3. Application; Construction Permit Supporting Information. For those facilities required to submit a Construction Permit Application for Wastewater Treatment Plant or Construction Permit Application for Clean Water Collection System[Sewer Line Extensions], the following information shall be submitted with the application pursuant to Section 2 of this administrative regulation:

(1)(a) The applicant shall identify who will inspect and certify that the facility under construction conforms to the plans and specifications approved by the cabinet in accordance with this administrative regulation.

(b) Facilities designed by an engineer shall be inspected and certified by an engineer;

(2) The applicant shall provide:

(a) An estimate for the cost of the facility and the sources of project funding;

(b) A USGS 7.5 minute topographic map with the proposed project site identified;

(c) The North American Datum 1983 (NAD 83), degree, minutes, and seconds measurement of the proposed project's latitude and longitude; and

(d) An estimate, and the basis for the estimate, for the average daily flow added by the proposed project;

(3) Closure plan.

(a) If an existing facility or a portion of a facility will be taken out of service, the applicant shall submit a closure plan discussing the following items:

1. How the facility will be constructed and how the sewage will be diverted to the new construction without a bypass to a stream. If a bypass is unavoidable during construction, the applicant shall submit:

a. An explanation of why construction cannot occur without the bypass;

b. An estimate of the shortest duration for the construction to be completed;

c. A description of all equipment, material, labor, and any other item necessary to complete the construction; and

d. An estimate of when the necessary items for the construction will be on-site;

2. How the contents of the facility will be removed and properly disposed;

3. How any remaining sludge will be removed and properly disposed;

4. How the abandoned facility will be removed or filled and covered; and

5.[4.] How the abandoned sewers will be plugged and manholes filled and covered.

(b) If an existing WWTP discharge is eliminated, the owner of the WWTP shall submit a completed No Discharge Certification, DEP 7032-NDC (3/2018), within thirty (30) days after the elimination of the discharge;

(4) Preliminary submittal. Applicants for WWTP construction permits may submit the following information prior to formal submittal of the construction application, to allow the applicant to receive a preliminary determination on the suitability of the proposed discharge location and preliminary effluent limits used in the design of the facility.

(a) If the information in this subsection is not submitted prior to the formal submittal, the information shall be submitted with the construction application.

(b) The preliminary determination shall be valid for up to one (1) year after issuance of the preliminary determination or until the issuance of the KPDES permit, whichever occurs first.

(c) The preliminary determination shall not be a guarantee of final permit limits and may be changed as a result of information

presented during the public notice phase of the KPDES permitting procedure.

(d) The preliminary effluent limits shall be contingent upon the validity, accuracy, and completeness of the following information that the applicant shall submit:

1. A reproducible copy of a USGS 7.5 minute topographic map with the projected service area outlined, the proposed WWTP location, and the discharge point identified on the map;

2. A letter from the regional planning agency stating whether the applicant's project is compatible with the regional facility plan or water quality management plan;

3. a. For a new or an expansion of an existing regional facility pursuant to 401 KAR 5:006, a regional facility plan or water quality management plan.

b. The planning requirements of Recommended Standards for Wastewater Facilities, 2014 Edition, A Report of the Wastewater Committee of the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, 2014 (Ten States' Standards) shall be satisfied by the cabinet's approval of a regional facility plan or a water quality management plan;

4. For a WWTP project, a demonstration that the users of the proposed WWTP cannot be served by an existing regional facility. The applicant shall provide a detailed evaluation of alternatives by conducting a twenty (20) year present worth cost analysis.

a. The distance criteria for determining availability shall not apply to a WWTP with an average daily design capacity less than or equal to 1,000 gpd.

b. The distance shall be measured along the most feasible route of connection to a point where the downstream sewer has capacity to carry the additional flow; and

5. An estimate and the basis for the estimate of the average daily flow added by the proposed project;

(5) For a WWTP project, the applicant shall submit the following influent design values:

(a) Average daily flow;

(b) Peak daily flow;

(c) Peak hourly flow;

(d) Peak instantaneous flow;

(e) BOD;

(f) Influent suspended solids;

(g) Phosphorus; and

(h) Ammonium nitrogen (NH₃-N);

(6) For a WWTP project, if the discharge point of a proposed WWTP fails to coincide with a stream indicated as a blue line on a USGS 7.5 minute topographic map, the applicant shall demonstrate that the applicant has a recorded deed, recorded other right of ownership, or recorded right of easement to discharge the applicant's effluent across any land owner's property that comes between the point of discharge and a blue line stream;

(7) For a WWTP project, the applicant shall submit a copy of the plat or survey clearly indicating the property boundaries, the position of the proposed facility, and the position of the dwellings within 200 feet of the WWTP;

(8) For a WWTP project, the applicant shall provide a sludge management plan that includes the method of sludge processing and ultimate sludge disposal;

(9) For a WWTP project, the applicant shall indicate that laboratory services shall be provided for self-monitoring and process control to ensure that the WWTP operation complies with the permit; and

(10) For a WWTP project, the applicant shall submit:

(a) A schematic drawing of the WWTP layout and detailed explanation of the proposed facility and its method of operation;

(b) The WWTP's reliability category and a demonstration of how the WWTP complies with the reliability requirements in Section 13 of this administrative regulation; and

(c) The design calculations used to size the unit processes.

Section 4. Application; Preliminary Considerations. (1) A permit shall not be granted to a facility that is not compatible with a regional facility plan or with a water quality management plan approved by the cabinet or the U.S. EPA.

(2) A permit shall not be granted to construct a new or expanded wastewater treatment plant five (5) miles or less upstream of a surface water intake.

(a) The cabinet may issue a variance to the five (5) mile limitation established in this subsection if the applicant demonstrates that the proposed wastewater treatment plant incorporates design and reliability features necessary to protect water quality at surface water intakes located five (5) miles or less downstream of the proposed wastewater treatment plant, and that the wastewater treatment plant discharge will not significantly affect the quality of the water at the downstream source water intake.

(b) An applicant for a variance on the five (5) mile limitation established in this subsection to construct a new or expanded wastewater treatment plant shall submit to the cabinet a plan of study describing in detail how the applicant plans to undertake the demonstration required by subparagraph (a) of this subsection. At a minimum the plan of study shall include the:

1. Methodologies to be used;

2. Source and extent of existing data to establish quantitative and qualitative background conditions or tentative plan to generate a data base that will establish quantitative and qualitative background conditions;

3. Parameters to be measured and equipment to be used for measurement and analysis;

4. Means by which the discharge flow and resulting plume will be simulated to include estimates of maximum concentrations expected at the discharge point and the downstream surface water intake; and

5. Distribution of instream sampling points and the frequency at which samples will be taken.

(c) An applicant for a permit to construct a new or expanded wastewater treatment plant shall not commence field work on the demonstration required by subparagraph (a) of this subsection until the plan of study has been reviewed and approved by the cabinet.

(d) An applicant for a permit to construct new or expanded wastewater treatment plant greater than five (5) miles upstream of a surface water intake may be required to demonstrate that the proposed wastewater treatment plant discharge will not significantly affect the quality of the water at the downstream surface water intake.

(3)[(2)] A new open-top component of a WWTP shall not be located within 200 feet of an existing dwelling or property line; except:

(a) A WWTP that serves an individual residence shall not be required to be at least 200 feet from the dwelling that it serves; and

(b) An open-top component of a WWTP may be located within 200 feet of another dwelling that the WWTP does not serve or a property line if:

1. The WWTP or component is enclosed within a building that controls odors and dampens noise; or

2. The applicant demonstrates that an equivalent method for noise and odor control shall be provided.

(4)[(3)] A discharge point or direct discharge into a wellhead protection area shall comply with Section 4(2) of this administrative regulation[Water Policy Memorandum No. 84-02, Five Mile Limit Policy,] if that public drinking water well or spring is under the direct influence of surface water.

(5)[(4)] The initial suitability of a location for a proposed discharge point or spray irrigation field shall be determined by the cabinet after site inspection. In determining the suitability of the location, the cabinet shall consider the:

(a) Distance to the nearest dwelling;

(b) Distance to water intake used for a public water supply;

(c) Downstream land use;

(d) Physical characteristics and current use of the stream;

(e) Physical characteristics of the proposed spray field including karst topography;

(f) Need for easements;

(g) Location of property boundaries; and

(h) Other items consistent with this administrative regulation and KRS Chapter 224.

(5) If the discharge from the WWTP enters a sinkhole directly

or enters a disappearing stream, the applicant shall submit a proposal for a groundwater tracer study or results from a previously conducted study to the cabinet.

(a) The cabinet shall accept a groundwater tracer study or a proposal for a groundwater tracer study if it is sufficiently scientifically rigorous to establish if a hydrologic connection exists with:

1.[Establish if a hydrologic connection exists with] Surface waters that may result in additional or more stringent permit limitations;

2.[Establish if a hydrologic connection exists with] Domestic water supply intakes within five (5) miles; and

3.[Establish if a hydrologic connection exists with] Drinking water wells within five (5) miles.

(b) The cabinet shall notify that applicant of the cabinet's acceptance or denial of a proposed groundwater tracer study.

(c) If the cabinet accepts a proposal for a groundwater tracer study, the applicant shall conduct the groundwater tracer study and submit the completed groundwater tracer study to the cabinet.

(d) The cabinet shall issue, deny, or modify the permit based upon the findings of a scientifically rigorous groundwater tracer study.

(6) The cabinet may condition or deny a permit to construct or expand a facility based on its compatibility with a regional facility plan or the availability of a regional facility.

(a) Permits to construct, expand, or operate a sewage system shall require connection to a regional facility if one (1) becomes available and shall not be renewed, reissued, or modified to remove that requirement unless a regional facility is no longer available.

(b) The distance criteria to determine if a regional facility is available shall be measured along the most feasible route of connection to a point where the downstream sewer has capacity to carry the additional flow.

(7) Pursuant to 401 KAR 5:075[5:300], the cabinet may coordinate issuance of a construction permit for WWTPs that require a new KPDES permit or modification to a KPDES permit with the issuance of the KPDES permit to ensure that public comments received as a result of the public notice requirements of 401 KAR 5:075 shall be considered in the issuance of the construction permit.

(a) The cabinet may also coordinate issuance of construction approval for the associated sewer lines with the issuance of the construction permit for the WWTP.

(b) The cabinet may condition or deny the construction permit based on those public comments.

(8)(a) The cabinet shall issue a notice of deficiency for the deficiencies in the application, fees, supporting information, or plans and specifications.

(b) Failure of the applicant to respond to a notice of deficiency within thirty (30) days shall result in the application being terminated without the issuance of a construction permit.

Section 5. Fees. (1) Except as specified in KRS 224.10-100, 224.16-050, and subsection (5) of this section, the applicant shall submit a construction permit fee as provided in subsection (4) of this section with the construction permit application and any applicable KPDES fee.

(2) If the cabinet denies a construction permit for a WWTP or sewer line, the fee for the construction permit shall be retained by the cabinet, unless the fee is for a WWTP that serves only an individual residence.

(3) The applicant shall make checks or money orders payable to the Kentucky State Treasurer.

(4) Construction permit fees shall be as established in the table in this subsection[shown on the following schedule], except as provided in subsection (5) of this section.

Facility Category	Construction Permit Fee
Large Facility: WWTP	\$1,800
Intermediate Facility: WWTP	\$900
Small Facility: WWTP	\$450
Minor Modification to a WWTP:	\$200

Small Facility for Nonprofit Organizations pursuant to KRS 224.16-050(5):	\$50
Large Facility: Sewer Lines	\$800
Intermediate Facility: Sewer Lines	\$400
Small Facility: Sewer Lines	\$200

(5) Fees established in this section shall not apply to an agricultural waste handling system or to a renewal of a KNDOP permit.

(6) The WWTP fee shall apply to the WWTP project and sewers or pump stations located on the plant property.

(a) A sewer fee shall apply to all sewers, force mains, and pump stations that are bound together as one (1) set of plans.

(b) If a WWTP project includes sewers, force mains, or pump stations located off of the plant property, at least two (2) fees shall be submitted.

(7) To qualify for the reduced fee in subsection (4) of this section, nonprofit organizations shall submit proof that they are qualified pursuant to 26 U.S.C. 501(c)(3).

Section 6. Plans and Specifications. (1) The applicant shall submit to the cabinet at least one (1) set~~three (3) sets~~ of detailed plans and specifications for the facility and one (1) digital copy. Plans for gravity sewer lines and force mains shall include a plan view and a profile view.

(2) The cabinet may request additional information as is necessary to evaluate the facility to ensure compliance with this administrative regulation.

(3) If cabinet approval is obtained, changes shall not be made to the plans and specifications that would alter or affect the location, capacity, type of treatment process, discharge location, or quality of effluent without issuance of a modified permit from the cabinet.

(4) If a proposed facility will become a part of a sewer system served by a regional facility or has a projected average daily design capacity of 10,000 gpd or more, the plans and specifications shall be prepared, stamped, signed, and dated by a professional engineer.

(5) The plans shall be accompanied by engineering calculations necessary for the understanding of the basis and design of the facility.

(6) If a proposed facility's design capacity is less than 10,000 gpd, the cabinet may require the plans to be prepared, stamped, signed, and dated by a professional engineer if there is not sufficient operating data available from previous similar installations. Operation data shall demonstrate that water quality standards have not been violated and that there have not been significant operational problems.

Section 7. Design Considerations. (1)(a) Facilities, except an extended aeration package WWTP with an average daily design capacity less than 100,000 gpd, shall be designed in accordance with the Recommended Standards for Wastewater Facilities, 2014 Edition, A Report of the Wastewater Committee of the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, 2014~~Recommended Standards for Wastewater Facilities of the Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers~~, commonly referred to as Ten States' Standards.

1. A deviation from the Ten States' Standards requirements may~~shall~~ be approved if the applicant submits a written request for a deviation with the basis for the request pursuant to this paragraph.

2. The basis for the deviation request shall be supported by current engineering practice such as that found in Wastewater Engineering: Treatment and Reuse, Metcalfe and Eddy Inc., 5th Edition (2013)~~Some references to current engineering practice may be found in the Wastewater Engineering Treatment, Disposal, Reuse by Metcalfe and Eddy, Inc.]~~

3. Design calculations and other supporting documentation to support the deviation shall be submitted to the cabinet.

(b) Other practices may be required when~~by the cabinet based on the cabinet's best professional judgment that the practices are~~

necessary for the protection of public health and the environment.

(c) Other practices may~~shall~~ be approved by the cabinet if sufficient operational experience is available from previous similar installations to indicate operational problems have not occurred, that water quality standards have not been violated, and design calculations and documentation to support the other practice have been submitted to the cabinet.

(2) The applicant shall demonstrate that the effluent from a proposed facility shall:

(a) Protect those minimum conditions listed in 401 KAR 10:031 that are applicable to all waters of the Commonwealth;

(b) Not cause those waters designated by 401 KAR 10:026 or categorized by 401 KAR 10:030 to be of lesser quality than the numeric criteria applicable to those waters in 401 KAR 10:031 or the requirements of 401 KAR 10:030; and

(c) Be in accordance with any facility requirement established in 401 KAR Chapter 5.

(3) Each WWTP shall have a flow measuring device at the plant capable of measuring the anticipated flow, including variations, with an accuracy of \pm ten (10) percent.

(a) The flow measuring device shall measure all flow discharged by the WWTP including any bypasses.

(b) An indicating, recording, and totalizing flow measuring device shall be installed at each large WWTP.

(c) A flow measuring device for new large WWTPs shall meet the requirements of Section 12 of this administrative regulation.

(4) A bypass or overflow structure of any type shall not be constructed in a sewer line or pump station or at a WWTP unless construction of the bypass or overflow structure is necessary to prevent loss of life, personal injury, or severe property damage and there is not an~~a~~ alternative.

Section 8. Requirements for Sewer Line Extensions. (1) If the applicant does not own all of the proposed sewer line extension, the applicant shall identify the owner and the portion of the sewer line extension owned by the other person.

(2) The applicant shall submit letters from the owner of the:

(a)~~The owner of the~~ Sewer line extension stating that the owner shall accept operation and maintenance responsibilities for the sewer line extension as it is constructed;

(b)~~The owner of the~~ Sewer system stating that the owner approves the connection and accepts responsibility for the additional flow; and

(c)~~The owner of the~~ WWTP stating that the owner approves the connection and accepts responsibility for the additional flow.

(3)(a) The applicant shall demonstrate that the portion of the sewer system used by the connection has adequate capacity to transport the current and anticipated peak flow to the WWTP and that the portion of the sewer system used by the connection shall not be subject to excessive infiltration or excessive inflow.

(b) The cabinet may deny a sewer line extension for that portion of the sewer system if the portion of the system is subject to excessive infiltration or excessive inflow unless a plan for investigation and remediation that addresses these conditions has been submitted and is being implemented.

(4)(a) The applicant shall demonstrate that the WWTP that receives the waste has adequate capacity to treat the current and the anticipated flow and is not subject to excessive infiltration or excessive inflow.

(b) The cabinet may deny the sewer line extension if the WWTP does not have adequate capacity to treat the flow or is subject to excessive infiltration or excessive inflow unless a plan for investigation and remediation that addresses these conditions has been submitted and the plan is being implemented.

(5) The entrance of groundwater into, or loss of waste from, a new gravity sewer line shall be limited to 200 gpd per inch of diameter per mile of the gravity sewer line and shall include~~—This limitation includes~~ manholes, gravity sewer lines, and appurtenances.

(6)(a) The integrity of a new gravity sewer line shall be verified by either the infiltration-exfiltration or low pressure air testing method.

1. An infiltration-exfiltration test shall be performed with a

minimum positive head of two (2) feet.

2. A deflection test shall be performed for each new flexible pipe; pipe deflection shall not exceed five (5) percent.

3. Each new manhole shall be tested for watertightness.

(b) The integrity of a new force main shall be verified by leakage tests. The applicant shall describe the proposed testing methods and leakage limits in the specifications submitted with the permit application.

(7) The construction of a new combined sewer shall not be permitted unless it is a consolidation sewer, flood relief sewer, or a replacement of a combined sewer that:

(a) Conforms with the long-term CSO control plan that complies with the Combined Sewer Overflow (CSO) Control Policy, U.S. EPA, 59 Federal Register 18688, April 1994;

(b) Enhances water quality; and

(c) Protects public health and safety.

(8) A gravity sewer line and a force main shall be designed and constructed to give mean velocities, when flowing full, of not less than two and zero-tenths (2.0) feet per second.

(a) The roughness coefficient used in the Manning or Kutter's formula shall be 0.013, or the "C" factor used in the Hazen-Williams Formula shall be 100.

(b) If the specifications allow only plastic pipe, a roughness coefficient of 0.011 or a "C" factor of 120 may be used.

(c) A roughness coefficient between 0.013 and 0.011 may be used for other pipe materials if sufficient documentation of experimental testing is submitted to the cabinet and if the testing supports the use of the design roughness coefficient.

(9) A gravity sewer line and a force main shall have a minimum of thirty (30) inches of cover or provide comparable protection.

(10) If a gravity sewer line and a force main are to be constructed in fill areas, the fill areas shall be compacted to ninety-five (95) percent density as determined by the Standard Proctor Density test or to a minimum of ninety (90) percent density as determined by the Modified Proctor Density test prior to the installation of the sewer lines.

(11) The minimum diameter for a conventional gravity sewer line shall be eight (8) inches, except that:

(a) The minimum diameter for an extension to an eight (8) inch or larger sewer line if a future extension is not feasible shall be six (6) inches;

(b) The minimum diameter for an extension to a six (6) inch sewer line shall be six (6) inches; and

(c) A sewer line shall be sized based upon engineering calculations consistent with current engineering practices.

(12) A manhole shall be provided at the junction of two (2) building sewers. This subsection shall not apply to building sewers that serve a single-family residence.

(13) The following building sewers shall be exempt from the requirements of this administrative regulation:

(a) A gravity sewer that:

1. Discharges directly to the sewer main; and

2. Serves a single building; and

(b) A force main sewer, regardless of the location of the pump station that:

1. Discharges directly to a gravity sewer main; and

2. Serves a single building.

(14) Except as provided in paragraph (b) of this subsection, a sewer line shall be located at least fifty (50) feet away from an intermittent or perennial stream except where the sewer alignment crosses the stream.

(a) The distance shall be measured from the top of the stream bank.

(b) The applicant may request a variance from the requirement established in this subsection.

(15) A gravity sewer line and a force main that cross streams shall be constructed by a method that maintains normal stream flow and allows for a dry excavation.

(a) Water pumped from the excavation shall be contained and allowed to settle prior to reentering the stream.

(b) Excavation equipment and vehicles shall operate outside of the flowing portion of the stream.

(c) Spoil material from the sewer line excavation shall not be

allowed to enter the flowing portion of the stream.

(16) A pump station wetwell shall be sized so[such] that, based on the average flow, the time to fill the wetwell from the pump-off elevation to the pump-on elevation shall not exceed thirty (30) minutes.

(17) A pump station wetwell shall have a vent.

(18) A pump station shall provide a minimum of two (2) hours of detention, based on the average design flow, above the high level alarm elevation or provide an alternate source of power with wetwell storage providing sufficient time for the alternative power source to be activated.

(19) Each high point in the force main shall have an automatic air release valve.

(20) The applicant shall submit a performance curve for a proposed pump station.

(21) A simplex design shall be used only for a pump station that serves an individual residence or business, and a spare pump shall be available for immediate installation.

Section 9. Municipal Water Pollution Prevention Program. This section applies to owners of regional WWTPs, sewer systems served by regional WWTPs, and political subdivision facilities with KISOPs. (1) For each regional WWTP, the cabinet shall review the WWTP's reported monthly flows and organic loads for the most recent twelve (12) months. If the annual average flow or organic load, or for systems with combined sewer lines the lowest monthly flow and associated organic load, exceed the following values, the cabinet shall advise the owner of the WWTP of the need to address the potential overload condition pursuant to subsections[subsection] (2) and (3) of this section:

(a) For a regional WWTP with a design capacity of ten (10) mgd or less, ninety (90) percent of the WWTP's average daily design capacity; or

(b) For a regional WWTP with a design capacity of more than ten (10) mgd, ninety-five (95) percent of the WWTP's average daily design capacity.

(2) The cabinet shall give written notice to the owner of the WWTP that the wastewater collection system shall not accept any additional flow until the owner of the WWTP:

(a) Agrees to address the potential overload condition identified in subsection (1) of this section in accordance with subsection (3) of this section; or

(b) Demonstrates to the cabinet that the additional flow will not result in an increase in monthly flows at the WWTP and receives cabinet approval to accept the additional flow.

(3) The cabinet shall deny the approval of a sewer line extension until the owner of the WWTP agrees to address the potential overload condition identified in subsection (1) of this section. The owner shall address the condition by:

(a)1. Demonstrating, with supporting documentation, that the average daily design capacity of the plant is greater than the permitted amount.

2. The cabinet shall review the request and if justified, shall issue a revised average daily design capacity for the WWTP by issuing a modification to the KPDES permit;

(b) Expanding the WWTP to a size sufficient to handle the anticipated flows and loads; or

(c) Performing other remedial measures that address the condition.

(4)[(3)] The cabinet shall deny a sewer line extension that is of sufficient flow or adds load sufficient to exceed the remaining design capacity of the WWTP or exacerbate water quality problems until the owner of the WWTP agrees to address the design capacity or water quality problem.

(5)[(4)] The owners of the following facilities shall conduct a study of the sewer system or the affected portion of the sewer system that complies with subsections (5) and (6) of this section:

(a) A regional WWTP with a reported average flow or organic load that exceeds the percent identified in subsection (1)(a) or (b) of this section, as applicable, or a political subdivision KISOP facility that either:

1. Receives more than 275 gallons per capita per day of sewage flow based on the maximum flow received during a twenty-

four (24) hour period exclusive of industrial flow; or

2. Receives more than 120 gallons per capita per day of sewage flow based on the annual average of daily flows exclusive of industrial flow; or

(b) If subject to excessive infiltration or excessive inflow, a regional WWTP, sewer system served by a regional WWTP, or a political subdivision facility with a KISOP.

~~(6)~~~~(5)~~ The study shall determine if the infiltration-inflow can be removed in a cost-effective manner by using a twenty (20) year present worth cost analysis and if it cannot be, shall identify the modifications to the sewer system, affected portion of the sewer system, or affected portion of the WWTP necessary to transport and treat the infiltration-inflow.

(a) A schedule for completion of the necessary modifications shall also be prepared.

(b)1. The study and schedule shall be submitted to the cabinet for review and approval.

2. Approval shall be based on cost and length of time required to correct the infiltration-inflow.

~~(7)~~~~(6)~~ For the infiltration-inflow study of the sewer system or the affected portion of the sewer system, the owner shall:

(a) Use a map of the sewer system or the affected portion of the sewer system to select manholes for the installation of flow monitoring equipment;

(b) Install equipment to monitor flow at the key manholes, groundwater levels, and rainfall volume and duration for a period of thirty (30) to ninety (90) days;

(c) Conduct physical surveys, smoke tests, and dye water studies of the affected portion of the sewer system;

(d) Evaluate the cost-effectiveness of transportation and treatment versus correction of the infiltration-inflow sources by using a twenty (20) year present worth cost analysis;

(e) Internally inspect the sewer lines in the affected portion of the sewer system to determine the rehabilitation locations and methods if the rehabilitation locations and methods cannot be established by other analysis;

(f) Develop plans for rehabilitation of the affected portion of the sewer system or modifications to the affected portion of the facility necessary to transport and treat all flows; and

(g) Develop a schedule for completion of the rehabilitation or modifications.

~~(8)~~~~(a)~~~~(7)~~~~(a)~~ The owner of the facility shall complete the necessary rehabilitation or modifications in accordance with the schedule to which the applicant and cabinet agree.

(b) The cabinet may deny a further sewer line extension if the owner is not meeting the schedule or is not making progress that follows the schedule.

Section 10. Extended Aeration Package WWTP Requirements. This section shall apply to an extended aeration package WWTP intended to treat only domestic sewage but shall not apply to an extended aeration package WWTP that serves an individual residence. (1) A bar screen shall be provided for each plant, except those with trash traps pursuant to Section 14 of this administrative regulation.

(2) The aeration chamber shall have a minimum detention time of twenty-four (24) hours based on the average design flow.

(3) A minimum of 2,050 cubic feet of air shall be provided per pound of BOD.

(4) The clarifier shall have:

(a) A minimum detention time of four (4) hours based on the average design flow;

(b) A surface overflow rate of less than 1,000 GPD/ft²; and

(c) A solids loading of less than thirty-five (35) lb/ft² based on the peak daily design flow rate.

(5) A positive sludge return shall be provided.

(6)(a) A source of water shall be provided for cleanup.

(b) If a potable source is provided, backflow preventers shall be installed to protect the water supply.

(7) Fencing with a lockable gate shall be installed around the plant site.

(8) An all-weather access road to the plant shall be provided.

(9) A sludge holding system shall be provided for each large

WWTP. The sludge holding system shall:

(a) Provide two (2) cubic feet of volume per 100 gallons of WWTP design treatment capacity;

(b) Provide thirty (30) cubic feet per minute (cfm) of air per 1,000 cubic feet of tank volume;

(c) Be designed to prevent overflows; and

(d) Transport supernatant to the aeration chamber.

(10) For a large WWTP, motors and blowers shall be installed sufficient to handle the load if the largest unit is taken out of service.

(11) Post aeration, if required by effluent limits, shall be designed to raise the effluent dissolved oxygen from two (2) mg/l to the required effluent concentration.

(a) If a diffused air system is used, a minimum blower capacity of 0.154 cubic feet per minute (cfm) per 1,000 gallons of average daily design capacity shall be provided.

(b) If a step aeration ladder is used, a minimum drop of nineteen (19) feet shall be provided.

(12) A WWTP with a monthly average permit limit for CBOD of twenty (20) mg/l or less shall provide additional treatment.

(13) A WWTP that serves a restaurant or other similar establishment where food is prepared and served and a food grinder is used shall be designed to treat the additional BOD loading.

(14) Effluent discharge piping for a new WWTP, except a regional facility, shall be designed to transport sewage to facilitate a future connection to a regional facility.

(15) A used package extended aeration WWTP may be used if the manufacturer or a professional engineer certifies that the tank is structurally sound and all mechanical equipment has been reconditioned.

Section 11. Disinfection. (1) All WWTPs shall have a disinfection process that meets the following requirements:

(a) An ultraviolet disinfection system designed to treat the anticipated peak hourly flow with two (2) banks in series;

(b) A chlorination system with a flow or demand proportional feed system.

1. The chlorine contact tank shall have a minimum detention time of thirty (30) minutes based on the average flow, or fifteen (15) minutes based on the peak hourly flow, whichever requires the larger tank size.

2. A WWTP shall also have a dechlorination system with a flow or demand proportional feed system if necessary to meet the effluent limits;

(c) A chlorination system with a manually controlled feed system and a flow equalization basin designed to eliminate the diurnal flow variations.

1. The flow equalization basin shall meet the requirements of Section 17 of this administrative regulation.

2. The chlorine contact tank shall have a minimum detention time of thirty (30) minutes based on the average design flow or fifteen (15) minutes based on peak hourly flow.

3. A WWTP shall also have a dechlorination system if necessary to meet the effluent limits ~~;~~~~or~~

(d) A peracetic acid system for a WWTP with a capacity that is greater than 10,000 gpd in flow.

1. If a pilot test is to be conducted, the WWTP shall submit written notice of the intent to begin pilot testing.

2. Pilot testing shall not exceed twelve (12) months.

3. For final approval of a peracetic acid system, the WWTP shall submit:

a. A W-1 application;

b. A detailed plan showing:

i. The treatment train that shall include peracetic acid;

ii. The basin that will serve as a chamber for feeding peracetic acid; and

iii. Secondary containment of peracetic acid storage.

c. The type of pump used to deliver peracetic acid;

d. The type of material used in the feed line; and

e. The contact time calculations.

4. If basin construction is required, construction plans and specifications shall be signed, stamped, and dated by a

Professional Engineer.

(e) Other disinfection processes may be approved if they provide equivalent treatment.

(2) Tablet type chlorination equipment shall not be used in an intermediate or large WWTP.

Section 12. Requirements for Flow Measuring Devices. This section shall apply to a new large WWTP. (1)(a) Each flow measuring device shall be capable of measuring the anticipated flow, including variations, with an accuracy of \pm ten (10) percent.

(b) The flow measuring device shall measure all flow received at the WWTP.

(c) An indicating, recording, and totalizing flow measuring device shall be installed at each large WWTP.

(2)(a) If the influent and effluent flow are expected to be significantly different, flow measuring devices shall be provided for both the influent and the effluent flow.

(b) Multiple flow measuring devices shall be provided for a WWTP~~[the following]~~:

1.~~[A WWTP]~~ That stores and hydrographically controls the release of effluent;

2.~~[A WWTP]~~ With flow equalization facilities that are designed to store more than the volume required to dampen the diurnal flow variations;

3.~~[A WWTP]~~ With a lagoon that has a detention time of greater than twenty-four (24) hours;

4.~~[A WWTP]~~ With the capability to bypass a treatment process; and

5.~~[A WWTP]~~ With more than one (1) discharge point.

(3) Sharp crested weirs shall be used for measuring effluent flow only and shall have the following characteristics:

(a) The weir shall be installed perpendicular to the axis of flow, and there shall not be leakage at the weir edges or bottom;

(b) The weir plate shall be level and adjustable;

(c) The sides of a rectangular contracted weir shall be vertical;

(d) The angles of a V-notch weir shall be cut precisely;

(e) The thickness of the weir crest shall be less than one-tenth (0.1) of an inch;

(f) The distance from the weir crest to the bottom of the approach channel shall be more than one (1) foot or two (2) times the maximum weir head, whichever is greater;

(g) For a weir other than a suppressed, rectangular weir, the distance from the sides of the weir to the sides of the approach channel shall be more than one (1) foot or two (2) times the maximum weir head, whichever is greater;

(h) Air shall circulate freely under, and on both sides of, the nappe;

(i) The measurement of head on the weir shall be made at least four (4) times the maximum weir head upstream from the weir crest;

(j)1. The cross-sectional area of the approach channel shall be at least eight (8) times the area of the nappe.

2. The approach channel shall be straight and uniform upstream from the weir for a distance of fifteen (15) times the maximum weir head;

(k) The minimum acceptable weir head shall be two-tenths (0.2) foot;

(l) The maximum downstream pool level shall be at least two-tenths (0.2) foot below the crest elevation;

(m) The weir length for a rectangular, suppressed, or cipoletti weir shall be at least three (3) times the maximum weir head; and

(n) A reference staff gauge shall be provided.

(4) Parshall flumes may be used to measure influent or effluent flows and shall have the following characteristics:

(a) The approach channel upstream of the flume shall be straight and have a width uniform for the length required by the following:

1. If the flume throat width is less than one-half (1/2) the width of the approach channel, the straight upstream channel length shall be twenty (20) times the throat width;

2. If the flume throat width is equal to or larger than one-half (1/2) the width of the approach channel, the straight upstream length shall be greater than ten (10) times the approach channel

width; and

3. If the cross-sectional area of the inlet to the approach channel is smaller than the cross-sectional area of the approach channel, additional straight upstream channel length may be required to dissipate the velocity if necessary to maintain laminar flow;

(b) The throat section walls shall be vertical;

(c) The head measuring point shall be at two-thirds (2/3) the length of the converging sidewall;

(d) The flow shall be evenly distributed across the channel, shall be free of turbulence or waves, and shall not be located after transition sections;

(e) The longitudinal and lateral axes of the converging crest floor shall be level;

(f) Free flow conditions shall be maintained; and

(g) A reference staff gauge shall be provided for H_a and H_b to determine if submergence occurs.

(5) Other types of flow measuring devices shall be approved if the device reasonably and accurately measures the flow.

Section 13. Reliability Categories. (1) A WWTP design shall:

(a) Provide sufficient treatment units to allow for cleaning and repair without causing a violation of effluent limitations or a bypass from the sewer system or WWTP; and

(b) Provide storage or treatment capability sufficient to contain ~~or treat the~~:

1.~~[Contain or treat the]~~ Volume of the largest tank if that tank is out of service; and

2.~~[Contain or treat the]~~ Flow received during the time needed to drain, complete cleaning, and accomplish an anticipated repair without causing a permit violation or bypass of a treatment process.

(2) The cabinet shall determine the reliability grade of a WWTP based on the water quality use designation of the receiving stream, pursuant to 401 KAR 10:031.

(a) A Grade A WWTP shall have:

1. Treatment units and alternate power sufficient for the continuous use of all treatment processes and disinfection, with the exception of alternate power for the aeration equipment used in an activated sludge process; and

2. Full alternate power capacity for a discharge to a stream segment within five (5) miles of a public water supply intake.

(b) A Grade B WWTP shall have:

1. a. Treatment units sufficient for the continuous use of the preliminary, primary, and secondary treatment processes and disinfection; and

b. If an intermediate or large facility, alternate power sufficient for the continuous use of the preliminary, primary, secondary treatment, and disinfection processes, with the exception of alternate power for the aeration equipment used in an activated sludge process; or

2. If a small facility, a design that enables the small facility to connect to an emergency generator.

(c) A Grade C WWTP shall have:

1. a. Treatment units sufficient for the continuous use of the preliminary treatment, primary treatment, and disinfection processes; and

b. If an intermediate or large facility, alternate power sufficient for the continuous use of the preliminary treatment, primary treatment, and disinfection processes; or

2. If a small facility, a design that enables the small facility to connect to an emergency generator.

(d) If alternate power is required pursuant to this subsection:

1. Alternative power shall be provided from the connection to at least two (2) independent power sources or an emergency generator; or

2. The cabinet may approve alternative measures for an intermediate or small facility if:

a. The applicant can demonstrate that those measures provide protection comparable to alternative power; and

b. The receiving stream is not an OSRW, within five (5) miles of a public water supply intake, or within five (5) miles of a wellhead protection area.

(3) ~~The following WWTPs shall meet the requirements for a~~ Grade A WWTP requirements shall be met by a WWTP approved to discharge:

(a) ~~[A WWTP approved to discharge]~~ To a water body designated as an Outstanding State Resource Water pursuant to 401 KAR 10:031.

(b) ~~[A WWTP approved to discharge]~~ Into a sinkhole or disappearing stream; and

(c) ~~[A WWTP approved to discharge]~~ Within five (5) miles of a public water supply intake or discharge directly into a wellhead protection area.

(4) A WWTP shall meet the requirements for a Grade B WWTP if it discharges within five (5) miles upstream of the head of an embayment if the lake is at normal elevation.

(5) Except as provided in subsection (6) of this section, a WWTP shall, at minimum, meet the requirements for a Grade C WWTP.

(6) The cabinet shall not assign a grade to a WWTP:

(a) ~~[A WWTP]~~ Treating less than or equal to 1,000 gallons per day; or

(b) ~~[A WWTP]~~ Serving an individual family residence.

Section 14. Requirements for Trash Traps. A trash trap shall not be used on a WWTP with a design capacity of larger than 100,000 gpd. A trash trap shall have an outlet baffle, be accessible to cleaning equipment, have air-tight access openings for cleaning, allow for cleaning in front of baffles, and have a volume required by this section. (1) For a small WWTP, the trash trap volume shall be fifteen (15) percent of the average daily design flow; and

(2) For an intermediate or large WWTP with a design capacity of less than or equal to 100,000 gpd [or less], the trash trap volume shall be as indicated in the following table established in this subsection for the appropriate WWTP capacity. For capacities not included, the volume shall be interpolated.

WWTP Capacity (GPD)	Trash Trap Volume (Gallons)
10,000	1,500
20,000	2,400
30,000	2,900
40,000	3,200
50,000	3,430
60,000	3,600
70,000	3,740
80,000	3,840
90,000	3,920
100,000	4,000

Section 15. Requirements for Slow Sand Filters. (1) Wastewater loading shall not exceed five (5) GPD per square foot of filter surface area.

(2) Filter areas larger than 900 square feet shall have multiple beds.

(3) The discharge piping on the filter bed shall be located so that the maximum lateral travel over the sand is less than twenty (20) feet.

(4) Each discharge point shall serve a maximum of 300 square feet of filter surface.

(5) Each discharge point shall have a splash block with a minimum surface area of nine (9) square feet and a square or circular shape.

(6) Distribution piping shall be designed to drain properly.

(7) An underdrain shall be spaced on ten (10) foot centers or less.

(8) Gravel shall be placed around the underdrain and to a depth of six (6) inches over the top of the underdrain.

(9) The filter bed shall have at least thirty (30) inches of sand with an effective size between three-tenths (0.3) and five-tenths (0.5) millimeter.

(10) The dosing chamber shall have a volume sufficient to provide a depth of two (2) inches over the entire filter bed.

Section 16. Requirements for Rapid Sand or Mixed Media Filters. (1) Rapid sand or mixed media filter loadings shall not

exceed one (1) gallon per minute per square foot of filter surface area.

(2) If flow equalization is provided, the allowable loading may be increased to two (2) gallons per minute per square foot.

(3) A backwash system shall be provided.

Section 17. Requirements for Flow Equalization Basins. (1) A flow equalization basin shall have:

(a) A variable flow weir box set to deliver flow at a treatable rate;

(b) A minimum of 1.25 cfm of diffused air per 1,000 gallons of flow equalization volume;

(c) An emergency overflow to an appropriate point in the treatment scheme; and

(d) Sufficient volume to dampen the diurnal flow variations.

(2) ~~If site specific information or similar flow pattern is not available, the flow equalization basin volume shall be based on the following formula:~~

$$V = \frac{1}{24} \times Q$$

Where:

V is the required volume for the flow equalization basin;

t is the number of hours flow is generated; and

Q is the volume of flow anticipated to be received at the WWTP during a twenty-four (24) hour period.

(3) ~~A flow equalization basin with earth embankments shall be constructed with a slope not steeper than 1:3 (one to three) unless a steeper slope is supported by geotechnical and slope stability studies.~~

(3) ~~[(4)]~~ For a flow equalization basin constructed in material other than earth, the applicant shall indicate how the basin will be properly sealed.

(4) The flow equalization basin volume calculation and justification shall be provided to the cabinet.

Section 18. Requirements for Wastewater Treatment Lagoons.

(1) BOD loading shall be less than:

(a) Thirty-five (35) pounds per day per acre of lagoon surface for a nonaerated primary lagoon system;

(b) Fifty (50) pounds per day per acre of lagoon surface for a nonaerated polishing lagoon; and

(c) 150 pounds per day per acre of lagoon surface for an aerated lagoon.

(2)(a) The lagoon design submittal shall provide details on the aeration system proposed including:

1. The type, location, and capacity of the aeration units;

2. The operating depth;

3. The area of the lagoon at the operating depth;

4. Permeability and thickness of the lagoon liner;

5. Anticipated ultimate wastewater flow; and

6. Influent wastewater characteristics.

(b) A new lagoon system shall be designed to treat a raw wastewater BOD of at least 240 mg/l.

(c) Except as established in Subsection (5) of this section, the lagoon design shall be evaluated by the method established in Ten States' Standards and the predicted BOD remaining shall be less than the required effluent concentration.

(3) A lagoon shall be at least 200 feet from any present residence or adjacent property line.

(4) A nonaerated primary lagoon shall have a minimum detention time of ninety (90) days.

(5) The Ten States' Standards requirement for vegetation to be established prior to filling the lagoon shall not apply.

(6) An applicant proposing a lagoon with an embankment slope steeper than one to three (1:3) shall provide geotechnical and slope stability studies to support the design.

(7) The applicant shall indicate how a basin constructed in material other than earth will be properly sealed.

Section 19. Additional Requirements for WWTPs That Serve Schools. In addition to the requirements of Sections 10 through 18 of this administrative regulation, the following requirements established in this section shall apply to a WWTP that serves a

school.[:]

(1) If a flow equalization basin is provided it shall meet the requirements of Section 17 of this administrative regulation.[:]

(2) The aeration tank shall have at least ten (10) gallons of capacity per day per student for elementary and middle schools, or at least twenty (20) gallons of capacity per day per student for an elementary or middle school, and a high school.[:and]

(3) The secondary clarifier shall be sized to provide a maximum surface loading, at the average design flow, of 300 GPD per square foot of clarifier surface area. If a flow equalization basin is not provided, the secondary clarifier shall be sized to provide a maximum surface loading of 100 GPD per square foot at average daily design flow.

Section 20. Additional Requirements for WWTPs That Serve Multifamily Residential Developments. In addition to the requirements of Sections 10 through 18 of this administrative regulation, ~~[the following requirements shall apply to]~~ a WWTP that serves a multifamily residential development. ~~[:A multifamily residential development]~~ including subdivisions, condominiums, apartments, and mobile home parks shall comply with at least ~~[provide]~~ one (1) ~~[or more]~~ of the requirements established in Subsections (1) through (3) of this section. ~~[following measures for additional reliability:]~~ (1) Blowers and motors shall be installed sufficient to handle the organic load if the largest unit is not available for service.[:]

(2) An alternate source of power.[:or]

(3) Additional treatment units or processes.

Section 21. Additional Requirements for WWTPs That Propose Effluent Disposal by Spray Irrigation. In addition to the requirements of Sections 10 through 18 of this administrative regulation, the requirements in this section shall apply to a WWTP that proposes effluent disposal by spray irrigation. (1) One (1) acre of spray field shall be provided for each 1,000 GPD of treated wastewater. An applicant proposing higher application rates shall provide detailed design based on site-specified information.

(2) The following plans and specifications shall be signed, sealed, and dated by a professional engineer licensed in Kentucky:

(a) Plans for a WWTP with a design capacity of more than 1,000 gallons per day that propose an application rate greater than 1,000 gallons per acre per day; and

(b) Plans that propose a final slope equal to or greater than ten (10) percent.

(3) A spray field that has a slope greater than twenty-five (25) percent on any portion of the spray field shall not be permitted.

(4) The soil of a spray irrigation field shall have an average saturated hydraulic conductivity of not less than six-tenths (0.6) inch per hour, as established by:

(a) The saturated hydraulic conductivity value provided by an NRCS soil survey; or

(b) A saturated soil test of the spray field.

(5) The spray field shall have less than a six (6) percent slope unless:

(a) The average saturated hydraulic conductivity for the spray field is more than six (6) inches per hour; and

(b) The average soil depth of the spray field is at least twenty-four (24) inches.

(6) The spray irrigation field shall have sufficient vegetative growth to promote absorption, evaporation, and transpiration.

(a) Vegetative growth shall be perennial.

(b) Vegetative growth shall cover not less than ninety-five (95) percent of the spray field area.

(7) A twenty (20) foot buffer zone shall be provided between the outer boundary of the spray field and the property boundary or the applicant shall provide screening to inhibit the transport of aerosols and windborne spray across property boundaries.

(8) A spray irrigation field for an individual residence shall have a temporal or physical barrier that inhibits human contact with the airbone spray.

(9) Effluent from the spray irrigation field shall be contained on the owner's property.

(10) Setbacks.

(a) A construction permit shall not be issued if a portion of the spray field is closer than 200 feet from an existing dwelling.

(b) A portion of a spray field shall not be closer than the minimum setback requirements for a leach bed as established in 902 KAR 10:085, Section 8.

(c) If a setback provision of 902 KAR 10:085, Section 8, is less stringent than the setback requirements of this subsection, the more stringent setback shall apply.

(11) Effluent derived from a wastewater that contained human waste shall not be applied to an area in active production of food for human consumption.

(12) A spray irrigation field for an individual residence shall also have ~~[the following additional requirements:]~~

(a) At least three (3) sprinkler heads;

(b) A spray area larger than 0.19 acre; and

(c) A spray area larger than 0.38 acres if the slope is equal to or greater than six (6) percent.

Section 22. Requirements for WWTPs that Serve an Individual Residence. (1) A wastewater plant intended to serve an individual residence and eligible for a general KPDES permit pursuant to 401 KAR 5:055 shall have, at minimum, the following treatment processes:

(a) Extended aeration;

(b) Filtration; and

(c) Disinfection.

(2) The WWTP shall be capable of meeting the final effluent limitations of the general permit.

(3) The WWTP shall be capable of meeting secondary treatment requirements of 401 KAR 5:045 prior to filtration.

(4) The cabinet may allow an alternative or additional treatment process to extended aeration if an alternative process is necessary to meet the requirements of a general permit issued pursuant to 401 KAR 5:055.

(5) A minimum lot size of one (1) acre shall be provided for WWTPs ~~[located within a residential subdivision]~~. The cabinet may grant a variance to the one (1) acre limitation established in this subsection if the WWTP owner demonstrates that the WWTP will not adversely affect water quality.

(6) A WWTP serving an individual residence and proposing effluent disposal by spray irrigation shall also comply with Section 21 of this administrative regulation.

(7) Setback restrictions for a treatment system serving an individual residence shall not be less than the setback restrictions established by 902 KAR 10:085, Section 8, Table 7.

(8) An applicant may submit to the cabinet only one (1) of the two (2) [three (3)] copies of the plans and specifications required pursuant to Section 6 of this administrative regulation.

Section 23. Additional Requirements for extended aeration WWTPs that Serve Car Washes or Laundries. An extended aeration WWTP that serves a commercial or fleet car wash, commercial laundry, or laundry serving commercial or institutional establishment, shall have an average daily flow from other biochemically degradable sources that is at least four (4) times greater than the anticipated flow of the car wash, commercial laundry, or laundry serving a commercial or institutional establishment.

Section 24. The Construction Permit. (1)(a) A permit to construct a facility shall be effective upon issuance unless otherwise conditioned.

(b) If construction is not commenced within the twenty-four (24) months following a permit's issuance, a new permit shall be obtained before construction may begin.

(2)(a) The permittee shall submit the certification from an engineer that the facility was constructed in conformity with the plans and specifications approved by the cabinet in accordance with this administrative regulation within thirty (30) days from the completion of construction.

(b) The permittee shall certify the completion of construction for a project not designed by an engineer.

(c) If construction has not been completed within five (5) years

of the permit issuance date the permit shall expire and a new permit shall be required.

(3) Permit conditions.

(a) Permits may contain special conditions that ~~in the best professional judgment of the cabinet~~ are necessary to comply with KRS Chapter 224 and 401 KAR Chapters 4 through 11. The conditions shall be in writing and treated as a part of the permit.

(b) The following conditions shall apply to all construction permits:

1. There shall not be deviations from the plans and specifications submitted with the application or the conditions specified in this subsection, unless authorized in writing by the cabinet; and

2. The permittee shall ensure that the effluent is of satisfactory quality to prevent violations of the standards in 401 KAR Chapter 5 and 401 KAR Chapter 10.

(c) The following conditions shall also apply to a construction permit issued to a WWTP that discharges to waters of the Commonwealth:

1. If a sewer system served by a regional facility becomes available, the WWTP shall be abandoned and the influent flow shall be diverted to the regional facility; and

2. Issuance of this permit shall not relieve the permittee from the responsibility of obtaining other permits or licenses required by this cabinet and other state, federal, or local agencies.

(4) The construction permit for agricultural waste handling system may be used as an interim operational permit until the operational permit is issued or denied.

(5) The issuance of a permit by the cabinet shall not convey any property rights of any kind or any exclusive privilege.

Section 25. Kentucky No Discharge Operational Permits (KNDOPs). A Kentucky No Discharge Operational Permit (KNDOP) shall only be issued to a facility that does not discharge and does not intend to discharge to waters of the Commonwealth, including agricultural waste handling systems and facilities that dispose of effluent by spray irrigation. (1) Nutrient Management Plans. An animal feeding operation shall have a nutrient management plan that contains the information required by Subsection (2) of this section and that is consistent with the Agriculture Water Quality Act, KRS 224.71-100 through 224.71-145 and the NRCS Conservation Practice Standard Nutrient Management Code 590 for Kentucky, NRCS, Kentucky (January 2013).

(2) The nutrient management plan shall ~~to the extent applicable, also address the following elements~~:

(a) Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;

(b) Ensure proper management of animal mortalities established in KRS 257.160 to ensure that they shall not be disposed of in liquid manure, stormwater~~storm-water~~, or process wastewater storage or treatment system;

(c) Ensure that clean water shall be diverted from the production area;

(d) Prevent direct contact of confined animals with waters of the Commonwealth;

(e) Ensure that chemicals and other contaminants handled on-site shall not be disposed of in manure, litter, process wastewater, or stormwater~~storm-water~~ storage or treatment system, unless specifically designed to treat chemicals and other contaminants;

(f) Identify site-specific conservation practices to be implemented to control runoff of pollutants to waters of the Commonwealth;

(g) Identify protocols for testing of manure, litter, process wastewater, and soil;

(h) Establish protocols to land apply manure, litter, or process wastewater in accordance with site-specific nutrient management practices that ensure agricultural utilization of the nutrients in the manure, litter, or process wastewater; and

(i) Large animal feeding operations shall identify records that shall be maintained to document the implementation and management of the minimum elements described in paragraphs (a) through (h) of this subsection.

(3) Additional Measures for Large Animal Feeding Operations.

(a) Visual inspections. There shall be routine visual inspections of the production area. The following shall be visually inspected:

1. Weekly inspections of all stormwater~~storm-water~~ diversion devices, runoff diversion structures, and devices channeling contaminated stormwater~~storm-water~~ to the wastewater and manure storage and containment structure;

2. Daily inspections of drinking water or cooling water lines; and

3. Weekly inspections of the manure, litter, and process wastewater impoundments. The inspection shall note the level in liquid impoundments as indicated by the depth marker in paragraph (b) of this subsection.

(b) Depth marker. An open surface liquid impoundment shall have a depth marker that clearly indicates the storage capacity.

(c) Corrective actions. A deficiency found as a result of an inspection shall be corrected.

(d) Mortality handling. A mortality shall not be disposed of in liquid manure or process wastewater system and shall be handled in a way that prevents the discharge of pollutants to surface water.

(4) Record Keeping Requirements for Large Animal Feeding Operation~~the~~ Production Areas~~Area~~. Each AFO shall maintain on-site, for a period of five (5) years from the date they are created, a complete copy of the information required by subsection (2)(i) of this section, and the records specified in paragraphs (a) through (f) of this subsection. The AFO shall make these records available to the cabinet for review upon request.

(a) Records documenting the inspections required pursuant to subsection (3)(a) of this section;

(b) Weekly records of the depth of the manure and process wastewater in the liquid impoundment as indicated by the depth marker pursuant to subsection (3)(b) of this section;

(c) Records documenting an action taken to correct deficiencies required pursuant to subsection (3)(c) of this section. Deficiencies not corrected within thirty (30) days shall be accompanied by an explanation of the factors preventing immediate correction;

(d) Records of mortalities management and practices used by the AFO to meet the requirements of subsection (3)(d) of this section;

(e) Records documenting the current design of manure or litter storage structures, including volume for solids accumulation, design treatment volume, total design volume, and approximate number of days of storage capacity; and

(f) Records of the date, time, and estimated volume of any overflow.

(5) Recordkeeping requirement for the land application areas.

(a) Each AFO shall maintain on-site a copy of its site-specific nutrient management plan.

(b) Each AFO shall maintain on-site for a period of five (5) years from the date it was created a complete copy of the information required by the permit application Short Form B, the information required by subsection (2)(i) of this section, and the records specified in paragraphs (a) through (j) of this subsection.

(c) The AFO shall make~~these records~~ available to the cabinet for review upon request~~;~~:

1. Expected crop yields;

2. The date manure, litter, or process waste water is applied to each field;

3. Weather conditions at time of application and for twenty-four (24) hours prior to and following application;

4. Test methods used to sample and analyze manure, litter, process waste water, and soil;

5. Results from manure, litter, process waste water, and soil sampling;

6. Explanation of the basis for determining manure application rates~~, as provided in the NRCS Conservation Standard Practice Code 590 for Kentucky~~;

7. Calculations showing the total nitrogen and phosphorus to be applied to each field, including sources other than manure, litter, or process wastewater;

8. Total amount of nitrogen and phosphorus applied to each field, including documentation of calculations for the total amount applied;

9. The method used to apply the manure, litter, or process

wastewater; and

10. Each date of manure application equipment inspection.

(6) If an animal feeding operation does not discharge, does not intend to discharge, and obtains a Kentucky No-Discharge Operational Permit pursuant to this section, the cabinet shall not consider the animal feeding operation a CAFO.

(7) ~~KNDOP~~ permit conditions.

(a) A permit may contain special conditions that ~~[in the best professional judgment of the cabinet]~~ are necessary to comply with KRS Chapter 224 and 401 KAR Chapters 4 through 11.

(b) The conditions shall be in writing and shall be treated as part of the permit.

(c) ~~The following conditions shall apply to all KNDOPs.~~

4-] There shall not be a point source discharge of wastewater from the facility.

~~(d)[2-]~~ The permit authorizes operation only of the WWTP described in the permit in the manner and under the conditions ~~established~~~~[described]~~ in the permit application and supporting documents as approved by the cabinet in the permit.

~~(e)[3-a.]~~ The permit shall not be construed as authorizing:

1. An operation that is otherwise in contravention of a statute, administrative regulation, ordinance, or order of a governmental unit.

~~2.[b. The permit shall not be construed to authorize]~~ The creation or maintenance of a nuisance.

~~(f)[4-a.]~~ The permit shall be subject to revocation or modification by the cabinet as established in KRS~~[Subchapter]~~ 224.10-100.

~~(g)[b-]~~ Commencement of a routine point source discharge shall result in a permit revocation.

~~(h)[5-]~~ A permit shall be issued in accordance with the provisions of KRS Chapter 224 and 401 KAR Chapters 4 through 11. Issuance of the permit shall not relieve the permittee from the responsibility of obtaining any other permits or licenses required by the cabinet and other state, federal, and local agencies.

~~(i)[6-]~~ If applicable, the waste materials removed from the settling basin shall be disposed of according to the requirements of the Division of Waste Management in 401 KAR Chapters 30 through 49.

~~(j)[7-]~~ Land application that results in runoff to a stream shall be prohibited.

Section 26. Kentucky Intersystem Operational Permits (KISOPs). A KISOP shall be issued to publicly or privately owned sewer systems that discharge to a WWTP or a sewer system that is owned by another person. (1) A KISOP shall not apply to sewer systems with less than 5,000 linear feet of sewer line.

(2) A KISOP shall not apply to a sewer system that discharges to a POTW if the system is subject to a local permit pursuant to the pretreatment program established in 401 KAR ~~5:055~~~~[5:057]~~.

(3) A KISOP shall be issued to the applicant and the permittee shall remain the responsible party until a Transfer of Permit Request form~~[change in ownership certification]~~ is submitted and the transfer of the permit~~[ownership]~~ is acknowledged by the cabinet.

(4) Permits may contain special conditions that ~~[in the best professional judgment of the cabinet]~~ are necessary to comply with KRS Chapter 224 and 401 KAR Chapters 4 through 11. The conditions shall be in writing and shall be treated as a part of the permit.

Section 27. Operational Permits. An operational permit required in Sections 25 and 26 of this administrative regulation shall be valid for five (5) years from the date of issuance and shall be renewed to maintain continuous operation. (1) The operational permit shall specify the type of monitoring or analysis required for a facility, and the frequency that the monitoring or analysis shall be performed and reported to the cabinet.

(2) The facility, including backup or auxiliary components, shall be operated and maintained to ensure compliance with permit requirements and this administrative regulation.

Section 28. Transfer of Operating Permits. (1) An operating

permit shall be issued to the applicant, and the permittee shall remain the responsible party for compliance with the permit until:

(a) A Transfer of Permit Request form~~[change in ownership certification]~~ is submitted by the new owner and the transfer of the permit~~[ownership]~~ is acknowledged by the cabinet; or

(b) The current permittee has submitted a Transfer of Permit Request form~~[change in ownership certification]~~ and the transfer of the permit has been acknowledged by the cabinet.

(2) A Transfer of Permit Request form~~[change in ownership certification]~~ submitted by the current permittee without the signature of the new permittee~~[owner]~~ shall include a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them.

(3) A transfer of permit request~~[change in ownership certification]~~ shall serve as an application for a minor modification of the operating permit.

(4) Transfer of operating permits issued pursuant to Sections 25 and 26 of this administrative regulation shall be as established in C.F.R. 122.61.

Section 29. Alternative Requirements. (1) The cabinet may approve alternative requirements to the provisions of Sections 7 to 23 of this administrative regulation if ~~the cabinet determines~~~~[based on the cabinet's best professional judgment]~~ that the alternative measure provides sufficient treatment, or transport.

(2) The applicant shall demonstrate that an alternative requested by the applicant provides sufficient treatment or transport.

Section 30. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Recommended Standards for Wastewater Facilities, 2014 Edition, A Report of the Wastewater Committee of the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, 2014"~~[Recommended Standards for Wastewater Facilities", 2004, Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers]~~. This document is also known as the "Ten States' Standards";

(b) ~~"Water Policy Memorandum No. 84-02, Five Mile Limit Policy, signed by T. Michael Taimi, August 28, 1984", Facilities Construction Branch;~~

(c) ~~"Construction Permit Application for Wastewater Treatment Plant, DEP No. 7071-W1 (3/2018)[DEP 7071-W (2/2009)]";~~

~~(d) "Construction Permit Application for Clean Water Collection System, DEP No. 7071-S1 (3/2018)" [Sewer Line Extension, DEP 7071-S (9/96)], Facilities Construction Branch;~~

~~(e) "Change in Ownership Certification for Sewer Line Extensions, DEP 7071-CO (9/96)", Facilities Construction Branch;~~

~~(f) "Transfer of Permit Request" ["Change in Ownership Certification], DEP 7032-CO (3/2018)[(2/2009)]";~~

~~(g) "No Discharge Certification, DEP 7032-NDC (3/2018)[(2/2009)]";~~

~~(h) "Kentucky No Discharge Operational Permit for Closed Loop and Spray Irrigation Systems Application, DEP 7033-ND (3/2018)[(2/2009)]";~~

~~(i) "Kentucky No Discharge Operational Permit Application for Agricultural Wastes Handling Systems, Short Form B, DEP 7033-B-ND (3/2018)[(2/2009)]";~~

~~(j) "Site Survey Request, Kentucky No Discharge Operational Permit for Agricultural Wastes Handling System, DEP 7032-Ag-Site (9/96)";~~

~~(k) "Kentucky Intersystem Operational Permit Application, DEP 7103 (3/2018)[(2/2009)]"; and~~

~~(l) "NRCS Conservation Practice Standard Nutrient Management Code 590 for Kentucky, NRCS, Kentucky, (January 2013)[(5/24/04)]".~~

~~(m) "Combined Sewer Overflow (CSO) Control Policy", U.S. EPA, 59 Federal Register 18688, April 1994.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through

Friday, 8 a.m. to 4:30 p.m. This material is also available on the division's Web site at <http://water.ky.gov>.

(3)(a) "Recommended Standards for Wastewater Facilities, 2014 Edition, A Report of the Wastewater Committee of the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, 2014" may also be obtained at <http://10statesstandards.com/wastewaterstandards.pdf>.

(b) "Combined Sewer Overflow (CSO) Control Policy, U.S. EPA, 59 Federal Register 18688, April 1994" may also be obtained at <https://www.epa.gov/sites/production/files/2015-10/documents/owm0111.pdf>.

(c) "NRCS Conservation Practice Standard Nutrient Management Code 590 for Kentucky, NRCS, Kentucky, (January 2013)" may also be obtained at [https://efotg.sc.egov.usda.gov/references/Delete/2013-11-9/Nutrient_Management_Std_\(590\).pdf](https://efotg.sc.egov.usda.gov/references/Delete/2013-11-9/Nutrient_Management_Std_(590).pdf).

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2018 at 6:00 p.m. Eastern Time at the Department for Environmental Protection, Training Room A, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the issuance of permits for the construction, modification, and operation of facilities authorized under KRS Chapter 224, and a schedule of fees to recover the costs of issuance for certain classes of permits.

(b) The necessity of this administrative regulation: This administrative regulation provides specific requirements for construction and modification of wastewater treatment facilities. This administrative regulation is necessary to implement the goal of KRS 224 to control water pollution in the Commonwealth and to address environmental goals of KRS 224 that are not covered under federal law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.10-100 which authorizes the cabinet to issue, continue in effect, revoke, modify, suspend, or deny permits to discharge into waters of the Commonwealth, and for the installation, alteration, expansion, or operation of any sewage system. KRS 224.16-050 allows the cabinet to issue federal permits pursuant to the Federal Water Pollution Control Act and to certify that applicants for a federal permit for the construction or operation of facilities which may result in a discharge into waters of the Commonwealth will comply with the applicable provisions of the Federal Water Pollution Control Act. KRS 224.16-060 establishes the cabinet as the water pollution agency for the Commonwealth for all purposes of the Water Pollution Control Act. KRS 224.70-

100 establishes the purposes of KRS Chapter 224 is to protect, prevent, and abate water pollution within the Commonwealth. KRS 224.70-110 prohibits discharges into any waters of the Commonwealth that may cause or contribute to water pollution.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific requirements for several categories of construction permits and no-discharge operating permits. Additionally, this administrative regulation incorporates by reference application forms and standards documents relevant to the permitting process.

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

(a) How the amendment will change this existing administrative regulation: The amendments remove an outdated Executive Order and correct inaccurate KRS and KAR citations, make technical grammatical changes, remove the Five Mile Policy from Materials Incorporated by Reference and place the language within the regulation, update Materials Incorporated by Reference and correct other document references, reduces the number of plans and specifications required, adds peracetic acid system as a treatment alternative, removes a flow equalization basin volume formula which has limited application, reduces the number of plans and specifications required to be submitted and providing for electronic copies, clarifies recordkeeping requirements for large AFOs, establishes a one-acre variance if the WWTP will not cause additional loading of pollutants of concern to waters of the Commonwealth, adds a KRS reference to animal mortality management, and establishes a five (5) year validity period for construction permits, and gives the cabinet and systems flexibility to allow line extensions and new taps when a system has improved its capacity to handle the additional flow.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify the responsibilities of both the cabinet and regulated community and to align the regulation with current practice. The details provided in this amendment assist in carrying out the goals of KRS Chapter 224.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.10-100 which authorizes the cabinet to issue, continue in effect, revoke, modify, suspend, or deny permits to discharge into waters of the Commonwealth, and for the installation, alteration, expansion, or operation of any sewage system. KRS 224.16-050 allows the cabinet to issue federal permits pursuant to the Federal Water Pollution Control Act and to certify that applicants for a federal permit for the construction or operation of facilities which may result in a discharge into waters of the Commonwealth will comply with the applicable provisions of the Federal Water Pollution Control Act. KRS 224.16-060 establishes the cabinet as the water pollution agency for the Commonwealth for all purposes of the Water Pollution Control Act. KRS 224.70-100 establishes the purposes of KRS Chapter 224 is to protect, prevent, and abate water pollution within the Commonwealth. KRS 224.70-110 prohibits discharges into any waters of the Commonwealth that may cause or contribute to water pollution.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the responsibilities of both the cabinet and regulated community, and aligns the regulation with current practice. The details provided in this amendment assist in carrying out the goals of KRS Chapter 224.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to approximately 3,500 existing permitted entities including individuals, businesses, and organizations that have or apply for permits issued solely under state authority (construction, Kentucky Intersystem Operational Permits, and Kentucky No Discharge Operational Permits). After analysis of the current types of permits, the amendment is expected to impact the following number of entities:

a. Individuals: Approximately 1,200 through construction

permits and KNDOPs for residences are affected by this regulation, but no new impact is expected.

b. Businesses: Approximately 1,050 through construction permits linked to KPDES permits and KNDOPs related to Animal Feeding Operations are affected by this regulation, but no new impact is expected.

c. Organizations: Approximately one hundred (100) civic, non-profit, professional, or religious organizations through construction permits linked to KPDES sanitary wastewater discharges and KNDOPs related to sanitary wastewater treatment are affected by this regulation, but no new impact is expected.

d. State or Local Government: Approximately 1,200 through construction permits for KPDES sanitary wastewater discharges, municipal wastewater, KISOPs related to inter-system transfers, and KNDOPs related to sanitary wastewater treatment are affected by this regulation, but no new impact is expected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will need to submit the revised application forms for permits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will not result in an increase in costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will benefit from a more clearly defined permitting process, improved forms, and a better environment.

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

(a) Initially: This amendment will not result in additional costs.

(b) On a continuing basis: This amendment will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Permit fees, state general funds, and federal EPA funds. This amendment will not require a change in funding sources.

(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:

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes permit fees for constructing new or modified wastewater treatment plants but the cabinet is not proposing amendments to these permit fees.

(9) TIERING: Is tiering applied? Yes, permit requirements and fees are tiered based upon the nature and size of the wastewater discharge.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects wastewater treatment systems that discharge to waters of the Commonwealth or that operate sewage systems. This administrative regulation affects all units of state or local government that have a KPDES discharge permit or a KNDOP permit for wastewater.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 224.10-110, 224.16-050, 224.16-060, 224.70-100, 224.70-110

(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.

(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? The amendments to this administrative regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? The amendments to this administrative regulation will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: The amendments to this administrative regulation will not result in increased revenue or expenditures.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation relating to the construction requirements for wastewater treatment facilities.

2. State compliance standards. KRS 224.10-100(5), 224.10-110, 224.16-050, 224.16-060, 224.70-100, 224.70-110

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate relating to construction requirements for wastewater treatment facilities.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No. there is no federal mandate relating to construction requirements for wastewater treatment facilities.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate relating to construction requirements for wastewater treatment facilities.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Amendment)

401 KAR 5:006. Wastewater planning requirements for regional planning agencies.

RELATES TO: KRS Chapters 67, 67A, 74, 76, 96, 108, 220, 224.10-100, 224.70-100, 224.70-110, 424, 33 U.S.C. 1251-1387

STATUTORY AUTHORITY: KRS 224.10-100, 224.70-100, 224.70-110, 40 C.F.R. 130, 33 U.S.C. 1288, 1313

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 and 224.70-100 require[requires] the Energy and Environment Cabinet to develop a comprehensive plan for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. 33 U.S.C. 1313(e) requires each state to establish and maintain a continuing planning process to provide for the control of water pollution. 33 U.S.C. 1288 requires the governor of the state or local officials to designate a boundary for areas within the state and a single representative organization within each area to develop a wastewater treatment management plan applicable to all wastewater generated within an area. 40 C.F.R. 130.6 requires the state and areawide agencies to update the plans as needed to reflect changing water quality conditions, results of implementation actions, and new requirements, or to remove conditions in prior conditional or partial plan approvals. This administrative regulation establishes Kentucky's regional facility planning process for publicly-owned wastewater treatment works that are, or result in, point sources of water pollution in designated planning areas.

Section 1. Applicability. (1) A governmental entity, such as a city, county, or other public body created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220, may apply for designation as a regional planning agency. An applicant for designation as a regional planning agency shall submit a regional facility plan to the cabinet.

(2) The cabinet shall designate a regional planning agency in accordance with 33 U.S.C. 1288(a)(2) and (3).

(3) The cabinet shall de-designate a regional planning agency if the regional planning agency:

(a) ~~[The regional planning agency]~~ Requests de-designation;

(b) ~~[The regional planning agency]~~ Fails to meet its planning obligations as specified in a grant agreement, contract, or memorandum of understanding; or

(c) ~~[The regional planning agency]~~ No longer has the resources or the commitment to continue water quality planning activities within the designated boundary.

(4) If a regional planning agency is de-designated, the cabinet shall assume responsibility for continued water quality planning and oversight of implementation of planning activities within the regional planning area.

(5) The cabinet shall not designate an entity as a regional planning agency if that entity does not have authority to meet the requirements established in 33 U.S.C. 1288(c)(2)(A) through (I).

Section 2. Requirement to Submit a Regional Facility Plan. (1) An applicant for designation as a new regional planning agency shall submit a regional facility plan to the cabinet.

(2) An existing regional planning agency shall submit a regional facility plan if:

(a) A new wastewater treatment facility is proposed for construction within the planning area;

(b) An existing regional planning agency proposes to expand the average daily design capacity of an existing wastewater treatment facility by more than thirty (30) percent; or

(c) The equivalent population served by an existing wastewater collection system or a system with a Kentucky Inter-System Operating Permit is proposed for expansion by more than thirty (30) percent of the population served in the previously approved regional facility plan.

(3) A regional planning agency shall request a pre-planning meeting with the cabinet before submitting a regional facility plan.

(4) One (1) [Two (2)] paper copy[copies] and one (1) electronic copy of the regional facility plan shall be submitted to the cabinet and [One (1) copy] shall be certified in a manner that meets the requirements established in 201 KAR 18:104.

Section 3. Contents of a Regional Facility Plan. (1) A regional facility plan shall include adequate information to allow for an environmental assessment of the projects proposed in the regional facility plan that are ready to begin construction within ~~[the first]~~ twenty-four (24) months of the ~~cabinet's approval of the plan[planning period]~~ and to assure that a cost-effective and environmentally sound means of achieving the established water quality goals can be implemented.

(2) A regional facility plan ~~[shall be consistent with the Regional Facility Plan Guidance and]~~ shall include:

(a) An executive [A regional facility plan] summary of the findings presented in subsequent sections;

(b) A statement of the purpose of and need for the regional facility plan, including documentation of existing water quality or public health problems related to wastewater in the planning area;

(c) A description of the:

1. Physical characteristics of the planning area;

2. ~~[(d) A description of the]~~ Socioeconomic characteristics of the planning area;

3. ~~[(e) A description of the]~~ Existing environment in the planning area;

4. ~~[(f) A description of the]~~ Existing wastewater collection and treatment facilities in the planning area; and

5. Discharge permit conditions and compliance with those conditions;

~~[(d) [(g)]]~~ A forecast of flows and waste loads for the planning

area;

~~[(e) [(h)]]~~ A detailed evaluation of each alternative which shall include [alternatives, along with]

1. A twenty (20) year present worth cost analysis for each alternative with sufficient detail to determine the most cost-effective alternatives.

2. All wastewater management alternatives considered, including no action, and the basis for the engineering judgment for selection of the alternatives chosen for detailed evaluation ~~[- shall be included].~~

3. Sufficient detail ~~[shall be provided]~~ to allow for a thorough cost analysis ~~[to be conducted].~~

4. Nonmonetary effectiveness criteria shall ~~include [be limited to]~~ implementability, environmental impact, ~~constructability [engineering — evaluation],~~ public support, ~~decentralization,~~ and regionalization.

5. Intended sources of funding and estimated user fees.

6. The alternatives shall reflect a comprehensive regional plan for the planning area and shall minimize the number of point source discharges. ~~[Intended sources of funding shall be listed along with estimated user fees;]~~

~~[(f) [(i)]]~~ Cross-cutter correspondence and mitigation which shall include certification from the regional planning agency of its commitment to all required mitigative action;

~~[(g) [(j)]]~~ An evaluation of the recommended regional facility plan; and

~~[(h) [(k)]]~~ Documentation of public participation.

1. A certified copy of the advertisement for the public hearing required by Section 5 of this administrative regulation, an attendance log or sign-in sheet, a copy of the minutes of the public hearing, and written comments and responses shall be submitted as part of the regional facility plan.

2. If more than one (1) public hearing is held or if there are public meetings or public notices about the project, a copy of all documentation of these events shall be submitted as part of the regional facility plan.

~~[3. At the required public hearing, the scope of the project, cost of the project, alternatives considered, and estimated user charges and hook-up fees shall be discussed.]~~

(3) The items required in subsection 2(c) through (f) [(2) (f) through (h)] of this section shall be prepared by, or under the direct supervision of, a professional engineer licensed in Kentucky.

Section 4. Requirement to Submit an Asset Inventory Report.

(1) An asset inventory report shall be submitted to the cabinet if:

(a) It has been ten (10) years since the cabinet approved the [last [regional planning agency submitted a] regional facility plan or asset inventory report; and

(b) Section 2(2) of this administrative regulation does not require the regional planning agency to submit a regional facility plan.

(c) A major facility shall submit the regional facility plan using the Water Resources Inventory System (WRIS). A minor facility may submit the regional facility plan using WRIS or the Asset Inventory Report form.

(2) The regional planning agency shall submit ~~[the following information on the Asset Inventory Report Form]:~~

(a) Wastewater facility data;

(b) Revenue and expenses;

(c) Asset inventory;

(d) Project prioritization;

(e) Funding plan;

(f) Copies of supporting documentation; and

(g) Certification statement from a designated official.

(3) The cabinet shall issue to the regional planning agency an assessment report that provides recommendations related to facility planning, operation, and management that ensure continuing compliance and protection of surface water and groundwater.

(4) The cabinet shall provide public notice of its assessment of the Asset Inventory Report on its Web site for thirty (30) days.

(5) The public shall have an opportunity to comment on the cabinet's assessment of the asset inventory report and the period

for comment shall remain open for thirty (30) days from the date of the first publication of the report. ~~[(6)(a) If it has been ten (10) years or more since the approval of a regional planning agency's regional facility plan, the regional planning agency shall submit an asset inventory report to the cabinet by July 1, 2012.~~

~~(b) A subsequent asset inventory report shall be due to the cabinet ten (10) years from the approval date of the regional facility plan or asset inventory report, whichever is most recent.]~~

Section 5. Public Notice, Public Comment, and Public Hearing Requirements. (1) Prior to final agency action on the regional facility plan, the regional planning agency shall publish notice of its draft plan and shall hold a public hearing on the draft plan. Public notice of the draft plan and the public hearing shall be provided pursuant to KRS Chapter 424.

(2) A public notice issued pursuant to this administrative regulation shall contain ~~the following information~~:

(a) The name and address of the regional planning agency that is proposing the plan;

(b) A brief description of the contents of the draft plan and the area to be served;

(c) The name, address, and telephone number of persons from whom interested persons may obtain further information and a copy of the draft regional facility plan;

(d) A brief description of the public's right to comment on the draft regional facility plan and the procedures for commenting;

(e) The date of previous public notices relating to the draft regional facility plan;

(f) The date, time, and place of the public hearing on the draft plan; and

g) A brief description of the nature and purpose of the hearing.

(3) The planning agency shall provide a copy of the public notice and the draft plan to the cabinet for publication on its Web site at least thirty (30) days prior to the public hearing.

(4) At the required public hearing, the scope of the project, cost of the project, alternatives considered, and estimated user charges and hook-up fees shall be discussed.

~~(5)~~(4) The public shall have an opportunity to comment on the draft plan and the period for comment shall remain open for thirty (30) days from the date of the first publication of the notice of the public hearing or until the termination of the hearing, whichever is later. The regional planning agency may extend the public comment period, on request, if it believes additional public input is necessary.

~~(6)~~(5) A person may submit written or oral comments and data to the regional planning agency concerning the draft regional facility plan. In the interest of time and efficiency, limits may be set up on the time allowed for oral statements and the submission of statements in writing may be required.

~~(7)~~(6) All persons who believe any condition of the draft plan is inappropriate, inaccurate, incomplete, or otherwise not in the best interest of the public and the environment, shall raise all reasonably ascertainable issues and submit all reasonably available arguments and factual background supporting their position, including all supporting materials, by the close of the public comment period.

Section 6. Regional Facility Plan Review. (1) The cabinet shall prepare an environmental assessment report summarizing the regional facility plan.

(a) The cabinet shall submit the environmental assessment report to the State Clearinghouse for review and comments to identify potentially adverse impacts resulting from the proposed projects ~~[that are ready to begin construction within the first twenty-four (24) months of the planning period].~~

(b) The cabinet shall provide public notice of the environmental assessment report on its Web site for thirty (30) days.

(c) The public shall have an opportunity to comment on the environmental assessment report, and the period of comment shall remain open for thirty (30) days from the date of the first publication of the report.

(d) The cabinet may identify measures in the environmental assessment report to avoid, minimize, or reduce potentially

adverse environmental impacts.

(2) The cabinet shall issue a determination to approve or deny a regional facility plan within 120 calendar days of receipt of a complete regional facility plan.

(3) If the regional facility plan is submitted consistent with the requirements of this administrative regulation and addresses water quality or public health problems related to wastewater, the cabinet shall approve the regional facility plan.

(4) KPDES and facility construction permit decisions shall be made in accordance with approved regional facility plans, as established in 40 C.F.R. 130.12(a) and (b).

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

~~(a) "Regional Facility Plan Guidance", February 2011; and~~

~~(b) "Asset Inventory Report Form", DEP No. DOW0501 February 2011 is incorporated by reference.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained through the Division of Water's Web site at <http://water.ky.gov>.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2018 at 6:00 p.m. Eastern Time at the Department for Environmental Protection, Training Room A, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Kentucky's regional facility planning process for publicly-owned wastewater treatment works that are, or result in, point sources of water pollution in designated planning areas.

(b) The necessity of this administrative regulation: This administrative regulation requires regional planning agencies to perform facility planning for point sources of pollution in designated planning areas for protecting, maintaining, and improving water quality. The facility planning process is a key element of the comprehensive plan for the management of water resources as required by KRS 224.10-100, 224.70-100, and federal law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 and 224.70-100 require the Energy and Environment Cabinet to develop a comprehensive plan for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. 33 U.S.C. 1313(e) requires each state to establish and maintain a continuing planning process to provide for the control of water pollution. 33 U.S.C. 1288 requires the governor of the state

or local officials to designate a boundary for areas within the state and a single representative organization within each area to develop a wastewater treatment management plan applicable to all wastewater generated within an area. 40 C.F.R. 130.6 requires the state and areawide agencies to update the plans as needed to reflect changing water quality conditions, results of implementation actions, and new requirements, or to remove conditions in prior conditional or partial plan approvals. This administrative regulation establishes Kentucky's regional facility planning process for publicly-owned wastewater treatment works that are, or result in, point sources of water pollution in designated planning areas.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation serves as an important component of the federally required continuous planning process, and comprehensive plans for the management of water resources as required by KRS 224.10-100 and 224.70-100.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation will correct KRS and KAR citations, align language with current LRC standards, reduce the number of hard copies of plans needed for submission to facilitate electronic submissions, clarify that major systems use the WRIS system and minor systems have the flexibility to use WRIS or the Asset Inventory Report Form to submit regional plans, add discharge permit conditions and compliance, constructability and decentralization, and intended sources of funding and user fees to facility plans, and remove the Guidance from materials incorporated by reference because its requirements are already in the regulation and to allow flexibility in the methods of gathering and reporting required information.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to correct and clarify regulatory requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 and 224.70-100 require the Energy and Environment Cabinet to develop a comprehensive plan for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. 33 U.S.C. 1313(e) requires each state to establish and maintain a continuing planning process to provide for the control of water pollution. 33 U.S.C. 1288 requires the governor of the state or local officials to designate a boundary for areas within the state and a single representative organization within each area to develop a wastewater treatment management plan applicable to all wastewater generated within an area. 40 C.F.R. 130.6 requires the state and areawide agencies to update the plans as needed to reflect changing water quality conditions, results of implementation actions, and new requirements, or to remove conditions in prior conditional or partial plan approvals. This administrative regulation establishes Kentucky's regional facility planning process for publicly-owned wastewater treatment works that are, or result in, point sources of water pollution in designated planning areas.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to this administrative regulation will correct and clarify the regional planning process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 255 regional planning agencies that will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation will not require any additional action on the part of regulated entities.

(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 not result in

additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The number of required hard copies of regional plans will be reduced to facilitate electronic submission, clarification that major systems use the WRIS and giving minor systems the flexibility to use either WRIS or the Asset Inventory Report Form, and more flexibility regarding compliance by removing the Guidance from the materials incorporated by reference.

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

(a) Initially: This administrative regulation will not result in additional costs.

(b) On a continuing basis: This administrative regulation will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation is implemented and enforced using state general funds and federal funds provided by the U.S. Environmental Protection Agency.

(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 will not require an increase in fees or funding.

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

(9) TIERING: Is tiering applied? Yes, tiering is applied. Whether a regional facility plan is required depends on the level of growth the regional facility experiences in a given time frame, and whether a facility is required to use the WRIS depends on whether it is a major or minor facility.

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? Regional planning agencies, including city and county governments, which have the overall responsibility for the regional facility planning process within their designated planning boundaries.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.70-100, 33 U.S.C. 1313(e), 33 U.S.C. 1288, 40 C.F.R. 130.6

(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 revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: The amendments to this administrative regulation will not generate revenue nor increase costs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 33 U.S.C. 1313(e), 33 U.S.C. 1288, 40 C.F.R. 130.6
2. State compliance standards. KRS 224.10-100, 224.70-100
3. Minimum or uniform standards contained in the federal mandate. 33 U.S.C. 1313(e) requires each state to establish and maintain a continuing planning process to provide for the control of water pollution. 33 U.S.C. 1288 requires the governor of the state or local officials to designate a boundary for areas within the state and a single representative organization within each area to develop a wastewater treatment management plan applicable to all wastewater generated within an area. 40 C.F.R. 130.6 requires the state and areawide agencies to update the plans as needed to reflect changing water quality conditions, results of implementation actions, and new requirements, or to remove conditions in prior conditional or partial plan approvals.
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 difference 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 difference responsibilities or requirements, than those required by the federal mandate.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 5:015. Releases[Spills and bypasses] to be reported to the division.

RELATES TO: KRS Chapter 224

STATUTORY AUTHORITY: KRS 224.1-400, 224.10-100[224.10-100(17)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.1-400 requires any person who possesses or controls pollutants or contaminants to immediately report certain releases of pollutants or contaminants into the environment to the cabinet. KRS 224.10-100 requires the cabinet to provide for the prevention, abatement, and control of water pollution. This administrative regulation requires that releases of pollutants or contaminants which could result in or contribute to pollution of the waters of the Commonwealth from any source other than a KPDES-permitted facility[spills and bypasses from sewage systems as defined in KRS 224.01-010(25)] be reported to the division. This administrative regulation establishes reporting timeframes and mechanisms that[Such reports] enable the division to determine what action is necessary[it need initiate] to protect public safety and mitigate or reduce the effect of the release[such spill or bypass].

Section 1. Any person having knowledge in advance of the necessity to release a pollutant or contaminant which could result in or contribute to pollution of the waters of the Commonwealth[bypass a sewage system] shall notify the Division of Water before the release[such bypass] is commenced. Notification shall be given as far in advance as possible.

Section 2. Emergency Reports. (1) If[Whenever] by reason of emergency or accident a release of pollutants or contaminants is threatened or occurs[spill or discharge occurs from a sewage system or from a container or pipeline used to transport or store substances] which could[would] result in or contribute to the pollution of the waters of the Commonwealth and which may present an imminent or substantial danger to public health or welfare, the person possessing or controlling the pollutant or contaminant shall, as soon as the person has knowledge of any

release of a pollutant or contaminant from a site to the environment,[the person in charge of such activity shall] immediately notify the Division of Water by calling the Division of Water in Frankfort at (502) 564-3410 or the appropriate regional field office of the Division of Water as established in Table 1 of this administrative regulation[the most rapid means available].

Table 1 – Division of Water Regional Field Office Contact Numbers		
Regional Office	Phone Number	Counties Served
<u>Bowling Green</u>	<u>(270) 746-7475</u>	<u>Allen, Barren, Butler, Edmonson, Grayson, Hart, Logan, Ohio, Simpson, and Warren</u>
<u>Columbia</u>	<u>(270) 384-4734</u>	<u>Adair, Boyle, Casey, Clinton, Cumberland, Green, LaRue, Lincoln, Marion, Metcalfe, Monroe, Nelson, Pulaski, Russell, Taylor, Washington, and Wayne</u>
<u>Florence</u>	<u>(859) 525-4923</u>	<u>Boone, Bracken, Campbell, Carroll, Gallatin, Grant, Henry, Kenton, Owen, Pendleton, and Trimble</u>
<u>Frankfort</u>	<u>(502) 564-3358</u>	<u>Anderson, Bourbon, Clark, Estill, Fayette, Franklin, Garrard, Harrison, Jessamine, Madison, Mercer, Nicholas, Powell, Scott, and Woodford</u>
<u>Hazard</u>	<u>(606) 435-6022</u>	<u>Breathitt, Floyd, Johnson, Knott, Lee, Letcher, Magoffin, Martin, Perry, Pike, and Wolfe</u>
<u>London</u>	<u>(606) 330-2080</u>	<u>Bell, Clay, Harlan, Jackson, Knox, Laurel, Leslie, McCreary, Owsley, Rockcastle, and Whitley</u>
<u>Louisville</u>	<u>(502) 429-7122</u>	<u>Breckinridge, Bullitt, Hardin, Jefferson, Meade, Oldham, Shelby, and Spencer</u>
<u>Madisonville</u>	<u>(270) 824-7529</u>	<u>Caldwell, Christian, Crittenden, Daviess, Hancock, Henderson, Hopkins, McLean, Muhlenberg, Todd, Union, and Webster</u>
<u>Morehead</u>	<u>(606) 783-8655</u>	<u>Bath, Boyd, Carter, Elliott, Fleming, Greenup, Lawrence, Lewis, Mason, Menifee, Montgomery, Morgan, Robertson, and Rowan</u>
<u>Paducah</u>	<u>(270) 898-8468</u>	<u>Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Livingston, Lyon, Marshall, McCracken, and Trigg</u>

(2) If a report required by this section is made during other than normal business hours, it shall be made through the twenty-four (24) hour environmental emergency telephone number at (800) 928-2380.

Section 3. (1) Any person notifying the division pursuant to Sections 1 or[and] 2 of this administrative regulation shall report:

- (a) The point of release:[discharge,]
- (b) The nature of the material released:[discharged,]
- (c) The quantity of the material released or the estimated quantity if not known:[discharged]
- (d) The date, time, and duration of the release; and
- (e) An assessment of probable environmental impact.

(2) If notification is not initially made in writing, it shall be confirmed by written notification within ten (10) days if requested by the division director or the division director's appointed representative. For each release or threatened release, the report shall identify the:

- (a) Precise location:

(b) Name, address, and phone number of the person or persons who:

1. Possesses or controls the contaminant or pollutant;
2. Has actual knowledge of the facts; and
3. Can be contacted for additional information;

(c) Specific pollutant or contaminant or hazardous substance;

(d) Concentration and quantity of the pollutant or contaminant or hazardous substance;

(e) Circumstances and cause;

(f) Efforts taken to mitigate or control;

(g) To the extent known, potential harmful effects;

(h) Transportation characteristics of the medium or matrix into which the contaminant or pollutant was released or threatened to be released;

(i) Present or proposed remedial action by the person at the site; and

(j) Additional information that may facilitate remediation of the site.

~~Section 4. [Notification required under Section 1 of this administrative regulation may be made by any mode of communication. Notification required by Section 2 of this administrative regulation shall be made by the most rapid means of communication available. If notification is not initially made in writing, it shall be confirmed by written notification within ten (10) days if requested by the division director or his appointed representative.~~

~~Section 5.] Persons failing to report as required by [in] Sections 1 through 3[, 2, 3 and 4] of this administrative regulation are subject to the penalties provided by KRS 224.99-010.~~

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2018 at 6:00 p.m. Eastern Time at the Department for Environmental Protection, Training Room A, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes reporting timeframes and mechanisms for releases or threatened releases of contaminants or pollutants that may affect public health and safety from a source other than a KPDES-permitted facility.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for proper reporting of releases or threatened releases of contaminants or pollutants to protect public health and safety.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.1-400 requires any person possessing or controlling pollutants or contaminants to report a

release of pollutants or contaminants to the cabinet. KRS 224.10-100 requires the cabinet to provide for the prevention, abatement, and control of water pollution. This administrative regulation requires that releases or threatened releases of pollutants or contaminants from a source other than a KPDES-permitted facility which could result in or contribute to pollution of the water be reported to the division. This administrative regulation establishes reporting timeframes and mechanisms that enable the division to determine what action is necessary to protect public safety and mitigate or reduce the effect of the release.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes reporting timeframes, responsibilities, and specific information for reporting releases or threatened releases of pollutants or contaminants that may be a potential threat to health or the environment from any source other than a KPDES-permitted facility.

(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 addresses and clarifies reporting timeframes, responsibilities, and contact information for the reporting of releases or threatened releases of pollutants or contaminants into waters of the Commonwealth from any source other than a KPDES-permitted facility and aligns language with current regulatory grammatical requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary so that releases or threatened releases of pollutants or contaminants from sources other than a KPDES-permitted facility will be promptly reported to the correct contact at the Division of Water to assess and mitigate any potential threat to health or the environment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.1-400 requires any person possessing or controlling pollutants or contaminants to report a release of pollutants or contaminants to the cabinet. KRS 224.10-100 requires the cabinet to provide for the prevention, abatement, and control of water pollution. This administrative regulation requires that releases or threatened releases of pollutants or contaminants from a source other than a KPDES-permitted facility which could result in or contribute to pollution of the water be reported to the division. This administrative regulation establishes reporting timeframes and mechanisms that enable the division to determine what action is necessary to protect public safety and mitigate or reduce the effect of the release.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes the most recent contact information at the Division of Water so that releases or threatened releases of pollutants or contaminants from sources other than a KPDES-permitted facility will be promptly reported, and any potential threat to health or the environment can be assessed and mitigated in a timely manner.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to a release or threatened release of pollutants or contaminants from any source other than a KPDES-permitted facility. This administrative regulation affects any individual, business, organization, or state and local government that possesses or controls a pollutant or contaminant that is spilled or released into waters of the Commonwealth and may endanger health or the environment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will not need to take any additional actions to comply with this regulation.

(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 not result in

additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected entities will have the most current contact information at the Division of Water for reporting releases or threatened releases of contaminants or pollutants.

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

(a) Initially: This administrative regulation will not result in additional costs.

(b) On a continuing basis: This administrative regulation will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing general funds and potentially EPA funds under the federal Safe Drinking Water Act and Clean Water Act.

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

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

(9) TIERING: Is tiering applied? No. This administrative regulation establishes a reporting mechanism and requirements for releases or threatened releases of pollutants or contaminants from any source other than a KPDES-permitted facility.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects all units of state or local government that may release a contaminant or pollutant from a source other than a KPDES-permitted facility.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.1-400, 224.10-100

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: This administrative regulation updates the reporting mechanism for releases or threatened releases of contaminants or pollutants from a source other than a KPDES-permitted facility. It will not generate additional revenue or result in additional costs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal

mandate. There is no equivalent federal mandate.

2. State compliance standards. KRS 224.1-400, 224.10-100

3. Minimum or uniform standards contained in the federal mandate. There is no equivalent federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no equivalent federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no equivalent federal mandate.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Amendment)

401 KAR 5:037. Groundwater protection plans.

RELATES TO: KRS 151.110, [151.232,]Chapter 224[,-SB-241]

STATUTORY AUTHORITY: KRS[224.01-010,] 224.10-100, 224.70-100, 224.70-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 and 70-100 require the cabinet to provide for the prevention, abatement, and control of all water pollution. KRS 224.10-100 authorizes the cabinet to promulgate administrative regulations to achieve the objectives of KRS Chapter 224. KRS 224.70-110 generally prohibits any form of water pollution in contravention of administrative regulations promulgated by the cabinet. This administrative regulation identifies certain activities for which groundwater protection plans shall be prepared and implemented to prevent groundwater pollution and ensure protection for current and future uses of groundwater. This administrative regulation also identifies certain activities for which groundwater protection plans are not required.[KRS Chapter 224 requires the cabinet to adopt administrative regulations to protect waters of the Commonwealth and to prevent pollution of waters of the Commonwealth. This administrative regulation establishes the requirement to prepare and to implement groundwater protection plans to ensure protection for all current and future uses of groundwater and to prevent groundwater pollution.]

Section 1. Definitions.[The following definitions describe terms used in this administrative regulation.] Terms not defined below shall have the meanings given to them by KRS 224.1-010 and 401 KAR 5:002[224.01-010 or if not so defined, the meanings attributed by common use]. (1) "Abandoned well" means a well not currently in use and not intended for future use.

(2) "Agriculture operation" is defined by KRS 224.71-100[means any farm operation on a tract of land, including all income-producing improvements and farm dwellings, together with other farm buildings and structures incident to the operation and maintenance of farms, situated on ten (10) contiguous acres or more of land used for the production of livestock, livestock products, poultry, poultry products, milk, milk products, or silviculture products, or for the growing of crops such as, but not limited to, tobacco, corn, soybeans, small grains, fruit and vegetables; or devoted to and meeting the requirements and qualifications for payment to agriculture programs under an agreement with the state or federal government].

(3) "Best management practices" is defined by 401 KAR 5:002[means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the Commonwealth. Best management practices also include treatment requirements, operating procedures, and practices to control plant site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage].

(4) "Borehole"["Bore-hole"] means a hole drilled into the subsurface[soil] for exploratory or sampling purposes.

(5) "Bulk quantities" means undivided quantities of any substance equal to or greater than fifty-five (55) U. S. gallons liquid

measure or 100 pounds net dry weight transported or held in an individual container.

(6) "Commercial" means services at stores, offices, restaurants, warehouses, and other service and nonmanufacturing activities, excluding households and industries.

(7) "Container" means any portable enclosure in which a material is stored, transported, treated, disposed, or otherwise handled.

(8) "Core hole" means a hole drilled for the purpose of obtaining a rock sample.

(9) "Corrective action" means an activity or measure taken to remedy groundwater pollution.

(10) "Floor drain" means an opening in the floor used to collect spills, water, or other liquids.

(11) "Generic groundwater protection plan" means a groundwater protection plan that can be applied to activities conducted at different locations because the activities are substantially identical and because the potentials of the activities to pollute groundwater are substantially the same.

(12) "Groundwater" ~~is defined by 401 KAR 5:002[means the subsurface water occurring in the zone of saturation beneath the water table and perched water zones below the B soil horizon including water circulating through fractures, bedding planes, or solution conduits].~~

(13) "Groundwater pollution" means water pollution as defined in KRS 224.1-010[224.01-040] of groundwaters of the Commonwealth.

(14) "Groundwater protection plan" means a document that establishes a series of practices designed to prevent groundwater pollution.

(15) "Hydrogeologic sensitivity" means an assessment of the potential ease and speed of vertical infiltration or recharge of a liquid through the soil and the unsaturated zones combined with assessments of the maximum potential flow rate and dispersion potential after entry into the principal or uppermost saturated zone.

(16) "Industrial" means manufacturing or industrial processes, including ~~but not limited to, the following manufacturing processes]:~~

- (a) Electric power generation;
- (b) Fertilizer or agricultural chemicals;
- (c) Food and related products or by products;
- (d) Inorganic chemicals;
- (e) Iron and steel manufacturing;
- (f) Leather and leather products;
- (g) Nonferrous metals manufacturing or foundries;
- (h) Organic chemicals;
- (i) Plastics and resins manufacturing;
- (j) Pulp and paper ~~manufacturing[industry];~~
- (k) Rubber and miscellaneous plastic products;
- (l) Stone, glass, clay, and concrete products;
- (m) Textile manufacturing;
- (n) Transportation equipment; and
- (o) Water treatment.

(17) "Karst" ~~is defined by 401 KAR 5:002[means the type of geologic terrain underlain by carbonate rocks where significant solution of the rock has occurred due to flowing groundwater].~~

(18) "Land treatment" or "land disposal" is defined by 401 KAR 5:002[means the application or incorporation of a pollutant onto or into the soil].

(19) "Loading and unloading areas" means areas used for loading and unloading, and related handling of raw materials, intermediate substances, products, wastes, or recyclable materials. Loading and unloading areas include ~~but are not limited to,~~ areas used to load and unload drums, trucks, and railcars.

(20) "On-site sewage disposal system", "on-site sewage system", and "on-site system" mean[means] a complete system installed on a parcel of land, under the control or ownership of any person, which accepts sewage for treatment and ultimate disposal under the surface of the ground ~~including[. The common terms "on-site sewage system" and "on-site system" also have the same meaning. This definition includes, but is not limited to, the following]:~~

- (a) A conventional system consisting of sewage pretreatment

unit, distribution box, and lateral piping within rock-filled trenches or beds;

(b) A modified system consisting of a conventional system enhanced by shallower trench or bed placement, artificial drainage systems, dosing, alternating lateral fields, fill soil over the lateral field, or other necessary modifications to the site, system, or wasteload to overcome the site limitations;

(c) An alternative system consisting of a sewage pretreatment unit, necessary site modifications, wasteload modifications, and a subsurface soil absorption system using other methods and technologies than a conventional or modified system to overcome site limitations;

(d) Cluster systems that[which] accept effluent from more than one (1) structure's or facility's sewage pretreatment unit and transport the collected effluent through a sewer system to one (1) or more common subsurface soil absorption systems or conventional, modified, or alternative design; and

(e) A holding tank that[which] provides limited pretreatment and storage for off-site disposal in situations in which[where] site limitations preclude immediate installation of a subsurface soil absorption system or connection to a municipal sewer.

(21) "Pesticide" means a substance or mixture of substances intended to:

~~(a)[Any substance or mixture of substances intended to] Prevent, destroy, control, repel, attract, or mitigate any pest;~~

~~(b)[Any substance or mixture of substances intended to] Be used as a plant regulator, defoliant, or desiccant; or~~

~~(c)[Any substance or mixture of substances intended to] Be used as a spray adjuvant.~~

(22) "Privately owned[Privately-owned] treatment works" is defined by 40 C.F.R. 122.2[means any device or system which is used to treat wastes from any facility whose operator is not the operator of the treatment works and which is not a publicly-owned treatment works].

(23) ~~"Sinkhole" is defined by 401 KAR 5:002[means a naturally occurring topographic depression in a karst area. Its drainage is subterranean and serves as a recharge source for groundwater and it is formed by the collapse of a conduit or the solution of bedrock].~~

(24) "Sinking stream" means a surface stream in a karst region that disappears underground usually through gradual seepage of flow along the channel bottom.

(25) "Storing" means the containing of materials, products, substances, wastes, or other pollutants on a temporary basis ~~in[such] a manner that does not[as not to] constitute disposal.~~

(26) "Surface impoundment" means a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials, including those[although it may be] lined with manmade materials, which is designed to hold an accumulation of liquids or solids.

(27) "Water well" or "well" means any excavation or opening in the surface of the earth that is drilled, cored, bored, washed, driven, jetted, or otherwise constructed when the actual or intended use in whole or in part of an excavation is the removal of water for any purpose, including ~~but not limited to,~~ culinary and household purposes, animal consumption, food manufacture, use of geothermal resources for domestic heating purposes and industrial, irrigation, and dewatering purposes, but not including wells to be used for watering stock or for general farm use if the wells do not provide water for human consumption.

(28) "Wellhead protection area" is defined by 401 KAR 5:002[means the surface and subsurface area surrounding a water well, well field, or spring, supplying a public water system, through which pollutants are reasonably likely to move toward and reach the water well, well field or spring or an area defined as a wellhead protection area in a county water supply plan].

(29) "Zone of saturation" means the zone in which all the subsurface voids in the rock or soil are filled with water.

Section 2.[Scope and Applicability.] (1)[Scope. The goal of this administrative regulation is the prevention of groundwater pollution. This administrative regulation identifies certain activities for which groundwater protection plans shall be prepared and implemented.

~~This administrative regulation also identifies certain activities for which groundwater protection plans are not required.~~

(2) Applicability. Except for activities ~~established~~as provided in subsections 2 and (3) ~~[and (4)]~~ of this section ~~a~~any person responsible for conducting any of the~~following~~ activities established in this section shall prepare and implement a groundwater protection plan~~in accordance with the requirements of this administrative regulation~~:

(a) Storing or related handling of bulk quantities of pesticides or fertilizers for commercial purposes;

(b) Storing or related handling of bulk quantities of pesticides or fertilizers for the purpose of distribution to a retail sales outlet;

(c) Applying of pesticides or fertilizers for commercial purposes;

(d) Applying of fertilizers or pesticides for public right-of-way maintenance or institutional lawn care;

(e) Land treatment or land disposal of a pollutant;

(f) Storing, treating, disposing, or related handling of hazardous waste, solid waste, or special waste in landfills, incinerators, surface impoundments, tanks, drums or other containers, or in piles;

(g) Commercial or industrial storing or related handling in bulk quantities of raw materials, intermediate substances or products, finished products, substances held for recycling, or other pollutants held in tanks, drums or other containers, or in piles;

(h) Transmission in pipelines of raw materials, intermediate substances or products, finished products, or other pollutants;

(i) Installation or operation of on-site sewage disposal systems;

(j) Storing or related handling of road oils, dust suppressants, or deicing agents at a central location;

(k) Application or related handling of road oils, dust suppressants or deicing materials;

(l) Mining and associated activities;

(m) Installation, construction, operation, or abandonment of wells, bore holes, or core holes;

(n) Collection or disposal of pollutants in an industrial or commercial facility through the use of floor drains~~which are~~ not connected to on-site sewage disposal systems, closed-loop collection or recovery systems, or a waste treatment system permitted under the Kentucky Pollutant Discharge Elimination System;

(o) Impoundment or containment of pollutants in surface impoundments, lagoons, pits, or ditches; or

(p) Commercial or industrial transfer, including loading and unloading, in bulk quantities of raw materials, intermediate substances or products, finished products, substances held for recycling, or other pollutants.

~~(2)(3)~~ General exclusion. ~~A~~Any person who conducts an activity identified in Subsection ~~(1)(2)~~ of this section shall not be required to prepare or to implement a groundwater protection plan for that activity if that person can demonstrate by substantial evidence based on the factors set forth in this subsection, the activity has no reasonable potential of altering the physical, thermal, chemical, biological, or radioactive properties of the groundwater in a manner, condition, or quantity that will be detrimental to the public health or welfare, to animal or aquatic life, to the use of groundwater as present or future sources of public water supply or to the use of groundwater for recreational, commercial, industrial, agricultural, or other legitimate purposes. The demonstration shall at a minimum consider~~the following factors~~:

(a) Hydrogeologic sensitivity at or near the location of the activity;

(b) Quantity of the pollutants, including the cumulative potential to pollute from small discharges, spills, or releases ~~that~~which individually would not have the potential to pollute;

(c) Physical, chemical, and biological characteristics of the pollutants such as solubility, mobility, toxicity, concentration, and persistence;

(d) Use of the pollutants at the locations of the activities; and

(e) Present and potential uses of the groundwater.

~~(3)(4)~~ Specific exclusions. The provisions of this administrative regulation shall not apply~~to the following activities~~:

(a) Normal use or consumption of products sized and packaged for personal use by individuals;

(b) Retail marketing of products sized and packaged for personal use or consumption by individuals;

(c) Activities conducted entirely inside enclosed buildings if:

1. The building has a floor sufficient to prevent the release of pollutants to groundwater; and

2. There are no floor drains, or all floor drains within the building are connected to an on-site sewage disposal system, closed-loop collection or recovery system or a waste treatment system permitted under the Kentucky Pollutant Discharge Elimination System;

(d) Storing, related handling, or transmission in pipelines of pollutants that are gases at standard temperature and pressure;

(e) Storing municipal solid waste in a container located on property where the municipal solid waste is generated and ~~that~~which is used solely for the purpose of collection and temporary storage of that municipal solid waste prior to off-site disposal;

(f) Installing and operating sewer lines or water lines approved by the cabinet pursuant to 401 KAR 5:005 or 8:100;

(g) Storing water in ponds, lakes or reservoirs;

(h) Impounding stormwater, silt, or sediment in surface impoundments;

(i) Application of chloride-based deicing materials used on roads or parking lots;

(j) Emergency response activities conducted in accordance with local, state, and federal law;

(k) Fire fighting activities;

(l) Conveyance or related handling by motor vehicle, rolling stock, vessel, or aircraft;

(m) Agricultural activities at agriculture operations; or

(n) Application by commercial applicators of fertilizers or pesticides on lands used for agriculture operations.

~~(4)(5)~~ Relationship to other programs. Nothing in this administrative regulation shall abrogate the duty of a person to comply with the statutes and other administrative regulations administered by the cabinet, with the statutes and administrative regulations administered by other state and federal agencies, or with statutes and ordinances administered by a local government.

Section 3. Preparation of Groundwater Protection Plans. (1) General requirements for site-specific and generic groundwater protection plans.~~[A groundwater protection plan establishes a series of practices to be followed by the person required to prepare and to implement it.]~~ The practices established by a groundwater protection plan shall be designed and implemented in a manner that will prevent groundwater pollution. ~~A~~This section describes the contents of site-specific and generic groundwater protection plans. Any person conducting an activity identified in Section 2(1)(2)(2) of this administrative regulation shall determine if an exclusion of Section 2(2) or (3)(2)(3) or (4) of this administrative regulation applies to that activity.

(2) Deadlines for preparation and implementation. Except for activities excluded by Section 2(2) or (3)(2)(3) or (4) of this administrative regulation, ~~a~~any person required to prepare and to implement a groundwater protection plan pursuant to Section 2 of this administrative regulation, shall prepare and implement a site-specific or generic groundwater protection plan~~within one (1) year of the effective date of this administrative regulation, or~~ upon commencement of the regulated activity~~, whichever is later~~.

(3) Elements of generic and site-specific groundwater protection plans. Both generic and site-specific groundwater protection plans shall contain~~the following~~:

(a) General information regarding the facility and its operation, including the:

1. Name of the facility;~~the~~

2. Address of the facility;~~and~~

3.~~the~~ Name of the person or persons responsible for implementing the plan;

(b) Identification of all activities identified in Section 2(1)(2)(2) of this administrative regulation and not excluded by Section 2(2) or (3)(2)(3) or (4) of this administrative regulation;

(c) Identification of all practices chosen for the plan to protect groundwater from pollution;

(d) An implementation schedule for the practices selected for the plan;

(e) A description of and implementation schedule for employee training necessary to ensure implementation of the plan;

(f) An inspection schedule requiring regular inspections as needed to ensure that all practices established are in place and properly functioning;

(g) A certification by the person responsible for implementing the plan or ~~an~~a duly authorized representative ~~as defined by 401 KAR 5:002~~ that the plan complies with the requirements of this administrative regulation, and that the person responsible for implementing the plan has reviewed the terms of the plan and ~~shall~~will implement its provisions.

(4) Selection of practices for groundwater protection. ~~A~~Any person required to prepare a groundwater protection plan pursuant to this section shall evaluate technological means for protection of groundwater from pollution that may result from activities addressed by the plan and shall select practices for the plan ~~that~~which protect groundwater from pollution. The groundwater protection practices chosen for a groundwater protection plan may include~~but are not limited to~~:

- (a) Equipment design;
- (b) Operational procedures;
- (c) Preventive maintenance techniques;
- (d) Construction techniques;
- (e) Personnel training;
- (f) Spill response capabilities;
- (g) Alternative materials or processes;
- (h) Implementation of new technology;
- (i) Modification of facility or equipment;
- (j) Spill prevention control and countermeasure plans;
- (k) Best management practices;
- (l) Hazardous waste contingency plans;
- (m) Other plans prepared pursuant to other programs ~~that~~which protect groundwater from pollution;
- (n) Runoff or infiltration control systems;
- (o) Siting considerations; and
- (p) Any other practice which will protect groundwater from pollution.

(5) Specific practices. In selecting practices to protect groundwater for the activities identified in Section ~~2(1)~~2(2) of this administrative regulation and not excluded by Section ~~2(2) or (3)~~2(3) or (4) of this administrative regulation ~~a~~any person preparing a groundwater protection plan shall consider the nature of the pollutant and the hydrogeologic characteristics at or near the location of the activity and shall comply with the provisions of this subsection in selecting those practices:

(a) Loading and unloading areas. Loading and unloading areas shall have spill prevention and control procedures and operation procedures designed to prevent groundwater pollution. Spill containment and cleanup equipment shall be readily accessible.

(b) On-site sewage disposal systems. ~~A~~No person shall ~~not~~ install a new or replace an existing on-site sewage disposal system if a ~~publicly or privately owned~~publicly or privately owned treatment works capable of treating the pollutants to be discharged is available.

(c) Floor drains.

1. ~~A~~Any person using existing floor drains shall evaluate those floor drains to determine if they discharge to an on-site sewage disposal system, to a closed-loop collection or recovery system, or to a waste treatment system permitted under the Kentucky Pollutant Discharge Elimination System.

2. If drains are identified which do not discharge to an on-site sewage disposal system, a closed-loop collection or recovery system, or a waste treatment system permitted under the Kentucky Pollutant Discharge Elimination System, that person shall terminate the discharge or connect it to an on-site sewage disposal system, a closed-loop collection or recovery system, or a waste treatment system permitted under the Kentucky Pollutant Discharge Elimination System.

3. ~~A~~No person shall ~~not~~ install a floor drain unless it is

connected to an on-site sewage disposal system, closed-loop collection or recovery system, or a waste treatment system permitted under the Kentucky Pollutant Discharge Elimination System.

(d) Tanks and sumps.

1. ~~A~~Any person using a tank or sump shall prepare and implement good housekeeping practices, operating procedures, operator training, and spill response procedures.

2. ~~A~~In addition, any person using a tank or sump shall consider leak control devices, secondary containment, integrity testing, mechanical inspections, and overfill protection devices.

3. Containment additional to Subparagraphs 1 and 2 of this subsection shall not be~~Additional containment is not~~ required for sumps and tanks that are used solely to provide secondary containment.

(e) New surface impoundments, lagoons, pits or ditches.

1. ~~A~~Any person who constructs a new surface impoundment, lagoon, pit or ditch which will contain a pollutant shall evaluate the site's hydrogeology and shall design and operate it to minimize discharges to soil.~~However,~~ Soils may be used to construct liners if the soil liner will protect groundwater from pollution~~under appropriate conditions~~.

2. All necessary and appropriate measures shall be taken to prevent groundwater pollution. The person shall consider the use of liners, secondary containment, leak detection devices, and other appropriate and effective control systems that will protect groundwater from pollution.

3. Containment additional to Subparagraphs 1 and 2 of this subsection shall not be~~Additional containment is not~~ required for new surface impoundments, lagoons, pits, and ditches that are used solely to provide secondary containment.

(6) Exceptions to specific requirements.

(a) The provisions of subsection (5) of this section shall not apply to activities that are governed by other federal, state or regulatory programs that meet the requirements of subsection (7) of this section while the person conducting the activities remains in compliance with the other program.

(b) Variances from the provisions of subsection (5) of this section may be granted by the cabinet if the applicant for a variance demonstrates that a variance will not result in pollution of groundwater~~upon a showing of good cause~~, but ~~a~~in no event shall any person required to prepare a groundwater protection plan pursuant to this section ~~shall not~~ take any actions contrary to the provisions of subsection (5) of this section without prior written approval of the cabinet.

(7) Incorporation of requirements of other regulatory programs.

(a) Groundwater protection activities required by other federal, state, or local regulatory programs may be incorporated into a site-specific or generic groundwater protection plan by reference if the other regulatory program contains~~the following~~:

- 1. Management and design standards;
- 2. Mandatory monitoring for groundwater pollution or methods of detecting discharges, spills, or releases to groundwater; and
- 3. Specific corrective action criteria.

(b) 1. The plan shall identify each activity covered by the other regulatory program. The person responsible for implementing the plan shall certify compliance with the other regulatory program.

2. The provisions of the other program shall be the groundwater protection plan for purposes of this administrative regulation for the activities covered by the other regulatory program.

3. If activities identified in Section ~~2(1)~~2(2) of this administrative regulation and not excluded in Section ~~2(2) or (3)~~2(3) or (4) of this administrative regulation are conducted ~~that~~which are not covered by the other regulatory program, the plan shall contain separate practices designed to protect groundwater from pollution for each activity not covered by the other regulatory program.

(8) Generic groundwater protection plans. A generic groundwater protection plan shall be prepared in accordance with subsections (1) through (7) of this section and may govern all or part of a person's activities. A generic groundwater protection plan shall not be sufficient by itself if it does not address all activities

conducted by the person that are identified in Section 2(1)[2(2)] of this administrative regulation and not excluded by Section 2(2) or (3)[2(3) or (4)] of this administrative regulation.~~[A generic groundwater protection plan shall be prepared in accordance with subsections (1) through (7) of this section.]~~

(a) 1. A person responsible for preparing and implementing a groundwater protection plan required by this administrative regulation may apply one (1) provision of the plan to all substantially identical activities if factors identified in Section 2(2)[2(3)] of this administrative regulation do not cause substantial differences in the potential to pollute among locations.

2. If substantial differences do exist, the plan shall provide separate site-specific or region-specific preventive measures, as necessary, for the activities.

(b) A person responsible for preparing a groundwater protection plan governed by this section may use a generic groundwater protection plan prepared by another person or group, including a trade organization, if:

1. The activities identified in the generic groundwater protection plan are substantially identical;

2. The factors identified in Section 2(2)[2(3)] of this administrative regulation do not cause substantial differences in the potentials to pollute among locations; and

3. The groundwater protection plan has been reviewed and approved by the cabinet as established in this administrative regulation.

(c) A generic groundwater protection plan may consist of requirements imposed by other regulatory programs designed to protect groundwater or programs offering technical assistance for groundwater protection if the cabinet has approved the requirements of the other program as a generic groundwater protection plan. A[Any] person using a generic groundwater protection plan from another program pursuant to this paragraph as a part of, or all of, the[his] plan shall certify in the[his] plan that the plan[he] is subject to the program and in compliance with its provisions. Any activities that[which] are not addressed by the program shall be addressed separately in the groundwater protection plan.

(d) 1. A[Any] person conducting an activity listed in this subsection who does not prepare a groundwater protection plan for that activity or does not use another approved generic groundwater protection plan for that activity shall implement the provisions of the generic groundwater protection plan prepared by the cabinet.

2. The cabinet, in cooperation with other appropriate state agencies, shall prepare generic groundwater protection plans for:

a.[4.] Use of existing residential septic systems; and

b.[2.] Construction, operation, closure, and capping of water wells.

(e) 1. A generic groundwater protection plan that has been approved by the cabinet as established in this administrative regulation may be incorporated by reference in a facility's groundwater protection plan.~~[; however,]~~

2. Each person responsible for implementing the generic plan at a site shall maintain a copy of the plan at an appropriate, accessible location.

3. A[Any] person using a generic groundwater protection plan shall identify the activities governed by the plan and attach the identification to the copy of the generic plan.

(f) 1. A[Any] person preparing a new or revised generic groundwater protection plan[to be approved by the cabinet shall submit that plan to the cabinet for approval.

2. Upon submission of the plan to the cabinet, the[When that person submits that plan to the cabinet that] person shall also place a notice in a statewide newspaper and a trade publication likely to be read by those affected by the groundwater protection plan. That notice shall:

a. Provide for a thirty (30) day comment period;~~[and shall]~~

b. Identify activities that are addressed by the proposed generic groundwater protection plan;~~and~~[. The notice shall]

c. Describe the procedure for review by the public of the plan and the procedures and time frames for providing comments.

3. The cabinet shall also notify by mail or email anyone who has requested in writing to be placed on a mailing list for purposes

of this administrative regulation.

Section 4. Implementation of Groundwater Protection Plans.

(1) Record retention requirements.

(a) A[Any] site-specific groundwater protection plan required by Sections 2 through 4 of this administrative regulation, and~~[any]~~ documentation evidencing compliance with the provisions of the plan, shall be retained by the person responsible for implementing the plan, at the location of the activity if the location is normally attended at least eight (8) hours per day, or at the nearest office of that person's activity if the facility is not so attended.

(b) A[Any] generic groundwater protection plan and~~[any]~~ documentation evidencing compliance with the provisions of the plan~~;~~ shall be retained by the person responsible for implementing the plan~~;~~ in as many locations as necessary to ensure compliance.~~[Individual homeowners are not required to maintain a copy of the generic groundwater protection plan for residential septic systems at their residences.]~~

(c)~~[Unless the cabinet approves another retention period for a person.]~~ All records evidencing compliance shall be maintained and available for review by the cabinet for a period of not less than six (6) years after their preparation.

(2) Amendment of groundwater protection plans. Prior to conducting any new or modified activity, a[any] person conducting that activity shall amend the groundwater protection plan~~;~~ as necessary, to address the new or modified activity.

(3) Review and recertification of groundwater protection plans. Each groundwater protection plan shall be reviewed in its entirety every three (3) years, by the persons responsible for the plan, updated if necessary, and recertified. To the extent possible, the review shall include a reevaluation of the design and operation procedures for the pollution prevention practices previously selected for the plan to ensure that they are effective.

(4) Submission of groundwater plans to cabinet.

(a) Upon written request of the cabinet, a[any] person required to prepare a groundwater protection plan pursuant to this administrative regulation shall submit a copy of the plan to the cabinet within thirty (30) days of the date of the request.

(b) Upon written request of the cabinet, a[any] person who has made a determination pursuant to Section 2(2)[2(3)] of this administrative regulation that a groundwater protection plan is not required for a specific activity shall submit a written demonstration to the cabinet within thirty (30) days of the date of the request.

(5) Submission of additional information to the cabinet. Upon review of a groundwater protection plan that[which] has been submitted to the cabinet, the cabinet may require a[any] person responsible for preparation or implementation of a plan to submit any of the~~[following]~~ information in this subsection to determine if the plan is protective of groundwater~~[that the cabinet deems necessary]~~:

(a) For a site-specific groundwater protection plan, and for a generic groundwater protection plan in effect at a specific location, the location of all buildings, structures, roads, utilities, drainage pathways, and boundaries by using a narrative description or by using a map, diagram, or drawing;

(b) For a generic groundwater protection plan that applies to more than one (1) location, identification of the geographic region to which the generic groundwater protection plan applies, and an explanation of[as to] why that region was selected and why one (1) plan is appropriate for all activities addressed by the plan for all sites within the region;

(c) For a generic groundwater protection plan that applies to more than one (1) location, to the extent possible, a description of the nature and number of activities, and their associated facilities, that are expected to be governed by the generic groundwater protection plan;

(d) A Summary of reasonably available hydrogeologic information including~~[as follows]~~:

1. Identification of location of sinkholes, sinking streams, springs, streams, lakes, ponds, and ditches;

2. Description of soil survey information;

3. Identification and location of currently usable wells, abandoned wells, and wellhead protection areas;

4. Identification of subsidence areas; and
5. Description of any other relevant hydrogeologic data known to the person preparing or implementing the groundwater protection plan; and

(e) Any other information, including site-specific groundwater or geologic information, which is known and readily available to the person responsible for preparing or implementing the plan but not to the cabinet to determine if the plan is protective of groundwater [~~that the cabinet deems necessary~~].

(6) Revisions to plans after cabinet review.

(a) If the cabinet reviews a groundwater protection plan and determines that it does not meet the requirements of this administrative regulation, the cabinet shall notify the person responsible for preparing or implementing the plan of the deficiency in the plan. That person shall revise the plan to correct the deficiencies identified by the cabinet and submit the revised plan to the cabinet for further review.

(b) [~~Unless an extension of time is granted by the cabinet or the notice of deficiency is withdrawn by the cabinet,~~] The person submitting the revised plan shall have thirty (30) days from issuance of the notice of the deficiencies to submit the revised plan.

(c) The cabinet shall review the revised plan and notify the person submitting the revised plan of its final determination within ten (10) days of receiving the revised plan.

(7) Public inspection of groundwater protection plans.

(a) A[Any] person who desires to review a groundwater protection plan shall send a written request to the person required to prepare and to implement the groundwater protection plan.

(b) A[Any] person who receives a written request to review the groundwater protection plan shall within ten (10) working days:

1. Send a written response to the person requesting to inspect the groundwater protection plan stating that the groundwater protection plan may be reviewed at:

- a. The Division of Water in Frankfort;
- b. A regional office of the Division of Water;
- c. The facility; [~~or~~]
- d. A local public library; or

2. Send a written response to the person requesting to inspect the groundwater protection plan [~~;~~] stating the reason that a groundwater protection plan was not required to be prepared.

(c) A[Any] person who designates a review location for a groundwater protection plan shall send a copy of the groundwater protection plan to the location designated for review within ten (10) working days of receiving a written request to review the plan.

(8) Requirements upon transfer of property. Upon any subsequent transfer of a facility for which a groundwater protection plan has been prepared, the seller shall provide the purchaser with a copy of the most recent groundwater protection plan prepared for the facility pursuant to this administrative regulation.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2018 at 6:00 p.m. Eastern Time at the Department for Environmental Protection, Training Room A, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Carole J. Catalfo, Internal Policy

Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies activities for which groundwater protection plans are required to ensure protection for all current and future uses of groundwater, and to prevent groundwater pollution.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect groundwater resources which is especially important considering Kentucky's karstic topography.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 and 70-100 require the cabinet to provide for the prevention, abatement, and control of all water pollution. KRS 224.10-100 authorizes the cabinet to promulgate administrative regulations to achieve the objectives of KRS Chapter 224. KRS 224.70-110 generally prohibits any form of water pollution in contravention of administrative regulations promulgated by the cabinet. This administrative regulation identifies certain activities for which groundwater protection plans shall be prepared and implemented to prevent groundwater pollution and ensure protection for current and future uses of groundwater. This administrative regulation also identifies certain activities for which groundwater protection plans are not required.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation identifies the activities that require a groundwater protection plan and establishes specific information that groundwater protection plans must include.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation correct KRS citations and align language with current LRC requirements, correct and simplify definitions by referring to KAR and C.F.R., and remove outdated and expired timelines.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to clarify the roles and responsibilities of the cabinet and regulated community in preparing and implementing groundwater protection plans.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 and 224.70-100 require the cabinet to provide for the prevention, abatement, and control of water pollution. KRS 224.70-100 prohibits the discharge of any pollutants into, or substances that contribute to the pollution of, any waters of the Commonwealth. This administrative regulation identifies certain activities for which groundwater protection plans shall be prepared and implemented to prevent groundwater pollution and ensure protection for current and future uses of groundwater. This administrative regulation also identifies certain activities for which groundwater protection plans are not required.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to this administrative regulation will assist in clarifying definitions and regulatory language.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all citizens, businesses, organizations, and state, federal, and local governments that engage in activities specified in Section 2 of the regulation and are required to develop and implement groundwater protection plans. The cabinet is unable to provide an accurate number of these entities because the regulation does not require groundwater protection plans to be submitted to the cabinet except upon request.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendments to this administrative regulation will not require additional actions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendments to this administrative regulation will not result in additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will benefit from clear, defined terms that are consistent with state and federal regulations.

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

(a) Initially: This administrative regulation will not result in additional costs.

(b) On a continuing basis: This administrative regulation will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds. The amendments to this administrative regulation will not require a change in funding sources.

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

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

(9) TIERING: Is tiering applied? This administrative regulation is tied to the extent that it distinguishes between activities that require groundwater protection plans and those that do not.

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 transportation, utilities, public and private schools and universities, and state, federal, and local parks and other entities if they conduct activities specified in Section 2 of 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 224.10-110, 224.70-100, 224.70-110

(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.

(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? This administrative regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not generate any revenue.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: This administrative regulation will not generate any revenue or result in additional costs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation that requires groundwater protection plans.

2. State compliance standards. KRS 224.10-100, 224.70-100, 224.70-110

3. Minimum or uniform standards contained in the federal mandate. There is no federal statute or regulation that requires groundwater protection plans.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no federal statute or regulation that requires groundwater protection plans.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal statute or regulation that requires groundwater protection plans.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Amendment)

401 KAR 5:045. Treatment requirements; compliance; biochemically degradable wastes[; treatment].

RELATES TO: KRS 224.10-100, 224.70-100, 224.70-110

STATUTORY AUTHORITY: KRS 224.10-100(19), (21)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(19) requires the cabinet to issue, continue in effect, revoke, modify, suspend, or deny permits to discharge into waters of the Commonwealth. KRS 224.10-100(21) authorizes the cabinet to require technological levels of treatment and effluent limitations. This administrative regulation establishes minimum treatment requirements, requires all persons discharging pollutants through point sources to apply these measures, or more stringent as required, to meet water quality standards, and requires a minimum of secondary treatment or best conventional pollutant control technology for a facility that receives biochemically degradable wastes.

Section 1. Treatment Requirements. (1) This administrative regulation shall apply to all discharges to surface waters of the Commonwealth as defined by 401 KAR 10:001.

(2) All persons who discharge through a point source shall, as a minimum, apply the secondary treatment, or equivalent, considering the:

(a) Total cost of the application of such technology in relation to the effluent reduction benefits to be achieved;

(b) Age of the equipment and facilities involved;

(c) Process employed;

(d) Engineering aspects of the application of various types of control techniques; and

(e) Nonwater quality environmental impact.

(3) All persons who discharge through a point source shall apply the best available waste control technology, or equivalent, considering:

(a) The factors in subsection (2) of this section;

(b) Any operating and maintenance procedures;

(c) Schedules and prohibitions of activities; and

(d) Other management practices to control site run-off, spillage, leaks, sludge or waste disposal, or drainage from raw material storage.

(4) The cabinet may deny, revoke, or modify a permit to any applicant if the discharge does not conform to KRS 224.70-

100[Applicability].

Section 2. Biochemically Degradable Wastes; Treatment. (1) A facility that receives an influent that is biochemically degradable and discharges into waters of the Commonwealth shall provide a minimum of secondary treatment to that influent prior to its discharge.

(2) A facility subject to treatment requirements established in 401 KAR 5:080, Section 2 shall be exempt from the requirements of this administrative regulation.

Section 3[2]. Secondary Treatment of Biochemically Degradable Wastes. Secondary treatment shall be the degree of treatment that results in an effluent quality that meets the minimum requirements established in this section.[-] (1) Biochemical oxygen demand, five (5) days.

(a) The arithmetic mean of the values for effluent samples collected during a period of thirty (30) consecutive days shall not exceed thirty (30) milligrams per liter.

(b) The arithmetic mean of the values for effluent samples collected during a period of seven (7) consecutive days shall not exceed forty-five (45) milligrams per liter.

(2) Suspended solids.

(a) The arithmetic mean of the values for suspended solids in effluent samples collected during a period of thirty (30) consecutive days shall not exceed thirty (30) milligrams per liter.

(b) The arithmetic mean of values for suspended solids in effluent samples collected during a period of seven (7) consecutive days shall not exceed forty-five (45) milligrams per liter.

Section 3. Continuation of a Permit. A person responsible for an existing facility that receives biochemically degradable influent and discharges into waters of the Commonwealth shall apply for a permit to continue to discharge to the waters of the Commonwealth not later than 180 days prior to the expiration of the current permit.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2018 at 6:00 p.m. Eastern Time at the Department for Environmental Protection, Training Room A, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum treatment requirements for point source discharges and for secondary treatment or best conventional pollutant control technology for a facility that receives biochemically degradable wastes.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to control pollutants being

discharged into waters of the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(19) requires the cabinet to issue, modify, suspend, or deny permits to discharge into waters of the Commonwealth. KRS 224.10-100(21) authorizes the cabinet to require technological levels of treatment and effluent limitations. This administrative regulation establishes minimum treatment requirements for point source discharges and for secondary treatment or best conventional pollutant control technology for a facility that receives biochemically degradable wastes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes minimum treatment requirements for point source discharges and for secondary treatment or best conventional pollutant control technology for a facility that receives biochemically degradable wastes.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation incorporates the language of 401 KAR 5:035 (Treatment requirements; compliance) which is being repealed.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to preserve the regulatory language of 401 KAR 5:035 (Treatment requirements; compliance) which establishes minimum treatment requirements for point source discharges into waters of the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(19) requires the cabinet to issue, modify, suspend, or deny permits to discharge into waters of the Commonwealth. KRS 224.10-100(21) authorizes the cabinet to require technological levels of treatment and effluent limitations. This administrative regulation establishes minimum treatment requirements for point source discharges and for secondary treatment or best conventional pollutant control technology for a facility that receives biochemically degradable wastes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary to preserve the regulatory language of 401 KAR 5:035 (Treatment requirements; compliance) which is being repealed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects over 2,500 individuals, businesses, and organizations that have, or apply for, KPDES permits that have a biochemically degradable wastestream. After analysis of the current types of permits, the regulation is expected to impact the following number of entities:

a. Individuals: This administrative regulation affects approximately 1,200 individuals through construction and operational permits for individual family residences. The amendments to this administrative regulation are not expected to result in new impacts.

b. Businesses: This administrative regulation affects approximately 300 businesses that are not subject to federal effluent guidelines, through KPDES permits related to sanitary wastewater. The amendments to this administrative regulation are not expected to result in new impacts.

c. Organizations: This administrative regulation affects approximately sixty (60) civic, professional, non-profit, or religious organizations through KPDES permits related to sanitary wastewater treatment. The amendments to this administrative regulation are not expected to result in new impacts.

d. State or Local Government: This administrative regulation affects approximately 950 state or local government entities through KPDES permits related to sanitary wastewater. The amendments to this administrative regulation are not expected to result in new impacts.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not be required to take any additional action in order to comply with this amendment. This amendment preserves the regulatory language of 401 KAR 5:035 (Treatment requirements; compliance) which is being repealed.

(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 result in additional costs. This amendment preserves the regulatory language of 401 KAR 5:035 (Treatment requirements; compliance) which is being repealed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will have the benefit of consistent, streamlined state regulations that provide continuity with current regulations.

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

(a) Initially: This amendment will not result in additional costs. This amendment preserves the regulatory language of 401 KAR 5:035 (Treatment requirements; compliance) which is being repealed.

(b) On a continuing basis: This amendment will not result in additional costs. This amendment preserves the regulatory language of 401 KAR 5:035 (Treatment requirements; compliance) which is being repealed.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KPDES program fees, general funds, and U.S. EPA funds. This amendment will not result in changes to funding or fees.

(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 result in changes to funding or fees. This amendment preserves the regulatory language of 401 KAR 5:035 (Treatment requirements; compliance) which is being repealed.

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

(9) TIERING: Is tiering applied? Tiering is applied to the extent that the federal regulations are tiered. Pretreatment and secondary treatment requirements are dependent upon the nature of the discharge.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects approximately 950 state or local government entities through KPDES permits related to sanitary wastewater. The amendments to this regulation combines two existing regulations and are not expected to result in new impacts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.16-050, 224.70-110, 224.73-120, 40 C.F.R. 1.25(e), 25, 403.1, 33 U.S.C. 1251-1387, 42 U.S.C. 6901, 6902, 6905

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will not result in additional costs. This amendment preserves the regulatory language of 401 KAR 5:035 (Treatment requirements; compliance) which is being repealed.

(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.

(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? This administrative regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: This amendment will not result in additional costs or revenue. This amendment preserves the regulatory language of 401 KAR 5:035 (Treatment requirements; compliance) which is being repealed.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 1.25(e), 25, 403.1, 33 U.S.C. 1251-1387, 42 U.S.C. 6901, 6902, 6905

2. State compliance standards. KRS 224.10-100, 224.16-050, 224.70-110, 224.73-120

3. Minimum or uniform standards contained in the federal mandate. The federal regulations and Federal Water Pollution Control Act establish the standards for pretreatment and secondary treatment requirements.

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 establishes the same requirements and responsibilities as the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation establishes the same standards, responsibilities, and requirements as the federal mandate.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Amendment)

401 KAR 5:050. General provisions of KPDES Permitting Program.

RELATES TO: KRS 224.1-010[224.01-040], 224.1-070, 224.1-400, 224.10-110, 224.16-050, 224.70-100, 224.70-110, 224.70-120, 224.99-010, 40 C.F.R. 122.403, 33 U.S.C. 1251-1387

STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050, 224.70-110, 40 C.F.R. 122.403, 33 U.S.C. 1251-1387

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 authorizes the ~~Energy and Environment~~[~~Environmental and Public Protection~~] Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into the waters of the Commonwealth. KRS 224.16-050 ~~authorizes~~[~~empowers~~] the cabinet to issue federal permits pursuant to 33 U.S.C.[U.S.C.] Section 1342(b) of the Federal Water Pollution Control Act (33 U.S.C.[U.S.C.] Section 1251 et seq.) and requires that the cabinet shall not impose under any permit issued pursuant to this section any effluent limitation, monitoring requirement, or other condition that is more stringent than would have been applicable under the federal regulation if the permit were issued by the federal government. This administrative regulation establishes the provisions, terms, effect, schedule of compliance, and duration of a KPDES permit, and the basis for permit modification or revocation and reissuance.[~~Permits issued pursuant to KRS 224.16-050 shall be referred to as KPDES permits.~~]

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Section 1. ~~Compatibility with the CWA. The KPDES administrative regulations promulgated pursuant to KRS Chapter 224 are intended to be compatible with the federal regulations adopted pursuant to CWA.~~

Section 2. ~~Conflicting Provisions. The provisions of the KPDES administrative regulations shall[are to] be construed as[being] compatible with and complementary to each other. If any of these administrative regulations are found by a court of competent jurisdiction to be contradictory, the more stringent provisions shall apply.~~

Section 2. Duration of Permits. The duration of a KPDES permit shall be as established in 40 C.F.R. 122.46.

Section 3. Schedules of Compliance. The schedule of compliance for a KPDES permit shall be as established in 40 C.F.R. 122.47.

Section 4. Requirements for Recording and Reporting of Monitoring Results. The requirements for recording and reporting of a monitoring result shall be as established in 40 C.F.R. 122.48.

Section 5. Effect of a Permit. (1) Except for a toxic effluent standard or prohibition established in 401 KAR 5:065, compliance with a KPDES permit during its term shall constitute compliance, for purposes of enforcement, with the KPDES program.

(2) A permit may be modified, revoked and reissued, or revoked during its term for cause as established in Sections 7 and 8 of this administrative regulation.

(3) The issuance of a permit shall not convey property rights or exclusive privilege.

(4) The issuance of a permit shall not authorize:

(a) Injury to persons or property;

(b) Invasion of other private rights; or

(c) Infringement of state or local law or administrative regulations.

Section 6. Transfer of Permits. Transfer of a KPDES permit shall be as established in 40 C.F.R. 122.61.

Section 7. Modification or Revocation and Reissuance of Permit. (1) The modification or revocation and reissuance of a KPDES permit shall be as established in 40 C.F.R. 122.62.

(2) A minor modification of a KPDES permit shall be as established in 40 C.F.R. 122.63.

Section 8. Revocation of Permit. The causes and procedure for revoking a KPDES permit shall be as established in 40 C.F.R. 122.64.

Section 9. Substitutions, Exceptions, and Additions to Cited Federal Regulations. (1) "Waters of the Commonwealth" shall be substituted for "waters of the United States" in the federal regulations cited in this administrative regulation.

(2) "Cabinet" shall be substituted for "Director" in the federal regulations cited in this administrative regulation.

(3) "KPDES" shall be substituted for "NPDES" in the federal regulations cited in this administrative regulation.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2018 at 6:00 p.m. Eastern Time at the Department for Environmental Protection, Training Room A, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the

proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Carole J. Catafo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catafo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions, terms, effect, schedule of compliance, and duration of a KPDES permit, and the basis for permit modification or revocation and reissuance.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the provisions, terms, effect, schedule of compliance, and duration of a KPDES permit, and the basis for permit modification or revocation and reissuance. States with primacy over NPDES permitting are required to have state regulations that are consistent with federal regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 224 requires the cabinet to provide for the prevention, abatement, and control of water pollution, and authorizes the cabinet to issue, continue in effect, revoke, modify, suspend, or deny permits to discharge into waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. Section 1342(b) of the Federal Water Pollution Control Act, and requires that the cabinet shall not issue any permit with any requirement that is more stringent than would have been applicable under the federal regulation if the permit were issued by the federal government. KRS 224.10-100(19) requires the cabinet to issue, modify, suspend, or deny permits to discharge into waters of the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the provisions, terms, effect, schedule of compliance, and duration of a KPDES permit, and the basis for permit modification or revocation and reissuance. This administrative regulation assists in preventing, abating, and controlling water pollution.

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

(a) How the amendment will change this existing administrative regulation: This amendment incorporates the language of 401 5:070 (Provisions of the KPDES permit) which is being repealed.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to preserve and maintain the language of 401 KAR 5:070 (Provisions of the KPDES permit) which is being repealed. States with primacy over NPDES permitting are required to have state regulations consistent with federal regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 224 requires the cabinet to provide for the prevention, abatement, and control of water pollution, and authorizes the cabinet to issue, continue in effect, revoke, modify, suspend, or deny permits to discharge into waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. Section 1342(b) of the Federal Water Pollution Control Act, and requires that the cabinet shall not issue any permit with any requirement that is more stringent than would have been applicable under the federal regulation if the permit were issued by the federal government. KRS 224.10-100(19) requires the cabinet to issue, modify, suspend, or deny permits to discharge into waters of the

Commonwealth. This administrative regulation establishes the provisions, terms, effect, schedule of compliance, and duration of a KPDES permit, and the basis for permit modification or revocation and reissuance.

(d) How the amendment will assist in the effective administration of the statutes: This amendment preserves and incorporates the language of 401 KAR 5:070 (Provisions of the KPDES permit) which is being repealed. States with primacy over NPDES permitting are required to have state regulations that are consistent with federal regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 9,000 individuals, businesses, and organizations that have, or apply for, KPDES permits. After analysis of the current types of permits, the regulation is expected to impact the following number of entities:

a. Individuals: This administrative regulation affects approximately 1,200 individuals through KPDES permits for individual family residences. The amendments to this administrative regulation are not expected to result in new impacts.

b. Businesses: This administrative regulation affects approximately 5,100 businesses through KPDES permits for construction or industrial-related stormwater, wastewater, and sanitary wastewater. The amendments to this administrative regulation are not expected to result in new impacts.

c. Organizations: This administrative regulation affects approximately forty (40) civic, professional, non-profit, or religious organizations through KPDES permits for sanitary wastewater treatment. The amendments to this administrative regulation are not expected to result in new impacts.

d. State or Local Government: This administrative regulation affects approximately 1,650 state or local government entities through KPDES permits for construction or industrial-related stormwater, sanitary wastewater, and municipal wastewater. The amendments to this administrative regulation are not expected to result in new impacts.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation will not require any additional action for compliance. The amendment preserves and incorporates language from 401 KAR 5:070 (Provisions of the KPDES permit) which is being repealed.

(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 not result in additional costs. The amendment preserves and incorporates language from 401 KAR 5:070 (Provisions of the KPDES permit) which is being repealed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): State and federal regulations regarding discharge permits will remain consistent and compatible. The amendment also streamlines the regulations regarding KPDES permits.

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

(a) Initially: This administrative regulation will not result in additional costs. The amendment preserves and incorporates language from 401 KAR 5:070 (Provisions of the KPDES permit) which is being repealed.

(b) On a continuing basis: This administrative regulation will not result in additional costs. The amendment preserves and incorporates language from 401 KAR 5:070 (Provisions of the KPDES permit) which is being repealed.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Permit fees, general funds, and U.S. EPA funds. This amendment will not change sources of funding.

(7) Provide an assessment of whether an increase in fees or

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

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

(9) TIERING: Is tiering applied? Tiering is applied to the extent that the federal regulations are tiered. The type of discharge permit, pretreatment, and treatment requirements are dependent on the nature and size of the discharge.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects approximately 1,650 state or local government entities through KPDES permits for construction or industrial-related stormwater, sanitary wastewater, and municipal wastewater. The amendments to this administrative regulation are not expected to result in new impacts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.16-050, 224.70-110, 40 C.F.R. 122, 125, 33 U.S.C. Section 1251, et seq.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this administrative regulation will not generate any additional 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 amendment to this administrative regulation will not generate any additional revenue.

(c) How much will it cost to administer this program for the first year? This amendment to this administrative regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? This amendment to this administrative regulation will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: The amendment to this administrative regulation preserves and incorporates the language from 401 KAR 5:070 which is being repealed. The amendment will not result in additional costs or expenditures.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 122, 125, 33 U.S.C. Section 1251, et seq.

2. State compliance standards. KRS Chapter 224, 224.1-400, 224.10-100, 224.16-050

3. Minimum or uniform standards contained in the federal mandate. The federal statutes and regulations establish the provisions, terms, effect, schedule of compliance, and duration of a KPDES permit, and the basis for permit modification or revocation and reissuance.

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

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)**

401 KAR 5:052. Requirements applicable to cooling water intake structures for facilities regulated by Section 316(b) of the Clean Water Act, 33 U.S.C. 1326(b).

RELATES TO: KRS 224.10-100, 224.16-050, 224.70-100, 224.70-110, 40 C.F.R. 122, 33 U.S.C. 1251-1387, ~~EO-2008-507, 2008-531~~

STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050, 224.70-100, 224.70-110, 40 C.F.R. 125, ~~[125.80-125.89]~~ 33 U.S.C. 1251-1387

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the cabinet to issue, continue in effect, revoke, modify, suspend, or deny under such conditions as the cabinet may prescribe, permits to discharge into waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to ~~[provides that the cabinet may]~~ issue federal permits pursuant to 33 U.S.C. Section 1342(b) of the Clean Water Act, 33 U.S.C. Section 1251-1387, subject to the conditions imposed in 33 U.S.C. Section 1342(b) and (d). ~~[EO-208-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.]~~ This administrative regulation establishes the requirements applicable to cooling water intakes structures for new and existing facilities under Section 316(b) of the Clean Water Act, 33 U.S.C. 1326(b).

Section 1. ~~[Requirements for New Facilities.]~~ (1) Except as established in Sections 2 and 3 of this administrative regulation, requirements for new facilities pursuant to Section 316(b) of the Clean Water Act, 33 U.S.C. 1326(b), shall be as established in 40 C.F.R. 125.80 through 125.89. ~~[the following federal regulations:~~

- (a) ~~40 C.F.R. 125.80, July 1, 2007;~~
- (b) ~~40 C.F.R. 125.81, July 1, 2007;~~
- (c) ~~40 C.F.R. 125.82, July 1, 2007;~~
- (d) ~~40 C.F.R. 125.83, July 1, 2007;~~
- (e) ~~40 C.F.R. 125.84, July 1, 2007;~~
- (f) ~~40 C.F.R. 125.85, July 1, 2007;~~
- (g) ~~40 C.F.R. 125.86, July 1, 2007;~~
- (h) ~~40 C.F.R. 125.87, July 1, 2007;~~
- (i) ~~40 C.F.R. 125.88, July 1, 2007; and~~
- (j) ~~40 C.F.R. 125.89, July 1, 2007.~~

(2) ~~Substitutions. The following terms shall be substituted in the federal regulations cited in subsection (1) of this section:~~

- (a) ~~"Waters of the Commonwealth" shall replace "Waters of the United States"; and~~
- (b) ~~"Cabinet" shall replace "Director".]~~

(2) Except as established in Sections 2 and 3 of this administrative regulation, requirements for existing facilities pursuant to Section 316(b) of the Clean Water Act, 33 U.S.C. 1326(b), shall be as established in 40 C.F.R. 125.90 through 125.98.

Section 2. Political subdivisions and interstate agencies may adopt or enforce requirements that are more stringent than this administrative regulation.

Section 3. Substitutions. The following terms shall be substituted in the federal regulations cited in this administrative regulation:

- (a) "Waters of the Commonwealth" shall replace "waters of the United States"; and
- (b) "Cabinet" shall replace "Director".

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2018 at 6:00 p.m. Eastern Time at the Department for Environmental Protection, Training Room A, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Carole J. Catalfo Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation implements Section 316(b) of the Clean Water Act, 33 U.S.C. 1326(b), to ensure that the location, design, construction, and capacity of cooling water intake structures incorporate the best technology available to protect aquatic organisms from being killed or injured by impingement (being pinned against screens or other parts of cooling water intake structure) or entrainment (being drawn into cooling water systems and subjected to thermal, physical, or chemical stressors).

(b) The necessity of this administrative regulation: All states with primacy over NPDES permitting must have compatible state regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is consistent with the pollution prevention goals of KRS Chapter 224. KRS 224.10-100 authorizes the cabinet to issue, continue in effect, revoke, modify, suspend, or deny permits to discharge into waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. Section 1342(b) of the Clean Water Act. This regulation provides specific requirements for permitting dischargers that have cooling water intake structures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides requirements for cooling water intake structures as part of the KPDES permitting system for point source discharges that use cooling water intake structures. All states with primacy over NPDES permitting must have compatible state regulations.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes this administrative regulation by incorporating the federal rule for existing cooling water intake structures which became final in 2014.

(b) The necessity of the amendment to this administrative regulation: All states with primacy over NPDES permitting must have compatible state regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is consistent with the pollution prevention goals of KRS Chapter 224. KRS 224.10-100 authorizes the cabinet to issue, continue in effect, revoke, modify, suspend, or deny permits to discharge into waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to

issue federal permits pursuant to 33 U.S.C. Section 1342(b) of the Clean Water Act. The amendment to this administrative regulation provides specific requirements for permitting dischargers that have existing cooling water intake structures.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides requirements for cooling water intake structures as part of the KPDES permitting system for point source discharges that use cooling water intake structures. All states with primacy over NPDES permitting must have compatible state regulations. This amendment makes state and federal regulations compatible and consistent.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects power plants that have both KPDES permits and cooling water intake structures. This regulation affects existing cooling water intake structures.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities with existing cooling water intake structures will need to use best available technology to prevent death or injury to aquatic organisms. Regulated entities became subject to the new federal rule when it became final in 2014, so they should not need to take any additional actions to comply.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs were reviewed during promulgation of the federal rule. All NPDES delegated states must have regulations consistent with federal regulations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will be in compliance with both state and federal regulations regarding new and existing cooling water intake structures, and will have contributed to the environmental protection goals of the federal Clean Water Act and KRS Chapter 224.

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

(a) Initially: This administrative regulation will not result in any additional costs.

(b) On a continuing basis: This administrative regulation will not result in any additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing permit fees, general funds, and U.S. EPA funds. This administrative regulation will not change sources of funding.

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

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

(9) TIERING: Is tiering applied? To the extent that the federal regulations provide tiering, this regulation is tiered. The federal regulations provide tiered regulatory requirements based on the size of the cooling water intake structure.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects units of state or local government that have a KPDES discharge permit associated with an electric power plant.

(2) Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.16-050, 224.70-100, 224.70-110, 40 C.F.R. 125, 33 U.S.C. 1251-1387

(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.

(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? This administrative regulation will not result in increased program costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in increased program costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: The cost of compliance was evaluated during the promulgation of the federal regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 125, 33 U.S.C. 1251-1387

2. State compliance standards. KRS 224.10-100, 224.16-050, 224.70-100, 224.70-110

3. Minimum or uniform standards contained in the federal mandate. The federal standard requires that new and existing cooling water intake structures meet certain technological requirements to prevent death or injury to aquatic life.

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 contains the same requirements and responsibilities as the federal regulation.

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

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Amendment)

401 KAR 5:055. Scope and applicability of the KPDES Program and pretreatment requirements.

RELATES TO: KRS 61.870-61.884, 224.1-010, 224.1-070, 224.1-400, 224.18-100[224.01-010, 224.01-070, 224.01-400], 224.70-100, 224.70-120, 224.99-010, 33 C.F.R. 153, 40 C.F.R. 122, 123.44, 124.62, 131, 136, 144, 258, 261, 300, 401-471[300, 401-45], 33 U.S.C. 1251 -1387, 42 U.S.C. 300f – 300j, 6907

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.16-050, 224.18-100, 224.70-100, 224.70-110, 224.73-120, 40 C.F.R. 1.25(e), 25, 122.21, 300, 33 U.S.C. 1251 -1387, 42 U.S.C. 6901, 6902, 6907

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to provide for the prevention, abatement, and control of water pollution, to issue, continue in effect, revoke, modify, suspend or deny permits to discharge into waters of the

Commonwealth, and authorizes the cabinet to require[for persons discharging into the waters of the Commonwealth, by administrative regulation,] technological levels of treatment and effluent limitations. KRS 224.16-050(1) authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251 – 1387[subject to the conditions imposed in 33 U.S.C. 1342(b) and (d). KRS 224.16-050(1) requires that any exemptions granted in the issuance of these permits shall be pursuant to 33 U.S.C. 1311, 1312, and 1326(a)]. KRS 224.16-050(4) requires that the cabinet shall not issue[impose under] any permit[issued] pursuant to this administrative regulation[an effluent limitation, monitoring requirement, or other condition] that is more stringent than[the effluent limitation, monitoring requirement, or other condition that would have been applicable under the federal regulation] if the permit was issued by the federal government. KRS 224.73-120 authorizes the cabinet to apply and enforce against users of publicly owned treatment works the requirements of monitoring, recordkeeping and reporting, effluent limitations, and pretreatment standards for the introduction of pollutants into treatment works. This administrative regulation establishes the scope and applicability of the KPDES program and identifies categories of point sources required to obtain a KPDES permit, requirements pertaining to exclusions and prohibitions, requirements for general permits, requirements for disposal into wells and into publicly-owned treatment works (POTW), and requirements for disposal by land application. This administrative regulation implements 33 U.S.C. 1311, 1314, 1317, 1318, 1319, 1342, and 1345 related to the cabinet's pretreatment program and establishes responsibilities of the Commonwealth of Kentucky, local government, industry, and the public to implement the national pretreatment program to control pollutants as established in 40 C.F.R. 403.1.

Section 1. Definitions. Definitions established in 40 C.F.R. 122.2 shall apply for the interpretation of federal regulations that are cited within this administrative regulation.

Section 2. Applicability of the KPDES Requirements. (1) A KPDES permit shall be required to discharge pollutants from a point source into waters of the Commonwealth.

(2) Compliance with the KPDES program requirements shall constitute compliance with the operational permit requirements of 401 KAR 5:005.

(3) Failure to obtain a KPDES permit shall not relieve a discharger whose discharge is subject to the KPDES program from complying with the applicable performance standards of the KPDES program, 401 KAR 5:045[5:050] through 5:080.

Section 3. Point Source Categories Requiring a KPDES Permit. (1) The following categories of point sources shall require a KPDES permit to discharge:

- (a) A point source discharge identified in 40 C.F.R. 122[; effective July 1, 2012];
- (b) A concentrated animal feeding operation;
- (c) A concentrated aquatic animal production facility;
- (d) A discharge into aquaculture projects;
- (e) A discharge from separate storm sewers; and
- (f) A silviculture point source.

(2) A facility covered by a general permit issued pursuant to Section 8 of this administrative regulation[.] may be required to obtain an individual permit based on contributions to water pollution.

(3) If an individual permit is required pursuant to this section, except as provided in subsection (4) of this section, the cabinet shall notify the discharger of that decision and the reasons for it in writing.

(a) The discharger shall apply for a permit pursuant to 401 KAR 5:060 within sixty (60) days of notice, unless an extension is requested by the applicant and approved by the cabinet.

(b) The question of if the permit determination was proper shall remain open for consideration during the public comment period pursuant to 401 KAR 5:075 and in a subsequent hearing pursuant to KRS 224.10-420(2).

(4)(a) Prior to a determination that an individual permit shall be required for a stormwater[storm water] discharge, the cabinet may require the discharger to submit information regarding the nature of the discharge as established in 40 C.F.R. 122.21(e)[; effective July 1, 2012]; if:

1. The provisions of the general permit are not sufficient to protect human health and the environment; or

2. The discharger has a history of noncompliance with the provisions of the general permit.

(b) If an individual permit is required pursuant to this section, the cabinet shall notify the discharger of that decision and the reasons for it in writing.

(c) The discharger shall apply for a KPDES permit within sixty (60) days of notice, unless an extension is requested by the applicant and approved by the cabinet.

(d) The question of if the initial determination was proper shall remain open for consideration during the public comment period pursuant to 401 KAR 5:075 and in a subsequent hearing pursuant to KRS 224.10-420(2).

Section 4. Exclusions. An exclusion from the requirement to obtain a KPDES permit shall be:

(1) A discharge identified in 40 C.F.R. 122.3[; effective July 1, 2012;] or KRS 224.16-050(6);

(2) An authorization by permit or by rule that is prepared to assure that underground injection will not endanger drinking water supplies, pursuant to the Safe Drinking Water Act, 42 U.S.C. 300f-300j, and that are issued under a state or federal Underground Injection Control program;

(3) An underground injection control well that is permitted pursuant to 40 C.F.R. 144 if those permits are protective of public health and welfare and prevent the pollution of ground and surface waters; or

(4) A discharge that is not regulated by the U.S. EPA under the Clean Water Act Section 402, 33 U.S.C. 1342.

Section 5. Prohibitions. The cabinet shall not issue a KPDES permit if:

(1) The conditions of the permit would violate the provisions of KRS Chapter 224;

(2) The regional administrator has objected to issuance of the permit in writing pursuant to the procedures specified in 40 C.F.R. 123.44[; effective July 1, 2012];

(3) The conditions of the permit do not comply with the water quality standards established in 401 KAR Chapter 10[10:031]; or

(4) A prohibition is established in 40 C.F.R. 122.4[; effective July 1, 2012].

Section 6. Variance Requests from Technology-Based[Technology-based] Effluent Limitations. (1) A non-POTW may request a variance from otherwise applicable effluent limitations as established in 40 C.F.R. 122.21(m)[; effective July 1, 2012].

(2) A non-POTW may request an expedited variance as established in 40 C.F.R. 122.21(o)[; effective July 1, 2011].

Section 7. Effect of a Permit. The effect of a KPDES permit shall be as established in 40 C.F.R. 122.5[; effective July 1, 2012].

Section 8. A General permit shall be issued as established in 40 C.F.R. 122.28[; effective July 1, 2012].

Section 9. Disposal of Pollutants into Underground Injection Control Wells, into Publicly Owned Treatment Works, or by Land Application. (1) An adjustment of effluent limitations related to disposal of pollutants into wells, into publicly owned treatment works, or by land application shall be as established in 40 C.F.R. 122.50[; effective July 1, 2012].

(2) The cabinet may issue permits to control the disposal of pollutants into wells if necessary to protect the public health and welfare and to prevent the pollution of ground and surface waters.

Section 10. Variances from Technology-Based Treatment

Requirements Available to KPDES Applicants. Consistent with KRS 224.16-050, the variance provisions in this section and in 401 KAR 5:080, Sections 2 and 4, establish those variances from technology-based requirements available to KPDES applicants. (1) Economic capability. The cabinet, with the concurrence of U.S. EPA, may modify BAT requirements for a point source if the owner or operator demonstrates that the variance satisfies the requirements of 33 U.S.C. 1311(c).

(2) Environmental considerations. The cabinet, with the concurrence of U.S. EPA, may modify the BAT requirement for a point source that does not discharge toxic pollutants identified in 40 C.F.R. 401.15[~~effective July 1, 2012~~], conventional pollutants, or the thermal component of that discharge, if the owner or operator demonstrates that the modification is consistent with the conditions established in 33 U.S.C. 1311(g).

(3) Innovative technology. The cabinet shall establish a date for complying with the deadline for achieving BAT not later than two (2) years after the date for compliance with the effluent limitation would otherwise be applicable, if the innovative technology is as established in 33 U.S.C. 1311(k) and after consultation with the U.S. EPA Regional Administrator, as required by 40 C.F.R. 124.62(a)(2)[~~effective July 1, 2012~~].

(4) Thermal pollution. An alternative effluent limitation for the thermal component of a discharge shall be as established in 33 U.S.C. 1326(a).

Section 11. KPDES Pretreatment Requirements. (1) This administrative regulation shall not affect pretreatment requirements established by local law if those requirements are not less stringent than those established in state or national pretreatment standards or other requirements or prohibitions established under the National Water Pollution Control Act, 33 U.S.C. 1251-1387 or this administrative regulation.

(2) Prohibited discharges shall be as established in 40 C.F.R. 403.5.

(3) Categorical standards shall be as established in 40 C.F.R. 403.6.

(4) The granting of removal credits shall be as established in 40 C.F.R. 403.7.

(5) The development by a POTW of pretreatment program requirements shall be as established in 40 C.F.R. 403.8.

(6) The submission for approval of a pretreatment program or authorization to revise pretreatment standards shall be as established in 40 C.F.R. 403.9.

(7) The approval procedures for POTW pretreatment programs and POTW granting of removal credits shall be as established in 40 C.F.R. 403.11.

(8) The reporting requirements for POTWs and industrial users shall be as established in 40 C.F.R. 403.12.

(9) Variances from categorical pretreatment standards as a result of fundamentally different factors shall be as established in 40 C.F.R. 403.13.

(10) Confidentiality.

(a) Information submitted to the cabinet pursuant to this Section may be claimed as confidential by the submitter pursuant to KRS 224.10-210 and 224.10-212.

(b) All other information submitted to the POTW shall be available to the public at least to the extent provided by KRS 61.870 through 61.884.

(11) Net-gross calculation shall be as established in 40 C.F.R. 403.15.

(12) Upset provisions shall be as established in 40 C.F.R. 403.16.

(13) Bypasses shall be as established in 40 C.F.R. 403.17.

(14) Modification of POTW pretreatment programs shall be as established in 40 C.F.R. 403.18.

(15) Pretreatment program reinvention pilot projects under Project XL shall be as established in 40 C.F.R. 403.20.

Section 12. Substitutions, Exceptions, and Additions to Cited Federal Regulations. (1) "Waters of the Commonwealth" shall be substituted for "Waters of the United States" in the federal regulations cited in[Sections 1 through 10 of] this administrative

regulation.

(2) "Cabinet" shall be substituted for "Director" in[if the authority to administer] the federal regulations cited in[Sections 1 through 10 of] this administrative regulation[has been delegated to the cabinet].

(3) "KPDES" shall be substituted for "NPDES" in the[if the cabinet has been delegated authority to implement] federal regulations cited in[Sections 1 through 10 of] this administrative regulation.

(4) "Standard metropolitan statistical areas as defined by the University of Louisville Urban Studies Center, consistent with the U.S. Office of Management and Budget" shall be substituted for "Standard metropolitan statistical areas as defined by the Office of Management and Budget" in 40 C.F.R. 122.28(a)(1)(vi).

(5) "Urbanized areas as designated by the University of Louisville Urban Studies Center consistent with the U.S. Bureau of the Census" shall be substituted for "Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202, effective May 1, 1974" in 40 C.F.R. 122.28(a)(1)(vi).

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2018 at 6:00 p.m. Eastern Time at the Department for Environmental Protection, Training Room A, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Carole J. Catalfo Internal Policy Analyst, RPPS Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the scope and applicability of the KPDES program, including specific inclusions and exclusions, prohibitions, and requirements for disposal into wells, publicly owned treatment works (POTWs), and disposal by land application. This administrative regulation also implements the national pretreatment program to control pollutants in accordance with 40 C.F.R. 403.

(b) The necessity of this administrative regulation: KRS 224.16-050 requires that any exemptions granted in discharge permits shall be pursuant to 33 U.S.C. 1311, 1312, and 1326(a), and requires that the cabinet issue permits that are no more stringent than if the permit was issued by the federal government. Additionally, this administrative regulation is necessary to control pollutants being discharged into waters of the Commonwealth through pretreatment and secondary treatment standards. All states with primacy over NPDES permitting must have regulations that are consistent with the federal regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes KRS 224.10-100 requires the cabinet to provide for the prevention, abatement, and control of water pollution, issue, continue in effect, revoke, modify, suspend or deny permits to discharge into waters of the Commonwealth, and

authorizes the cabinet to require technological levels of treatment and effluent limitations. KRS 224.16-050 authorizes the cabinet to implement and issue federal permits pursuant to the Federal Water Pollution Control Act, and requires that the cabinet shall not issue any permit that is more stringent than if the permit was issued by the federal government. KRS 224.73-120 authorizes the cabinet to apply and enforce against users of publicly owned treatment works the requirements of monitoring, recordkeeping, and reporting, effluent limitations, and pretreatment standards. This administrative regulation establishes the requirements of the KPDES program and implements the national pretreatment program to control pollutants discharged into waters of the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes specific parameters for the KPDES program and pretreatment requirements.

(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 corrects references to KAR, KRS, and C.F.R. references, removes effective dates of C.F.R.s to make them consistent with all other Division of Water regulations, and maintains state requirements that are the same as federal requirements. The amendment also incorporates the language of 401 KAR 5:057 (Pretreatment requirements) which is being repealed.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary for accuracy and consistency between state and federal regulations. All states with primacy over NPDES permitting must have state regulations that are consistent with federal regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to provide for the prevention, abatement, and control of water pollution, issue, continue in effect, revoke, modify, suspend or deny permits to discharge into waters of the Commonwealth, and authorizes the cabinet to require technological levels of treatment and effluent limitations. KRS 224.16-050 authorizes the cabinet to issue federal permits pursuant to the Federal Water Pollution Control Act, and requires that the cabinet shall not issue any permit that is more stringent than if the permit was issued by the federal government. KRS 224.73-120 authorizes the cabinet to apply and enforce against users of publicly owned treatment works the requirements of monitoring, recordkeeping, and reporting, effluent limitations, and pretreatment standards. This administrative regulation establishes the requirements of the KPDES program and implements the national pretreatment program to control pollutants discharged into waters of the Commonwealth.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will clarify statutory and regulatory references, and maintains the KPDES administrative regulations as no less stringent than the corresponding federal regulations, which is required to maintain primacy over the program. The amendment will not change the manner in which the program is implemented.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 9,000 individuals, businesses, and organizations that have or apply for KPDES permits. After analysis of the current types of permits, the regulation is expected to impact the following number of entities:

a. Individuals: This administrative regulation affects approximately 1,200 individuals through KPDES permits for individual family residences. This administrative regulation is not expected to result in new impacts.

b. Businesses: This administrative regulation affects approximately 5,100 businesses through KPDES permits for construction or industrial-related stormwater and wastewater, and sanitary wastewater. This administrative regulation is not expected to result in new impacts.

c. Organizations: This regulation affects approximately sixty

(60) civic, professional, non-profit, or religious organizations through KPDES permits related to sanitary wastewater treatment. This administrative regulation is not expected to result in new impacts.

d. State or Local Government: This regulation affects approximately 1,650 state or local government entities through KPDES permits for construction or industrial-related stormwater, sanitary wastewater, and municipal wastewater. This administrative regulation is not expected to result in new impacts.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will not be required to take any additional action because the amendment to the administrative regulation does not change the manner in which the program is implemented.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will not result in additional costs because it does not change the manner in which the program is implemented.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will have the benefit of consistency between state and federal regulations.

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

(a) Initially: The amendment to this administrative regulation will not result in additional costs.

(b) On a continuing basis: The amendment to this administrative regulation will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing permit fees, general funds, and U.S. EPA funds. The amendment to this regulation will not result in funding changes.

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

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

(9) TIERING: Is tiering applied? To the extent that the federal regulations are tiered, this administrative regulation is also tiered. Permit requirements are based upon the nature and size of the discharge.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.10-110, 224.16-050, 224.70-100, 224.70-110, 40 C.F.R. 122.21, 300, 33 U.S.C. 1251-1387

(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 to this administrative regulation will not result in increased 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 to this administrative regulation will not result in increased revenue.

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation will not result in increased costs.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will not result in increased costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: The amendment to this administrative regulation clarifies regulatory and statutory citations, but does not change the manner in which the KPDES program is implemented.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 122.21, 300, 403, 33 U.S.C. 1251-1387

2. State compliance standards. KRS 224.10-100, 224.10-110, 224.16-050, 224.70-100, 224.70-110

3. Minimum or uniform standards contained in the federal mandate. The federal mandate establishes effluent limitations, pretreatment, treatment, and other standards for discharge permits. The federal standards require that primacy states meet or exceed the federal requirements for water pollution prevention established in the federal Clean Water Act (33 U.S.C. 1251-1387).

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 establishes the same requirements and responsibilities as those established in the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not establish stricter, additional, or different responsibilities or requirements than those established in the federal regulations.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Amendment)

401 KAR 5:060. KPDES application requirements.

RELATES TO: KRS 224.1-010[224.01-010], 224.1-400[224.01-400], 224.70-100, 224.70-120, 224.99-010[, 40 C.F.R. 110.6, 117.21, 122, 123.35, 136, 261, 262.34, 302.6, 355, Chapter I, Subchapter N, Parts 401-471, 33 U.S.C. 1251-1387, 42 U.S.C. 300h, 6901-7000, 11023]

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.16-050, 224.70-110, 40 C.F.R. 110.6, 117.21, 122, 123.35, 136, 261, 262.34, 302.6, 355, Chapter I, Subchapter N, Parts 401-471, 33 U.S.C. 1251-1387, 42 U.S.C. 300h, 6901-7000, 11023

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to provide for the prevention, abatement, and control of water pollution, and authorizes the cabinet to issue, continue in effect, revoke, modify, suspend, or deny permits to discharge into any waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387[, subject to the conditions established in 33 U.S.C. 1342(b) and (d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387]. This administrative regulation establishes the application requirements for a KPDES permit and contains additional requirements for general and specific categories of dischargers.

Section 1. Definitions. Except as established in 401 KAR 5:002, definitions established in 40 C.F.R. 122.2 shall apply for the interpretation of the federal regulations cited within this administrative regulation.

Section 2. Applying for a KPDES Permit. (1) Application requirements. A person who is required to have a permit, including a new applicant or permittee with an expiring permit, shall complete, sign, and submit an application to the cabinet as established in this administrative regulation and 401 KAR 5:055.

(2) Duty to apply.

(a)1. A person who discharges or proposes to discharge pollutants and who does not have an effective permit shall submit a complete application to the cabinet in accordance with this section, unless excluded as established in clauses a. through c. of this subparagraph.

a. A person covered pursuant to general permits as established in 40 C.F.R. 122.28[, effective July 1, 2012].

b. A person discharging to a POTW as established in 40 C.F.R. 122.3[, effective July 1, 2012] unless the cabinet requires an individual permit pursuant to 40 C.F.R. 122.44(m)[, effective July 1, 2012].

c. A user of a privately owned treatment works, unless the cabinet requires an individual permit pursuant to 40 C.F.R. 122.44(m)[, effective July 1, 2012].

2. The application shall include a BMP program if necessary pursuant to 40 C.F.R. 122.44(k)[, effective July 1, 2012].

(b) An applicant shall submit the appropriate application form, as established in Table 1 of this paragraph.

TABLE 1	
Discharge Type	Required Application Form
POTW	1 and A
CAFO	1 and B
Aquatic Animal Production Facility	1 and B
Manufacturing, commercial, mining and silvicultural discharges with process water	1 and C
Manufacturing, commercial, mining and silvicultural discharges with nonprocess wastewater only	1 and SC
Industrial stormwater point source discharges	1 and F

(3) Additional requirements for KPDES applications shall be as established in 40 C.F.R. 122.21[, effective July 1, 2012] and the modifications, exceptions, and additions of Section 11 of this administrative regulation.

(4) Continuation of expiring permits.

(a) The conditions of an expired permit shall continue in force until the effective date of a new permit if:

1. The permittee has submitted a timely and complete application; and

2. The cabinet, through no fault of the permittee, does not issue a new permit with an effective date pursuant to[under] 401 KAR 5:075, Section 11, on or before the expiration date of the previous permit.

(b) Effect. A permit continued pursuant to this subsection shall remain fully effective and enforceable until the effective date of a new permit.

(c) Enforcement. If the permittee is not in compliance with the conditions of the expiring or expired permit the cabinet shall[do the following]:

1. Initiate enforcement action based upon the permit that has been continued;

2. Issue a notice of intent to deny the new permit pursuant to 401 KAR 5:075, Section 3;

3. Issue a new permit pursuant to 401 KAR 5:075 with appropriate conditions to ensure that the permit is protective of water quality; or

4. Take action authorized by KRS 224 and 401 KAR Chapter 5.

Section 3. Service of Process. (1) Each applicant and permittee shall provide the cabinet with an address for receipt of a

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legal document for service of process.

(2) The last address provided to the cabinet pursuant to this provision shall be the address at which the cabinet shall tender a legal notice.

Section 4. Signatories to Permit Applications and Reports. Signatories to permit applications and reports shall be as established in 40 C.F.R. 122.22[~~effective July 1, 2012~~].

Section 5. Concentrated Animal Feeding Operations. (1) Additional permit application and special KPDES program requirements shall be as established in 40 C.F.R. 122.23[~~effective July 1, 2012~~].

(2) The incorporation of the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit if a CAFO obtains coverage under a general permit in accordance with 40 C.F.R. 122.23(h) and 40 C.F.R. 122.28 is not a cause for permit modification pursuant to the requirements of 401 KAR 5:050, Section 7[5:070, Section 6.] or 40 C.F.R. 122.62[~~effective July 1, 2012~~].

(3) The incorporation of changes to the terms of a CAFO's nutrient management plan that have been revised in accordance with the requirements established in 40 C.F.R. 122.42(e)(6)[~~effective July 1, 2012~~] shall be a minor modification as established in 40 C.F.R. 122.63[~~effective July 1, 2012~~].

Section 6. Concentrated Aquatic Animal Production Facilities. A concentrated aquatic animal production facility shall be a point source subject to the KPDES permit program and shall be subject to permit application and special KPDES program requirements established in 40 C.F.R. 122.24[~~effective July 1, 2012~~].

Section 7. Aquaculture Projects. A discharge into an aquaculture project shall be a point source subject to the KPDES permit program and the requirements established in 40 C.F.R. 122.25[~~effective July 1, 2012~~].

Section 8. Stormwater[~~Storm—Water~~] Discharges. A point source discharge of stormwater[~~storm water~~] shall be subject to the KPDES permit program and the requirements established in 40 C.F.R. 122.26[~~effective July 1, 2012~~].

Section 9. Silvicultural Activities. A silvicultural point source shall be a point source subject to the KPDES permit program and the requirements established in 40 C.F.R. 122.27[~~effective July 1, 2012~~].

Section 10. Regulated Small MS4. (1) The objective of regulating a small MS4 shall be as established in 40 C.F.R. 122.30[~~effective July 1, 2012~~].

(2) The operator of a small MS4 shall be subject to regulation as established in 40 C.F.R. 122.32[~~effective July 1, 2012~~].

(3) The application requirements for a small MS4 shall be as established in 40 C.F.R. 122.33[~~effective July 1, 2012~~].

(4) The permit for a small MS4 shall contain conditions consistent with the requirements established in 40 C.F.R. 122.34[~~effective July 1, 2012~~].

(5) A small MS4 may share responsibilities to implement minimum control measures as established in 40 C.F.R. 122.35[~~effective July 1, 2012~~].

Section 11. Substitutions, Exceptions, and Additions to Cited Federal Regulations. (1) "Waters of the Commonwealth" shall be substituted for "Waters of the United States" in the federal regulations cited in[~~Sections 4 through 10 of~~] this administrative regulation.

(2) "Cabinet" shall be substituted for "Director" in the[~~if the authority to administer~~] federal regulations cited in[~~Sections 4 through 10 of~~] this administrative regulation[~~has been delegated to the cabinet~~].

(3) "KPDES" shall be substituted for "NPDES" in the[~~if the authority to administer~~] federal regulations cited in[~~Sections 4 through 10 of~~] this administrative regulation[~~has been delegated to~~

~~the cabinet~~].

(4) The forms required in Section 2(2)(b) of this administrative regulation shall be substituted for the federal forms established in 40 C.F.R. 122.21[~~effective July 1, 2012~~].

(5) The conditions for Cooling Water Phase II shall be as established in 40 C.F.R. 122.21(r)(1)(ii)[~~shall be modified to remove the references to 40 C.F.R. 125.95, effective July 1, 2012~~].

(6) The special procedures related to thermal variances cited as 40 C.F.R. Section 124.65 in 40 C.F.R. 122.21(m)(6) shall be modified to 40 C.F.R. 124.62[~~effective July 1, 2012~~].

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

(a) KPDES Form 1, DEP 7032, March 2018[~~February 2009~~];

(b) KPDES Form A, DEP 7032A, March 2018[~~February 2009~~];

(c) KPDES Form B, DEP 7032B, March 2018[~~February 2009~~];

(d) KPDES Form C, DEP 7032C, March 2018[~~February 2009~~];

(e) KPDES Form SC, DEP 7032SC, March 2018[~~February 2009~~];

(f) KPDES Form F, DEP 7032F, March 2018[~~February 2009~~]; and

(g) KPDES Form NE, DEP 7032NE, March 2018[~~February 2009~~]; and

(h) ~~KPDES Form NDCAFO, DEP 7032NDCAFO, February 2009~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained through the Division of Water Web site at <http://water.ky.gov>.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2018 at 6:00 p.m. Eastern Time at the Department for Environmental Protection, Training Room A, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application requirements for all KPDES permits and contains additional requirements for general and specific categories of discharges.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide specific requirements for permitted discharges into waters of the Commonwealth. All states with primacy over NPDES permitting must have compatible state regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to issue, continue in effect, requires the cabinet to provide for the prevention, abatement, and revoke, modify, suspend, or deny

permits to discharge into any waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387. This administrative regulation establishes the application requirements for a KPDES permit and contains additional requirements for general and specific categories of dischargers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific requirements for several categories of permits, and references specific documents and federal regulations relevant to the permitting process.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation corrects references to KAR, KRS, and C.F.R.s, removes C.F.R. "effective dates" for consistency with all other Division of Water regulations and federal regulations, and removes a form that is no longer necessary to the permitting process.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to maintain consistency with all other Division of Water regulations and federal regulations. States with primacy over NPDES permitting must have regulations that are compatible with federal regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to issue, continue in effect, requires the cabinet to provide for the prevention, abatement, and revoke, modify, suspend, or deny permits to discharge into any waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387. The amendment maintains consistency between all Division of Water regulations and federal regulations. States with primacy over NPDES permitting must have regulations that are compatible with federal regulations.

(d) How the amendment will assist in the effective administration of the statutes: The amendment removes discrepancies between state and federal regulations, and aids in carrying out the water pollution prevention, control, and abatement goals of KRS Chapter 224.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 9,000 individuals, businesses, and organizations that have or apply for KPDES permits. After analysis of the current types of permits, the regulation is expected to impact the following number of entities:

a. Individuals: This administrative regulation affects approximately 1,200 individuals through KPDES permits for individual family residences. The amendments to this administrative regulation are not expected to result in any new impacts.

b. Businesses: This administrative regulation affects approximately 5,100 businesses through KPDES permits for construction or industrial-related stormwater and wastewater, and sanitary wastewater. The amendments to this administrative regulation are not expected to result in any new impacts.

c. Organizations: This administrative regulation applies to approximately forty (40) civic, professional, non-profit, or religious organizations through KPDES permits for sanitary wastewater treatment. The amendments to this administrative regulation are not expected to result in any new impacts.

d. State or Local Government: This administrative regulation applies to approximately 1,650 state or local government entities through KPDES permits for construction or industrial-related stormwater, sanitary wastewater, and municipal wastewater. The amendments to this administrative regulation are not expected to result in any new impacts.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will not need to take additional action to be in compliance with the amendment. The amendment will not change the manner in which the program is implemented.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will not result in additional costs because it does not change substantive requirements of current state or federal regulations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will have the benefit of consistent state and federal regulations.

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

(a) Initially: The amendment to this administrative regulation will not result in additional costs.

(b) On a continuing basis: The amendment to this administrative regulation will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing permit fees, general funds, and U.S. EPA funds. The amendment will not change the sources of funding.

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

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

(9) TIERING: Is tiering applied? This administrative regulation is tiered to the extent that the federal regulations are tiered. Permit requirements are tiered based on the nature and size of the discharge.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects wastewater treatment systems that discharge to waters of the Commonwealth and all units of state or local government that have a KPDES discharge permit.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 224, 40 C.F.R. 110.6, 117.21, 122, 123.35, 136, 261, 262.34, 302.6, 355, Chapter I, Subchapter N, Parts 401-471, and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387).

(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.

(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? This administrative regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in additional costs.

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

Revenues (+/-): NA

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Expenditures (+/-): NA

Other Explanation: The amendment to this administrative regulation clarifies regulatory and statutory citations, but does not change the manner in which the KPDES program is implemented.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 110.6, 117.21, 122, 123.35, 136, 261, 262.34, 302.6, 355, Chapter I, Subchapter N, Parts 401-471, 33 U.S.C. 1251-1387, 42 U.S.C. 300h, 6901-7000, 11023
2. State compliance standards. KRS Chapter 244
3. Minimum or uniform standards contained in the federal mandate. The federal mandate contains standards for NPDES application requirements. The federal standard requires that states with primacy over NPDES permitting have regulations that meet or exceed the federal requirements for water pollution prevention under the Clean Water Act (33 U.S.C. 1251-1387).
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 requirements or additional or different responsibilities or requirements than the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standard or additional or different responsibilities or requirements than the federal mandate.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 5:065. KPDES permit conditions.

RELATES TO: KRS 224.1-010, 224.1-070, 224.1-400[224.04-040, 224.04-070, 224.04-400], 224.18-100, 224.70-100, 224.70-120, 224.99-010, 40 C.F.R. 122, 129, 136, 401-471, 503, 33 U.S.C. 1251 – 1387[~~EO 2008-507, 2008-531~~]

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.16-050, 224.70-110, 40 C.F.R. 122, 129, 136, 401-471, 503, 33 U.S.C. 1251-1387[~~EO 2008-507, 2008-531~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the cabinet to issue, continue in effect, revoke, modify, suspend or deny under conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387[~~subject to the conditions imposed in 33 U.S.C. 1342(b) and (d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act, 33 U.S.C. 1251 – 1387. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environmental Cabinet~~]. This administrative regulation establishes the conditions applicable to all[a] KPDES permits,[~~permit and~~] the procedures for establishing and calculating permit conditions, the procedures for reporting spills, releases, bypasses, upsets, and other events of noncompliance to the division, the establishment of limits, standards, and other conditions, primary industrial categories, toxic pollutant effluent standards, test procedures for the analysis of pollutants, effluent guidelines and standards, and standards for the use or disposal of sewage sludge.

Section 1. Definitions. Definitions established in 40 C.F.R. 122.2 shall apply for the interpretation of federal regulations that are cited within this administrative regulation.

Section 2. Federal Regulations. A KPDES permit limitation, standard, or condition shall be as established in:

- (1) 40 C.F.R. 122.41[~~effective July 1, 2008~~];
- (2) 40 C.F.R. 122.42[~~effective July 1, 2008, as amended in the Federal Register, Volume 73, Number 225 P70483, November 20, 2008~~];
- (3) 40 C.F.R. 122.43[~~effective July 1, 2008~~];
- (4) 40 C.F.R. 122.44[~~effective July 1, 2008~~];
- (5) 40 C.F.R. 122.45[~~effective July 1, 2008~~];
- (6) 40 C.F.R. 122, Appendix A[~~effective July 1, 2008~~];
- (7) 40 C.F.R. 129[~~effective July 1, 2008~~];
- (8) 40 C.F.R. 136[~~effective July 1, 2008~~];
- (9) 40 C.F.R. 401 through 471[~~401- 471, effective July 1, 2008~~]; and
- (10) 40 C.F.R. 503[~~effective July 1, 2008~~].

Section 3. Substitutions, Exceptions, and Additions to Cited Federal Regulations. (1) "Waters of the Commonwealth" shall be substituted for "Waters of the United States" in the federal regulations cited in[~~Section 2 of~~] this administrative regulation.

(2) "Cabinet" shall be substituted for "Director" in[~~if the authority to administer~~] the federal regulations cited in[~~Section 2 of~~] this administrative regulation[~~has been delegated to the cabinet~~].

(3) "KPDES" shall be substituted for "NPDES" in the[~~if the authority to administer a~~] federal regulations[~~regulation~~] cited in[~~Section 2 of~~] this administrative regulation[~~has been delegated to the cabinet~~].

(4) In addition to applicable requirements for state permits established in 40 C.F.R. 122.43(b)(1)[~~effective July 1, 2008~~], the requirements of interstate agencies shall be considered in permits issued by the cabinet.

(5) Reporting shall be as established in 40 C.F.R. 122.41 except that:

(a) If a spill or release of pollutants or contaminants, bypass, upset, or other event of noncompliance occurs that may present an imminent or substantial danger to the environment or the public health or welfare, the permittee shall immediately notify the Division of Water by calling the Division of Water in Frankfort at (502) 564-3410 or the appropriate regional field office of the Division of Water as established in Table 1 of this section.

(b) If a report required by this subsection is made during other than normal business hours, it shall be made through the twenty-four (24) hour environmental emergency telephone number at (800) 928-2380.

Table 1 – Division of Water Regional Field Office Contact Numbers		
Regional Office	Phone Number	Counties Served
Bowling Green	(270) 746-7475	Allen, Barren, Butler, Edmonson, Grayson, Hart, Logan, Ohio, Simpson, and Warren
Columbia	(270) 384-4734	Adair, Boyle, Casey, Clinton, Cumberland, Green, LaRue, Lincoln, Marion, Metcalfe, Monroe, Nelson, Pulaski, Russell, Taylor, Washington, and Wayne
Florence	(859) 525-4923	Boone, Bracken, Campbell, Carroll, Gallatin, Grant, Henry, Kenton, Owen, Pendleton, and Trimble
Frankfort	(502) 564-3358	Anderson, Bourbon, Clark, Estill, Fayette, Franklin, Garrard, Harrison, Jessamine, Madison, Mercer, Nicholas, Powell, Scott, and Woodford
Hazard	(606) 435-6022	Breathitt, Floyd, Johnson, Knott, Lee, Letcher, Magoffin, Martin, Perry, Pike, and Wolfe
London	(606) 330-2080	Bell, Clay, Harlan, Jackson, Knox, Laurel, Leslie, McCreary, Owsley, Rockcastle, and Whitley

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<u>Louisville</u>	<u>(502) 429-7122</u>	<u>Breckinridge, Bullitt, Hardin, Jefferson, Meade, Oldham, Shelby, and Spencer</u>
<u>Madisonville</u>	<u>(270) 824-7529</u>	<u>Caldwell, Christian, Crittenden, Daviess, Hancock, Henderson, Hopkins, McLean, Muhlenberg, Todd, Union, and Webster</u>
<u>Morehead</u>	<u>(606) 783-8655</u>	<u>Bath, Boyd, Carter, Elliott, Fleming, Greenup, Lawrence, Lewis, Mason, Menifee, Montgomery, Morgan, Robertson, and Rowan</u>
<u>Paducah</u>	<u>(270) 898-8468</u>	<u>Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Livingston, Lyon, Marshall, McCracken, and Trigg</u>

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2018 at 6:00 p.m. Eastern Time at the Department for Environmental Protection, Training Room A, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 224.10-100 authorizes the cabinet to issue, continue in effect, revoke, modify, suspend or deny under conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387. This administrative regulation establishes permit requirements applicable to all dischargers and contains additional requirements for specific categories of dischargers.

(b) The necessity of this administrative regulation: This administrative regulation provides specific requirements for permitted discharges into waters of the Commonwealth. All states with primacy over NPDES permitting must have compatible state regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to issue, continue in effect, revoke, modify, suspend or deny under conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387. This administrative regulation is consistent with the pollution prevention goals of KRS Chapter 224.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation provides specific requirements applicable to all dischargers, and contains requirements for specific categories of dischargers.

(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 statutory citations, removes an outdated Executive Order, and makes the regulation consistent with corresponding federal regulations. The amendment requires immediate emergency reporting if an unanticipated discharge may endanger health or the environment and provides specific information for emergency reporting.

(b) The necessity of the amendment to this administrative regulation: This amendment makes the regulation consistent with corresponding federal regulations, requires immediate emergency reporting if an unanticipated discharge may endanger health or the environment, and provides specific information for emergency reporting. All states with primacy over NPDES permitting must have compatible state regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to issue, continue in effect, revoke, modify, suspend or deny under conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387. This administrative regulation is consistent with the pollution prevention goals of KRS Chapter 224.

(d) How the amendment will assist in the effective administration of the statutes: The amendments align federal and state regulations and therefore eliminate any confusion or gaps between the two.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 9,000 individuals, businesses, and organizations that have or apply for KPDES permits. After analysis of the current types of permits, the regulation is expected to impact the following number of entities:

a. Individuals: This administrative regulation affects approximately 1,200 individuals through KPDES permits for individual family residences. The amendments to this administrative regulation are not expected to result in any new impacts.

b. Businesses: This administrative regulation affects approximately 5,100 businesses through KPDES permits for construction or industrial-related stormwater and wastewater, and sanitary wastewater. The amendments to this administrative regulation are not expected to result in any new impacts.

c. Organizations: This administrative regulation applies to approximately forty (40) civic, professional, non-profit, or religious organizations through KPDES permits for sanitary wastewater treatment. The amendments to this administrative regulation are not expected to result in any new impacts.

d. State or Local Government: This administrative regulation applies to approximately 1,650 state or local government entities through KPDES permits for construction or industrial-related stormwater, sanitary wastewater, and municipal wastewater. The amendments to this administrative regulation are not expected to result in any new impacts.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendments to this administrative regulation are mostly technical in nature which will not require additional actions by regulated entities. In the event of an unanticipated discharge that may endanger health or the environment, a regulated entity must report the discharge to the Division of Water immediately.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3): This amendment to this administrative regulation will not impose any new costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendments align federal and state regulations, close any gaps between the two, and provide clarity to the regulated community.

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

(a) Initially: This amendment will not result in additional costs.

(b) On a continuing basis: This amendment will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment will have no impact on funding for implementation or enforcement.

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

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

(9) TIERING: Is tiering applied? The federal regulations provide tiered requirements depending upon the class of industrial user, the requirements of POTWs, and specific categories of dischargers. Program requirements and limitations depend on the size and specific category of the user. This administrative regulation is tiered in the same way as the federal 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? This administrative regulation affects all units of state or local government that have a KPDES discharge permit.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.10-110, 224.16-050, 224.70-110, 40 C.F.R. 122, 129, 136, 401-471, 503, 33 U.S.C. 1251-1387.

(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 will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment will not generate any revenue.

(c) How much will it cost to administer this program for the first year? This amendment will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? This amendment will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: The amendment to this administrative regulation will not result in additional costs or revenue.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 122 and 33 U.S.C. 1251-1387.

2. State compliance standards. KRS 224.10-100, 224.10-110, 224.16-050, 224.70-110.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate establishes permit requirements applicable to all dischargers and contains additional requirements for specific categories of dischargers. States with primacy over NPDES permits are required to have state regulations that meet or exceed the federal requirements for water pollution prevention developed under the Clean Water Act, 33 U.S.C. 1251-1387.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? This administrative regulation will require immediate reporting of unanticipated discharges that may endanger health or the environment to the Division of Water. 40 C.F.R. 122.41 requires a verbal report within twenty-four (24) hours from the time the permittee becomes aware of the circumstances.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Unanticipated discharges that may endanger health or the environment must be reported and addressed immediately to mitigate the risk of any potential damage that may result.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Amendment)

401 KAR 5:075. Cabinet review procedures for KPDES permits and permit timetables for 401 KAR Chapter 5.

RELATES TO: KRS 224.1-010, 224.1-070, 224.1-400[224.01-010, 224.01-070, 224.01-400], 224.10-420, 224.10-440, 224.10-470, 224.70-100, 224.70-120, 224.99-010, 40 C.F.R. 124[, 33 U.S.C. 1251-1387]

STATUTORY AUTHORITY: KRS 224.10-100[(19)], 224.10-220, 224.16-050, 224.70-110, 33 U.S.C. 1251-1387

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(19) authorizes the cabinet to issue, continue in effect, revoke, modify, suspend or deny permits to discharge into any waters of the Commonwealth. KRS 224.16-050(1) authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387[subject to the conditions imposed in 33 U.S.C. 1342(b) and (d)]. KRS 224.10-220 requires the cabinet to establish timetables for the issuance of all permits by the cabinet, except those permits for which a timetable is established by statute. This administrative regulation establishes timetables for permits that are required by 401 KAR Chapter 5, the procedures for receiving permit applications, preparing draft permits, issuing public notice, inviting public comment and holding public hearings on draft permits.

Section 1. Review of the Application. An application for a KPDES permit shall be submitted and reviewed as established in 40 C.F.R. 124.3[, effective July 1, 2009].

Section 2. Review Procedures for Permit Modification, Revocation and Reissuance, or Revocation. A KPDES permit modification, revocation and reissuance, or revocation shall be as established in 40 C.F.R. 124.5[, effective July 1, 2009.] except that a request for a hearing shall be made as established in Section 13 of this administrative regulation.

Section 3. Draft Permits. Preparation or denial of a draft permit shall be as established in 40 C.F.R. 124.6[, effective July 1, 2009].

Section 4. Fact Sheets. A fact sheet shall be prepared as established in 40 C.F.R. 124.8[, effective July 1, 2009].

Section 5. Public Notice of Permit Actions and Public Comment Period. Public notice of a permit action and the public comment period shall be as established in 40 C.F.R. 124.10[, effective July 1, 2009].

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Section 6. Public Comments and Requests for Public Hearings. Provisions for public comments and requests for a public hearing shall be as established in 40 C.F.R. 124.11~~[-effective July 1-, 2009]~~.

Section 7. Public Hearings. A public hearing shall be conducted as established in 40 C.F.R. 124.12~~[-effective July 1-, 2009]~~.

Section 8. Obligation to Raise Issues and Provide Information During the Public Comment Period. An obligation to raise issues and provide information during the public comment period shall be as established in 40 C.F.R. 124.13~~[-effective July 1-, 2009]~~.

Section 9. Conditions Requested by the Corps of Engineers and Other Government Agencies. Conditions requested by the Corps of Engineers or another government agency shall be as established in 40 C.F.R. 124.59~~[-established July 1-, 2009]~~.

Section 10. Reopening of the Public Comment Period. The public comment period shall be reopened as established in 40 C.F.R. 124.14~~[-effective July 1-, 2009]~~.

Section 11. Issuance and Effective Date of Permit. (1) After the close of the public comment period established in Section 5 of this administrative regulation, the cabinet shall make a determination to issue, deny, modify, revoke and reissue, or revoke a permit.

(a) The cabinet shall provide written notice to~~[notify]~~ the applicant and to each person who submitted written comments or requested notice of the determination.

(b) The notification shall include reference to the procedures to request a hearing to contest the determination.

(2) A final permit determination shall become effective thirty (30) days after the service of notice of the determination, unless:

(a) A later effective date is specified in the determination; or

(b)~~[A stay is granted pursuant to KRS 224.10-420(2) and Section 13 of this administrative regulation; or~~

~~(c) Comments did not request a change in the draft permit, in which case the permit shall become effective immediately upon issuance.~~

(3) The determination, which is a condition precedent to demanding a hearing pursuant to KRS 224.10-420(2) and Section 13 of this administrative regulation, shall be the final permit decision.

Section 12. Response to Comments. Response to comments shall be as established in 40 C.F.R. 124.17~~[-effective July 1-, 2009]~~.

Section 13. Hearings pursuant to KRS 224.10-420. (1) A determination pursuant to Section 11 of this administrative regulation shall be subject to a demand for a hearing pursuant to KRS 224.10-420(2).

(2) A hearing held pursuant to this section shall comply with~~[be subject to]~~ the provisions of KRS 224.10-440 and 224.10-470.

(3) Failure to raise an issue pursuant to Section 8 of this administrative regulation shall not preclude an aggrieved person from making a demand for a hearing pursuant to KRS 224.10-420(2).

Section 14. Permit Timetables. (1) This section shall apply to permits required by 401 KAR 5:005.

(2) The cabinet shall issue its final decision on a complete permit application within the review time specified in this section.

(3) A complete permit application shall contain all the administrative and technical information required by applicable statutes and administrative regulations.

(4) The review time for construction or minor modification of a wastewater treatment plant shall be ninety (90) calendar days from the receipt of a complete permit application. The review time for all other permits required by 401 KAR 5:005 shall be forty-five (45) calendar days from receipt of a complete permit application except as established in Section 15 of this administrative regulation.

Section 15. Timetables for KPDES Permits. (1) This section shall apply for KPDES permits issued pursuant to KRS 224.16-050(1).

(2) The cabinet shall issue its final decision on a complete permit application within 180 calendar days after receipt of an administratively complete permit application, except as provided in Section 16 of this administrative regulation.

(3) A complete permit application shall contain all the administrative and technical information required by applicable statutes and administrative regulations.

(4) Within thirty (30) calendar days of initial receipt of an application for a KPDES permit, the cabinet shall notify the applicant as to whether the application is administratively complete, or if not complete, of the deficiencies that make the application administratively incomplete. A determination that the application is administratively complete shall not mean that the application is complete in every detail, nor shall it mean that any aspect of the application is technically sufficient or approvable.

(5) If the application is determined to be administratively incomplete, the applicant shall correct identified deficiencies within thirty (30) calendar days of the date of notification. If the applicant does not correctly identify deficiencies within the time frame, the cabinet may return the application, and the fees may be retained by the cabinet.

(6) After the notification that the application is administratively complete, if the cabinet determines that the application is technically deficient, the cabinet shall notify the applicant of deficiencies that make the application technically incomplete or unapprovable. The applicant shall correct the technical deficiencies within thirty (30) days of the notification, or other time as agreed upon by the applicant and cabinet. If the technical deficiencies are not corrected within thirty (30) calendar days or the agreed upon time frame, the cabinet may deny the permit, and the fee may be retained by the cabinet.

Section 16. Timetable Exclusions. The time periods that shall not be included in the cabinet's consideration of its decision on a KPDES shall include:

(1) Time waiting for the applicant to respond to a notice of deficiency;

(2) Time during which the permit, application, decision, or related matter is held in litigation, including administrative hearings;

(3) Time during which an opportunity for public hearing or public comment period on a draft or proposed permit is given, and time during which a public hearing is scheduled and held;

(4) Time waiting for federal, state, or local agencies to comment on the permit or to respond to written requests from the cabinet for additional information; and

(5) Other times as agreed to by the applicant and the cabinet.

Section 17. Timetable Extensions. (1) If two (2) or more permits for a facility, site, source, construction project, or other entity are required from the cabinet, the cabinet may coordinate the issuance of the permits, establishing different review and action times that shall be accomplished by the cabinet or applicant. If the permits are coordinated, the cabinet shall so notify the applicant and indicate the time frames under which the intermediate and final permit actions shall be accomplished. The established time frame for final action shall not exceed the last date for action that is provided for under applicable statutes and administrative regulations, based on all applications being considered and their filing dates.

(2) The applicant and the cabinet may agree that the timetables or review times specified in this administrative regulation may be extended.

Section 18. Substitutions, Exceptions, and Additions to Cited Federal Regulations. (1) "Waters of the Commonwealth" shall be substituted for "Waters of the United States" in the federal regulations cited in this administrative regulation.

(2) "Cabinet" shall be substituted for "Director", "EPA", and "Regional Administrator" in the federal regulations cited in this administrative regulation.

(3) "KPDES" shall be substituted for "NPDES" in the federal regulations cited in this administrative regulation.

(4) "Mail", as used in 40 C.F.R. 124.10 and cited in Section 5 of this administrative regulation, shall include electronic transmissions.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2018 at 6:00 p.m. Eastern Time at the Department for Environmental Protection, Training Room A, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures and timetables for receiving permit applications, preparing draft permits, issuing public notice, the public comment period, and holding public hearings on draft permits.

(b) The necessity of this administrative regulation: KRS 224.16-050(1) authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act. This regulation provides specific requirements and timetables for the review and decision-making process regarding permitted discharges into waters of the Commonwealth. All states with primacy over NPDES permitting must have compatible state regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to issue, continue in effect, revoke, modify, suspend, or deny permits to discharge into any waters of the Commonwealth. KRS 224.16-050(1) authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387. KRS 224.10-220 requires the cabinet to establish timetables for the issuance of all permits by the cabinet, except those permits for which a timetable is established by statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific requirements and timetables for the review and decision-making process regarding KPDES permit applications.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this regulation consolidates language from 401 KAR 5:300 (Permit timetables) which is being repealed, renames the regulation appropriately, corrects references to KAR, KRS, and C.F.R., and removes C.F.R. "effective dates" to be consistent with all other Division of Water regulations and federal regulations.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to preserve the language of 401 KAR 5:300 (Permit timetables) which is being repealed, to streamline regulations for the regulated community, to accurately reference statutes and regulations, and to provide consistency between federal and state regulations. All states with primacy over NPDES permitting must have regulations that are compatible with federal regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to issue, continue in effect, revoke, modify, suspend, or deny permits to discharge into any waters of the Commonwealth. KRS 224.16-050(1) authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387. KRS 224.10-220 requires the cabinet to establish timetables for the issuance of all permits by the cabinet, except those permits for which a timetable is established by statute.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation preserves the language of 401 KAR 5:300 (Permit timetables) which is being repealed, streamlines regulations for the regulated community, corrects references to statutes and regulations, and provides consistency between federal and state regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 9,000 individuals, businesses, and organizations that have or apply for KPDES permits. After analysis of the current types of permits, the regulation impacts the following number of entities:

a. Individuals: This administrative regulation affects approximately 1,200 individuals through construction, KPDES, and Kentucky No-Discharge Operational Permits for individual family residences. The amendments to this administrative regulation are not expected to result in new impacts.

b. Businesses: This administrative regulation affects approximately 5,800 businesses through KPDES permits for construction or industrial-related stormwater and wastewater, sanitary wastewater, and KNDOPs related to Animal Feeding Operations. The amendments to this administrative regulation are not expected to result in new impacts.

c. Organizations: This administrative regulation affects approximately sixty (60) civic, professional, non-profit, or religious organizations through KPDES permits and for KNDOPs related to sanitary wastewater treatment. The amendments to this administrative regulation are not expected to result in new impacts.

d. State or Local Government: This administrative regulation affects approximately 1,650 state or local government entities through KPDES permits for construction or industrial-related stormwater, sanitary wastewater, municipal wastewater, and for KNDOPs related to sanitary wastewater treatment. The amendments to this administrative regulation are not expected to result in new impacts.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will not require additional action on the part of the regulated entities to comply with the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will not result in additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated community will benefit from a more streamlined and efficient regulation, and will continue to benefit from consistent state and federal regulations.

(5) Provide an estimate of how much it will cost the

administrative body to implement this administrative regulation:

(a) Initially: This administrative regulation will not result in additional costs.

(b) On a continuing basis: This administrative regulation will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing permit fees, general funds, and U.S. EPA funds. This administrative regulation will not change the sources of funding.

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

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

(9) TIERING: Is tiering applied? Yes. Permit requirements are tiered based on the nature and size of the discharge.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects all units of state or local government that have a KPDES discharge permit and that have wastewater-related KNDOPs.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.10-220, 224.16-050, 224.70-110, 40 C.F.R. 124, 33 U.S.C. 1251-1387

(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 result in additional revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not result in additional revenue.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: The amendment to this administrative regulation is technical in nature and consolidates language from a regulation that is being repealed, and will not result in additional costs or revenue.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 124, 33 U.S.C. 1251-1387

2. State compliance standards. KRS 224.10-100, 224.10-220, 224.16-050, 224.70-110

3. Minimum or uniform standards contained in the federal mandate. The federal mandate establishes specific requirements and timetables for the review and decision-making process regarding permitted discharges and requires that states with primacy over NPDES permitting have state regulations that are compatible with federal regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No. 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.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Amendment)

401 KAR 5:080. Criteria and standards for the Kentucky Pollutant Discharge Elimination System.

RELATES TO: KRS[224.10-100,] 224.10-110,[224.16-050,] 224.18-760,[224.70-100, 224.70-110,] 40 C.F.R. 122.21, 122.29, 125.1, 125.2, 125.3, 125.10, 125.11, 125.31, 125.32, 125.70, 125.71, 125.72, 125.73, 401.15[EO 2008-507, 2008-531]

STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050, 224.70-100, 224.70-110, 40 C.F.R. 122, 125[EO 2008-507, 2008-531]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the cabinet to issue, continue in effect, revoke, modify, suspend or deny under conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387, ~~subject to the conditions imposed in 33 U.S.C. 1342(b) and (d) and that an exemption granted in the issuance of a KPDES permit shall be pursuant to 33 U.S.C. 1311, 1312, and 1326(a). EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environmental Cabinet.~~ This administrative regulation establishes the criteria and standards for the KPDES permitting system.

Section 1. Definitions. Definitions established in 40 C.F.R. 122.2 shall apply for the interpretation of the federal regulations cited within this administrative regulation.

Section 2. Criteria and standards for technology-based treatment standards shall be as established in:

- (1) 40 C.F.R. 125.1[~~, effective July 1, 2008~~];
- (2) 40 C.F.R. 125.2[~~, effective July 1, 2008~~]; and
- (3) 40 C.F.R. 125.3[~~, effective July 1, 2008~~].

Section 3. Criteria for issuance of permits to aquaculture projects shall be as established in:

- (1) 40 C.F.R. 125.10[~~, effective July 1, 2008~~]; and
- (2) 40 C.F.R. 125.11[~~, effective July 1, 2008~~].

Section 4. Criteria and standards for determining fundamentally different factors shall be as established in:

- (1) 40 C.F.R. 125.30[~~, effective July 1, 2008~~];
- (2) 40 C.F.R. 125.31[~~, effective July 1, 2008~~]; and
- (3) 40 C.F.R. 125.32[~~, effective July 1, 2008~~].

Section 5. Criteria for determining alternative effluent limitations for the control of a thermal component of a discharge shall be as established in:

- (1) 40 C.F.R. 125.70[~~, effective July 1, 2008~~];
- (2) 40 C.F.R. 125.71[~~, effective July 1, 2008~~];
- (3) 40 C.F.R. 125.72[~~, effective July 1, 2008~~]; and
- (4) 40 C.F.R. 125.73[~~, effective July 1, 2008~~].

Section 6. Special KPDES program requirements related to

new sources and new discharges shall be as established in 40 C.F.R. 122.29[~~], effective July 1, 2008~~].

Section 7. Toxic pollutants shall be as established in 40 C.F.R. 401.15[~~References throughout 401 KAR Chapter 5 establish requirements for discharges of toxic pollutants. Subsections (1) through (66) identify those toxic pollutants that shall be considered for each of these KPDES requirements.~~

- (1) Acenaphthene.
- (2) Acrolein.
- (3) Acrylonitrile.
- (4) Aldrin or dieldrin.
- (5) Antimony and compounds.
- (6) Arsenic and compounds.
- (7) Asbestos.
- (8) Benzene.
- (9) Benzidine.
- (10) Beryllium and compounds.
- (11) Cadmium and compounds.
- (12) Carbon tetrachloride.
- (13) Chlordane (technical mixture and metabolites).
- (14) Chlorinated benzenes (other than dichlorobenzenes).
- (15) Chlorinated ethanes (including 1,2-dichloroethane, 1,1,1-trichloroethane, and hexachloroethane).
- (16) Chloroalkyl ethers (including chloromethyl, chloroethyl, and mixed ethers).
- (17) Chlorinated naphthalene.
- (18) Chlorinated phenols (including other than those listed elsewhere; includes trichlorophenols and chlorinated cresols).
- (19) Chloroform.
- (20) 2-chlorophenol.
- (21) Chromium and compounds.
- (22) Copper and compounds.
- (23) Cyanides.
- (24) DDT and metabolites.
- (25) Dichlorobenzenes (including 1,2-, 1,3-, and 1,4-dichlorobenzenes).
- (26) Dichlorobenzidine.
- (27) Dichloroethylenes (including 1,1- and 1,2-dichloroethylene).
- (28) 2,4-dichlorophenol.
- (29) Dichloropropane and dichloropropene.
- (30) 2,4-dimethylphenol.
- (31) Dinitrotoluene.
- (32) Diphenylhydrazine.
- (33) Endosulfan and metabolites.
- (34) Endrin and metabolites.
- (35) Ethylbenzene.
- (36) Fluoranthene.
- (37) Haloethers (other than those listed elsewhere; including chlorophenylphenyl ether, bromophenylphenyl ether, bis(dichloroisopropyl) ether, bis(chloroethoxy) methane, and polychlorinated diphenyl ethers).
- (38) Halomethanes (other than those listed elsewhere; including methylene chloride methylchloride, methyl-bromide, bromoform, dichlorobromomethane, trichlorofluoromethane, and dichlorodifluoromethane).
- (39) Heptachlor and metabolites.
- (40) Hexachlorobutadiene.
- (41) Hexachlorocyclohexane (all isomers).
- (42) Hexachlorocyclopentadiene.
- (43) Isophorone.
- (44) Lead and compounds.
- (45) Mercury and compounds.
- (46) Naphthalene.
- (47) Nickel and compounds.
- (48) Nitrobenzene.
- (49) Nitrophenols (including 2,4-dinitrophenol and dinitrocresol).
- (50) Nitrosamines.
- (51) Pentachlorophenol.
- (52) Phenol.
- (53) Phthalate esters.

- (54) Polychlorinated biphenyls (PCBs).
- (55) Polynuclear aromatic hydrocarbons (including benzantracenes, benzopyrenes, benzofluoranthene, chrysenes, dibenzanthracenes, and indenopyrenes).
- (56) Selenium and compounds.
- (57) Silver and compounds.
- (58) 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD).
- (59) Tetrachloroethylene.
- (60) Thallium and compounds.
- (61) Toluene.
- (62) Toxaphene.
- (63) Trichloroethylene.
- (64) Vinyl chloride.
- (65) Zinc and compounds.
- (66) The term "compounds" shall include organic and inorganic compounds].

Section 8. The level of effluent quality attainable through the application of secondary or equivalent treatment shall be as established in:

- (1) 40 C.F.R. 133.100[~~], effective July 1, 2008~~];
- (2) 40 C.F.R. 133.101[~~], effective July 1, 2008~~];
- (3) 40 C.F.R. 133.102[~~], effective July 1, 2008~~];
- (4) 40 C.F.R. 133.103[~~], effective July 1, 2008~~];
- (5) 40 C.F.R. 133.104[~~], effective July 1, 2008~~]; and
- (6) 40 C.F.R. 133.105[~~], effective July 1, 2008~~].

Section 9. Modifications, Exceptions, and Additions to Cited Federal Regulations. (1) "Waters of the United States" shall be modified to "Waters of the Commonwealth" in the federal regulations cited in[~~Sections 1 through 8 of~~] this administrative regulation;

(2) "Director" shall be modified to "cabinet" in[~~if the authority to administer] the federal regulations cited in[Sections 1 through 8 of] this administrative regulation[has been delegated to the cabinet];~~

(3) "NPDES" shall be modified to "KPDES" in[~~if the authority to administer] the federal regulations cited in[Sections 1 through 8 of] this administrative regulation[has been delegated to the cabinet]; and~~

(4) The notification requirements related to applications for a thermal variance shall be modified to add the notification of interstate agencies in 40 C.F.R. 125.72(d)[~~], effective July 1, 2008~~].

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2018 at 6:00 p.m. Eastern Time at the Department for Environmental Protection, Training Room A, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

- (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria and standards for the KPDES permitting system and provides any exemptions granted in the issuance of KPDES permits shall be pursuant to 33 U.S.C. 1311, 1312, and 1326(a).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide specific requirements for permitted discharges into waters of the Commonwealth. All states with NPDES delegation must have regulations that are compatible with federal regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to provide for the prevention, abatement, and control of all water pollution and to issue, continue in effect, revoke, modify, suspend, or deny permits to discharge into any waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to issue permits pursuant to the Federal Water Pollution Control Act with certain conditions. KRS 224.70-100 requires the cabinet to provide a comprehensive program for the prevention, abatement, and control of water pollution. KRS 224.70-110 prohibits pollution of the waters of the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by providing specific standards and criteria for the KPDES permitting system.

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

(a) How the amendment will change this existing administrative regulation: The amendment removes an outdated Executive Order, corrects statutory and regulatory references, aligns the language of "toxic pollutants" with the federal C.F.R., and removes "effective dates" to be consistent with all other Division of Water regulations.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify the cabinet's authority, abbreviate the regulation, and provide consistency between state and federal regulations. All states with NPDES delegation must have regulations compatible with the federal regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to provide for the prevention, abatement, and control of all water pollution and to issue, continue in effect, revoke, modify, suspend, or deny permits to discharge into any waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to issue permits pursuant to the Federal Water Pollution Control Act with certain conditions. KRS 224.70-100 requires the cabinet to provide a comprehensive program for the prevention, abatement, and control of water pollution. KRS 224.70-110 prohibits pollution of the waters of the Commonwealth.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the cabinet's authority, abbreviates the regulation, and provides consistency between state and federal regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 2,000 businesses and publicly owned treatment works that have or apply for KPDES permits subject to technology-based effluent guidelines. This regulation does not apply to individuals or to civic, professional, non-profit, or religious organizations. After analysis of the current types of permits, the regulation is expected to impact the following entities:

a. Businesses: This administrative regulation affects approximately 1,925 businesses through KPDES permits for wastewater discharges subject to technology-based effluent guidelines for wastewater related to commercial or industrial activities. The amendments to this administrative regulation are not expected to result in new impacts.

b. State or Local Government: This administrative regulation affects approximately 250 state or local government entities through KPDES permits for publicly owned treatment works subject to technology-based limits of secondary treatment. The

amendments to this administrative regulation are not expected to result in new impacts.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will not need to take any additional action to comply with this administrative regulation. The amendments are technical in nature and do not affect the substance of the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this regulation will not result in additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated community will have an abbreviated regulation that is consistent with federal regulations.

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

(a) Initially: The amendment to this administrative regulation will not result in additional costs.

(b) On a continuing basis: The amendment to this administrative regulation will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing permit fees, general funds, and U.S. EPA funds. The amendment to this administrative regulation will not change sources of funding.

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

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

(9) TIERING: Is tiering applied? To the extent that the federal regulations are tiered based on classes of industrial users, specific requirements of POTWs, and specific categories of discharges, this administrative regulation is also tiered.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects approximately 250 state or local government entities through KPDES permits for publicly owned treatment works subject to technology-based limits of secondary treatment. The amendments to this administrative regulation are not expected to result in new impacts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 224 and the Federal Clean Water Act (33 U.S.C. 1251-1387).

(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 to this administrative regulation will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to this administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: The amendment to this administrative regulation is technical in nature, therefore, no additional revenue will be generated nor will costs be increased.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 122, 125, 33 U.S.C. 1251-1387

2. State compliance standards. KRS Chapter 224

3. Minimum or uniform standards contained in the federal mandate. The federal mandate contains NPDES criteria and standards. All states with NPDES delegation must have regulations that meet or exceed the federal requirements for water pollution prevention.

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 or additional or different responsibilities or requirements.

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

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Amendment)

401 KAR 5:320. Wastewater Laboratory Certification Program.

RELATES TO: KRS 224.1-010[224.01-040], 224.10-100, 224.10-670, 224.70-100, 224.70-110, 40 C.F.R. 136, 33 U.S.C. 1342

STATUTORY AUTHORITY: KRS 224.10-670

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-670 authorizes the cabinet to promulgate administrative regulations establishing standards for the operation of laboratories, fees for certification and competency evaluation of those laboratories, issuance of certificates of competency, and a certification program for laboratories that submit environmental data as it relates to analyses and laboratory tests for activities subject to 33 U.S.C. 1342. This administrative regulation establishes the wastewater laboratory certification program, standards for the certification of wastewater laboratories, and fees for certification and evaluation of wastewater laboratories.

Section 1. Definitions. (1) "Analysis category" means one (1) of the following analyte groups for which an analysis can be performed by a wastewater laboratory:

- (a) Inorganic general chemistry;
 - (b) Inorganic metals;
 - (c) Organic chemistry volatiles;
 - (d) Organic chemistry semi-volatiles;
 - (e) Organic chemistry pesticides, herbicides, or PCBs;
 - (f) Organic chemistry dioxins;
 - (g) Microbiology;
 - (h) Whole effluent toxicity; and
 - (i) Field analysis.
- (2) "Certified" means that the cabinet has determined that the

wastewater laboratory meets the regulatory performance criteria and the standard of quality established in this administrative regulation and has issued a certification.

(3) "Equivalency of certification" means certification of a wastewater laboratory by an entity, other than the cabinet, whose requirements for certification are determined by the cabinet to meet the requirements of this administrative regulation.

(4) "Field analysis" means a measuring of[the following]:

- (a) Dissolved oxygen;
- (b) Residual chlorine;
- (c) pH;
- (d) Temperature;
- (e) Conductivity; and
- (f) Turbidity.

(5) "Field-only wastewater laboratory" means a wastewater laboratory that performs a measurement for only the parameters identified as field analysis, regardless of whether the measurement takes place outdoors, in an on-site room used as a laboratory, or in an off-site laboratory.

(6) "General wastewater laboratory" means a wastewater laboratory that performs an analysis for at least one (1) analysis category other than field analysis, regardless of whether the general wastewater laboratory also performs a field analysis measurement.

(7) "Interim certification" means a certification approved by the cabinet if it determines through documentation review that the wastewater laboratory meets the requirements of Section 10 of this administrative regulation. Interim certification is applicable to a method-analyte pairing until the cabinet has completed an on-site audit for that method-analyte pairing.

(8) "Primary analyst or technician" means an analyst or technician who performs a specific method-analyte pairing analysis more often than any other analyst or technician at that wastewater laboratory.

(9) "Wastewater laboratory" means a laboratory that performs an analysis, measurement, or laboratory test for an activity subject to 33 U.S.C. 1342.

~~Section 2.[Effective Date for this Administrative Regulation. The effective date for this administrative regulation shall be:~~

- ~~(1) January 1, 2014, for a general wastewater laboratory; and~~
- ~~(2) January 1, 2015, for a field-only wastewater laboratory.~~

~~Section 3.] Requirement for Acceptance of Environmental Data.[(1)] In accordance with KRS 224.10-670(2)[and the schedule established in subsection (2) of this section], environmental data from analyses and laboratory tests submitted to the cabinet for activities subject to 33 U.S.C. 1342 shall be performed:~~

- ~~(1)[(a)] By a certified wastewater laboratory; and~~
- ~~(2)[(b)] In compliance with:~~

- ~~(a)[1-] An analytical method in 40 C.F.R. Part 136 or as established in the applicable permit;~~
- ~~(b)[2-] This administrative regulation; and~~
- ~~(c)[3-] The provisions of the Commonwealth of Kentucky Wastewater Laboratory Certification Manual.[(2) The requirements established in subsection (1) of this section shall begin on:~~
- ~~(a) January 1, 2015, for a general wastewater laboratory; and~~
- ~~(b) January 1, 2016, for a field-only wastewater laboratory.]~~

Section 3[4]. Certification Requirements. The requirements established in this section shall apply to a wastewater laboratory seeking certification. (1) Application for certification shall be made on the Kentucky Wastewater Laboratory Certification Program[.] Application for Kentucky Laboratory Certification, DEP No. DOW0503[KWLCF-Form-App], and shall include all information required by that form, and shall be submitted with the applicable fee as established in Section 7[8] of this administrative regulation as follows:

- (a) If in paper form, to: Kentucky Division of Water; Attn: Laboratory Certification; 300 Sower Boulevard; Frankfort, Kentucky 40601; or
 - (b) If in electronic form, via the cabinet's Web site: www.water.ky.gov.
- (2) The wastewater laboratory shall apply for certification for

each analysis category and for each method-analyte pairing for which the wastewater laboratory intends to perform an analysis.

Section 4[5]. Term of Certification Periods for a General Wastewater Laboratory. (1) The initial certification period for a general wastewater laboratory shall be from January 1, 2014, until December 31, 2015, and subsequent certification periods shall be consecutive two (2) year periods, beginning January 1, 2016.

(2) If, beginning January 1, 2016, a general wastewater laboratory applies for initial certification of the wastewater laboratory or for certification for a new method-analyte pairing, the initial certification period shall be the two (2) year period as established in subsection (1) of this section, based upon the date of application receipt by the cabinet.

Section 5[6]. Term of Certification Periods for a Field-Only Wastewater Laboratory. (1) The initial certification period for a field-only wastewater laboratory shall be from January 1, 2015, until December 31, 2016, and subsequent certification periods shall be consecutive two (2) year periods, beginning January 1, 2017.

(2) If, beginning January 1, 2017, a field-only wastewater laboratory applies for initial certification of the wastewater laboratory or for certification for a new method-analyte pairing, the initial certification period shall be the two (2) year period as established in subsection (1) of this section, based upon the date of application receipt by the cabinet.

Section 6[7]. Due Date for Certification Renewal Applications.

(1) If ~~a[an application, the]~~ Kentucky Wastewater Laboratory Certification Program[.] Application for Kentucky Laboratory Certification[., KWLCF Form App.] for certification renewal is received by the cabinet by November 15 of the odd-numbered year of the current certification period for a general wastewater laboratory, or November 15 of the even-numbered year of the current certification period for a field-only wastewater laboratory, the application shall be considered timely submitted, and the wastewater laboratory's certification shall continue in effect until the cabinet acts upon the application, unless the certification is otherwise revoked.

(2) If ~~a[an application, the]~~ Kentucky Wastewater Laboratory Certification Program[.] Application for Kentucky Laboratory Certification[., KWLCF Form App.] for certification renewal is received by the cabinet after November 15 but on or before December 15 of the odd-numbered year of the current certification period for a general wastewater laboratory, or after November 15 but on or before December 15 of the even-numbered year of the current certification period for a field-only wastewater laboratory, the application shall not be considered timely submitted, and shall be subject to the surcharge established in Section 7(4)[8(4)] of this administrative regulation. The wastewater laboratory's certification shall continue in effect until the cabinet acts upon the application, unless the certification is otherwise revoked.

(3) If ~~a[an application, the]~~ Kentucky Wastewater Laboratory Certification Program[.] Application for Kentucky Laboratory Certification[., KWLCF Form App.] for certification renewal is received by the cabinet after December 15 of the odd-numbered year of the current certification period for a general wastewater laboratory, or after December 15 of the even-numbered year of the current certification period for a field-only wastewater laboratory, the application shall not be considered timely submitted, and shall be subject to the surcharge established in Section 7(5)[8(5)] of this administrative regulation. The wastewater laboratory's certification shall expire after December 31 of that odd-numbered year for a general wastewater laboratory, or after December 31 of that even-numbered year for a field-only wastewater laboratory, and shall not be valid until the cabinet acts upon the renewal application.

Section 7[8]. Annual Certification Fees. (1) The annual certification fees for wastewater laboratory certification shall be established in Table 1 of subsection (2) of this section and shall include:

(a) A nonrefundable administrative fee; and

(b) A fee for each applicable analysis category.

(2) If a follow-up audit is performed to verify the correction of a deficiency identified by an audit pursuant to Section 10 of this administrative regulation, an additional audit fee, established in Table 1, shall be assessed.

Table 1: Wastewater Laboratory Certification Fee

Fee Category	Annual Fee
Administrative Fee	\$1,000
Analysis Category Fee	
Inorganic general chemistry	\$500
Inorganic metals	\$500
Organic chemistry volatiles	\$500
Organic chemistry semi-volatiles	\$500
Organic chemistry pesticides, herbicides, PCBs	\$500
Organic chemistry dioxins	\$750
Microbiology	\$500
Whole effluent toxicity	\$1,000
Field analysis only	\$250
Follow-up Audit Fee	\$500

(3) The applicable certification fee shall be due by November 15 of each year. In odd-numbered years of the certification period for a general wastewater laboratory, or in even-numbered years of the certification period for a field-only wastewater laboratory, the applicable certification fee shall be submitted concurrent with the renewal certification[application, the]—Kentucky Wastewater Laboratory Certification Program[.] Application for Kentucky Laboratory Certification[., KWLCF Form App.]

(4)(a) If a fee is received by the cabinet after November 15 but on or before December 15, the wastewater laboratory shall incur a surcharge of fifteen (15) percent of the applicable certification fee (administrative fee plus analysis category fee).

(b) Payment of this surcharge shall be due thirty (30) days after notice is provided by the cabinet.

(5) If a fee is received by the cabinet after December 15, the wastewater laboratory shall incur a surcharge of twenty-five (25) percent of the applicable certification fee.

(a) The wastewater laboratory's certification shall expire after December 31 of that year and shall not be valid until the applicable certification fee and the surcharge are received by the cabinet.

(b) Payment of this fee and surcharge shall not reinstate certification for failure to timely submit an application for certification renewal pursuant to the expiration established in Section 7(3) of this administrative regulation.

(6) A wastewater laboratory seeking or obtaining equivalency of certification shall receive a twenty (20) percent reduction of the certification fee.

(7) An in-state laboratory that is also certified for drinking water analysis, as established in 401 KAR 8:040, shall receive a twenty (20) percent reduction of the certification fee.

(8) A wastewater laboratory that provides only field analysis shall be exempt from the annual administrative fee established in Table 1 of subsection (2) of this section.

(9) A wastewater laboratory operated by a facility that has been issued a Kentucky Pollutant Discharge Elimination System permit and that is providing only field analysis for only its own facility shall be exempt from all fees established in this administrative regulation.

(10) A wastewater laboratory operated by a municipality that provides analysis for only its own facility shall receive a ~~reduction~~[the following reduction] to the administrative fee established in Table 1 of subsection (2) of this section, based on its maximum permitted flow value as established in this subsection[.]:

(a) Less than or equal to 0.10 million gallons per day (MGD), a 100 percent reduction (no administrative fee)[.];

(b) Less than or equal to 0.50 MGD but greater than 0.10 MGD, a seventy-five (75) percent reduction[.];

(c) Less than or equal to one and zero tenths (1.0) MGD but greater than zero and five tenths (0.5) MGD, a fifty (50) percent reduction[.];

(d) Less than or equal to two and zero tenths (2.0) MGD but greater than one and zero tenths (1.0) MGD, a twenty-five (25)

percent reduction~~[-; and]~~

(e) Greater than two and zero tenths (2.0) MGD, a ten (10) percent reduction.

(11) If more than one (1) reduction pursuant to subsections (6) through (10) of this section applies, only the greatest reduction shall be taken.

Section 8~~[9]~~. Interim Certification. (1) If a wastewater laboratory demonstrates that it meets the~~[following]~~ requirements established in subparagraphs (a) through (d) of this subsection~~[are met]~~ for a method-analyte pairing, the cabinet shall approve interim certification for that method-analyte pairing~~[-;]~~

(a) All information required by the Kentucky Wastewater Laboratory Certification Program~~[-]~~ Application for Kentucky Laboratory Certification~~[-; KWLCP Form App-]~~ shall be submitted to the cabinet~~[-;]~~

(b) The appropriate fee shall be submitted to the cabinet~~[-;]~~

(c) A method, including instrumentation, established in 40 C.F.R. Part 136 or the applicable permit shall be used~~[-; and]~~

(d) A proficiency test study sample shall be analyzed by the primary analyst or technician within the last year and the results shall be within the acceptance limits specified by a proficiency test study provider approved by the American Association for Laboratory Accreditation.

(2) A wastewater laboratory with interim certification may analyze samples for that method-analyte pairing for compliance purposes.

Section 9~~[10]~~. Audits. (1) A certified wastewater laboratory shall allow a cabinet auditor to conduct, and shall participate in, an on-site audit during normal business hours.

(2) Wastewater laboratory certification records and supporting documentation shall be retained for five (5) years or until the next on-site audit, whichever is longer.

(3) If the cabinet identifies a deficiency, the certified laboratory shall correct or otherwise address the deficiency within thirty (30) days of receipt of notice of the deficiency.

(4)(a) If an on-site audit of a wastewater laboratory located outside of Kentucky is conducted by the cabinet, the wastewater laboratory shall bear the reasonable cost of the audit.

(b) Payment shall be due thirty (30) days after notice of this cost is provided by the cabinet.

Section 10~~[11]~~. Full Certification Requirements. (1) If, after an on-site audit and review of submitted information, all requirements established by~~[of]~~ this administrative regulation for a method-analyte pairing have been met, the cabinet shall approve full certification for that method-analyte pairing.

(2) To maintain full certification for the method-analyte pairing, the wastewater laboratory shall:

(a) Maintain compliance with the requirements established by~~[of]~~ this administrative regulation, based upon the cabinet's review of requested documentation, on-site audit inspection, or both;

(b) Analyze a proficiency test study sample at least annually by the primary analyst or technician and the results shall be within the acceptance limits specified by a proficiency test study provider approved by the American Association for Laboratory Accreditation. If the wastewater laboratory fails a proficiency test study, the wastewater laboratory shall, within ninety (90) days after receiving notice of the failed proficiency test study, analyze a second proficiency test study with the results within the acceptance limits specified by an approved proficiency test study provider;

(c) Notify the cabinet within thirty (30) calendar days of a change in the personnel, equipment, analytical method, or laboratory location identified in its~~[application-]~~ Kentucky Wastewater Laboratory Certification Program~~[-;]~~ Application for Kentucky Laboratory Certification~~[-; KWLCP Form App-]~~;

(d) Submit documentation or data required by this administrative regulation; and

(e) Submit to the cabinet all fees by the deadlines established in this administrative regulation.

Section 11~~[12]~~. Provisional Certification. (1) The cabinet shall, when becoming aware of a failure of a wastewater laboratory to comply with one (1) or more of the requirements established in Section 10~~(2)~~~~[11(2)]~~ of this administrative regulation, provide written notice to the wastewater laboratory of the deficiency and of the cabinet's intent to change the certification status to provisional certification.

(2) If the deficiency relates to a specific method-analyte pairing, the cabinet may change the status of the wastewater laboratory's certification to provisional certification. If the status is changed to provisional certification, this changed status shall be for only the analyte that failed to meet the requirements of Section 10~~(2)~~~~[11(2)]~~ of this administrative regulation, unless the cabinet had certified a group of related analytes based on a limited number of analytes in the group.

(3) The wastewater laboratory shall submit to the cabinet a written corrective action plan to address this deficiency within thirty (30) days of receipt of the notice of intent from the cabinet, specifying the immediate and long-term corrective actions that shall be taken.

(4) The wastewater laboratory shall correct this deficiency as soon as reasonably possible. If the deficiency is not corrected within thirty (30) days of receipt of the notice of intent, the cabinet shall change the certification status to provisional certification, and shall provide written notice to the wastewater laboratory of this action.

(5) A wastewater laboratory with provisional certification may continue to analyze a sample for compliance purposes, but shall notify its client of the wastewater laboratory's provisional certification status prior to conducting an analysis for that client and shall provide that information in writing to the client.

(6) A wastewater laboratory with provisional certification shall correct the deficiency as soon as is reasonably possible, but within three (3) months of written notification from the cabinet of the change to provisional certification status.

(7) The cabinet shall restore the wastewater laboratory's provisional certification status to full certification upon making a determination that the deficiency resulting in the provisional certification status has been corrected and shall provide written notice to the wastewater laboratory of this action.

Section 12~~[13]~~. Certification Revocation. (1) The cabinet may immediately revoke a wastewater laboratory's certification for~~[any of the following reasons]~~:

(a) ~~Failing~~~~[Failure]~~ to use an analytical method established in 40 C.F.R. Part 136 or in the applicable permit;

(b) Reporting proficiency test study data from another laboratory as its own data;

(c) Engaging in falsification of data or another deceptive practice;

(d) Endangering public health or the environment through an operation associated with the wastewater laboratory;

(e) ~~Refusing~~~~[Refusal]~~ to allow or participate in an on-site audit conducted by the cabinet; or

(f) Persistent failure to report accurate compliance data to the cabinet.

(2) If the cabinet revokes a wastewater laboratory's certification pursuant to subsection (1) of this section, the cabinet shall immediately notify the wastewater laboratory of this action and provide written notice to the wastewater laboratory of this action.

(3) If a wastewater laboratory has not corrected the deficiency resulting in the provisional certification status within three (3) months of written notification from the cabinet of the change to provisional certification, the cabinet shall provide written notice to the wastewater laboratory of the cabinet's intent to revoke the wastewater laboratory's certification for any method-analyte pairing involved in the deficiency.

(4) The wastewater laboratory may request, in writing, a redetermination of the cabinet's intent to revoke certification pursuant to subsection (3) of this section.

(a) If a redetermination is requested, the request shall be made within thirty (30) days of receipt of the notice of intent to revoke.

(b)1. This request shall be submitted to the cabinet and shall

explain the basis for the redetermination request and, if appropriate, include a written corrective action plan to address the deficiency identified in the cabinet's notice of intent to revoke.

2. The request shall be signed by a responsible official of the wastewater laboratory.

(5) The cabinet, having received a request for redetermination pursuant to subsection (4) of this section, shall make a final determination whether or not to continue provisional certification, approve certification, or revoke certification, and shall provide written notice to the wastewater laboratory of this action.

(6) If, within thirty (30) days of receipt of the notice of intent to revoke pursuant to subsection (3) of this section, the wastewater laboratory does not request a redetermination, the cabinet shall revoke the wastewater laboratory's certification and provide written notification to the wastewater laboratory of this action.

Section 13[14]. Cabinet to Develop Templates. (1) The cabinet shall develop templates to assist wastewater laboratories in preparing a quality assurance plan (QAP) and standard operating procedures (SOPs) applicable for field analysis measurements.

(2) The templates developed by the cabinet shall address all applicable requirements for a QAP and common device SOPs, but will require the inclusion of site-specific information to be provided by the wastewater laboratory.

(3) The cabinet shall provide public notice and at least a thirty (30) day opportunity for public review and comment on the proposed templates before finalizing these templates.

(4) These templates may be used by a field-only wastewater laboratory or for the field analysis portion by a general wastewater laboratory. A wastewater laboratory is not required to use these templates, and may independently develop its own QAP and SOPs.

(5) The cabinet shall make the final templates available on its Web site.

Section 14[15]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Commonwealth of Kentucky Wastewater Laboratory Certification Manual", June 2013; and

(b) "Kentucky Wastewater Laboratory Certification Program[.] Application for Kentucky Laboratory Certification", DEP No. DOW0503 (March 2018)[KWLC Form App, March 2013;

(c) "~~Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms~~", Fourth Edition, U.S. EPA-821-R-02-013, October 2002; and

(d) "~~Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms~~", Fifth Edition U.S. EPA-821-R-02-012, October 2002.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained through the Division of Water's Web site at <http://water.ky.gov>.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2018 at 6:00 p.m. Eastern Time at the Department for Environmental Protection, Training Room A, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards, fees, evaluation, and certification of wastewater laboratories.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the wastewater laboratory certification program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-670 authorizes the cabinet to establish a wastewater laboratory certification program and requires all environmental samples collected pursuant to 33 U.S.C. 1342 to be submitted to laboratories certified by the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statute by providing the specifics of the wastewater laboratory certification program established pursuant to KRS 224.10-670.

(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 corrects a statutory reference, removes expired timetables that began the wastewater laboratory certification program but are no longer applicable, makes technical updates to the wastewater laboratory certification application, and updates the Kentucky Wastewater Laboratory Certification Manual for clarification and to align with current practice.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to refine the administrative regulation and update the materials incorporated by reference.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-670 authorizes the cabinet to establish a wastewater laboratory certification program and requires all environmental samples collected pursuant to 33 U.S.C. 1342 to be submitted to laboratories certified by the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in effective administration of the statutes by refining the language of the regulation and updating materials incorporated by reference to align with current practices.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to approximately 79 commercial laboratories, 71 field service laboratories, 320 industrial laboratories, and 179 municipal laboratories.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendments will not require additional action to comply with 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): The amendment will not result in additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): KRS 224.10-670 requires samples to be analyzed by a certified wastewater laboratory in order for the data to be deemed valid. The amendments align the regulation with current practice.

(5) Provide an estimate of how much it will cost the

administrative body to implement this administrative regulation:

(a) Initially: The amendment will not result in additional costs.

(b) On a continuing basis: The amendment will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Program fees authorized by KRS 224.10-670.

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

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

(9) TIERING: Is tiering applied? Yes, tiering is applied in this administrative regulation. Municipal wastewater laboratories that provide service only for their own facilities have a sliding scale reduction from 100% (no fee) to 10% based on the maximum permitted flow value. Wastewater laboratories pay an analysis category fee for only the analysis categories for which they seek certification.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation applies to approximately 79 commercial laboratories, 71 field service laboratories, 320 industrial laboratories, and 179 municipal laboratories.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-670, 40 C.F.R. 136.

(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 to this administrative regulation will not generate any additional 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 to this administrative regulation will not generate any additional revenue.

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: The amendment to this administrative regulation will not result in additional revenue or costs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 136 provides the substantive requirements for wastewater laboratories, but there is no requirement for the states to implement a wastewater laboratory certification program.

2. State compliance standards. KRS 224.10-670.

3. Minimum or uniform standards contained in the federal mandate. Wastewater laboratory analysis, for the purpose of demonstrating compliance with activities subject to 33 U.S.C.

1342, must meet the analytical methods and instrumentation required by 40 C.F.R. 136.

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 responsibilities or requirements.

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

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

501 KAR 6:070. Kentucky Correctional Institution for Women.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. 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 Kentucky Correctional Institution for Women.

Section 1. Incorporation by Reference. (1) "Kentucky Correctional Institution for Women Policies and Procedures", May 15, 2018~~[March 10, 2015]~~, are incorporated by reference. Kentucky Correctional Institution for Women Policies and Procedures include:

KCIW 01-03-01	Communications Between Staff and Inmates (Amended 2/14/13)
KCIW 01-08-01	News Media Access (Amended 2/14/13)
KCIW 02-04-01	Accounting Procedures (Amended 2/14/13)
KCIW 02-05-01	Inmate Canteen and Staff Canteen (Amended <u>5/15/18</u> [2/14/13])
KCIW 05-01-01	Outside Consultation, Research and Student Interns (Amended 2/14/13)
KCIW 06-01-01	Offender Information (Amended 5/14/13)
KCIW 08-02-01	Fire Safety Practices (Amended 2/14/13)
KCIW 08-02-02	Fire Evacuation Routes (Amended <u>5/15/18</u> [11/25/13])
KCIW 09-01-02	Inmate Move Sheet (Amended 2/14/13)
KCIW 09-06-04	Regulation of Inmate Movement (Amended <u>5/15/18</u> [2/14/13])
<u>KCIW 09-06-05</u>	<u>State Vehicles and Private Vehicles (Added 5/15/18)</u>
KCIW 09-10-01	Pedestrian and Vehicular Traffic (Amended 11/25/2013)
KCIW 09-10-02	Inmate Entry and Exit Procedure (Amended 5/14/13)
KCIW 09-11-01	Prohibiting Inmate Authority Over Other Inmates (Amended 2/14/13)
KCIW 09-12-01	Search Plan (Amended 12/29/2014)
KCIW 09-13-01	Tobacco Free Environment (Amended 11/25/13)
KCIW 09-13-02	Alcohol Detection (Amended 5/14/13)
KCIW 10-01-01	Special Management Unit General Operations and Regulations (Amended <u>5/15/18</u> [3/10/15])
KCIW 10-01-02	Special Management Unit Status, Placement and Review (Amended <u>5/15/18</u> [2/14/13])
KCIW 10-01-04	Death Row (Amended <u>5/15/18</u> [2/14/13])
KCIW 11-02-01	Menu Preparation and Special Diets (Amended 2/14/13)
KCIW 11-03-01	Food Service Operations (Amended

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KCIW 11-04-01 5/15/18[2/14/13]
 Health Regulations and General Guidelines for
 the Food Service Area (Amended 12/29/2014)
 KCIW 11-07-01 Special Religious Diets (Amended
5/15/18[2/14/13])
 KCIW 12-01-01 Laundry, Clothing, and Personal Hygiene
 (Amended 5/15/18[3/10/15])
 KCIW 12-02-01 Pest Control (Amended 12/29/[20]14)
 KCIW 12-04-04 Sanitation Plan (Amended 5/15/18[11/25/13])
 KCIW 13-01-01 Provision of Medical and Dental Care (Amended
 11/25/13)
 KCIW 13-01-02 Health Appraisal and Periodic Exams (Amended
 2/14/13)
 KCIW 13-01-03 Pharmaceutical Services (Amended 11/25/13)
 KCIW 13-02-01 Family Notification (Amended 5/14/13)
 KCIW 13-03-01 Emergency Care (Amended 2/14/13)
 KCIW 13-03-02 Convalescent and Chronic Care (Amended
 2/14/13)
 KCIW 13-04-02 Psychiatric and Psychological Services
 (Amended 3/10/15)
 KCIW 13-07-01 Detoxification and Alcohol or Chemical
 Dependency (Amended 2/14/13)
 KCIW 13-09-01 Suicide Prevention and Intervention Program
 (Amended 2/14/13)
 KCIW 13-09-02 Inmate Observer Program (Amended 2/14/13)
 KCIW 13-13-01 Health Care Records (Amended 11/25/13)
 KCIW 13-14-01 Health Services (Amended 2/14/13)
 KCIW 13-14-02 Operational Guidelines for the Mental Health
 Area of the Lonnie Watson Center (Amended
 11/25/[20]13)
 KCIW 13-14-04 Injury Prevention (Added 2/14/13)
 KCIW 14-02-01 Access to Legal Resources and Services
 (Amended 5/15/18[12/29/2014])
 KCIW 15-06-01 Restriction Guidelines (Amended 2/14/13)
 KCIW 16-01-01 Inmate Correspondence (Amended
5/15/18[12/29/2014])
 KCIW 16-02-01 Access to Telephones (Amended 2/14/13)
 KCIW 16-03-01 Inmate Visiting (Amended 5/15/18[3/10/15])
 KCIW 16-05-01 Inmate Packages (Amended
5/15/18[12/29/2014])
 KCIW 17-01-01 Assessment Center Operations and Programs
 (Amended 5/15/18[5/14/13])
 KCIW 17-02-01 Admission Procedure (Amended 2/14/13)
 KCIW 17-05-01 Inmate Personal Property (Amended
5/15/18[5/14/13])
 KCIW 18-01-01 Inmate Classification (Amended 11/25/13)
 KCIW 18-01-03 Honor Program (Amended 5/15/18[2/14/13])
 KCIW 18-05-01 Special Needs Inmates (Amended
5/15/18[11/25/13])
 KCIW 18-05-02 Youthful Offender (Added 12/15/14)
 KCIW 18-05-03 Lesbian, Gay, Bisexual, Transgender, and
 Intersex (LGBTI) (Amended 5/15/18[3/10/15])
 KCIW 19-01-01 Inmate Work and Program Assignments
 (Amended 5/15/18[12/29/2014])
 KCIW 19-02-01 Governmental Services (Amended 2/14/13)
 KCIW 19-03-01 Landscape and Maintenance Work Details
 (Amended 2/14/13)
 KCIW 19-04-01 Correctional Industries (Amended
5/15/18[12/29/2014])
 KCIW 20-01-01 Educational Programs (Amended
5/15/18[12/29/2014])
 KCIW 21-01-01 Library Services (Amended 3/10/15)
 KCIW 22-01-01 Recreation and Inmate Activity (Amended
 11/25/13)
 KCIW 22-01-02 Arts and Crafts Program (Amended 2/14/13)
 KCIW 22-01-04 Inmate Club Activities (Amended 11/25/13)
 KCIW 23-01-01 Religious Services (Amended 12/29/2014)
 KCIW 24-01-01 Social Services Program (Amended 2/14/13)
 KCIW 24-02-01 Substance Abuse Program (Amended 2/14/13)
 KCIW 25-02-01 Temporary Release and Community Release
 (Amended 5/14/13)
 KCIW 25-03-01 Funeral Home Visit or Bedside Visit (Amended
 2/14/13)

KCIW 26-01-01 Volunteer Service Program (Amended 2/14/13)

(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.

JAMES ERWIN, Commissioner

APPROVED BY AGENCY: May 8, 2018

FILED WITH LRC: May 15, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2018, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Kentucky Correctional Institution for Women including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, and to meet American Correctional Association (ACA) standards requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Kentucky Correctional Institution for Women, a correctional institution within the Kentucky Department of Corrections. The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections and its institutions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference establish the policies and procedures that govern the operations of the Kentucky Correctional Institution for Women. It provides direction and information to Corrections employees, inmates, and visitors concerning the rules and operations of the institution.

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

(a) How the amendment will change this existing administrative regulation: The amendment maintains the institution's compliance with ACA and PREA standards and updates practices for the institution.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and update practices for the institution.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections and its institutions.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and

inmates information concerning the effective and orderly management of the institution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Correctional Institution for Women, 220 employees, 650 inmates, and all visitors to KCIW.

(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: Staff and inmates will have to follow the changes made in the policies and procedures. Employees and inmates of the Kentucky Correctional Institution for Women will have to change their actions to comply with any operational changes made by this regulation. Others who enter KCIW will have to comply with policies and procedures concerning entry, search, contraband, and others when they enter the institution.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs for the institution.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the institution.

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

(a) Initially: No increase in funding is anticipated.

(b) On a continuing basis: No increase in funding is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Correctional Institution for Women budgeted funds for the biennium.

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

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation impact the operation of the Kentucky Correctional Institution for Women.

(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, and to meet American Correctional Association (ACA) standards requirements.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment does not create any revenue for the Kentucky Correctional Institution for Women or other government entity.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment does not create any revenue for the

Kentucky Correctional Institution for Women or other government entity.

(c) How much will it cost to administer this program for the first year? The amendment to this regulation impacts how the Kentucky Correctional Institution for Women operates. The amendment is not expected to increase the Kentucky Correctional Institution for Women budgeted funds for the biennium.

(d) How much will it cost to administer this program for subsequent years? The amendment to this regulation impacts how the Kentucky Correctional Institution for Women operates. The amendment is not expected to increase the Kentucky Correctional Institution for Women budgeted funds.

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 Criminal Justice Training (Amendment)

503 KAR 5:090. Participation: requirements; application; withdrawal.

RELATES TO: KRS 15.440, 15.450

STATUTORY AUTHORITY: KRS 15.450(1), 15.440(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.450(1) authorizes the Secretary of the Justice and Public Safety Cabinet or his designated representative to promulgate administrative regulations necessary to the administration of the Kentucky Law Enforcement Foundation Program Fund. This administrative regulation establishes the requirements for application to, participation in, and withdrawal from the fund, and conforms to the training requirements established by the Kentucky Law Enforcement Council pursuant to KRS 15.330(1)(f) and (h).

Section 1. Education Requirements. (1) To demonstrate that an officer has completed the education requirement found in KRS 15.440(1)(c), the local unit shall send to the fund administrator:

(a) A copy of the high school diploma issued or recognized by the state department of education; or

(b) A copy of a General Educational Development (GED) certificate issued by a state department of education.

(2) A police officer who was "grandfathered" into the fund without having to meet the educational requirement found in KRS 15.440(1)(c), who subsequently experiences a separation of employment as a police officer, may regain eligibility to participate in the fund:

(a) Upon reemployment as a police officer by a local unit which is participating in the fund, and completion of the educational requirement found in KRS 15.440(1)(c), if the separation was a result of resignation or dismissal; or

(b) Without completion of the educational requirement found in KRS 15.440(1)(c) if the police officer:

1. Retired pursuant to KRS 61.637; and

2. Is reemployed as a police officer with the same agency no later than twelve (12) months from the initial retirement date.

Section 2. Basic Training Requirement. (1) Time limit.

(a) A local unit that elects to participate in the fund shall require all police officers employed as of the date of the initial participation to demonstrate compliance with the basic training requirement within one (1) year of the date of initial participation. An officer employed after the date of the initial participation shall demonstrate compliance by completing the basic training requirement within one (1) year of the date of employment.

(b) If extenuating circumstances occur that are beyond the control of an officer, including serious injury or illness, personal tragedy, or agency emergency, the local unit may request an extension of time in which the officer shall complete basic training.

The agency shall request an extension, in writing, not less than thirty (30) days prior to expiration of the one (1) year time limit as established in subsection (1)(a) of this section. The extension of time to be granted shall not exceed 180 days.

(c) The local unit shall be in violation of this subsection if:

1. An officer fails to complete training during the one (1) year period and has not experienced an extenuating circumstance; or

2. An officer fails to complete training prior to expiration of a time extension based upon an extenuating circumstance.

(2) Compliance. A police officer shall demonstrate completion of the basic training requirement by:

(a) If the officer has never completed basic training, the officer shall successfully complete:

1. The Department of Criminal Justice Training 800[928] hour basic training course; or

2. A basic training course approved and recognized by the council which consists of a minimum of 800[928] hours with a course content equivalent to the Department of Criminal Justice Training 800[928] hour basic training course;

(b) If the officer has successfully completed a Department of Criminal Justice Training basic training course, or another council-approved and recognized basic training course, additional basic training shall not be required if he has:

1. Been continuously employed as a police officer since the completion of that basic training; or

2. Experienced a separation of employment as a police officer for no more than twelve (12) months prior to his present eligibility to participate in the fund;

(c) If the officer has successfully completed a Department of Criminal Justice Training basic training course, or another council-approved and recognized basic training course; and has experienced a separation of employment as a police officer for more than twelve (12) months but less than thirty-six (36) months prior to his present eligibility to participate in the fund, he shall successfully complete the following Department of Criminal Justice Training courses:

1. The twenty-four (24) hour legal update: Penal Code course; and

2. The sixteen (16) hour legal update: Constitutional Procedure course; or

(d) If the officer has successfully completed a Department of Criminal Justice Training basic training course, or another council-approved and recognized basic training course, and experienced a separation of employment as a police officer for more than thirty-six (36) months prior to his present eligibility to participate in the fund, he shall successfully complete the following Department of Criminal Justice Training courses:

1. The twenty-four (24) hour legal update: Penal Code course;

2. The sixteen (16) hour legal update: Constitutional Procedure course; and

3. One (1) of the following forty (40) hour courses which is most appropriate for the officer's duty assignment as determined by the fund administrator:

a. Basic officer skills; or

b. Orientation for new police chiefs.

(3) If calculating the total number of months of separation and service described in subsection (2)(c) and (d) of this section:

(a) Calculation shall begin effective the first date employed as a police officer and shall include all subsequent months.

(b) For the first or last month of a continuous period of employment or separation:

1. If the number of days of service for a specific month is less than the maximum possible number of regular service days for that month, the officer shall receive credit for a full month of service;

2. If the number of days of separation for a specific month is less than the maximum possible number of regular service days for that month, the month shall not be calculated as a month of separation.

(4) A police officer that is required to meet the requirements of subsection (2)(c) or (d) of this section, shall not be:

(a) Eligible to participate in the fund until meeting those requirements; or

(b) Entitled to back payment of funds from their original hire

date.

(5) A police officer who has never completed basic training and is not eligible to be "grandfathered" into the fund shall not be:

(a) Eligible to participate in the fund until completing the basic training requirement in subsection (2)(a) of this section; or

(b) Entitled to back payment of funds from their original hire date.

(6) A police officer who was "grandfathered" into the fund without having to meet the basic training requirement found in KRS 15.440(1)(d), shall not be required to demonstrate compliance with the basic training requirement to regain eligibility to participate in the fund if the police officer:

(a) Retired pursuant to KRS 61.637; and

(b) Is reemployed as a police officer with the same agency no later than twelve (12) months from the initial retirement date.

Section 3. In-service Training Requirement. (1) A local unit that elects to participate in the fund shall:

(a) Require all police officers employed as of the date of initial participation, and all officers employed after the date of initial participation, to successfully complete the forty (40) hour in-service training requirement each calendar year; and

(b) Not be considered to be in violation of this paragraph if an officer's failure to meet the in-service training requirement in a calendar year is due to an extenuating circumstance including serious injury or illness, personal tragedy, or agency emergency.

(2) An officer meeting the requirements of subsection (1)(b) of this section shall be required to meet the in-service training requirement within a reasonable time as determined by the fund administrator or his designee. The reasonable time shall not exceed 180 days from the termination of the extenuating circumstance.

(3) If an officer, under circumstances that are not extenuating, fails to successfully complete forty (40) hours of in-service training in a calendar year:

(a) The fund administrator or his designee shall notify the local unit that the officer must complete the in-service training for the year of delinquency within a reasonable time, but not to exceed 180 days, as determined by the fund administrator or his designee, or else the local unit, if it continues to employ the officer full time, shall be in violation of this paragraph and shall lose its eligibility to participate in the fund; and

(b) He shall not:

1. Receive a salary supplement until he makes up the in-service training for the year of delinquency; and

2. Be entitled to receive back pay supplement for the period of nonpayment caused by the delinquency in training.

(4)(a) A police officer who successfully completes a basic training course approved and recognized by the council shall be considered to have fulfilled the in-service training requirement for the calendar year in which the basic training is completed when that completion occurs in the calendar year of the present application for participation in the fund.

(b) An officer who demonstrates compliance with the basic training requirement by completion of a course approved and recognized by the council prior to the calendar year of the present application for participation in the fund, shall complete a forty (40) hour in-service training course for that calendar year in order to remain eligible to participate in the fund.

(c) Earned in-service training hours in excess of the mandatory forty (40) hours per year shall not be carried forward to subsequent calendar years.

(5) If a police officer who is qualified to participate in the fund has his police service terminated due to resignation or dismissal before he meets his in-service training requirement for the calendar year, he shall still be eligible to participate in the fund for that part of the calendar year during which he was employed as a police officer.

(6)(a) Except for courses as authorized in paragraph (b) of this subsection, a police officer shall not, for fund eligibility purposes, take the same in-service training course that he has successfully completed in a previous year for fund eligibility purposes unless at least three (3) years have passed since the earlier course was

completed.

(b) A police officer may repeat in-service training courses providing instruction in diminishable skills that the officer has successfully completed in the previous year up to a maximum of sixteen (16) hours as specified in each of the following training areas:

1. Four (4) hours of a course or courses in driver training, including techniques, operational principles, and legal considerations necessary for enhancement of driving skills for law enforcement officers;

2. Four (4) hours of a course or courses in firearms training, including tactical situations, marksmanship, and legal considerations necessary to enhance the skills of law enforcement officers in firearms use;

3. At least one (1) hour, but no more than eight (8) hours, in a course or courses in law enforcement legal update training that shall include training on recent federal and state legislation and regulations, issuance and development of recent case law, and basic legal consideration impacting law enforcement officers in the exercise of their peace officer powers; and

4. No more than seven (7) hours in a course or courses in tactical law enforcement training that may include self-defense techniques, administration of first aid, active shooter tactics and techniques, and de-escalation techniques.

Section 4. Local Ordinance Requirement. (1) To be eligible to participate in the fund, a local unit shall enact an ordinance or resolution requiring the local unit and police department to comply with KRS 15.410 to 15.510 and with 503 KAR Chapter 5.

(2) A certified copy of this local ordinance or resolution shall be submitted by the local unit to the fund administrator along with the application for participation in the fund.

(3) If the local unit has withdrawn from, or lost eligibility to participate in the fund, the previously enacted local ordinance or resolution shall no longer be recognized by the fund administrator, and a new ordinance or resolution shall be submitted with a new application for participation in the fund.

Section 5. Application. A local unit desiring to apply for admission to the fund shall submit an Application for Police Training Incentive form to the fund administrator.

Section 6. Withdrawal. (1) To withdraw from the fund, a local unit shall send a written notice of withdrawal to the fund administrator.

(2) The fund administrator or his designee shall acknowledge in writing the receipt of the withdrawal notice.

(3) The withdrawal shall be effective as of the date the withdrawal notice is received by the fund administrator.

(4) Upon withdrawal, a local unit shall return all salary supplement funds received from the fund for which its police officers have not yet become qualified.

Section 7. Audits. (1) A participating agency shall comply with audits if requested by the fund administrator's designee, to demonstrate compliance with 503 KAR Chapter 5.

(2) The audit shall include examination of records of police officer training attendance, and payroll and KLEFPF records.

Section 8. Incorporation by Reference. (1) The "Application for Police Training Incentive", Form KLEFPF-1, 10/16, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM ALEX PAYNE, Commissioner

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 15, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

June 26, 2018, at 9:00 a.m. at the Department of Criminal Justice Training, 4445 Kit Carson Drive, Funderburk Building, Eastern Kentucky University Campus, Richmond, Kentucky 40475. 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 June 30, 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: Deaidra C. Douglas, Assistant General Counsel, Justice & Public Safety Cabinet, Department of Criminal Justice Training, 521 Lancaster Avenue, Funderburk Building, Richmond, Kentucky 40475, phone (859) 622-8229, fax (502) 564-6686, email deaidra.douglas@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deaidra Douglas

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides the training requirements for law enforcement officers to participate in the Kentucky Law Enforcement Foundation Program Fund (KLEFPF) in accordance with the graduation requirements for law enforcement officers attending basic training at the Department of Criminal Justice Training.

(b) The necessity of this administrative regulation: KRS 15.440 requires officers participating in KLEFPF to meet training requirements established by the Kentucky Law Enforcement Council (KLEC). KRS 15.450 requires for the Secretary of the Justice and Public Safety Cabinet (Secretary) or his designated representative to promulgate regulations necessary to carry out the responsibilities of administering the KLEFPF.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15.450(1) states, in part, "[t]he secretary or his or her designated representative shall administer the Law Enforcement Foundation Program fund pursuant to the provisions of KRS 15.410 to 15.510 and may promulgate any administrative regulations as, in his or her judgment, are necessary to carry out his responsibilities..."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 15.440 requires officers participating in KLEFPF to meet the training standards set forth by the Kentucky Law Enforcement Council. KRS 15.334 authorizes the Kentucky Law Enforcement Council (KLEC) to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.404 and prescribe qualifications for attendance and conditions for expulsion from law enforcement training schools. KRS 15.440(1)(d) allows the KLEC to set the number of hours for basic training by regulation. 503 KAR 1:110 sets the number of required training hours. This amendment brings the number of training hours required for KLEFPF participation into accord with the proposed amendment to

(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 modifies the minimum number or hours for basic training courses in conjunction with proposed modifications to 503 KAR 1:110.

(b) The necessity of the amendment to this administrative regulation: The amendment will modify the minimum number of training hours, as provided in KRS 440 (1)(d), to allow for an eight-hundred (800) hour basic training academy. This will allow the Department of Criminal Justice Training to meet the increasing demand for basic training courses, which must be completed within one year of an officer's hiring or appointment.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require completion of

basic training within the one year window in order to satisfy KLEFPF statutory and regulatory mandates.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will modify the minimum number of training hours, to allow for an eight-hundred (800) hour basic training academy in conjunction with a proposed amendment to 503 KAR 1:110. This will allow the Department of Criminal Justice Training to meet the increasing demand for basic training courses, which must be completed within one year of an officer's hiring or appointment to satisfy KLEFPF statutory and regulatory mandates.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All law enforcement agencies that employ certified peace officers in the Commonwealth will have the benefit of quicker completion of basic training for new hires or appointments. In addition, the individual department's down time and per diem costs for officers attending basic training will be decreased.

(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: DOJT has to have approval of the 800 hour curricula.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs to the department of Criminal Justice Training will be commensurate with current costs for basic training courses, as the number of hours will minimally affect administrative costs. Costs for law enforcement agencies will be lower, as they will have decreased down time for officers in training, which should result in less necessity for overtime pay, and lower per diem pay for officers attending training.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Department of Criminal Justice Training will be able to meet the demand for basic training classes in a timely manner, without sacrificing the quality of training. There is currently a large backlog of applicants for basic training. Costs for law enforcement agencies will be lower, as they will have decreased down time for officers in training, which should result in less necessity for overtime pay, and lower per diem pay for officers attending training.

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

(a) Initially: The result should be no fiscal impact or a possible cost decrease to the Department of Criminal Justice Training.

(b) On a continuing basis: The result should be no fiscal impact or a possible cost decrease to the Department of Criminal Justice Training.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The current source of funds, flowing from the Kentucky Law Enforcement Foundation Program Fund, will be the ongoing source of funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as training funds are statutorily provided through KLEFPF. The law enforcement officers eligible for the training by statute and budget bill receive the same benefits of this training.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? Law enforcement agencies and the Department of Criminal Justice Training will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.330, 15.404, 15.440, 15.450.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation does not provide revenue to any government entity.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation does not provide revenue to any government entity.

(c) How much will it cost to administer this program for the first year? This amendment is not anticipated to increase costs other than additional firearms ammunition described in (3).

(d) How much will it cost to administer this program for subsequent years? The cost is expected to be the same or lower than prior to the amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TRANSPORTATION CABINET Department of Highways Division of Contract Procurement (Amendment)

603 KAR 2:015. Prequalification for construction, certificate of eligibility and contract claims dispute.

RELATES TO: KRS 13B, 45A.245, 61.878(1)(c), 176.090-176.110, 176.130-176.220

STATUTORY AUTHORITY: KRS ~~[174.080]~~ 176.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 176.140 requires the cabinet to establish rules and regulations in order to determine the eligibility of bidders for construction contracts with the Department of Highways. This administrative regulation establishes the requirements for an applicant to obtain a certificate of eligibility with the cabinet to provide a method by which the determination shall be made. This administrative regulation also establishes the hearing procedures for a contract claims dispute ~~[and denial, revocation, or limitation of certification].~~

Section 1. Definitions. (1) "Cabinet" means the Transportation Cabinet.

(2) "Contract" means a competitively bid contract between the contractor and the department pursuant to KRS Chapter 45A and 176.090 through 176.110.

(3) "Contractor" means the person, corporation, partnership, or joint venture that enters into a contract with the department for highway maintenance or construction.

(4) "Maximum eligibility amount" means the maximum amount of uncompleted prime contract work authorized at one (1) time.

Section 2. Certificate of Eligibility. (1)(a) A contractor bidding on a construction or maintenance project, or accepting a subcontract on a construction or maintenance project of the department, shall be prequalified and possess a certificate of eligibility issued by the department to bid on construction projects.

(b) The certificate shall state the maximum eligibility amount and types of work for which the contractor is qualified.

1. The department may waive the requirements established in subsection (1)(a) and (b) on a project not specifically involving the construction or maintenance of a public road in connection with the letting of a contract if the requirement is not mandated by KRS 176.130.

2. The waiver shall be included in the notice to contractors and the bid proposal for the project.

(2) The Commissioner of Highways shall appoint a Construction Prequalification Committee composed of department employees to review each application and make a recommendation to the State Highway Engineer concerning the eligibility of a contractor to bid on a department construction or maintenance contract.

Section 3. Application for Certificate of Eligibility. (1) A contractor desiring to procure a certificate shall submit a completed Application for Certificate Eligibility, TC 14-1, to the Division of Construction Procurement. The applicant shall provide:

(a) Information regarding the applicant's ability to perform the types of work for which eligibility is requested;

(b) Construction experience resumes of the applicant's principal officers and key personnel;

(c) A description of the applicant's plant and equipment;

(d) Financial statements prepared as of the close of the previous fiscal year for an established company, or to reflect the current financial status of a newly established contractor applicant; and

(e) A certificate of authority if required by KRS 176.150(4).

(2)(a) An applicant desiring eligibility in excess of \$1,000,000 shall submit financial statements presented in accordance with generally accepted accounting principles, and audited by a certified public accounting firm.

(b) The audit shall be performed in accordance with generally accepted auditing standards promulgated by the American Institute of Certified Public Accounts and include procedures specifically applicable to the construction industry.

(c) The applicant's financial statements shall include supplemental financial information if requested by the department.

(d) The financial statements for an applicant desiring eligibility of \$1,000,000 or less shall be accompanied by a review report issued by a certified public accounting firm or a compilation report or balance sheet issued by a certified public accounting firm or an accountant.

(3) Pursuant to KRS 61.878(1)(c), the department shall not make the application information required in this section available to the public. Pursuant to KRS 176.210, the department may make lists of qualified bidders public.

Section 4. Method of Computing Maximum Eligibility Amount.

(1)(a) The allowable current net assets as determined from the financial statements, plus the cash surrender value, less loans, of life insurance on which the applicant is the beneficiary, excluding policies with other beneficiaries, shall be multiplied by a factor of twelve (12) to establish the net current assets factor.

(b) The book value of owned equipment shall be multiplied by a factor of six (6) to establish the equipment factor.

(c) The equipment factor shall be added to the net current assets factor to determine the maximum capacity factor of the contractor.

(2) The contractor's percentage rating shall be established by the department by evaluating the contractor's organization and experience, plant and equipment, and prior construction performance in accordance with the maximum percentages established in paragraphs (a) through (c) of this subsection.

(a) Organization and experience shall be twenty (20) percent.

(b) Plant and equipment shall be thirty (30) percent.

(c) Performance shall be fifty (50) percent.

(3)(a) The maximum eligibility amount shall be determined by multiplying the contractor's percentage rating and the maximum capacity factor. The maximum capacity factor shall not exceed \$1,000,000 if a limited financial report has been submitted.

(b) A contractor's current eligibility amount shall be the net

difference between the contractor's maximum eligibility amount as shown on the certificate of eligibility issued by the department, and the total value of uncompleted prime contract work charged to the contractor regardless of its location and with whom it may be contracted.

Section 5. Issuance of Certificate of Eligibility. (1)(a) The Construction Prequalification Committee shall review each application for a certificate of eligibility and make a recommendation of eligibility to the State Highway Engineer.

(b) The State Highway Engineer shall issue a determination of eligibility within thirty (30) calendar days after receipt of the application unless the application is deferred as established in Section 6(3) of this administrative regulation.

(c) Upon receiving a separate written request from a contractor not prequalified with the department indicating its intent to bid on a specific federal-aid project that has been advertised for a bid opening within the thirty (30) day period, the department shall review the application and make a determination of eligibility within fifteen (15) calendar days.

(2) A certificate of eligibility shall terminate 120 calendar days after the end of the applicant's fiscal year unless the certificate is suspended or revoked prior to that time.

(a) An applicant shall file a new application pursuant to Section 3 of this administrative regulation within ninety (90) calendar days after the end of the applicant's fiscal year.

(b) The department shall review the application and approve or disapprove the issuance of a new certificate of eligibility within thirty (30) calendar days of the date of receipt by the department.

(3) The certificate of eligibility in effect as of the bid opening date shall constitute the basis for determining the eligibility of a bidder.

(4) An applicant may, in regard to the department's decision on its application:

(a) Request reconsideration of the department's decision pursuant to Section 6 of this administrative regulation; or

(b) Appeal the department's decision pursuant to Section 9 of this administrative regulation.

Section 6. Reconsideration of Decisions. (1)(a)1. An applicant may request reconsideration of a decision of the Construction Prequalification Committee if the applicant is denied a certificate of eligibility or disagrees with the maximum eligibility amount or the types of work established in its certificate of eligibility.

2. An applicant may request reconsideration of a department decision to suspend or revoke the certificate of eligibility or to reduce the maximum eligibility amount.

(b) A request for reconsideration shall be submitted in writing to the department within ten (10) calendar days of the applicant's receipt of the notice of the department's action.

(c) A request for reconsideration shall state the basis of the request and be supported by information and evidence that indicates why a certificate of eligibility should be issued or why the certificate of eligibility should be amended.

(d) The Construction Prequalification Committee shall review the request and may contact the applicant for clarification or expansion of the submitted information. The committee shall make a recommendation to the State Highway Engineer.

(e) The Department of Highways shall notify the applicant of its determination within thirty (30) calendar days after receipt of the request for reconsideration.

(f) If the Department of Highways does not concur with the reconsideration request of the applicant, the applicant shall be notified of his or her right to an administrative hearing pursuant to Section 9 of this administrative regulation.

(2)(a) An applicant denied a certificate of eligibility may submit a new application for reconsideration.

(b) The department shall consider the new application and notify the applicant of the action taken within thirty (30) calendar days after receipt of the application.

(3)(a) An application that has been deferred by the department until the applicant settles an outstanding debt to the Commonwealth, completes a project, or satisfies prior concerns about work performance on a project shall remain in the possession of the department until the reason for deferral is resolved.

(b)1. An applicant shall be notified of a deferral within ten (10) calendar days after action is taken by the department to defer the application.

2. The applicant shall be notified of his or her right to an administrative hearing regarding the deferral.

(4)(a) An interim application may be submitted if there has been a substantial increase in the net current assets of the applicant and the applicant wishes to apply for an increase in the maximum eligibility shown on the certificate of eligibility.

(b) The interim application shall contain a financial statement certified in the same manner as the statements submitted by the applicant at the close of the previous fiscal year.

(c) The department shall review the interim application and notify the applicant of its determination within thirty (30) calendar days after receipt of the application.

(5)(a) A certificate holder, upon receipt of a certified mail request from the department, shall submit an interim financial statement or current information relating to the applicant's organization, equipment, and work status.

(b) The information requested shall be submitted within thirty (30) calendar days after receipt of the request. Failure to provide the information requested shall constitute a basis for the suspension or revocation of a certificate of eligibility.

(6) An applicant may request an administrative hearing if the applicant is denied a certificate of eligibility, the application is deferred, or the applicant disagrees with the maximum eligibility amount or the types of work listed in the certificate of eligibility.

(7) To request an administrative hearing, an applicant shall notify the department in writing within ten (10) calendar days after receipt of the denial or certificate of eligibility.

Section 7. Revocation. (1) Upon receipt of information or evidence that a holder of a certificate of eligibility has failed to perform satisfactorily by failure to comply with the laws, administrative regulations, or specifications applicable to a contract or subcontract, the department shall take action to suspend or revoke the certificate of eligibility or to reduce the maximum eligibility amount.

(2) A notice to the certificate holder stating the grounds on which the action is proposed, shall be sent by certified mail.

(3) A request for reconsideration pursuant to Section 6 of this administrative regulation, or a request for an administrative hearing, shall be submitted by the certificate holder in writing within ten (10) calendar days of the receipt of notice of a decision by the cabinet. If a written request is not received within ten (10) calendar days, the proposed action shall become final.

Section 8. Administrative Claims Process. (1) The cabinet shall not consider a claim for extra work as established in the edition of the Standard Specifications for Road and Bridge Construction applicable to the contract between the cabinet and the contractor unless the contractor has submitted a completed Notice of Potential Claim, TC 63-77, to the engineer before beginning the disputed work. The editions of the Standard Specifications for Road and Bridge Construction may be found on the cabinet's website at <https://transportation.ky.gov/Construction/Pages/Kentucky-Standard-Specifications.aspx>.

(2) A claim against the cabinet for delay shall be submitted in writing to the engineer on a completed Notice of Potential Claim, TC 63-77 within ten (10) calendar days of the date the contractor knew or should have known of the existence of the claim as based on daily records, contractor records, and applicable correspondence.

(a) A claim presented to the cabinet by the contractor after ten (10) calendar days shall not

be considered for payment by the cabinet.

(b) After receipt of Notice of Potential Claim, TC 63-77, the cabinet shall respond to the contractor with Acknowledgement of Notice of Potential Claim, TC 63-78.

(3) For claims involving extra work, the contractor shall submit to the engineer a summary of the account forms that identify each operation affected, and the specific locations where work is affected, no later than fourteen (14) calendar days after filing the Notice of Potential Claim TC 63-77, and on a weekly basis thereafter.

(4) If the contractor's records indicate costs that are greater than those on record with the cabinet, the engineer shall notify the contractor in writing.

(a) A contractor shall respond to the engineer within three (3) working days if he or she disagrees with the findings of the engineer.

(b) If the contractor fails to respond, the records of the cabinet shall control.

(5) For claims involving delay, the contractor shall submit the following in writing:

(a) A request for an extension of contract time based on the contractor's progress schedule;

(b) Information regarding the potential effect to the schedule caused by the delay;

(c) Identification of the operations that have been, or will be delayed;

(d) The possible mitigating actions and the additional costs or time to implement the mitigating actions;

(e) An explanation of how the department's act or omission delayed the operation, and an estimation of the amount of time necessary to complete the project; and

(f) An itemization of the extra costs incurred including:

1. How the extra costs relate to the delay, and how they were calculated and measured;

2. An identification of the project employees for whom the costs are being compiled; and

3. An identification of the contractor's equipment by manufacturer and the numbers of the items of equipment for which costs have been compiled.

(6) A contractor may request additional time or a different submittal schedule, such as biweekly or monthly, by submitting a written request to the engineer. Approval or denial of the request shall be issued by the engineer within seven (7) calendar days of receipt of the request.

(7)(a) The engineer, in consultation with the district transportation engineering branch manager, shall attempt to resolve the dispute with the contractor within sixty (60) calendar days of the date of receipt of the submitted claim from the contractor

(b) If the claim is not resolved by the engineer, then the claim shall be submitted to the director, Division of Construction, who shall have ninety (90) calendar days from the date of submission to make the final determination.

(c) If the matter is not resolved by the engineer and the contractor and prior to making a final determination on the matter, the director, Division of Construction shall convene an informal settlement conference with the contractor for the purpose of either settling the dispute or identifying the issues which need resolution. If the settlement conference is unsuccessful, the director, Division of Construction, shall notify the contractor in writing of the cabinet's decision regarding the contractor's claim.

(d) If the engineer or the director, Division of Construction, fails to render a decision within the time limits established in this section, the inaction shall be deemed a denial of the claim by the cabinet, and the contractor may proceed with the administrative hearing process pursuant to Section 9 of this administrative regulation. If a decision is not rendered within the time limits established in subsection (7)(a) and (b) of this section, the cabinet shall bear all costs associated with the hearing officer.

(8) The contractor shall request an administrative hearing pursuant to KRS Chapter 13B within thirty (30) calendar days of the date of the notification of the decision by the cabinet.

(9) Upon the agreement in writing of both parties, the parties may engage in formal nonbinding mediation of the dispute with a mediator agreeable to both parties. The parties participating in the mediation shall each pay one-half (1/2) of the costs associated with the mediator.

(10) If mediation is agreed upon by the parties, all time limits related to the continuing administrative process shall be stayed until either the cabinet or the contractor submits written notice to the other that they are terminating the mediation process. The time limits previously stayed shall commence to run upon the date of the written notice.

Section 9. Hearing Procedure. (1) A request for an administrative hearing pursuant to the provisions of this administrative regulation shall be in writing and mailed to the Kentucky Transportation Cabinet, State Highway Engineer, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622.

(2) A written request for an administrative hearing shall be submitted to the State Highway Engineer within thirty (30) calendar days of the date of the decision by the director, Division of Construction.

(3) A request for an administrative hearing that is not submitted timely to the cabinet shall be denied, and the decision by the director, Division of Construction, shall stand.

(4) The secretary of the Transportation Cabinet, after receiving the report and recommendation of the hearing examiner, may accept the report and recommendation in its entirety, or reject or modify the findings and recommendations of the hearing examiner as established in a final order pursuant to KRS Chapter 13B.

(5) The contractor shall be notified by final order of the secretary's decision.

(6) The contractor shall have appeal rights pursuant to KRS Chapter 13B.

(7) The contractor shall reimburse the cabinet one-half (1/2) of the expenses of the hearing officer within thirty (30) calendar days after the date of the entry of the final order by the Secretary of Transportation. If a contractor fails to pay its portion of the hearing officer expenses, the cabinet shall withhold an amount due to the contractor from a current or future project.

Section 10. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Application for Certificate of Eligibility", TC 14-1, February, 2017;

(b) "Notice of Potential Claim", TC 63-77, January, 2018; and

(c) "Acknowledgement of Notice of Potential Claim", TC 63-78, January, 2018

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Transportation Cabinet, Department of Highways, Division of Construction Procurement, 200 Mero Street, Frankfort, Kentucky 40622. The office hours are 8 a.m. to 4:30 p.m. on weekdays. The office telephone number is (502) 564-3500. ["Commissioner" means the Commissioner of Highways.

(2) "Cabinet" means the Transportation Cabinet.

(3) "Department" means the Department of Highways.

(4) "Division" means the Division of Construction.

(5) "Concurrence" means the agreement with the entire report and recommendation of the hearing examiner.

(6) "Dissent" means disagreement with a part or portions of the report and recommendation of the hearing examiner.

(7) "Contract" means a competitively bid contract between the contractor and the department pursuant to KRS Chapter 45A and 176.090 to 176.110.

(8) "Contractor" means the person, corporation, partnership or joint venture which enters into a contract with the department for highway maintenance or construction.

(9) "Maximum eligibility amount" means the maximum amount of uncompleted prime contract work permitted at any one (1) time.

Section 2. Certificate of Eligibility. (1)(a) A contractor bidding on a construction or maintenance project or accepting a

subcontract on a construction or maintenance project of the Transportation Cabinet, Department of Highways, shall be prequalified and possess a certificate of eligibility issued by the department to bid on construction projects.

(b) The certificate shall state the maximum eligibility amount and types of work for which the contractor is qualified.

(c) The department may waive this requirement on a project not specifically involving the construction or maintenance of a public road in connection with the letting of a contract if the requirement is not mandated by KRS 176.130. The waiver shall be contained in the notice to contractors and the bid proposal for the project.

(2) The Commissioner of Highways shall appoint a construction prequalification committee composed of department employees to review each application and make a recommendation to the State Highway Engineer concerning the eligibility of a contractor to bid on a department construction or maintenance contract.

Section 3. Application for Certificate of Eligibility. A contractor desiring to procure a certificate shall submit, on the application and financial statement form TC 14-1, "Application for Certificate of Eligibility", December 1999 edition, provided by the department, information relating to the following:

(1) Ability to perform the types of work for which eligibility is requested.

(2) Construction experience resumes of the principal officers and key personnel of the contractor.

(3) Description of plant and equipment.

(4) Balance sheet and financial statement prepared as of the close of the last fiscal year or to reflect the current financial status of a newly established contractor.

(a) The financial statement of an applicant desiring eligibility in excess of \$1,000,000 shall be audited and attested by an independent public accountant or certified public accountant who holds a valid registration card from the Kentucky State Board of Accountancy or a registration card in the state in which the principal office of the contractor is located. The audit shall be made in accordance with the generally accepted auditing standards adopted by the membership of the American Institute of Certified Public Accountants. Standard audit forms and procedures shall conform with the institute's recommendations for the audit program of contractors. The accountant shall also comply with the specific instructions relative to the presentation of supporting detail requested by the department to determine the amount of net current assets available.

(b) The financial statement of an applicant desiring eligibility of \$1,000,000 or less shall be signed by the person preparing the statement and by a principal officer of the contractor.

(5) A "Certificate of Authority" if required by KRS 176.150(4).

Section 4. Confidentiality of Financial Information. In order to comply with KRS 61.878(1)(c) and KRS 176.210 the department shall not make available to the public the application information required in Section 3(3) and (4) of this administrative regulation.

Section 5. Method of Computing Maximum Eligibility Amount.

(1)(a) The allowable net current assets as determined from the financial statement plus the cash surrender value, less loans, of life insurance on which the applicant is the beneficiary (exclude all policies with other beneficiaries) shall be multiplied by a factor of twelve (12) to establish the net current assets factor.

(b) The book value of owned equipment shall be multiplied by a factor of six (6) to establish the equipment factor.

(c) The equipment factor shall be added to the net current assets factor to determine the maximum capacity factor of the contractor.

(2) The contractor's percentage rating shall be established by the department by evaluating the contractor's organization and experience, plant and equipment and performance in accordance with the following maximum percentages:

(a) Organization and experience - twenty (20) percent;

(b) Plant and equipment - thirty (30) percent;

(c) Performance—fifty (50) percent.

(3)(a) The maximum eligibility amount shall be determined by multiplying the contractor's percentage rating and the maximum capacity factor.

(b) A contractor's current eligibility amount shall be the net difference between the contractor's maximum eligibility amount as shown on the certificate of eligibility issued by the department and the total value of uncompleted prime contract work charged to the contractor regardless of its location and with whom it may be contracted.

Section 6. Issuance of Certificate of Eligibility. (1)(a) The Construction Prequalification Committee shall review each application for a certificate of eligibility and make a recommendation of eligibility to the State Highway Engineer.

(b) The State Highway Engineer shall issue a determination of eligibility within thirty (30) days after receipt of the application unless the application is deferred as provided in Section 7(3) of this administrative regulation.

(c) Upon receiving a separate written request from a contractor not prequalified with the department indicating its intent to bid on a specific federal aid project which has been advertised for a bid opening within the thirty (30) day period, the department shall review the application and make a determination of eligibility within fifteen (15) calendar days.

(2) A certificate of eligibility shall terminate 120 days after the end of the applicant's fiscal year unless the certificate is suspended or revoked prior to that time. Ninety (90) days of this period is to permit the applicant to file a new application in accordance with Section 3 of this administrative regulation, thirty (30) days is for the department's review of the application and, if approved, the issuance of the new certificate of eligibility.

(3) The certificate of eligibility in effect as of the bid opening date shall constitute the basis for determining the eligibility of a bidder.

(4) An applicant may, in regard to the department's decision on its application:

(a) Request reconsideration of the department's decision in accordance with Section 7 of this administrative regulation; or

(b) Appeal the department's decision in accordance with Section 10 of this administrative regulation.

Section 7. Reconsideration of Decisions of Construction Prequalification Committee. (1)(a) An applicant may at any time request reconsideration of an application if the applicant is denied a certificate of eligibility or disagrees with the maximum eligibility amount or the types of work set forth in its certificate of eligibility by notifying the department in writing. An applicant may also request reconsideration of a department decision to suspend or revoke the certificate of eligibility or to reduce the maximum eligibility amount if the request is submitted in writing within ten (10) days after receipt of the notice of the department's action.

(b) A request for reconsideration shall clearly state the basis of the request and be supported by information and evidence which indicates why a certificate of eligibility should be issued or why the certificate of eligibility should be amended.

(c) The Construction Prequalification Committee shall review the request, may contact the applicant for clarification or expansion of the submitted information, and shall make recommendation to the State Highway Engineer.

(d) The Department of Highways shall notify the applicant of its determination within thirty (30) days after receipt of the request for reconsideration.

(e) If the Department of Highways does not concur with the reconsideration request of the applicant, the applicant shall be notified of his right to an administrative hearing pursuant to Section 10 of this administrative regulation.

(2) An applicant denied a certificate of eligibility may submit a new application if factors constituting the basis for the issuance of a certificate of eligibility warrant reconsideration. The department shall consider the new application and notify the applicant of the action taken within thirty (30) days after receipt of the application.

(3)(a) An application which is deferred by the department until

the applicant settles outstanding debt to the Commonwealth, completes a project, or satisfies prior concerns about work performance on a project shall remain in the possession of the department until the time that the reason for deferral is resolved to the satisfaction of the department.

(b) The department shall then take action on the deferred application to issue or deny a certificate of eligibility.

(c) The applicant submitting an application, which is deferred, shall be notified of the deferral within ten (10) days after action is taken by the department to defer the application. The applicant shall be notified pursuant to Section 10 of this administrative regulation of his right to an administrative hearing regarding the deferral.

(4) An interim application may be submitted if there has been a substantial increase in the net current assets of the applicant and the applicant wishes to apply for an increase in the maximum eligibility shown on the certificate of eligibility. The interim application shall contain a financial statement certified in the same manner as statements prepared as of the close of the fiscal year. The department shall review the interim application and notify the applicant of its determination within thirty (30) days after receipt of the application.

(5) A certificate holder, upon receipt of a certified mail request from the department, shall submit an interim financial statement or current information relating to the applicant's organization, equipment and work status. The information requested shall be submitted within thirty (30) days after receipt of the request. Failure to provide the information requested shall constitute a basis for the suspension or revocation of a certificate of eligibility.

(6) An applicant may request an administrative hearing if the applicant is denied a certificate of eligibility, his application is deferred, or the applicant disagrees with the maximum eligibility amount or the types of work set forth in its certificate of eligibility by notifying the department in writing within ten (10) days after receipt of its denial or certificate of eligibility. The department shall hold an administrative hearing pursuant to the provisions of Section 10 of this administrative regulation.

Section 8. Revocation of Certificate of Eligibility or Reduction of Maximum Eligibility Amount. (1) Upon receipt of information or evidence that a holder of a certificate of eligibility has failed to perform satisfactorily or adhere to the laws, administrative regulations, or specifications applicable to a contract or subcontract, the department may take action to suspend or revoke the certificate of eligibility or to reduce the maximum eligibility amount.

(2) A notice to the certificate holder, setting forth the grounds on which the action is proposed, shall be sent by certified mail.

(3) The proposed action shall become final unless the certificate holder submits a written request for a reconsideration pursuant to Section 7 of this administrative regulation or an administrative hearing within ten (10) days after receipt of the notice.

(4) If the certificate holder requests an administrative hearing, the department shall hold this hearing in accordance with the provisions of Section 10 of this administrative regulation.

Section 9. Administrative Claims Process. (1) The cabinet shall not consider a claim for extra work as defined in the edition of the standard specifications for road and bridge construction applicable to the contract between the cabinet and the contractor unless the contractor has submitted form TC 63-32, "Notice of Changed Condition/Disagreement", December 1999 edition, to the resident engineer before beginning the disputed work.

(2) Any other claim not referenced in subsection (1) of this section that a contractor shall possess against the cabinet for compensation shall be submitted in writing on form TC 63-32, "Notice of Changed Condition/Disagreement", to the resident engineer within ten (10) days of the date of which the contractor knew or should have known of the existence of said claim. Any claim presented after said ten (10) days shall not be considered for payment by the cabinet. After receipt of TC 63-32, "Notice of Changed Condition/Disagreement", the cabinet shall respond to

the contractor with form TC 63-33, "Acknowledgment of Notice of Changed Condition/Disagreement".

(3) If a contractor has a contract claim or requests relief from the cabinet, the contractor shall exhaust the administrative process within the cabinet as set forth below prior to requesting an administrative hearing.

(a)1. For claims involving extra work, the contractor shall submit his claim in writing, setting forth the amount in dispute, the basis of the claim and any supporting documentation of said claim to the resident engineer not later than thirty (30) days after receipt of the "Final Inspection and Formal Acceptance Report of Completed Construction", Form TC 63-44.

2. For claim disputes involving final quantities and payments, the contractor shall submit his claim in writing setting forth the amount in dispute, the basis of the claim and any supporting documentation of said claim to the resident engineer not later than sixty (60) days from the date of the "Final Release" (Form TC 63-34) sent by the cabinet.

(b) The resident engineer in consultation with the district transportation engineering branch manager for construction and the contractor shall attempt to resolve the dispute with the contractor. The resident engineer shall have sixty (60) days from the date of receipt of written notice of a formal claim to resolve the dispute.

(c) Should the claim not be resolved by the resident engineer, then the claim shall be submitted to the Director, Division of Construction, who shall have ninety (90) days to make the final determination.

(d) If the matter is not resolved by the resident engineer and the contractor and prior to making a final determination on the matter, the Director, Division of Construction, shall convene an informal settlement conference with the contractor for the purpose of either settling the dispute or identifying the issues which need resolution. If the settlement conference is unsuccessful, the Director, Division of Construction, shall notify the contractor in writing of the cabinet's decision regarding the contractor's claim. Said notification shall inform the contractor of his rights to an administrative hearing pursuant to Section 10 of this administrative regulation.

(e) Should the resident engineer or the Director, Division of Construction, fail to render a decision within the time limits set forth in this administrative regulation, said inaction shall be deemed a denial of the claim by the cabinet and the contractor may proceed with the administrative hearing process pursuant to Section 10 of this administrative regulation. Further, should the Director, Division of Construction, fail to render a decision in the time frame previously stated, the cabinet shall bear all costs associated with the hearing officer.

(f) The contractor shall request an administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of the date of the notification of the decision by the cabinet.

(g) Upon the agreement in writing of both parties, the parties may engage in formal nonbinding mediation of the dispute with a mediator agreeable to both parties. The parties participating in the mediation shall each pay one-half (1/2) of the costs associated with the mediator.

(h) If mediation is agreed upon by the parties, the formal administrative process that culminates with a KRS Chapter 13B hearing and all time limits therein shall be stayed until the cabinet or the contractor submits written notice to the other that they are terminating the mediation process. The time limits previously stayed shall commence to run upon the date of the written notice.

Section 10. Hearing Procedure. (1) A request for an administrative hearing pursuant to the provisions of this administrative regulation shall be in writing and mailed to the State Highway Engineer, Department of Highways, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

(2) Upon receipt of a request for an administrative hearing, the State Highway Engineer shall forward the request to the Office of General Counsel and Legislative Affairs for proceedings in accordance with the provisions of KRS Chapter 13B. Failure to submit a written request for an administrative hearing to the State

Highway Engineer within thirty (30) days of the date of the decision by the Director, Division of Construction, shall be ground to summarily deny the request for hearing and the decision by the Director, Division of Construction, shall stand.

(3) If a hearing is commenced, the hearing examiner shall prepare and submit his report with a recommendation to the Secretary of Transportation through the Office of General Counsel and Legislative Affairs.

(4) The secretary, after receiving the report and recommendation of the hearing examiner, may accept the report and recommendation in its entirety, or reject or modify any or all of the findings and recommendations of the hearing examiner as set out in a final order pursuant to KRS Chapter 13B.

(5) The contractor shall be notified by Final Order of the secretary's decision.

(6) The contractor shall have appeal rights pursuant to KRS Chapter 13B.

(7) The contractor shall reimburse the cabinet one-half (1/2) of the expenses of the hearing officer within thirty (30) days after the date of the entry of the final order by the Secretary of Transportation. The cabinet may withhold any sum owed a contractor on a current or future project that the cabinet is owed for the costs and/or expenses of the hearing officer.

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

(a) Transportation Cabinet form TC 14-1, "Application for Certificate of Eligibility", December 1999 edition;

(b) Transportation Cabinet form TC 63-32, "Notice of Changed Condition/Disagreement", December 1999 edition;

(c) Transportation Cabinet form TC 63-33, "Acknowledgment of Notice of Change Condition/Disagreement", December 1999 edition;

(d) Transportation Cabinet form TC 63-34, "Final Release", March 1998 edition; and

(e) Transportation Cabinet form TC 63-44, "Final Inspection and Formal Acceptance Report of Completed Construction", November 1997 edition.

(2) All material incorporated by reference as a part of this administrative regulation may be viewed, copied, or obtained from the Transportation Cabinet, Department of Highways, Division of Contract Procurement, 501 High Street, Frankfort, Kentucky 40622. The office hours are 8 a.m. to 4:30 p.m. on weekdays. The office telephone number is (502) 564-3500.]

GREG THOMAS, Secretary

ANDY BARBER, State Highway Engineer

D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: April 11, 2018

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 25, 2018 at 10:00 a.m. Eastern Time at the Kentucky Transportation Cabinet, Room C-106, 200 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Ann Dangelo, Assistant General Counsel, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, email Ann.Dangelo@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Ann D'Angelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the bidder of a construction contract with the cabinet to obtain a certificate of eligibility.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to update and provide information to potential bidders of construction contracts. This administrative regulation has not been amended since 2000.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 176.140 requires the cabinet to establish rules and regulations in order to determine the eligibility of bidders for construction contracts.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation updates the requirements for bidders to become eligible.

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

(a) How the amendment will change this existing administrative regulation: This amendment will update: forms, information regarding audits and financial statements submitted by applicants for eligibility, processes involving submission, and review of applications.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to inform the public of the most current requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The cabinet is required to establish the requirements for bidders of construction contracts with the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will update the reg and inform contractors of the most current requirements in the bidding process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects companies performing construction and maintenance projects for the cabinet.

(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: Contractors working with the cabinet will be required to notify the KYTC project engineer on a weekly basis rather than waiting until the end of the project. This will require progressive work during the project.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs are anticipated. The work required in (a) was already part of this administrative regulation. The only difference will be the additional work required by a contractor to stay current and make the periodic submissions to the cabinet.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will be more efficient because the agency will be made aware of project costs on a more timely basis, and the agency can provide feedback as to which costs are eligible for reimbursement. The entity can use this information to monitor resources and adjust the resources on the project accordingly.

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

(a) Initially: There are no costs associated with these amendments.

(b) On a continuing basis: There actually should be a savings. The amendment will prompt the agency to be involved in the project decisions and this could help reduce costs.

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

implementation and enforcement of this administrative regulation: No funding is necessary.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are not established by this administrative regulation.

(9) TIERING: Is tiering applied? No. Tiering is not applied because all bidders for construction contracts are required to follow the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No divisions of state or local governments should be impacted. This administrative regulation impacts the approximately 200 contractors that perform roadwork for the cabinet. It also impacts the Division of Construction within the cabinet.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 176.140.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will not affect expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is not expected to generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation is not expected to generate revenue.

(c) How much will it cost to administer this program for the first year? There will not be any costs.

(d) How much will it cost to administer this program for subsequent years? There will not be any costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Charitable Gaming
(Amendment)

820 KAR 1:001. Definitions~~[for 820 KAR Chapter 1].~~

RELATES TO: KRS 238.500, et. seq.~~[-238.995]~~

STATUTORY AUTHORITY: KRS 238.515(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(9) authorizes the Department of Charitable Gaming to promulgate administrative regulations to carry out the purposes and intent~~[provisions]~~ of the chapter. This administrative regulation establishes definitions of terms used throughout 820 KAR Chapter 1.

Section 1. Definitions. (1) "Account number" means the unique identification number, if any, assigned by a card-minding device system or electronic pulltab system to a customer that uses a card-minding device to play bingo or an electronic pulltab device to purchase and play a pulltab.

(2) "Bet block" means an area that indicates the dollar amount

of the wager.

(3) "Bingo ball" means a ball imprinted with numbers and letters which is used in the selection process of a bingo game.

(4) "Bingo machine" means:

(a) A type of selection device with a receptacle for the unselected bingo balls, a blower for selecting the balls, and a ball tray that contains seventy-five (75) holes in which to place the ball once it is called; or

(b) A generator that randomly selects the balls and displays them on the face of the device.

(5) "Bingo paper pack" means a group of bingo paper sheets that are manufactured, collated, and sold by the manufacturer as a unit.

(6) "Bingo paper package" means a group of bingo paper sheets or packs that are assembled together by an organization for sale at a gaming occasion that becomes a unique item for sale with a specific price.

(7) "Bingo paper sheet" means a single piece of paper on which one (1) or multiple bingo faces are printed.

(8) "Break open bingo" means a bingo game in which the numbers on the face are hidden until after purchase.

(9) "Bundle" means to price a certain amount of bingo paper faces for a certain price with the patron choosing the type of packs that make up the total faces.

(10) "Called" means that a number located on a bingo ball has been:

(a) Selected by the selection device;

(b) Verbally announced by the caller;

(c) Displayed on the flashboard or other device; and

(d) Placed in a ball tray or otherwise continuously displayed until completion of the bingo game.

(11) "Cash" means currency, coinage, or a negotiable instrument.

(12) "Cash over" means the total amount of money actually received from the sale of gaming supplies at a charitable gaming session [gaming occasion] is more than the amount of money due from the sale of that quantity of gaming supplies.

(4) [(13)] "Cash short" means the total amount of money actually received from the sale of gaming supplies at a charitable gaming session [gaming occasion] is less than the amount of money due from the sale of that quantity of gaming supplies.

(5) "Charitable gaming session" means a single gathering, event, or occurrence, at a specific location, during a specific time period, at which games of chance as defined by KRS Chapter 238 are conducted by a charitable organization.

(6) "Charitable gaming session program" means a written list of all games to be played and prize amounts to be paid for each game during a charitable gaming session, including, if the prizes are based on attendance, the amount of the prize and the attendance required.

(7) [(14)] "Chief executive officer" means the director of the organization or the person who has legal authority to direct the management of the organization, distributor, manufacturer, or charitable gaming facility with respect to the conduct of charitable gaming.

(8) [(15)] "Chief financial officer" means the person who is [shall be]:

(a) Responsible for overseeing the financial activities of the organization, distributor, manufacturer, or charitable gaming facility;

(b) The custodian of the charitable gaming session [gaming occasion] records; and

(c) Responsible for ensuring that all [the] records are accurate, complete, and maintained [regularly for inspection by the department].

(16) "Conditioning" means a restatement of:

(a) How many numbers or combinations of numbers are being selected by the players;

(b) The way [in which the] numbers are being wagered; and

(c) The corresponding dollar amount wagered.

(17) "Continuation game" means a multipart bingo game in which more than one (1) game with more than one (1) pattern may be played on one (1) bingo paper sheet.

(18) "Covered" means daubed or smeared with indelible ink if using a disposable paper bingo face, or marked electronically if using a card-minding device.

(19) "Cumulative pulltab game" means a pulltab game consisting of multiple pulltab deals or game sets that is designed by the manufacturer so that a portion of each deal's predetermined payout is designated to a prize pool board.

(20) "Deal" or "game set" means each separate game or series of pulltabs, including electronic pulltabs, which has the same serial number and which may be composed of multiple packages.]

(9) [(21)] "Digital signature" means a method by which data, as in a software application, is expressed in a calculated number which is used to verify the accuracy of the data or a copy of the data. [(22) "Disposable paper bingo face" means a nonreusable bingo face assembled in a single sheet, multiple face sheet, pad, or pack form.]

(10) [(23)] "Draw ticket" means a blank ticket upon which the numbers are marked as they are randomly selected. [(24) "Electronic pulltab" means an electronic version of a paper pulltab that is distributed from a finite number of game outcomes by a central computer system and played on an electronic pulltab device.

(25) "Electronic pulltab system" means:

(a) A central computer system, which may be an optional site system;

(b) Electronic pulltab devices;

(c) Point of sale stations;

(d) Secondary components; and

(e) Proprietary software that contains reporting and control functions as specified by 820 KAR 1:033, whereby the central computer system communicates with the electronic pulltab devices for the purpose of distributing a finite number of electronic pulltabs, a certain number of which, if randomly selected, entitle a player to prize awards at various levels.]

(11) [(26)] "EPROM" means Erasable Programmable read-only memory [ROM]. [(27) "Event game" means a type of pulltab game, with or without a seal card, that is designed by the manufacturer so that certain prizes are determined by:

(a) The draw of a bingo ball; or

(b) A method of randomly selecting numbers or symbols that correspond to the numbers or symbols printed on a paper or electronic pulltab.

(28) "Exception log" means a record documenting a prize payout that has not been authorized by the computer.

(29) "Face" means a paper or an electronic representation containing:

(a) Five (5) rows of five (5) squares with numbers or symbols;

(b) A free center space;

(c) The letters "B", "I", "N", "G", "O" printed in order over the five (5) columns; and

(d) A unique perm number identifying each face.

(30) "Fixed base card-minding device" means a computer system, not necessarily manufactured by a licensed manufacturer, which has been loaded with proprietary software by a licensed manufacturer to enable it to function as a card-minding device.

(31) "Fixed base electronic pulltab device" means a single personal computing device which has been loaded with proprietary software by a licensed manufacturer to enable it to function as an electronic pulltab device.

(32) "Flare" means the paper included with a deal of paper pulltabs, or the electronic representation of a paper flare included with a game set of electronic pulltabs, that identifies the game, the rules of the game, the payout structure, and other information as set forth by 820 KAR 1:032, 820 KAR 1:033, and 820 KAR 1:036.

(33) "Flashboard" or "display board" means a board that displays the bingo numbers called.

(34) "Form number" means a manufacturer's alphanumeric number that identifies a pulltab payout structure.]

(12) [(35)] "Gambling" is defined by KRS 528.010(4) [means staking or risking something of value on the outcome of a contest, game, gaming scheme, or gaming device which:

(a) Is based upon an element of chance, in accord with an agreement or understanding that someone will receive something

of value if there is a certain outcome; and

(b) Does not include a contest or game in which eligibility to participate is determined by chance and the ultimate winner is determined by skill.

(36) "Game set" means the entire deal of finite electronic pulltabs that contains predefined and randomized game results assigned under a unique serial number.

(37) "Game subset" means a division of a game set into equal sizes following randomization, with each game subset also identified by a unique serial number.

(38) "Gaming occasion" means an event at which charitable gaming takes place, such as a bingo session, a charity fundraising event, a special limited charity fundraising event, a sale of pulltabs, or a sale of raffle tickets.

(39) "Gaming occasion program", "bingo program", "occasion program", or "program" means a written list of all games to be played and prize amounts to be paid for each game during a gaming occasion, including, if the prizes are based on attendance, the amount of the prize and the attendance required.

(40) "Hand-held card-minding device" means a hand-held computer that is either manufactured or customized by the manufacturer to operate as a card-minding device.

(41) "Hand-held electronic pulltab device" means a single tablet or hand-held computer, other than a mobile phone or similar hand-held device, that is either manufactured or customized by the manufacturer to operate as an electronic pulltab device.]

(42) "Hard card" means a reusable card bearing a bingo face or faces.

(43) "Inside ticket" means a blank Keno ticket:

(a) Constructed with eighty (80) blocks numbered one (1) through eighty (80); and

(b) Containing a bet block.

(44) "Jackpot prize in a progressive pulltab game" or "progressive jackpot prize" means a prize in addition to the instant or seal card prizes which is carried over from deal to deal, or game set to game set, until it is won.

(45) "Jar ticket" means a type of pulltab game ticket that is folded, glued, or stapled.

(46) "Keno" means a numbers game in which:

(a) A participant chooses from one (1) to ten (10) numbers from a pool of eighty (80) numbers; and

(b) The winner and the prize is determined by correctly matching the participant's numbers to the twenty (20) numbers generated in the game.

(47) "Keno equipment" means:

(a) An electronic selection device;

(b) A random number generator;

(c) A computerized Keno system; or

(d) An integrated system of computer hardware and software that:

1. Generates a player ticket;

2. Records a game outcome;

3. Verifies a winning ticket;

4. Produces a management report; or

5. Performs other internal audit controls of a Keno operation.

(48) "Keno manager" means the person in charge of the operation of the Keno game.

(49) "Last sale" means a pulltab game designed by the manufacturer in which a prize is awarded to the person who bought the last pulltab or electronic pulltab in a deal or game set.]

(13)[(60)] "Merchandise prize" means a noncash prize given away at a charitable gaming session[event] either as a game prize or a door prize. [(51) "Model number" means the name or number designated by the manufacturer that indicates the unique structural design of a hand-held card-minding device, fixed base card-minding device, card-minding system component, hand-held electronic pulltab device, fixed base electronic pulltab device, or any element of an electronic pulltab system.

(52) "Multipackaged pulltab deal" means a pulltab game consisting of a single deal or game set of not more than 25,000 tickets that is packed or electronically grouped in subsets and in which each subset contributes to a prize pool with or without a prize board.

(53) "Multirace ticket" means a single Keno ticket that allows a player to make the same wager on consecutive games.

(54) "Outside ticket" means a computer-generated Keno ticket given to the player which reflects game and wagering information.

(55) "Perm number" means the number located on a bingo face that identifies the unique pattern of numbers appearing on that face.

(56) "Pickle jar, bonanza ball, or hot ball" means games played in conjunction with other bingo games in which:

(a) A bingo ball is selected by the selection device prior to the start of certain bingo games or all bingo games; and

(b) A patron is awarded the amount of money associated with the pickle jar, bonanza ball, or hot ball, if the selected bingo ball is called, and because of that selected ball being called, a patron wins the bingo game being played.

(57) "Player pick bingo" means that the patron picks the numbers which constitute a bingo on his or her face or faces and a machine prints those numbers on the bingo face at the gaming occasion before the game is played.]

(14)[(58)] "Player tracking software" means computer software installed on a card-minding device system, electronic pulltab system, or other point of sale system that is used to identify or track certain characteristics of bingo or pulltab players, including personal data and purchasing habits. [(59) "Progressive bingo" means a bingo game in which the value of the prize is carried forward to the next bingo occasion if no player wins at that session.

(60) "Progressive pulltab game" or "carryover pulltab game" means a pulltab game consisting of one (1) or more deals or game sets designed by the manufacturer so that a portion of the deal's predetermined prize payout is designated to a progressive jackpot and the jackpot value may accumulate from one (1) deal to the next deal until won.]

(15)[(61)] "PROM" means programmable read-only memory[ROM].

(16)[(62)] "Promotional" means any item available at no charge to all participants at an charitable gaming session[event].

(17)[(63)] "Proprietary software" means custom computer software developed by the manufacturer that is a primary component of a card-minding device system or electronic pulltab system and is required for a card-minding device to be used in a game of bingo or for an electronic pulltab device to be used to play an electronic pulltab. [(64) "Pulltab" means a charity game ticket as defined by KRS 238.505(5).]

(18)[(65)] "Purchased prize" means any merchandise prize that was purchased and not donated. [(66) "Quick pick" means a number selection made for the player by a computer.]

(19)[(67)] "RAM" or "random access memory" means the electronic memory that a computer uses to store information.

(20)[(68)] "Random number generator" means a device:

(a) For generating number values that exhibit characteristics of randomness; and

(b) Composed of:

1. Computer hardware;

2. Computer software; or

3. A combination of computer hardware and software. [(69) "ROM" or "read only memory" means the electronic component used for storage of nonvolatile information in Keno equipment that provides instructions needed by the computer to begin its operations each time it is turned on and may be either "PROM" or "EPROM".]

(21)[(70)] "Secondary component" means an additional software or hardware component that:

(a) Is part of or is connected to a card-minding device system or electronic pulltab system;

(b) Does not affect the conduct of the game of bingo or an electronic pulltab;

(c) Is provided by the manufacturer; and

(d) May include computer screen backgrounds, battery charge-up software routines, monitors, keyboards, pointer devices, mice, printers, printer software drivers, or charging racks. [(71) "Selected" means a bingo number that has been obtained by the selection device and is ready to be called next by the bingo caller.

(72) "Selection device" means a device that:

- (a) May be operated manually or automatically; and
- (b) Is used to randomly select bingo numbers.

(73) "Selection pool" means the bingo numbers in a selection device that have not been selected.]

(22)(74) "Serial number" means a number assigned by the manufacturer to track the individual product. [(75) "Series number" means the number of unique faces contained in a series.]

(76) "Set" means a case or cases of paper that contain one (1) of each face in a series.]

(23)(77) "Site system" means computer hardware, software, and peripheral equipment leased or purchased from a licensed distributor and used by a licensed organization to conduct, manage, and record bingo games played on card-minding devices and electronic pulltab games played on electronic pulltab devices.

(24)(78) "Terminal number" means the unique identification number, if any, assigned by a manufacturer to a specific standard card-minding device or a specific electronic pulltab device.

(25)(79) "Transaction log" means a record of the same information printed on each outside ticket that is:

- (a) Retained in the computer's memory; or
- (b) Printed out by the computer. [(80) "Verification system" means a book of bingo faces compiled by the manufacturer or an electronic device created by the manufacturer that:

(a) Lists the unique patterns of numbers on each face by perm number; and

- (b) Is used to verify the authenticity of a winning face.]

(26)(81) "Version number" means a unique number designated by the manufacturer to identify a specific version of software used on or by the card-minding device system or the electronic pulltab system. [(82) "Way ticket" means a single ticket that permits wagering on a combination of groups of numbers in various ways designated by the player.

(83) "Week" means a seven (7) day period beginning on Sunday and ending Saturday.

(84) "Year" is defined by KRS 238.505(25).]

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

CANNON G. ARMSTRONG, COMMISSIONER
DAVID A. DICKERSON, SECRETARY

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2018, at 11:00 a.m., at the Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 p.m. on June 30, 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: Doug Hardin, Deputy Commissioner, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625, email Doug.Hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative

regulation provides definitions for terms used throughout the charitable gaming regulations.

(b) The necessity of this administrative regulation: This regulation is necessary to clearly articulate the regulatory requirements established in the charitable gaming regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 238.522, the Charitable Gaming Advisory Commission reviewed this regulation at the Commission's second quarter meeting on May 2, 2018. No written comments were received from the Commissioners. KRS 238.515(9) authorizes the Department to promulgate administrative regulations to carry out and implement KRS Chapter 238.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to clearly articulate the definitions for terms used in the charitable gaming regulations.

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

(a) How the amendment will change this existing administrative regulation: In the proposed amendment, 820 KAR 1:001 will contain definitions of general application for the entire chapter. Definitions that are applicable only to pulltab gaming are being transferred to 820 KAR 1:032, Section 1. Definitions that are applicable only to bingo gaming are being transferred to 820 KAR 1:042, Section 1. All definitions related to Keno have been deleted in the proposed amendment consistent with the repeal of 820 KAR 1:110, Keno.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to make the regulation more user-friendly. The administrative regulation currently has eighty-four (84) subparts in which general definitions are alphabetized and intermingled with definitions specific to bingo, pulltabs, and electronic pulltabs, resulting in unnecessary length and difficulty for users attempting to locate a definition.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 238.515(9) authorizes the department to promulgate administrative regulations in accordance with KRS Chapter 13A that are necessary to carry out the purposes and intent of KRS Chapter 238. These amendments conform to the content of the authorizing statute by clearly articulating the definitions for terms used in the charitable gaming regulations that establish requirements for licensees and exempt organizations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary to clearly articulate the regulatory requirements established in the charitable gaming regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Charitable Gaming, its employees, and licensees, and exempt organizations will be affected by this administrative regulation. As of March 2018, the Department of Charitable Gaming regulated over 1,400 charitable gaming entities that will be affected by this administrative regulation, as follows:

- Over 600 charitable gaming organizations;
- Over 800 exempt charitable gaming organizations;
- Twenty-four (24) manufacturers of charitable gaming supplies;
- Twenty-three (23) distributors of charitable gaming supplies; and
- Thirty-four (34) charitable gaming facilities.

(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 questions (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not have to take any actions to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): Regulated entities will not incur any cost to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will be able to more easily locate and navigate the definitions applied in corresponding regulations.

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

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

(b) On a continuing basis: There will be no continuing cost to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no funding necessary 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: The implementation of this administrative regulation requires no increase in fees or funding.

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

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulations applies to all licensees and exempt organizations.

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 Charitable Gaming is the agency responsible for implementing this regulation. If a local fire department or school district seeks exempt status or licensure to engage in charitable gaming, it would be subject to 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 238.515(9).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation is not intended to have any effect on the expenditures or revenues of any state or local government agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is not intended to generate revenue for any state or local government 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 administrative regulation is not intended to generate revenue for any state or local government agency.

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

(d) How much will it cost to administer this program for subsequent years? There is no cost 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 (+/-): No impact.

Expenditures (+/-): No impact.

Other Explanation: None.

PUBLIC PROTECTION CABINET Department of Charitable Gaming (Amendment)

820 KAR 1:005. Charitable gaming licenses and exemptions[Exempt Organizations].

RELATES TO: KRS 238.515, 238.525, 238.530, 238.535, 238.540, 238.555

STATUTORY AUTHORITY: KRS 238.515[(3), (9)], 238.525, 238.530, 238.535(2), (13), 238.555

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(1) requires the Department of Charitable Gaming to license charitable organizations, charitable gaming facilities, manufacturers, and distributors that desire to engage in charitable gaming. KRS 238.515(2) requires the Department of Charitable Gaming to establish and enforce reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities. This administrative regulation establishes the requirements, fees, and procedures for licensure of a qualifying charitable organization, distributor, manufacturer, or charitable gaming facility. This administrative regulation further lays out criteria for temporary licenses, exemptions, and inspections for verifying the information contained in an application.[KRS 238.535(2) authorizes issuance of an exemption from licensing requirements to organizations meeting all licensing requirements if no special limited charitable games are played and annual gross receipts do not exceed \$25,000. KRS 238.535(2) requires charitable organizations to complete a form notifying the department of its exemption and requires completion of an annual financial report. This administrative regulation establishes the requirements for filing for an exemption and the annual reporting requirements.]

Section 1. Application for Licensure. (1) At least sixty (60) days prior to the expiration of its existing license or its first expected date of gaming, facility operation, or business operations in Kentucky during the license period, an applicant shall submit the appropriate complete, accurate, and documented application:

(a) A charitable organization shall submit Form CG-1;

(b) An organization authorized to hold special event raffles pursuant to KRS 238.535(14)(b) shall submit Form CG-SER;

(c) A distributor shall submit Form CG-2;

(d) A manufacturer shall submit Form CG-3;

(e) A charitable gaming facility shall submit Form CG-4;

(2) The department shall review the application and notify the applicant in writing of any deficiencies in the application as soon as practicable. An application shall not be considered complete until all deficiencies are resolved.

(3) If the applicant does not file a written response to a deficiency request, provide requested information and documents, or otherwise cure the identified deficiency within thirty (30) days of the written notice, the application shall be deemed withdrawn.

(4) If the applicant does file a written response to a deficiency request within thirty (30) days of the written notice, but the response does not cure the identified deficiency, the department shall issue a subsequent deficiency notice. If the deficiency is incapable of being cured, the department shall deny the license.

(5) Once the department has received a complete application, it shall grant or deny the license within sixty (60) days of receipt.

Section 2. License Requirements, Fees, and Issuance. (1) The department shall issue a license if the applicant has:

(a) Met the statutory requirements as set forth:

1. For charitable organizations, by KRS 238.535;

2. For special event raffle organizations, by KRS 238.535(14)(b);

3. For distributors and manufacturers, by KRS 238.530;

4. For charitable gaming facilities, by KRS 238.555;

(b) Paid all fees and fines;

(c) Filed all required reports;

(d) Filed an acceptable financial plan, if required;

(e) Complied with all terms and conditions of any applicable settlement agreement or probationary terms; and

(f) Submitted fingerprints cards as required by KRS 238.525.

(2) Fees for licenses issued shall be paid according to the following schedule:

(a) A nonrefundable application fee of twenty-five (25) dollars shall accompany each application for licensure and shall be credited against the amount of the annual license fee, if the requested license is granted.

(b) For charitable organizations and organizations licensed

pursuant to KRS 238.535(14)(b):

1. \$100 for:
 (i) A charitable organization upon initial application; or
 (ii) A charitable organization with gross receipts not in excess of \$100,000;

2. \$200 for a charitable organization with gross receipts over \$100,000, but not in excess of \$250,000; or

3. \$300 for a charitable organization with gross receipts over \$250,000.

(c) For manufacturers or distributors: \$1,000.

(d) For charitable gaming facilities:

1. \$1,250 for a facility conducting eight (8) or fewer sessions per week;

2. \$2,500 for a facility conducting between nine (9) and eighteen (18) sessions per week.

(3) A license shall not be issued until the license fee and any other fees or fines due are paid in full.

(4) The license term shall be for one (1) year from the effective date of the license.

(5) A licensed charitable organization, distributor, manufacturer, or charitable gaming facility may submit a written change request to change any information contained in the license application or printed on the license. All change requests shall be accompanied by a twenty-five (25) dollar change fee and be signed by an officer. The department shall process change requests and issue or deny an amended license within ten (10) days of receipt, and the licensee shall not engage in gaming until a license reflecting the change request has been issued.

(a) Except as provided in KRS 238.535(12)(b)(2), a licensed charitable organization may change the date, time, or location of a charitable gaming session if the licensed charitable organization submits a written request to the department at least ten (10) days prior to the date of the requested change. Any change request made pursuant to this subsection must be accompanied by a lease, if required, for the new gaming location.

(b) If a charitable organization wishes to cancel a charitable gaming session, the organization shall notify the department, in writing, at least twenty-four (24) hours prior to the scheduled start of the charitable gaming session, except in the event of an emergency beyond the organization's control, in which case the organization shall notify the department of the change as soon as practicable. A cancellation shall not require a change fee.

Section 3. Temporary License. (1) Application for Licensure. The department may issue a temporary license to an applicant for a charitable gaming license if the applicant has submitted a complete and accurate license application form, and has complied with all other licensing requirements for an annual license.

(2) License Fee. For each temporary license issued, the licensee shall pay a twenty-five (25) dollar fee. The total temporary license fee charged in a year shall not exceed the annual license fee.

Section 4. Distributor Requirements. (1) A distributor shall maintain a separate bank account for the operation of the distributorship that is not commingled with a personal account or another business account. If the license distributor owns multiple distributorships, a separate bank account shall be maintained for each distributorship.

(2) Any payments received by a distributor from a charitable organization shall be by check drawn on the charitable gaming account or electronic fund transfer from the charitable gaming account.

(3) A distributor or its agent(s) shall maintain storage facilities for gaming supplies to be sold within the Commonwealth of Kentucky within this State, and shall identify the facilities' physical locations to the department. Storage facilities shall be made accessible to the department for inspection upon request.

Section 5. Charitable Gaming Facility Requirements. (1) A licensed charitable gaming facility shall be permitted to list on its website the names, license numbers, gaming sessions, and information regarding the charitable organizations that game at that

licensed charitable gaming facility.

(2) If a charitable organization contracts with a licensed charitable gaming facility to operate concession stand(s), the members of the charitable organization that volunteer at the concession stand may volunteer to work for their own gaming session, but shall not volunteer for the gaming session of any other charitable organization that games at that licensed charitable gaming facility.

(3) A licensed gaming facility shall maintain a separate bank account for the licensed gaming facility operation that is not commingled with a personal account or another business account. If the licensee owns multiple licensed gaming facilities, a separate bank account shall be maintained for each licensed gaming facility. If separate businesses are operated out of the licensed gaming facility, including a check cashing service or a concession stand, each business shall have a separate bank account.

(4) Any payments received by a licensed gaming facility from a charitable organization shall be by check drawn on the charitable gaming account or electronic fund transfer from the charitable gaming account of the charitable organization.

(5) The lease agreement executed between the licensed charitable gaming facility and charitable organization shall contain the day and time of each charitable gaming session a charitable organization will conduct at the licensed gaming facility. If the day and time are included in the lease agreement, the day and time listed in the lease agreement shall be accurate and shall match the day and time listed on the organization's charitable gaming license.

Section 6. Exempt Organizations. (1) An organization seeking exemption from charitable gaming licensing requirements shall submit a complete and accurate Form CG-Exempt, Organization Grossing Under \$25,000 Application for Exemption, at least thirty (30) days prior to the expected date of gaming. The Form CG-Exempt shall be submitted with a non-refundable fee of twenty-five (25) dollars.

(2) If the charitable organization has submitted a complete application, and meets the requirements for exemption prescribed in KRS Chapter 238, the department shall issue a Notification of Exemption within thirty (30) days of the completed submission.

(3) The department shall review the application and shall notify the applicant within thirty (30) days of receipt of the initial application of the nature of any deficiencies. If identified deficiencies are not cured within thirty (30) days from the notice, the application shall be deemed withdrawn, and no exemption will be granted in response to the application.

(4) The charitable organization shall not be required to file an additional exemption application with the department if the gaming activities of the charitable organization remain within the qualifications for exempt status.

(5) The charitable organization shall notify the department of any changes in the exempt status of the charitable organization within thirty (30) days of the occurrence of such changes.

(6) A charitable organization possessing a Notice of Exemption shall file an annual report with the department before January 31 of each year. This report shall be filed on Form CG-EFR, Annual Financial Report For Exempt Organization. The report may be filed electronically.

(7) A charitable organization that has had its exemption revoked for any reason shall pay a nonrefundable reinstatement fee of twenty-five dollars (25) with any application or request for reinstatement.

Section 7. Licensee Inspections. (1) An applicant for a license or an exemption shall be able to demonstrate the existence of their establishment by:

(a) Contracts or leases;

(b) Utility bills;

(c) Records maintained by the parent organization;

(d) Bank records; or

(e) Similar documents.

(2) Any such records shall be accessible to the department for inspection.

(3) An applicant for a license or an exemption shall be able to

demonstrate its maintenance of an office by copies of the business records including the articles of incorporation and by-laws, if any, any tax forms, the check book and bank statements, and any other records kept in the ordinary course of operating the type of business for which licensure is sought.

(4) An applicant for a charitable gaming facility license shall be able to demonstrate that it is the entity that is operating the charitable gaming facility and that the charitable gaming facility does not have any prohibited relationships with organizations, distributors, or manufacturers. This may include an inspection of its office including contracts, required reports, checkbook, bank accounts, and any other records regarding the operation of the charitable gaming facility. Any such records stored or maintained in electronic formats shall likewise be accessible to the department for inspection.

(5) An applicant for a distributor's or manufacturer's license shall be able to demonstrate prior to licensing that it manufactures or distributes gaming supplies from the locations stated on the license application. This may include an inspection of those locations and a demonstration or explanation of its ability to track gaming supplies and maintain the appropriate records. Any such records stored or maintained in electronic formats shall likewise be accessible to the department for inspection.

(6) Inspections shall be completed by appropriate department personnel who shall file a report stating the result(s) of the inspection performed.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form CG-Exempt, "Organization Grossing Under \$25,000 Application for Exemption (2018)";

(b) Form CG-EFR, "Annual Financial Report For Exempt Organization (2018)";

(c) Form CG-1, "Charitable Organization License Application (2018)";

(d) Form CG-SER, "Special Event Raffle License Application (2018)";

(e) Form CG-2, "Distributor License Application (2018)";

(f) Form CG-3, "Manufacturer License Application (2018)";

(g) Form CG-4, "Facility License Application (2018)"; and

(h) Form CG-OC, "Notice Of Change In Officers Or Chairpersons (2018)."

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Form for Exemption. (1) An organization shall submit a complete, accurate, and verifiable Form CG-Exempt, Organization Grossing Under \$25,000 Application for Exemption, at least thirty (30) days prior to the expected date of gaming.

(2) The form shall not be considered complete until all deficiencies are resolved.

(3) If the organization does not respond to a deficiency request within thirty (30) days, the form shall be deemed withdrawn, and the organization shall not game.

(4) If the organization has submitted a complete form, and meets the requirements for licensure prescribed in KRS Chapter 238, the department shall issue a Notification of Exemption.

(5) The organization shall not be required to file an additional exemption request form with the department if the gaming activities of the charitable organization remain exempt.

(6) The organization shall notify the department of any changes in the information contained on the form within thirty (30) days.

(7) An organization possessing a Notice of Exemption shall file an annual report with the department before January 31 of each year. This report shall be filed on Form CG-EFR, Annual Financial Report For Exempt Organization. The report may be filed electronically.

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

(a) Form CG-Exempt, "Organization Grossing Under \$25,000

Application for Exemption", 5/15; and

(b) Form CG-EFR, "Annual Financial Report For Exempt Organization", 5/15.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

820 KAR 1:005, Charitable gaming licenses and exemptions.

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

CANNON G. ARMSTRONG, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2018, at 11:00 a.m., at the Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 p.m. on June 30, 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: Doug Hardin, Deputy Commissioner, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625, email Doug.Hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies the requirements for certification of charitable organizations as exempt from licensure, and sets forth the requirements for charitable gaming organizations, manufacturers, distributors, and gaming facilities to apply for and obtain licensure from the Department of Charitable Gaming for charitable gaming activities within the Commonwealth of Kentucky. This administrative regulation also incorporates changes required by the passage of House Bill 164 in the 2018 Regulation Session.

(b) The necessity of this administrative regulation: This regulation is necessary so that the Department of Charitable Gaming may issue exemptions pursuant to KRS Chapter 238 and 820 KAR Chapter 1. Additionally, House Bill 164 passed during the 2018 legislative session creates a new license type, and this administrative regulation creates the licensing process for that new license type.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 238.522, the Charitable Gaming Advisory Commission reviewed this regulation at the Commission's second quarter meeting on May 2, 2018. No written comments were received from the Commissioners. KRS 238.515 authorizes the department to promulgate administrative regulations in order to carry out and implement KRS Chapter 238. This administrative regulation provides basis for the Department to exempt organization from licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The

Department of Charitable Gaming is charged with the responsibility of licensing and regulating charitable gaming. Upon amendment, this administrative regulation will provide the requirements for exemptions and licensure of charitable organizations, manufacturers, distributors, and gaming facilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment to 820 KAR 1:005 brings together within one (1) regulation all of the regulations pertaining to exempt status or licensure for charitable organizations, manufacturers, distributors, and gaming facilities. The current section 820 KAR 1:005 relates to organizations obtaining certification as being exempt from any requirement for licensure as a charitable organization. In combination with the contemporaneously filed repealer, the proposed amendment reorganizes the substantive content of several administrative regulations, including 820 KAR 1:010, 820 KAR 1:015, 820 KAR 1:016, 820 KAR 1:017, and 820 KAR 1:029. The amendment will make it easier for any person or entity seeking licensure to locate all licensure regulations in one section of the Chapter. The amendment also creates a twenty-five dollar (\$25) fee to be paid when filing for exempt status, making this filing consistent with all other licensure-related filings under this Chapter. Lastly, this administrative regulation incorporates changes required by the passage of House Bill 164 in the 2018 Regulation Session which included the creation of a new license type.

(b) The necessity of the amendment to this administrative regulation: Licensure regulations have been divided into multiple sections on various aspects of charitable gaming licenses pursuant to KRS Chapter 238 and 801 KAR Chapter 1. Locating all rules governing charitable gaming licensure in one administrative regulation will clarify requirements for all applicants and licensees. Lastly, this administrative regulation incorporates changes required by the passage of House Bill 164 in the 2018 Regulation Session which included the creation of a new license type.

(c) How the amendment conforms to the content of the authorizing statutes: These amendments conform to the content of the authorizing statute because this regulation sets forth licensing requirements as permitted by KRS 238.515.

(d) How the amendment will assist in the effective administration of the statutes: By consolidating the licensure requirements in one location, this amendment will make the regulations pertaining to licensure better organized and more user-friendly.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Charitable Gaming, its employees, licensees, and exempt organizations will be affected by this administrative regulation. As of March 2018, the Department of Charitable Gaming regulated over 1,400 charitable gaming entities that will be affected by this administrative regulation, as follows:

- Over 600 charitable gaming organizations;
- Over 800 exempt charitable gaming organizations;
- Twenty-four (24) manufacturers of charitable gaming supplies;
- Twenty-three (23) distributors of charitable gaming supplies;
- and
- Thirty-four (34) charitable gaming facilities.

(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 seeking licensure or exemption must complete the forms, provide the necessary information, and pay the required fee set forth in this administrative regulation. All these organizations must conform to this administrative regulation prior to conducting charitable gaming.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): This amendment to the administrative regulation

establishes a non-refundable twenty-five dollar (\$25) fee to apply for exempt status. The existing administrative regulation contains fees for licensure, which the amendment does not increase. The amendment provides that licensing fees for applicants pursuant to House Bill 164's new license type will be the same as those for current licensed charitable organizations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will make 820 KAR 1:005 more user friendly by incorporating all licensure regulations into one section of the Chapter.

(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 implement this administrative regulation.

(b) On a continuing basis: There is no additional 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 additional funding necessary to implement this amendment to the administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: This amendment should have no impact on fees or funding for this agency.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This amendment to the administrative regulation establishes a non-refundable twenty-five dollar (\$25) fee to apply for exempt status. The existing administrative regulation contains fees for licensure, which the amendment does not increase.

(9) TIERING: Is tiering applied? No, tiering is not applied among the different license types.

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 Charitable Gaming and any local fire department or school district seeking exempt status or licensure to engage in charitable gaming will be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.515(1) and (9).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If a fire department or school district applies for exempt status, it will have to pay the non-refundable twenty-five dollar (\$25) application fee.

(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 twenty-five dollars (\$25) for every exemption applicant. Estimating 800 exemption applications, this will generate \$20,000.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate twenty-five dollars (\$25) for every exemption applicant. Estimating 800 exemption applications per year, this will generate \$20,000 per year in subsequent years.

(c) How much will it cost to administer this program for the first year? This amendment will not incur any cost to administer for the first year.

(d) How much will it cost to administer this program for subsequent years? This amendment will not incur any cost to administer 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 (+/-): \$20,000 per annum.

Expenditures (+/-): None.

Other Explanation: One part of this amendment to the regulation imposes a non-refundable twenty-five dollar (\$25) fee for organizations applying for exempt status. This fee is only applicable to organizations seeking or renewing exempt status after the effective date of the amended regulation. It is unknown how many organizations will seek exemption. There is otherwise no change to the fiscal impact of licensure fees.

**PUBLIC PROTECTION CABINET
Department of Charitable Gaming
(Amendment)**

820 KAR 1:025. Reports[Financial Reports of a Licensed Charitable Organization].

RELATES TO: KRS 238.530, 238.550 [(6), (7), (8)], 238.555, 238.560, 238.570 [(1)]

STATUTORY AUTHORITY: KRS 238.515 [(4), (9)], 238.530, 238.550 [(6), (7), (8)], 238.555, 238.560, 238.570 [(1)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(4) requires the Department of Charitable Gaming to promulgate administrative regulations establishing standards of accounting, recordkeeping, and reporting to insure charitable gaming receipts are properly accounted for. KRS 238.530 authorizes the department to promulgate an administrative regulation to require a licensed distributor to report all activities relating to the sale, rental, lease, or furnishing of charitable gaming supplies and equipment. KRS 238.560 authorizes the department to take administrative action against any person for any violation of the provisions of KRS Chapter 238 and the administrative regulations promulgated thereunder. [KRS 238.550(6), (7), and (8) require the department to promulgate administrative regulations concerning financial report forms. KRS 238.570(1) requires a licensed charitable organization to remit a percentage of the gross receipts derived from charitable gaming to the department.] This administrative regulation establishes the method and time of filing[the] financial reports and remitting payment of[the] fees due.

Section 1. Reporting. (1) Licensees shall submit corresponding forms and reports quarterly as described in Section (2) of this administrative regulation:

(a) Licensed charitable organizations shall submit Form CG-FIN, "Financial Report for a Licensed Charitable Organization":

1. Licensed charitable organizations with gross receipts of less than \$200,000 per calendar year and no weekly bingo session shall only be required to submit Form CG-FIN annually, on or before January 31 of each year;

2. Licensed charitable organizations receiving distributions from organizations described in subsection (1)(d) of this administrative regulation shall submit Form CG-FIN-RA, "Financial Report for a Licensed Charitable Organization, Recipient Account". If the licensed charitable organization receives distributions from more than one such organization, it shall submit Attachment A-1 and G-1 for each distributing organization;

(b) Licensed charitable gaming facilities shall submit Form CG-FAC, "Licensed Charitable Gaming Facility Quarterly Report";

(c) Licensed distributors shall submit Form CG-DIS "Licensed Charitable Gaming Distributor Quarterly Report" for each quarter that the distributor is licensed;

(d) Organizations licensed pursuant to KRS 238.535(14)(b) shall submit Form CG-FIN-SER, "Licensed Organization Financial Report for Special Event Raffle License Only."

(2) All financial reports shall be:

(a) Submitted on the appropriate form prescribed in Section 1(1) of this administrative regulation;

(b) Typed or in permanent ink;

(c) Complete, accurate, and legible;

(d) Contain the original signature and printed name or, if submitted electronically, the typewritten name of either the chief

executive officer or the chief financial officer of the charitable organization, facility, or distributor; and

(e) Contain the original signature and printed name or, if submitted electronically, the typewritten name of the preparer of the report if prepared by an individual other than the chief executive officer or chief financial officer.

Section 2. Quarterly Reporting Requirements. (1) A licensee required to submit a quarterly report shall do so on or before the following dates for the preceding three month period:

(a) April 30;

(b) July 31;

(c) October 31; and

(d) January 31.

(2) If a date in Section 2(1) of this administrative regulation falls on a Saturday, Sunday, or legal holiday, the report shall be due on the first business day thereafter.

(3) The financial report and fee shall be considered timely filed if it has been:

(a) Mailed to the department by first class mail, postage prepaid, to the correct address and postmarked by the due date;

(b) Received in the department by hand-delivery on or before the due date; or

(c) Received by the department electronically on or before the due date.

(4) If any report or portion thereof is not filed when due, or if any required fee is not remitted when due, the licensee shall be subject to disciplinary action under KRS 238.560.

Section 3. Specific Reporting Requirements for Licensed Charitable Organizations. (1) The fee imposed by KRS 238.570(1) on gross gaming receipts of a licensed charitable organization shall be remitted by check made payable to "Kentucky State Treasurer" at the time the financial report is due.

(2) If a charitable organization does not have any information to place on an attachment to the financial report, it shall indicate "not applicable" on the attachment.

(3) To complete the Bingo Paper Supplies Inventory page of Form CG-FIN, the product description shall be listed in the format "# ON # UP", with:

(a) The number "ON" being the number of bingo faces on a bingo paper sheet; and

(b) The number "UP" being the number of bingo paper sheets contained in a bingo paper pack.

(4) If multiple pages are used for inventory, each person completing the inventory shall sign one (1) page of the pages that person completed and initial the remaining pages.

(5) All expenses incurred by a licensee shall be reported on the financial report for the date on which payment was made, which shall be either the date a check was written or an electronic funds transfer was made, regardless of when the supplies were used or the services were rendered.

Section 4. Incorporation by Reference. (1) The following are incorporated by reference:

(a) Form CG-FIN, "Financial Report for a Licensed Charitable Organization (2018)";

(b) Form CG-FIN-RA, "Financial Report for a Licensed Charitable Organization, Recipient Account (2018)";

(c) Form CG-FIN-SER, "Licensed Organization Financial Report for Special Event Raffle License Only (2018)";

(d) Form CG-FAC, "Licensed Charitable Gaming Facility Quarterly Report (2018)"; and

(e) Form CG-DIS, "Licensed Charitable Gaming Distributor Quarterly Report (2018)".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Reporting Period Defined. (1) For a licensed charitable organization that has gross receipts of \$200,000 or less per calendar year and does not have a weekly bingo session, a complete, accurate, legible, and verifiable financial report, in

accordance with Section 2 of this administrative regulation, shall be submitted by the licensed charitable organization along with the fee required by Section 3 of this administrative regulation for every year licensed to game on or before January 31st.

(2) For a licensed charitable organization not described in subsection (1) of this section, a complete, accurate, legible, and verifiable financial report, in accordance with Section 2 of this administrative regulation, shall be submitted by the licensed charitable organization along with the fee required by Section 3 of this administrative regulation for every quarter licensed to game on or before the following dates:

- (a) April 30, for the quarter January 1 to March 31;
- (b) July 31, for the quarter April 1 to June 30;
- (c) October 31, for the quarter July 1 to September 30; and
- (d) January 31, for the quarter October 1 to December 31.

(3) If the due date is on a Saturday, Sunday, or legal holiday, the report shall be due on the first business day thereafter.

(4) The financial report and fee shall be considered filed when due if it has been:

- (a) Mailed to the department by first class mail, postage prepaid, to the correct address and postmarked by the due date;
- (b) Received in the department by hand delivery on or before the due date; or
- (c) Received by the department electronically on or before the due date.

Section 2. Financial Reports. (1) A financial report shall:

- (a) Be submitted on Form CG-FIN, Financial Report for a Licensed Charitable Organization, including all attachments;
- (b) Be completed in ink or typed;
- (c) Include the original signature and printed name or, if submitted electronically, the typewritten name of either the chief executive officer or the chief financial officer of the licensed charitable organization; and
- (d) Include the original signature and printed name or, if submitted electronically, the typewritten name of the preparer if prepared by an individual other than the chief executive officer or chief financial officer.

(2) If an organization does not have any information to place on an attachment to the financial report, it shall indicate "not applicable" on the attachment.

(3) To complete the Bingo Paper Supplies Inventory page of Form CG-FIN, the product description shall be listed in the format "# ON # UP", with:

- (a) The number "ON" being the number of bingo faces on a bingo paper sheet; and
- (b) The number "UP" being the number of bingo paper sheets contained in a bingo paper pack.

(4) If multiple pages are used for inventory, each person completing the inventory shall sign one (1) page of the pages that person completed and initial the remaining pages.

Section 3. Fees Due. The fee imposed by KRS 238.570(1) on gross gaming receipts of a licensed charitable organization shall be remitted by check made payable to "Kentucky State Treasurer" at the time the financial report is due.

Section 4. Reporting Expenses. All expenses incurred by a licensee shall be reported on the financial report for the date on which payment was made, which shall be either the date a check was written or an electronic funds transfer was made, regardless of when the supplies were used or the services were rendered.

Section 5. Incorporation by Reference. (1) Form CG-FIN, "Financial Report for a Licensed Charitable Organization", 5/15, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

This is to certify that this administrative regulation was

distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

CANNON G. ARMSTRONG, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2018, at 11:00 a.m., at the Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 p.m. on June 30, 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: Doug Hardin, Deputy Commissioner, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625, email Doug.Hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies the reports that must be filed by licensed charitable gaming organizations, manufacturers, distributors, and gaming facilities and provides instructions for the information to be included and the timing for such reports to be due with the Department of Charitable Gaming. This administrative regulation also incorporates changes required by the passage of House Bill 164 in the 2018 Regulation Session.

(b) The necessity of this administrative regulation: This regulation is necessary for the Department of Charitable Gaming to ensure that licensed charitable organizations, manufacturers, distributors, and gaming facilities make certain reports consistent with KRS Chapter 238, and it establishes the forms used for reporting. Additionally, House Bill 164 passed during the 2018 legislative session creates a new license type, and this administrative regulation creates the financial reporting requirements for that new license type.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 238.522, the Charitable Gaming Advisory Commission reviewed this regulation at the Commission's second quarter meeting on May 2, 2018. No written comments were received from the Commissioners. KRS 238.515 authorizes the Department to promulgate administrative regulations to carry out and implement KRS Chapter 238. This administrative regulation requires that licensed charitable organizations, manufacturers, distributors, and gaming facilities make certain reports consistent with KRS Chapter 238 and establishes the forms used for reporting.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Department of Charitable Gaming is charged with the responsibility of licensing and regulating charitable gaming in Kentucky. The department must ensure that licensed charitable organizations, manufacturers, distributors, and gaming facilities report the information required by KRS Chapter 238 and 820 KAR Chapter 1 in a timely and accurate manner.

(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 consolidates into one administrative regulation all reporting requirements that were scattered throughout the regulatory scheme. The substance and content of 820 KAR 1:026, 820 KAR 1:027, and 820 KAR 1:028 will all be moved into this regulation. This amendment will make it easier for licensees to identify reporting requirements. Lastly, this administrative regulation incorporates changes required by the passage of House Bill 164 in the 2018 Regulation Session which included the creation of a new license type.

(b) The necessity of the amendment to this administrative regulation: Current reporting requirements are scattered across multiple sections of 820 KAR Chapter 1. This amendment will make it easier for licensees to identify reporting requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 238.515(9) authorizes the Department to promulgate administrative regulations in accordance with KRS Chapter 13A that are necessary to carry out the purposes and intent of KRS Chapter 238. These amendments conform to the content of the authorizing statute because it aids the Department in enforcing the provisions of KRS Chapter 238 by articulating requirements the requirements for certain reports and establishing the forms used for reporting.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will make the regulations pertaining to reporting better organized and more user-friendly.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Charitable Gaming and its employees are affected by this administrative regulation. New applicants who may apply as a result of the passage of House Bill 164 will also be affected by this administrative regulation amendment. In addition, the licensees and exempt organizations will be affected by this administrative regulation. As of March 2018, the Department of Charitable Gaming regulated over 1,400 charitable gaming entities that will be affected by this administrative regulation, as follows:

Over 600 charitable gaming organizations;
Over 800 exempt charitable gaming organizations;
Twenty-four (24) manufacturers of charitable gaming supplies;
Twenty-three (23) distributors of charitable gaming supplies;

and

Thirty-four (34) charitable gaming facilities.

(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 questions (3) will have to take to comply with this administrative regulation or amendment: The regulated entities must complete the reports, provide the necessary information, and pay the required fee set forth 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 should be no additional cost for compliance with the regulation for licensed charitable organizations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proposed amendment will make 820 KAR 1:025 the sole source for all reporting requirements for all licensed charitable gaming.

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

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

(b) On a continuing basis: There should be no additional 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 additional funding necessary to implement this amendment to the administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new or by the change, if it is an amendment: The implementation of this administrative regulation requires no increase in fees or funding.

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

(9) TIERING: Is tiering applied? Tiering is applied in Section 1 of this administrative regulation. Larger charitable organizations (those that gross \$200,000 or more) and those that run weekly bingo games are required to submit financial reports more often than smaller organizations. Because those charitable organizations are more heavily involved in charitable gaming, Department employees must monitor their compliance more frequently.

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 Charitable Gaming and any local government agencies seeking information regarding licensees will be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.515, 238.530, 238.550, 238.555, 238.560, 238.570.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is not intended to have any effect on the expenditures or revenues of any state or local government 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 administrative regulation is not intended to generate revenue for any state or local government agency.

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

(d) How much will it cost to administer this program for subsequent years? There is no cost 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 (+/-): No impact.

Expenditures (+/-): No impact.

Other Explanation: None.

PUBLIC PROTECTION CABINET Department of Charitable Gaming (Amendment)

820 KAR 1:032. Pulltabs~~[Pulltab construction]~~.

RELATES TO: KRS 238.505[(5), (27), (28)], 238.545[(1), (2)]

STATUTORY AUTHORITY: KRS 238.515 [(2), (4), (9)], 238.545 [(1), (2)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515 [(2) and (9) require] requires the Department of Charitable Gaming to establish and enforce reasonable standards for the conduct of charitable gaming. KRS 238.545 [(2)] requires the department to establish standards for pulltab construction, distribution, electronic pulltabs, and rules of play. This administrative regulation establishes those standards ~~[for the construction and distribution of pulltabs]~~.

Section 1. Pulltab Definitions. These definitions shall apply to all administrative regulations relating to pulltabs and/or electronic pulltabs.

(1) "Bonus round" means a single, new screen, apart from ordinary gameplay, that incrementally reveals the results of a single electronic pulltab ticket either by simulating the opening of additional tickets or simulating a prize board from which a player may pick symbols or icons.

(2) "Cumulative pulltab game" means a pulltab game consisting of multiple pulltab deals or game sets that is designed by the manufacturer so that a portion of each deal's predetermined payout is designated to a prize pool board.

(3) "Deal" means each separate game or series of pulltabs which has the same serial number and which may be composed of multiple packages.

(4) "Electronic pulltab system" means:

(a) A central computer system, which may be an optional site system;

(b) Electronic pulltab devices;

(c) Point of sale stations;

(d) Secondary components; and

(e) Proprietary software that contains reporting and control functions whereby the central computer system communicates with the electronic pulltab devices for the purpose of distributing a finite number of electronic pulltabs, a certain number of which, if randomly selected, entitle a player to prize awards at various levels.

(5) "Event game" means a type of pulltab game, with or without a seal card, that is designed by the manufacturer so that certain prizes are determined by:

(a) The draw of a bingo ball; or

(b) A method of randomly selecting numbers or symbols that correspond to the numbers or symbols printed on a paper or electronic pulltab.

(6) "Fixed-base electronic pulltab device" means a single personal computing device that [which] has been loaded with proprietary software by a licensed manufacturer to enable it to function as an electronic pulltab device.

(7) "Flare" means the paper included with a deal of paper pulltabs, or the electronic representation of a paper flare included with a game set of electronic pulltabs, that identifies the game, the rules of the game, the payout structure, and other information required by these regulations.

(8) "Form number" means a manufacturer's alphanumeric number that identifies a pulltab payout structure.

(9) "Game set" means the entire deal of finite electronic pulltabs that contains predefined and randomized game results assigned under a unique serial number.

(10) "Game subset" means a division of a game set into equal sizes following randomization, with each game subset also identified by a unique serial number.

(11) "Hand-held electronic pulltab device" means a single tablet or hand-held computer, other than a mobile phone or similar hand-held device that is either manufactured or customized by the manufacturer to operate as an electronic pulltab device.

(12) "Jackpot prize in a progressive pulltab game" or "progressive jackpot prize" means a prize in addition to the instant or seal card prizes which is carried over from deal to deal, or game set to game set, until it is won.

(13) "Jar ticket" means a type of pulltab game ticket that is folded, glued, or stapled.

(14) "Last sale" means a pulltab game designed by the manufacturer in which a prize is awarded to the person who bought the last pulltab or electronic pulltab in a deal or game set.

(15) "Multipackaged pulltab deal" means a pulltab game consisting of a single deal or game set of not more than 25,000 tickets that is packed or electronically grouped in subsets and in which each subset contributes to a prize pool with or without a prize board.

(16) "Pulltab" means a charity game ticket as defined by KRS 238.505(5).

(17) "Progressive pulltab game" or "carryover pulltab game" means a pulltab game consisting of one (1) or more deals or game

sets designed by the manufacturer so that a portion of the deal's predetermined prize payout is designated to a progressive jackpot and the jackpot value may accumulate from one (1) deal to the next deal until won.

Section 2. Conformity of Paper Pulltabs. (1) A licensed distributor of charitable gaming supplies and equipment shall distribute in Kentucky only those paper pulltabs conforming to the requirements of this administrative regulation.

(2) A licensed charitable organization shall sell to the public only those paper pulltabs conforming to the requirements of this administrative regulation.

Section 3[2]. Paper Pulltab Construction Standards. (1) Pulltabs shall be constructed so that the concealed numbers, symbols, or winner protection features cannot be viewed or determined from the outside of the pulltab using a high intensity lamp of up to and including 500 watts, with or without utilizing a focusing lens.

(2) The deal shall be designed, printed, glued, cut, and assembled in a manner to prevent determination of a winning or losing ticket without removing the tabs or otherwise uncovering the symbols or numbers as intended.

(3) Each pulltab in a deal shall bear the same serial number. If a seal card is used with a pulltab deal, the seal card shall bear the same serial number as each pulltab. Only one (1) serial number shall be used in a deal. A serial number used in a deal of pulltabs shall not be repeated by the same manufacturer on that same manufacturer's form number within a three (3) year period.

(4) If the pulltab utilizes a window, the numbers or symbols on the pulltab shall be fully visible in the window and shall be placed so that no part of a symbol or number remains covered when the tab is removed. Displacement of the symbol to the left or right in a window may be used for increased game security. Additional security devices or methods, including a laminate underneath a window, may be used by a manufacturer.

(5) It shall not be possible to distinguish winning pulltabs from losing pulltabs through variations in printing graphics or colors, including those involving different printing plates.

(6) All winning pulltabs shall have at least one (1) winner protection feature. In addition, all winning pulltabs that entitle a player to an instant prize of greater than twenty (20) dollars shall include an additional form of winner protection. Numeral jar tickets with colored winning numerals shall not be required to have secondary winner protection.

(7) All pulltabs shall be glued on the window edges and between each window. The glue shall be of sufficient strength and type to prevent the separation or delamination of the pulltab. For banded tickets, the glue shall be of sufficient strength and quality to prevent the separation of the band from the ticket.

(8) The window slits on each break open ticket shall be perforated on at least three cut sides. The ties shall be of a sufficient thickness or strength to prevent unauthorized peering under the windows and so that unauthorized peering under the windows can be detected. It shall not be possible to isolate winning or potential winning tickets from variations to the size or the appearance of a cut edge of the pulltab comprising a particular game.

(9) Except as provided in Sections 3(10) and 3(11) of this administrative regulation[subsection (10) or (11) of this section], the minimum information that shall be printed on an unopened pulltab with an overall area of two and five-tenths (2.5) square inches or more shall be:

(a) The name of the manufacturer, or its distinctive logo;

(b) The name of the game;

(c) The manufacturer's form number;

(d) The price per individual pulltab;

(e) The unique minimum five (5) digit game serial number, printed on the game information side of the pulltab; and

(f) The number of winners and respective winning numbers or symbols, and specific prize amounts.

(10) A pulltab with an overall area of at least one and six tenths (1.6) square inches unopened but less than two and five tenths

(2.5) square inches unopened shall:

(a) Have printed on it, at a minimum, the information listed in subsection (9)(a), (b), (c), (d), and (e) of this section; and

(b) Not be required to have the information listed in subsection (9)(f) of this section.

(11) A pulltab with an overall area of less than one and six-tenths (1.6) square inches unopened shall:

(a) Have printed on it, at a minimum, the information listed in subsection (9)(a) and (e) of this section; and

(b) Not be required to have the information listed in subsection (9)(b), (c), (d), or (f) of this section.

Section 4[3]. Randomization of Paper Pulltabs. Winning paper pulltabs shall be distributed and mixed among all other pulltabs in a deal to eliminate any pattern between deals, or portions of deals. The pulltab deal shall be assembled so that the winning pulltabs cannot be distinguished. Winning tickets shall be randomly distributed throughout the deal. Banded tickets packaged in bags, rather than boxes, shall be subject to these requirements.

Section 5[4]. Packaging and Distribution of Paper Pulltabs.

(1)(a) Each paper pulltab deal's package, box, or other container shall be sealed or taped at every entry point at the manufacturer's factory with a tamper resistant seal or tape.

(b) The seal or tape shall be visible under the shrink-wrap or from outside the container and shall be constructed to guarantee that, if the container is opened or otherwise tampered with, evidence of the opening or tampering will be easily detected.

(c) The seal or tape shall include a warning to the purchaser that the deal may have been tampered with if the package, box, or other container is received by the purchaser with the seal or tape broken.

(d) If the deal is packaged in a plastic bag, the entry point shall be completely sealed by the application of heat or adhesive. The warning may be imprinted in the plastic.

(2) A deal's serial number shall be clearly and legibly placed on:

(a) The outside of the deal's package, box, or other container; or

(b) The inside of the deal's package, box, or other container if it is clearly visible from the outside of the package, box, or other container.

(3) Manufacturers shall print on or affix to the outside of the package or container of pulltabs or include inside the package or container, in bold print of sufficient size to be easily read, a message that states substantially the following: "tickets must be removed from this packaging container and thoroughly mixed prior to sale to the public."

(4) Manufacturers shall include with every deal of pulltabs a bar code label that contains at a minimum the name of the manufacturer or its distinctive logo, the game form number, and the game serial number. The bar code label shall be visible from the outside of the package, box, or other container.

Section 6[5]. Flares and Seal Cards for Paper Pulltabs. (1) Every deal of pulltabs shall contain a flare or a seal card. The manufacturer shall print directly on the paper flare or seal card the following information:

(a) The name of the game;

(b) The manufacturer's name or logo;

(c) The manufacturer's form number;

(d) The game serial number;

(e) The ticket count;

(f) The prize structure, including a description of the number of winning pulltabs by denomination, with their respective winning symbols or number combinations, and amounts dedicated to the prize pool in a seal card game with a cumulative prize, or a carryover or progressive prize; and

(g) The cost per play.

(2) Every deal of pulltabs shall contain instructions on how to play the game.

Section 7[6]. Cumulative Games, and Carryover or Progressive

Games. (1) The rules for cumulative games, [and] carryover, or progressive games[,] shall apply to both paper and electronic pulltabs.

(2) The amount dedicated to a cumulative prize pool[,] or a carryover or progressive jackpot[,] shall be predetermined by the manufacturer and built into the payout structure for the game.

(a) For paper pulltabs, the dedicated amount shall be printed by the manufacturer on either the flare or seal card for each game or on each ticket in each game.

(b) For electronic pulltab games, the dedicated amount shall be included by the manufacturer on the flare or seal card for each game.

(3) All games contributing to the cumulative prize pool[,] or the carryover or progressive jackpot[,] shall be of the same form number.

(4) The paper or electronic flare or seal card for the carryover or progressive jackpot shall contain an area in which the current amount of the carryover or progressive jackpot can be posted.

(5) If a carryover or progressive pulltab game uses a progressive jackpot prize card that is separate from the jackpot seal, the jackpot card shall contain prize space for the organization to record the serial numbers of all games contributing to the jackpot prize.

(6) If a carryover or progressive pulltab game uses a jackpot prize card that is separate from the jackpot seal card, each deal of the game shall possess both a seal card and a jackpot prize card that has the serial number of the deal affixed to it by the manufacturer.

(7) In a carryover or progressive pulltab game, the organization shall either start a new jackpot card with each deal or use the original jackpot card until won. The organization shall maintain each jackpot card used[pursuant to 820 KAR 1:036, Section 2(15)].

(8) A progressive pulltab game shall not be designed by the manufacturer to give any player initial odds greater than a fifty (50) percent chance to win the progressive jackpot.

(9) If a paper pulltab game contributes to a progressive raffle jackpot, a licensed charitable organization shall not sell a similar version of that paper pulltab game unless it also contributes to a progressive raffle jackpot. All paper pulltab game tickets which contribute to a progressive raffle jackpot shall be sold for cash and shall not be used as a merchandise prize for any bingo, pulltab, or door prizes.

Section 8[7]. Event Games. (1) The rules for event games shall apply to both paper and electronic pulltabs.

(2) An event game shall not contain a "last sale" feature.

(3) The number of winners and the prize amounts shall be built into the payout structure for the game by the manufacturer.

(4) An event ticket prize shall not exceed the individual ticket prize limit for a pulltab game.

(5) The prize for an event pulltab game shall not be considered a bingo prize.

Section 9[8]. Multipackaged Pulltab Deals. (1) The rules for multipackaged pulltab deals shall apply to both paper and electronic pulltabs. Every package shall be played for the deal to show the stated profit.

(2) Each package may contain individual winners if desired. If each package contains a winner, the game shall contain a method of verifying from which package the winner was sold.

Section 10[9]. Tracking by Manufacturer. Every manufacturer of paper pulltabs shall maintain records sufficient to track each deal of paper pulltabs, by serial number and form number, from the manufacturer to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by department staff.

Section 11[40]. Tracking by Distributor. (1) Every distributor of paper and electronic pulltabs shall maintain records sufficient to track each deal of paper and electronic pulltabs, by serial number and form number, from purchase by the distributor to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by department staff.

(2) For sales in the Commonwealth of Kentucky[,] or to residents of Kentucky, the records required under this section shall be sufficient if the distributor records the name of the purchaser and makes and retains a copy of the Kentucky charitable gaming license or exemption number of the purchaser at the next point of sale. ~~[(3) For sales outside the Commonwealth of Kentucky to nonresidents of Kentucky, the records required under this section shall be sufficient if the distributor makes and retains a copy of a state charitable gaming license or a valid state identification card of the purchaser which contains the name, address, date of birth, and state identification number of the purchaser at the next point of sale.]~~

Section 12[44]. Requirements of Distributor Invoice. (1) Distributors selling paper pulltabs to charitable organizations or other distributors shall provide the charitable organization or other distributor with an invoice that contains, at a minimum, the following information:

- (a) The purchaser's name, address, and license number;
- (b) The address to which the shipment was delivered;
- (c) The date of sale or credit;
- (d) The conditions of the sale or credit;
- (e) The quantity of pulltabs sold including the number of [the] deals, the name of each deal, the tickets per deal, and the serial number and form number of the deal;
- (f) The total invoice amount;
- (g) The name of the person who ordered the supplies;
- (h) The name of the person making the delivery;
- (i) The date of delivery or date the item was picked up for sale or credit;
- (j) The place or manner of delivery; and
- (k) The name and signature of the person taking delivery, if any.

(2) A distributor may deliver paper pulltabs to an agreed secure location or to an identified person. An invoice not challenged within seven (7) days of delivery shall be deemed accurate. Any challenge to an invoice shall be made in writing to the distributor and a copy shall be sent to the department.

Section 13[42]. Defects. (1) If a defect in packaging or construction of a paper pulltab is discovered by an organization, the defect shall be reported to the distributor within fifteen (15) days. The distributor shall correct the defect or replace the defective items within a reasonable time, or, if the product cannot be replaced or the defect corrected, the distributor shall provide a refund to the organization.

(2) If the department, in consultation with the manufacturer, determines that a defect actually exists, and the defect affects game security or otherwise threatens public confidence in the game, the department shall, with respect to paper pulltabs for use in Kentucky, require the manufacturer to:

- (a) Recall the pulltabs affected that have not been sold at retail to licensed organizations; or
- (b) Issue a total recall of all affected deals.
- (3) In choosing and directing a particular recall in accordance with subsection (2) of this section, the department shall be guided in each circumstance by any combination of the following factors:
 - (a) The nature of the defect;
 - (b) Whether the defect affected game security;
 - (c) Whether the defect affected game playability;
 - (d) Whether the defect was limited to a specific number of deals of a particular form number;
 - (e) Whether the defect was easily detectable by a charitable organization;
 - (f) Whether the defect was easily detectable by members of the general public;
 - (g) Whether the defect threatens public confidence in the game; or
 - (h) Whether the defect is capable of being used to adversely affect the fair play of the game.
- (4) In consultation with the manufacturer, the department shall determine a specific date for the recall to be completed and whether the manufacturer is required to reimburse the organization

or distributor.

Section 14. Pulltab Dispenser Construction and Use. (1) An pulltab dispenser shall not be sold, leased, or otherwise furnished to any person in the state unless it has been approved by the department.

(2) Before approval by the department, a dispenser that is identical to the dispenser intended to be sold, leased, or otherwise furnished shall be certified by an independent testing laboratory that the dispenser satisfies the manufacturing requirements established in Section 15 of this administrative regulation.

(3) If granted, approval shall extend only to the specific dispenser model approved, and any modification shall first be approved by the department.

Section 15. Requirements of Pulltab Dispensers. Each pulltab dispenser shall meet the following requirements:

- (1) Contain a three (3) prong ground and surge protector, and shall be capable of withstanding static electricity;
- (2) Accommodate pulltabs of different sizes;
- (3) Be constructed so that customers can see how many pulltabs remain within the dispenser, or have resettable counters visible to the customer indicating the number of pulltabs left in each column of the dispenser;
- (4) Have an outlet or tray to catch dispensed pulltabs;
- (5) Accurately dispense the correct number of pulltabs;
- (6) Contain one (1) or more player buttons on the front of the dispenser to dispense pulltabs if pressed;
- (7) Contain an illuminated electronic display to display the value of money deposited;
- (8) Be capable, if a malfunction occurs or the electrical power is interrupted after the money has been validated, of accurately redisplaying the value of the money after the malfunction or power is restored;
- (9) Not dispense any credits, or validate, read, or redeem a winning pulltab;
- (10) If using bill acceptors or similar devices that do not return change, clearly disclose that fact to the customer;
- (11) Not have a video screen or produce audio sounds except for security alarms;
- (12) Not resemble a slot machine or other gambling device;
- (13) Contain the manufacturer's name, dispenser's serial number and model number, and date of manufacture, all of which shall be permanently affixed to the side of the dispenser;
- (14) Have an on/off switch in an inconspicuous location on the exterior of the dispenser;
- (15) Not record test sales of pulltabs or money acceptances on the dispenser's accounting meters;
- (16) Contain a nonresettable accounting meter for total money validated and for the total of pulltabs dispensed and shall be capable of retaining this information for six (6) months after power has been disconnected;
- (17) Contain an EPROM microchip which holds the dispenser's programming code and which is identical in all respects to the manufacturer's EPROM microchip approved by the department;
- (18) Contain a RAM or an EPROM microchip equipped with a RAM microchip, which shall maintain the same information as required in subsection (17) of this section for six (6) months after power has been disconnected. The microchip shall be installed with a tamper-proof seal inside the dispenser;
- (19) Automatically discontinue operation if any nonresettable accounting meter, RAM microchip, or an EPROM microchip is disconnected; and
- (20) Contain at least one (1) electronic money validator which shall:
 - (a) Only validate United States money;
 - (b) Not validate money in denominations in excess of twenty (20) dollars;
 - (c) Transmit the value of validated money to the pulltab dispenser;
 - (d) Be equipped with mechanisms to ensure that pulltabs will not be dispensed unless the money is validated and retained;
 - (e) Be capable of preventing acceptance of known counterfeit

money:

- (f) Return any invalid money to the player;
- (g) Have at least one (1) removable stacker box capable of stacking bills or a removable drop box contained in a separate locked compartment; and
- (h) Automatically discontinue accepting or validating money if a malfunction occurs or if electrical power to the dispenser or currency validator is interrupted.

Section 16. Pulltab Dispensing Limitations. (1) A charitable organization shall not use a dispenser until the charitable organization that previously used the dispenser has removed its pulltabs and money from the dispenser.

(2) Each charitable organization operating the dispenser shall place upon the dispenser an identification label which displays the organization's name and license number.

(3) The keys to open the locked doors to the dispenser's ticket dispensing area and cash box shall be solely in the possession and control of the designated chairperson of the charitable organization conducting the charitable gaming session.

(4) The entire deal of pulltabs shall be sold from the dispenser and shall not be sold on the floor.

(5) All pulltabs in any one column shall have the same serial number.

(6) A licensee shall not display, use, or otherwise furnish a dispenser which has in any manner been tampered with or which otherwise may deceive the public or affect a person's chances of winning.

(7) A pulltab deal shall not be placed in the dispenser until the entire deal of pulltabs previously in the dispenser has been played out or permanently removed.

(8) After placement in the dispenser, a pulltab shall not be removed from the dispenser, except for those pulltabs:

- (a) Actually played by consumers;
- (b) Removed by department representatives or law enforcement agencies;
- (c) Temporarily removed during necessary repair, and maintenance; or
- (d) Removed at the end of the charitable gaming session.

(9) At least one (1) chairperson who is listed on the application for licensure shall be present at all times a pulltab dispenser is in use and shall be responsible for the administration and conduct of the pulltab dispenser.

(10) An organization utilizing a pulltab dispenser at its office location or owned premises shall only utilize the dispenser during business hours.

Section 17. Pulltab Dispenser Inspection. The department or its authorized representatives may examine and inspect any automated pulltab dispenser. The examination and inspection shall include immediate access to the dispenser and unlimited inspection of all parts of the dispenser.

Section 18. Pulltab Dispenser Recordkeeping. (1) Each licensed charitable organization shall maintain the following information in connection with its use of an automated pulltab dispenser:

- (a) Date of purchase or lease of each dispenser;
- (b) Model and serial number of each dispenser;
- (c) Purchase or lease price of each dispenser;
- (d) Name, address, and license number of the distributor from whom the dispenser was purchased, leased or otherwise furnished; and
- (e) A record of all maintenance and repairs relating to the dispenser.

(2) Manufacturers and distributors shall maintain the following information in connection with each sale or lease of a dispenser:

- (a) Date of sale or lease;
- (b) Quantity sold or leased;
- (c) Cost per dispenser;
- (d) Model and serial number of each dispenser; and
- (e) Name, address, and license number of the purchaser or lessee.

(3) All records, reports, and receipts relating to dispenser sales, maintenance and repairs required to be maintained shall be retained for a period of three (3) years for examination by the department.

Section 19. Pulltab Dispenser Defects. (1)(a) If the department detects or discovers any defect or malfunction with the dispenser that is not temporary in nature or affects the integrity or security of the pulltab game, the department shall direct the manufacturer, distributor or organization to cease the sale, lease, or use of the dispenser, as applicable, and shall require the manufacturer to correct the defect, malfunction, or problem or recall the dispenser immediately upon notification by the department to the manufacturer.

(b) If the manufacturer, distributor, or organization detects or discovers any defect or malfunction with the dispenser which is not temporary in nature, the entity shall immediately remove the dispenser from use and notify the department of that action.

Section 20. Pulltab Rules of Play. (1) All individuals involved in the sale of pulltabs shall be trained in the proper conduct of the game and control of funds.

(2) The chairperson shall be in full charge of the charitable gaming session, supervise and direct all volunteers, and be responsible for assuring the proper receipt and recording of gaming funds.

(3) More than one charitable organization shall not conduct gaming at the same time and location as another charitable organization, except for licensed charity fundraising events.

(4) Each organization's gaming supplies shall be maintained in a location separate from another organization's gaming supplies. This location shall also be locked and access shall be controlled.

(5) Except for a charity fundraising event, a volunteer at any other charitable gaming session at which pulltabs are sold shall not purchase or play pulltabs at that charitable gaming session. At a charity fundraising event, a volunteer may purchase or play pulltabs on a day the volunteer does not work, and from a deal the volunteer does not sell.

(6) If the charitable organization has house rules concerning its charitable gaming session, the house rules shall:

- (a) Be posted in at least two (2) conspicuous locations at the charitable gaming session and announced prior to the commencement of the charitable gaming session; or be listed on the program;
- (b) Not conflict with KRS Chapter 238 or 820 KAR Chapter 1;
- (c) Be followed; and
- (d) Include the organization's name and license number.

Section 21. Playing. (1) The flare or seal card for paper pulltabs, including a progressive jackpot card relating to a carryover or progressive prize, or a prize board relating to a game with a cumulative prize, shall be posted by the licensed charitable organization in the vicinity of the deal and in full and complete view of the players while the deal is in play. Electronic pulltab games shall include an electronic flare or seal card, including a progressive jackpot card relating to carryover or progressive prizes, that is available for view on the electronic pulltab device by players at all times while the game set is in play.

(2) Paper pulltabs shall not be sold to the public from the original packing box or container. Paper pulltabs shall be removed from the original box or container and mixed by shuffling together prior to sale.

(3) If a deal of paper pulltabs is packed in more than one (1) box or container, an individual container shall not designate a winner or contain a disproportionate number of winning or losing tickets. Each package, box, or container shall be placed out for play at the same time unless the deal is designed by the manufacturer to be played in subsets. Those subsets may be placed out for play in succession.

(4) Paper pulltabs which have been marked, defaced, altered, tampered with, received in packaging that is not tamper-resistant, or otherwise constructed in a manner which tends to deceive the public or affect the chances of winning or losing, shall not be

placed into play. The organization shall notify the Department of Charitable Gaming of the existence of these tickets in writing within fifteen (15) days.

(5) Before placing a deal into play, the charitable organization shall verify that the serial number on the paper pulltabs within each deal matches the serial number on the flare or seal card accompanying the deal by conducting a random sampling of pulltabs within each deal. If the charitable organization determines that serial numbers on tickets within a deal or game set do not match the serial number on the flare or seal card accompanying the deal or game set, the organization shall not place the deal or game set into play and shall notify that distributor. If the distributor does not correct the problem within thirty (30) days, the organization shall notify the department in writing.

(6) Any licensed charitable organization which sells pulltabs from its office location or from a pulltab dispenser shall comply with 820 KAR Chapter 1 regarding the play, proper recordkeeping, and reporting of those sales. The sales shall be reported on the financial report.

(7)(a) If a deal or game set is not played to completion and there remain unsold winning pulltabs, the licensed charitable organization conducting the gaming shall sell the remaining pulltabs on the next appointed date for charitable gaming activities.

(b) If no future date is anticipated, the licensed charitable organization shall consider the deal or game set closed or completed, declare the winners, and post winning numbers for fifteen (15) days with information directing the method of claiming a prize at its office location. All unsold pulltabs shall be retained as required in Section 21(15) of this administrative regulation.

(c) If no winning pulltabs remain in the paper deal, the licensed charitable organization may consider the deal closed or completed, declare the winners, and shall retain unsold pulltabs as required in Section 21(15) of this administrative regulation.

(d) A licensed charitable organization shall not complete play of a deal, game set, or a seal card it did not initiate.

(8) A pulltab shall not be sold to the public at a price different than that printed by the manufacturer of the pulltab upon the flare or seal card which accompanies the deal or game set.

(9) Only authorized representatives of the charitable organization conducting the event at which pulltabs are sold shall verify the serial numbers and winner protections for all winning pulltabs redeemed.

(10) In playing paper pulltabs that utilize a seal card, a charitable organization shall not award a prize to the holder of a winning pulltab unless the serial number on the ticket presented for redemption matches the serial number on the seal card. In a progressive pulltab game, the serial number on the tickets shall be checked in accordance with Section 6 of this administrative regulation.

(11) A charitable organization shall award prizes to winners of pulltabs only in accordance with the prize structure indicated on the flare or seal card accompanying the deal or game set of tickets as designated by the manufacturer. If multiple prize structures are indicated on the flare or seal card, the charitable organization shall announce to the patrons and circle on the paper flare or seal card the prize structure to be awarded before placing the deal or game set into play.

(12) A holder of a winning pulltab shall have fifteen (15) days to redeem the winning ticket. If the prize is not claimed within fifteen (15) days, the prize shall be considered unclaimed and be retained as property of the organization.

(13) Once redeemed, the holder of a winning pulltab shall be paid no later than five (5) days from the date of redemption.

(14) All winning paper pulltabs shall have the winning symbol or number defaced or punched by an authorized representative of the charitable organization immediately after redemption.

(15)(a) The charitable organization shall retain, in paper or electronic form, for a period of twelve (12) months, to allow auditing by the staff of the department;

1. All winning pulltabs with a prize value of fifty (50) dollars and above;

2. The flare from all winning pulltabs with a prize value of fifty (50) dollars and above;

3. All seal cards with a prize value of fifty (50) dollars and above;

4. All prize boards in cumulative games with a prize value of fifty (50) dollars and above; and

5. All unsold pulltabs.

(b) These records may be maintained at the gaming location.

(16) The fair market value of bingo paper, a card-minding device, pulltab, or electronic pulltab device given away as a merchandise prize shall be the price that a patron would have paid for the same bingo paper, card-minding device, pulltab, or electronic pulltab device at that charitable gaming session.

(17)(a) If bingo paper is awarded as a merchandise prize, whether as a door prize or game prize, the patron shall be given a voucher.

(b) The voucher shall be completed with:

1. The name, address, and phone number of the patron redeeming the voucher;

2. The date on which it was awarded;

3. The date on which it was redeemed;

4. The amount of bingo paper given in exchange for the voucher; and

5. The serial number of the bingo paper.

(c) Once the voucher is completed, it shall be redeemed for the bingo paper.

(d) The organization shall retain the voucher with its charitable gaming session records.

(18)(a) If a card-minding device or electronic pulltab device is awarded as a merchandise prize, whether as a door prize or game prize, the patron shall be given a voucher.

(b) The voucher shall be completed with:

1. The name, address, and phone number of the patron redeeming the voucher;

2. The date on which it was awarded;

3. The date on which it was redeemed; and

4. The number of card-minding devices and the number of faces loaded on each device, or the number of electronic pulltab devices and credits loaded on each device, if any, given in exchange for the voucher.

(c) Once the voucher is completed, it shall be redeemed for the card-minding device or electronic pulltab device. No more than one (1) card-minding device or one (1) electronic pulltab device may be redeemed per player per charitable gaming session.

(d) The organization shall retain the voucher with its charitable gaming session records.

(e) There shall be a specific button on the point of sale programmed for each type of voucher involving a card-minding device and electronic pulltab device.

(19) If a paper pulltab or electronic pulltab device is awarded as a promotional item or a door prize, the amount and description of the pulltab or electronic pulltab device and credits loaded on each device, if any, shall be listed on the charitable gaming session program with "free" or "promotional" listed as the price. The point of sale shall have a specifically described discount button for this promotion.

(20) If a paper pulltab or electronic pulltab device is awarded as a bingo prize, the person in charge of bingo payouts shall purchase the pulltabs or electronic pulltab device and any credits loaded to the device from the pulltab manager by transfer of cash from bingo payout to pulltab sales, and it shall be recorded as a sale on the charitable gaming session records.

(21) Vouchers shall be redeemed on the same day as awarded.

(22) Jar tickets shall be played and prizes awarded as stated on the flare received with each deal.

(23) "Last Sale" pulltabs shall only be sold by an organization at its office location and not during a bingo session.

Section 22. Seal Card Games. (1) The organization shall post the paper seal card for the deal in play at the location of the seal game while the deal is in play. An electronic seal for an electronic game set shall be viewable, upon player request, on the video screen of the electronic pulltab device while the game set is in play.

(2) If a deal or game set with a seal card is not completed during a charitable gaming session, the organization shall require the patrons with holders to sign or enter their name electronically on the seal card and provide a means of contacting them when the winner is declared.

(3)(a) The seal for the deal or game set shall be broken, torn open, or otherwise revealed in plain view of all persons present when:

1. All tickets from a deal or game set have been sold;
2. All the winning tickets from a deal or game set have been sold;
3. All the lines on the sign-up card have been filled;
4. The deal or game set has been closed because no future date is anticipated; or
5. Instructed to by the game as designed by the manufacturer.

(b) Each winning combination, the name of the game, and the serial number of the deal or game set shall be announced and posted at the location of the game.

(c) The date the seal tab was opened shall be recorded on the seal card.

Section 23. Seal Card Games with Carry Over or Progressive Prizes. (1) The prize pool for a progressive pulltab game shall be established only through the play of deals or game sets of the same game which bear a manufacturer's form number identical to the form number of any previously-played deals or game sets contributing to the prize pool.

(2) Before placing a paper deal into play, the charitable organization shall verify that the serial number on the pulltabs within each deal match the serial number on the flare or seal card accompanying the deal by conducting a random sampling of pulltabs within each deal. The serial number on the tickets shall not be required to match the serial number on the progressive pulltab jackpot card if the deal is the second or subsequent deal played in the progressive game and one (1) progressive jackpot card is used for more than one (1) deal.

(3) After a progressive pulltab game has been started, it shall remain in play continuously until the progressive jackpot prize is awarded. If the game is begun at a bingo session, it shall be offered at each succeeding bingo session of the licensee. If the game is begun at the office location, it shall be offered on each succeeding day its office is open. If an organization stops conducting charitable gaming or wishes to stop playing a progressive pulltab game, the organization shall, with prior approval from the department, transfer the current jackpot to another progressive game or determine a method to award the progressive jackpot to the players. With prior approval from the department, an organization may alter the suggested rules of the manufacturer to determine a winner.

(4) The seal card for each deal or game set in a progressive game shall show, in addition to all other information required for flares and seal cards, the amount dedicated to the progressive jackpot prize pool.

(5) Every seal card for each deal or game set that has been played or is being played in the course of a progressive pulltab game, together with any progressive jackpot card, shall be displayed at all times while the game is in play, until the progressive jackpot prize is won.

(6) The serial numbers for each deal or game set contributing to a carryover or progressive jackpot prize shall be recorded in the charitable gaming session records.

(7) A progressive or carryover pulltab game shall be played in accord with the manufacturer's specifications for the determination of a winner, unless the department permits otherwise pursuant to subsection (3) of this section.

(8) If a progressive or carryover pulltab game bearing the same manufacturer's form number is no longer available, the organization shall contact the department for instructions on how to proceed.

(9)(a) If a progressive prize remains unpaid, a licensed charitable organization shall display, in full and complete view of the players and at all times either:

1. The jackpot card being played and each seal card

contributing to the jackpot prize pool; or

2. A legible poster identifying by name, serial number, and form number each deal or game set of pulltabs contributing an amount to the jackpot prize pool.

(b) The poster or seal cards shall remain displayed during bingo sessions or other charitable gaming activities conducted by the organization until the expiration of fifteen (15) calendar days after the organization awards the prize. For progressive pulltab games played on an electronic pulltab device, a poster shall be displayed to fulfill this requirement.

(c) If a progressive jackpot prize is not awarded, the organization shall continue to display the poster or seal cards during bingo sessions or other charitable gaming activities it conducts for at least fifteen (15) calendar days after the date the organization considers the game closed and retains the prize as its property.

(d) If a progressive prize remains unpaid, a licensed charitable organization shall display, in full and complete view of the players and at all times, the current value of the jackpot.

(10) An organization shall not award the jackpot prize in a progressive pulltab game unless the serial number and form number on the winning ticket match the serial number and form number on a seal card from a deal or game set of tickets which contributed to the jackpot prize.

(11) For jackpot prizes of two hundred-fifty (250) dollars or over, the organization shall attach a copy of the valid state identification card which contains the name, address, date of birth, and state identification number of the winner to the jackpot prize card.

(12) The jackpot prize in a progressive game may accrue in excess of two thousand four hundred (2,400) dollars. An individual jackpot prize shall not be paid in excess of two thousand four hundred (2,400) dollars. The amount of the current jackpot, the amount contributed, the payouts made, and the jackpot carried forward to the next charitable gaming session at each charitable gaming session shall be recorded in the charitable gaming session record.

(13) Any advertisement regarding the progressive jackpot may state the total amount in the jackpot prize pool as long as it also includes the statement that the individual payout shall not exceed two thousand four hundred (2,400) dollars.

(14) A licensed charitable organization shall report to the department concerning its play of seal card games with a progressive prize on the financial report.

(15) The jackpot prize pool in a progressive game shall be considered an adjusted gross receipt that shall be deposited within two (2) business days of the charitable gaming session.

Section 24. Seal Card Games with Cumulative Prizes. (1) The prize pool for a cumulative pulltab game shall be established only through the play of deals or game sets of the same game which bear a manufacturer's form number identical to the form number of any previously played deals or game sets contributing to the prize pool, unless the department permits otherwise pursuant to subsection (3) of this section.

(2) Before placing a paper deal into play, the charitable organization shall verify that the serial number on the pulltabs within each deal match the serial number on the flare, prize board, or seal card accompanying the deal by conducting a random sampling of pulltabs within each deal.

(3) After a cumulative pulltab game has been started, it shall remain in play continuously until the cumulative prize pool has been awarded. If that game is begun at a bingo session, it shall be offered at each succeeding bingo session of the licensee. If the game is begun at the office location, it shall be offered on each succeeding day their office is open. If an organization stops conducting charitable gaming or wishes to stop playing a cumulative pulltab game, the organization shall, with prior approval from the department, transfer the current jackpot to another cumulative game or determine a method to award the cumulative jackpot to the players. With prior approval from the department, an organization may alter the suggested rules of the manufacturer to determine a winner.

(4) Prizes shall be offered and awarded only in accord with the manufacturer's predesignated prize structure for the game, unless the department permits otherwise pursuant to Section 24(3) of this administrative regulation.

(5) The seal card for each deal or game set in a cumulative pulltab game shall show, in addition to all other information required for flares and seal cards, the amount dedicated to the cumulative prize pool.

(6) Every seal card for each deal or game set that has been played or is being played in the course of a cumulative pulltab game, together with any prize board, shall be displayed at all times while the game is in play, until the cumulative prize pool is awarded.

(7) The serial numbers for each deal or game set contributing to a cumulative prize pool shall be recorded in the charitable gaming session records.

(8) An organization shall not award the cumulative prize pool unless the serial number and form number on the winning ticket matches the serial number and form number on a seal card from a deal or game set of tickets which contributed to the cumulative prize board.

(9) A cumulative prize board shall not contain prizes totaling in excess of two thousand four hundred (2,400) dollars.

(10) A licensed charitable organization shall report to the department concerning its play of seal card games of cumulative games on the financial report.

Section 25. Electronic Pulltab System Construction Standards.

(1) An electronic pulltab system's central computer system shall be dedicated to electronic accounting, reporting, and the presentation, randomization, and transmission of electronic pulltabs to electronic pulltab devices. It shall also be capable of generating the data necessary to provide reports required by regulation or otherwise specified by the department.

(2) A player shall purchase or otherwise obtain access to an electronic pulltab device, and load money to a player account for purchase of electronic pulltabs during the current charitable gaming session, only from a point of sale station. The point of sale station may be stationary, mobile, or self-service.

(3) All equipment used to facilitate the distribution, play, or redemption of electronic pulltabs shall be physically located within the boundaries of the Commonwealth of Kentucky. Electronic pulltab devices, site system if used, point of sale stations, and all secondary components shall be located on the premises where the charitable gaming session is being held.

(4) A manufacturer, distributor, or charitable organization shall not add to an electronic pulltab system any software or program unless the software or program has been certified by an independent testing facility. If the department detects or discovers an electronic pulltab system at a playing location that is using a program or software that has not been certified by an independent testing facility, the electronic pulltab system shall be determined to have an unauthorized modification and use of the system shall cease immediately.

(5) Any element of the central computer system that holds or maintains game data, other than an electronic pulltab device or point of sale station, shall be kept in a locked and secure enclosure with limited access to designated personnel. The system shall provide a secure physical and electronic means for securing the games and game data against alteration, tampering, or unauthorized access.

(6) The central computer system shall include a central server located in the Commonwealth of Kentucky that is accessible to the department so the department has the ability to remotely verify the operation, compliance, and internal accounting systems of the electronic pulltab system at any time. The department shall have real time and complete read-only access to all data for all systems and devices.

(a) The manufacturer shall provide to the department all current protocols, passwords, and any other required information needed to access the electronic pulltab system prior to the operation of the system within Kentucky, and at all times while the system remains operational within Kentucky.

(b) The department shall be notified of any changes in the protocols, passwords, and any other required information needed to access the system at least three (3) days prior to the change.

(c) Any reports maintained or generated by the electronic pulltab system shall be capable of being downloaded or otherwise accessed via the internet by the department.

(7) A site system, if used, shall:

(a) Be located at the gaming premises;

(b) Be operated by the charitable organization;

(c) Interface with, connect with, control, or define the operational parameters of the electronic pulltab devices;

(d) Report and transmit the game results as prescribed by the department;

(e) Provide security and access levels sufficient so that the internal control objectives are met as prescribed by the department; and

(f) Contain a point of sale station.

(8) The site system, if used, may include the following components:

(a) Required printers;

(b) Proprietary executable software;

(c) Report generation software; and

(d) An accounting system or database.

(9) The electronic pulltab system shall provide password protection for each organization.

(10) An electronic pulltab system shall provide a means for terminating a game set if information about electronic pulltabs in an open game set has been accessed, or if the department determines there has been a breach of game security. Traceability of unauthorized access including time and date, users involved, and any other relevant information shall be available.

(11) An electronic pulltab system shall not permit the alteration of any accounting or significant event information. Significant events shall include power resets or failures, communication loss between an electronic pulltab device and the electronic pulltab system, any award in excess of the single win limit for an electronic pulltab, or corruption of the electronic pulltab system memory or storage. If financial data is changed, an automated audit log shall be capable of being produced to document the following:

(a) Data element altered;

(b) Data element value prior to alteration;

(c) Data element value after alteration; and

(d) Time and date of alteration.

(12) An electronic pulltab system shall provide password security or other secure means of ensuring data integrity and enforcing user permissions for all system components, including the following:

(a) All programs and data files shall only be accessible via the entry of a password that shall be known only to authorized personnel;

(b) The electronic pulltab system shall have multiple security access levels to control and restrict different privilege levels;

(c) The electronic pulltab system access accounts shall be unique when assigned to the authorized personnel;

(d) The storage of passwords and PINs shall be in an encrypted, nonreversible form; and

(e) A program or report shall be available that lists all authorized users on the electronic pulltab system including their privilege level.

(13) All components of an electronic pulltab system that allow access to users, other than end-users for game play, shall have a password sign-on comprised of a personal identification code and a personal password.

(14) Electronic pulltab system software components shall be verifiable by a secure means at the system level. An electronic pulltab system shall have the ability to allow for an independent integrity check of the components from an outside source and is required for all control programs that may affect the integrity of the electronic pulltab system. This shall be accomplished by being authenticated by a third-party device, which may be embedded within the electronic pulltab system software or having an interface or procedure for a third-party application to authenticate the component. This integrity check shall provide a means for field

verification of the electronic pulltab system components.

(15) The electronic pulltab system shall have a medium for securely storing electronic pulltab game sets which shall be mirrored in real time by a backup medium. The electronic pulltab system shall also provide a means for storing duplicates of the game sets already transmitted to the electronic pulltab devices so as to reflect, on an ongoing basis, changes in the transmitted game sets as they occur.

(a) All storage shall be through an error checking, nonvolatile physical medium, or an equivalent architectural implementation, so that if the primary storage medium fails, the functions of the electronic pulltab system and the process of auditing those functions shall continue with no critical data loss.

(b) The database shall be stored on redundant media so that a single failure of any portion of the system shall not result in the loss or corruption of data.

(c) If there is a catastrophic failure when the electronic pulltab system cannot be restarted in any other way, it shall be possible to reload the electronic pulltab system from the last viable backup point and fully recover the contents of that backup, to consist of at least the following information:

1. All significant events;

2. All accounting information; and

3. Auditing information, including all open game sets and the summary of completed game sets.

(16) Connections between all components of the electronic pulltab system shall only be through use of secure communication protocols which are designed to prevent unauthorized access or tampering, employing Data Encryption Standards (DES) or equivalent encryption with changeable seeds or algorithms.

(17) An electronic pulltab system's central computer system may be used to record the data used to verify game play and to configure and perform security checks on electronic pulltab devices, if the functions do not affect the security, integrity, or outcome of any game and meet the requirements set forth in this administrative regulation regarding program storage devices.

(18) An electronic pulltab system shall not display to the player, the licensed charitable organization, or the licensed distributor the number of electronic pulltabs that remain in a game set, or the number of winners or losers that have been drawn or still remain in the game set while the game set is still open for play. Once a game set has been closed, it shall not be able to be opened for play.

(19) The electronic pulltab system shall render unplayable the electronic pulltabs of a charitable organization once the organization logs out of the system at the end of the organization's charitable gaming session and until the organization logs back onto the system at the start of the organization's next scheduled charitable gaming session. If multiple organizations use the same electronic pulltab devices and electronic pulltab system, one (1) organization's electronic pulltab games and data shall not be accessible or played by another organization.

(20) An electronic pulltab system may include player tracking software. Player tracking records shall at all times be the property of the charitable organization and neither the manufacturer nor the distributor shall utilize or make available to any person, other than the department or as otherwise authorized by law, the information contained within the player tracking software without the express permission of the charitable organization.

(21) One (1) or more electronic internal accounting systems shall be required to perform recordkeeping, reporting, and other functions in support of an electronic pulltab system. The electronic internal accounting system shall not interfere with the outcome of any gaming function.

(22) The electronic internal accounting system shall be capable of recording and retaining for a period of not less than three (3) years the following information:

(a) The name and license number of the organization utilizing an electronic pulltab system; and

(b) For each charitable gaming session:

1. The date and time of each log-on and log-off of an organization;

2. The total amount of all monetary transactions regarding electronic pulltabs and electronic pulltab devices at each charitable

gaming session;

3. The total number of electronic pulltab devices sold or provided at each charitable gaming session;

4. The serial number of each hand-held electronic pulltab device sold or provided;

5. The terminal number for each fixed base electronic pulltab device sold or provided;

6. The name, serial number, price, and predetermined finite number of tickets within each game set available for play at each charitable gaming session;

7. The total number of electronic pulltabs played from each game set at each charitable gaming session;

8. All prize payouts for each game set per charitable gaming session; and

9. All wagers and other information necessary to fully reconstruct a game outcome.

(23) The information required by Section 25(22) of this administrative regulation shall be secure and shall not be accessible for alteration. Information pertaining to the number of electronic pulltabs that remain in an open game set, or the number of winners or losers that have been drawn or still remain in an open game set shall not be accessible to the licensed organization or the licensed distributor.

(24) The electronic pulltab system's central computer system shall maintain a printable, permanent record of all transactions involving each device and each closed electronic pulltab game played on each device.

(25) An electronic pulltab system shall have report generation software with the capability to print all information required to be maintained on the system's active or archived databases, and pursuant to the restrictions related to information available on open game sets.

(26) All data required to be available or reported by this administrative regulation shall be retained for a period of not less than three (3) years.

(27) An electronic pulltab system shall utilize randomizing procedures in the creation of game sets for electronic pulltabs or utilize externally generated randomized game sets. After randomization, game sets may be broken into game subsets of equal size which shall be assigned a unique serial number.

(28) Winning electronic pulltabs shall be distributed randomly among all other pulltabs in a game set to eliminate any pattern between game sets, or portions of game sets.

(29) Any random number generation, shuffling, or randomization of outcomes used in connection with an electronic pulltab system shall be by use of a random number generation application that has successfully passed standard tests for randomness and unpredictability.

Section 26. Electronic Pulltab Point of Sale Requirements. (1) An electronic pulltab system shall include a point of sale station that is used to facilitate the sale of an electronic pulltab device, to load money to a player account for purchase of electronic pulltabs during the current charitable gaming session, and to cash-out or redeem credits from the play of electronic pulltabs.

(a) The point of sale station may be stationary, mobile, or self-service.

(b) The point of sale station shall not be designed or manufactured to resemble an electronic gaming device that utilizes a video display monitor, such as a video lottery terminal, video slot machine, video poker machine, or any similar video gaming device.

(c) The point of sale station shall not have vertical or horizontal spinning reels, a pull handle, sounds or music intended to entice a player to play, flashing lights, tower light, top box, enhanced animation, artwork, or any other attribute or representation that mimics a video lottery terminal, video slot machine, video poker machine, or any similar video gaming device.

(d) The point of sale station shall not function simultaneously as an electronic pulltab device.

(2) The point of sale station shall be capable of printing a receipt, which the organization shall provide to the player, that details each transaction. The receipt shall contain, at a minimum, the following information:

- (a) The date and time of the transaction;
- (b) A unique non-resettable transaction number that is printed in continuous, consecutive order;
- (c) The dollar amount of the transaction, including the cost, if any, of the electronic pulltab device and the amount of money loaded to a player account that will be available for the purchase of electronic pulltabs during that charitable gaming session;
- (d) A unique entry code or account number that will be used to activate an electronic pulltab device and make available to the player the money loaded to the player account at the point of sale for the purchase of electronic pulltabs during that charitable gaming session;
- (e) The name of the charitable organization and license number; and
- (f) The point of sale identification number or name.
- (3) If the receipt printer malfunctions or printed receipts are not legible, manual receipts shall be issued that contain the same information required by Section 26(2) of this administrative regulation.
- (4) The point of sale station shall be capable of displaying, at minimum, the following for each charitable gaming session:
 - (a) The sales transaction history, including:
 - 1. The organization name and license number;
 - 2. Date and time of each transaction;
 - 3. Dollar value of each transaction;
 - 4. Quantity of electronic pulltab devices sold;
 - 5. All transaction numbers; and
 - 6. The point of sale identification number or name; and
 - (b) A pay-out history detailing all pay-outs, including:
 - 1. The organization name and license number;
 - 2. Date and time of each pay-out;
 - 3. Dollar value of each pay-out; and
 - 4. Point of sale identification number or name.
- (5) A point of sale station shall not display information relating to prizes already paid out in a particular game set, the number of electronic pulltabs that remain in a game set, or the number of winners or losers that have been drawn or still remain in the game set while the game set is still open for play.
- (6) A player shall only cash-out or redeem credits from a point of sale station.

Section 27. Electronic Pulltab Device Construction Standards.

- (1) An electronic pulltab device shall not be capable of being used for the purpose of engaging in any game prohibited by the department.
- (2) An electronic pulltab device shall be designed as a handheld or fixed base personal computing device that:
 - (a) Is used to play one (1) or more electronic pulltab games;
 - (b) Requires coded entry to activate a device for a player to purchase and play electronic pulltabs, but does not allow the use of coin, currency, or tokens to be inserted to purchase and play electronic pulltabs;
 - (c) Maintains and displays information pertaining to accumulation of credits that may be applied to games in play or redeemed upon termination of play;
 - (d) Has no vertical or horizontal spinning reels, pull handle, sounds or music solely intended to entice a player to play, flashing lights, tower light, top box, coin tray, ticket acceptor, hopper, coin acceptor, cabinet, artwork, or any other attribute or representation that mimics a video slot machine;
 - (e) Shall not be capable of displaying any animation while in an idle state. An electronic pulltab device may use simple display elements or screen savers to prevent monitor damage;
 - (f) Has no additional function as a gambling device other than as an electronic pulltab device or as an approved card-minding device;
 - (g) Is not a pulltab dispenser as described in these regulations; and
 - (h) The device must have adjustable volume accessible to the player or the charitable organization.
- (3) An electronic pulltab device shall not have hardware or software that determines the outcome of any electronic pulltab, produces its own outcome, or affects the order of electronic

pulltabs as dispensed from the electronic pulltab system's central computer system. The game outcome shall be determined by the electronic pulltab system's central computer system.

(4) An electronic pulltab device may utilize a touch screen. The touch screen shall meet the following requirements:

- (a) It shall be accurate once calibrated;
 - (b) It shall be able to be recalibrated; and
 - (c) It shall have no hidden or undocumented buttons or touchpoints anywhere on the touch screen.
- (5) A fixed base electronic pulltab device shall not be built into a cabinet or in any way be designed or manufactured to resemble any electronic gaming device that utilizes a video display monitor, such as a video lottery terminal, video slot machine, video poker machine, or any similar video gaming device.

Section 28. Electronic Pulltab Software Construction Standards. (1) Any game available for play in the Commonwealth of Kentucky must be installed on the demonstration terminals at the Department of Charitable Gaming's office in Frankfort, Kentucky prior to being available for play in the Commonwealth.

(2) An electronic pulltab system shall dispense, upon player request and payment of consideration, an electronic pulltab. A player shall win if the player's electronic pulltab contains a combination of symbols or numbers that was designated in advance of the game as a winning combination. There may be multiple winning combinations in each game. All games shall be played without replacement.

(3) An electronic pulltab game or game set shall:

- (a) Be a version of a paper pulltab game, with a prize structure and gameplay rules substantially similar to a paper pulltab game, that is played on an electronic pulltab device;
- (b) Have a predetermined, finite number of winning and losing tickets, not to exceed 25,000 tickets per game set;
- (c) Charge the same price for each ticket in a game set;
- (d) Comply with KRS Chapter 238, and 820 KAR Chapter 1;
- (e) Comply with prize limits set forth in KRS Chapter 238;
- (f) Have a unique serial number for each game set that shall not be regenerated. Each pulltab in a game set shall bear the same serial number and only one (1) serial number shall be used in a game set. After randomization, game sets may be broken into subsets of equal size. If game subsets are used, they shall each be assigned a unique serial number and be traceable to a parent game set. If a seal card is used with a pulltab game set, the seal card shall bear the same serial number as each pulltab; and

(g) Have an electronic flare or seal card, viewable upon player request, that displays the name of the game, manufacturer's name or logo, manufacturer's form number, the game serial number, the predetermined finite number of tickets in the game set, and the prize structure, including a description of the number of winning pulltabs by denomination, and amounts, if any, dedicated to the prize pool in a seal card game with a cumulative prize, or a carryover or progressive prize; and the cost per play of an electronic pulltab within the game set.

(h) Every game set of electronic pulltabs shall contain electronic rules of play.

(4) An electronic pulltab game shall not contain vertical or horizontal spinning reels or other representations that mimic a video slot machine.

(5) Games shall not contain obscene or offensive graphics or references.

(a) Game animation shall be limited to animation that simulates the opening of a paper pulltab.

(b) Game sounds shall have a duration of no longer than one second and shall be limited to:

- (1) Indicating that the player's ticket has won;
- (2) Indicating that the player's ticket has lost;
- (3) Indicating that the player has pressed a button; and
- (4) Simulating the opening of a paper pulltab ticket.

(5) The result of an electronic pulltab ticket shall be clearly shown on the video display without utilizing animation. Winning tickets shall indicate to the player the symbols or combination of symbols that resulted in a winning ticket. Prizes shall be added as a credit to the player's account.

(6) The game may, without utilizing animation, include text-based graphics to indicate that the ticket has won and that the player has won an opportunity to play in a bonus round.

(7) The available games, flare, and rules of play shall be displayed on the electronic pulltab device's video screen upon player request.

(8) Any number of game may be selectable for play on any given electronic pulltab device. Only one (1) of the game shall be playable at a time.

(9) An electronic pulltab device shall have one (1) or more buttons, or an electromechanical or touch screen to facilitate the following functions:

(a) Viewing of the game "help" screens;

(b) Viewing of the game rules including the flare or seal card;

(c) Initiating game play;

(d) Cash-out or logout; and

(e) Purchasing or revealing the pulltab.

(10) Each electronic pulltab shall be initially displayed so that the numbers, letters, or symbols on the pulltab are concealed. Each electronic pulltab game shall require the player to press a "purchase" or equivalent button to initiate the purchase of an electronic pulltab. The game shall then require the player to press a subsequent button or buttons to reveal the numbers, letters, or symbols on the pulltab. A player shall have the option of opening each individual line, row, or column of each electronic pulltab or choosing to "open all".

(11) If the player's winning ticket leads to a bonus round that simulates the opening of additional tickets, then the following disclaimer must be displayed in a conspicuous manner in the player interface of the electronic pulltab device every time the player wins a supplemental tab, and on the HELP screen: "Tabs that appear in [Name of Game] do not represent equal or separate chances to win. The supplemental tabs are utilized to reveal the value of the initial, winning pulltab ticket incrementally. These supplemental tabs appear for entertainment value only."

(12) An available player account balance shall be collected by the player by pressing the "cash-out" button or "logoff" button on the electronic pulltab device and taking the device, the receipt, or, if allowed, a player account card to the point of sale station.

Section 29. Independent Testing Facility Certification for Electronic Pulltabs. (1) An electronic pulltab system shall not be sold, leased, or otherwise furnished to any person for use in the conduct of charitable gaming until an identical system containing identical software has been tested and certified by an independent testing facility.

(2) The cost of testing and certification shall be the responsibility of the manufacturer.

(3) The independent testing facility shall certify in writing that the electronic pulltab system and associated hardware and software conform, at a minimum, to the requirements and restrictions set forth in KRS Chapter 238 and these administrative regulations.

(4)(a) The department, in consultation with the independent testing facility, shall determine if the electronic pulltab system and associated hardware and software conform to the requirements and restrictions contained in KRS Chapter 238 and these administrative regulations, and shall notify the manufacturer of its decision in writing.

(b) Once the department has received the test results from the independent testing facility, the department may request a demonstration of the product within thirty (30) days.

(5) Any modifications to an electronic pulltab system or its software, except as provided in Section 31(7) of this administrative regulation, shall be tested and certified by an independent testing facility, demonstrated to the department by the manufacturer upon request, in the same manner as a new system or new software. Testing and certification shall be at the manufacturer's expense.

Section 30. Electronic Pulltab Defect and Recall. (1)(a) If a manufacturer, distributor, or charitable organization detects or discovers any defect, malfunction, or problem with an electronic pulltab system, electronic pulltab device, or electronic pulltab game

that affects the security or the integrity of the electronic pulltab system, electronic pulltab device, or electronic pulltab game, the manufacturer, distributor, or charitable organization shall immediately notify the department. The charitable organization shall also immediately notify the distributor of the defect, malfunction, or problem. The distributor shall immediately notify the manufacturer of the defect, malfunction, or problem.

(b) If the department detects, discovers, or is notified of any problem with an electronic pulltab system, electronic pulltab device, or electronic pulltab game that affects the security or the integrity of the electronic pulltab system, electronic pulltab device, or electronic pulltab game, the department shall direct the manufacturer, distributor, and charitable organization to immediately cease the sale, lease, or use of the affected electronic pulltab system, electronic pulltab device, or electronic pulltab game until the problem can be assessed by the department in consultation with the manufacturer or distributor.

(c) If the department, in consultation with the manufacturer or distributor, determines that a defect actually exists, and the defect affects game security or otherwise threatens public confidence in the game, the department shall require the manufacturer to issue a total recall of all affected electronic pulltab systems, electronic pulltab devices, or electronic pulltab games or affected game sets or subsets, if necessary.

(d) In choosing and directing a particular recall in accordance with Section 30(1)(c) of this administrative regulation, the department shall be guided in each circumstance by any combination of the following factors:

1. The nature of the defect;

2. Whether the defect affected game security;

3. Whether the defect affected game playability;

4. Whether the defect was limited to a specific number of deals of a particular form number;

5. Whether the defect was easily detectable by a charitable organization;

6. Whether the defect was easily detectable by members of the general public;

7. Whether the defect threatens public confidence in the game; or

8. Whether the defect is capable of being used to adversely affect the fair play of the game.

(e) The manufacturer or distributor may correct the defect, if possible, without issuing a total recall if the affected electronic pulltab devices and electronic pulltabs are not offered for sale, lease, or use if and until the department allows. The manufacturer or distributor shall make all corrections within a reasonable time, not to exceed thirty (30) days, and the manufacturer or distributor shall demonstrate the correction to the department. If the department believes the defect has been corrected and that the defect no longer affects game security or otherwise threatens public confidence in the game, the department may issue written notification that the affected electronic pulltab system, devices, or pulltab game may be reoffered for sale, lease, or use.

(f) If a recall of an electronic pulltab system or electronic pulltab device is necessary, the department, in consultation with the manufacturer, shall determine a specific date for the recall of any affected electronic pulltab system or electronic pulltab device to be completed and whether the manufacturer is required to reimburse the organization or distributor. The recall of any electronic pulltab game shall occur no later than twenty-four (24) hours after the manufacturer is notified of the defect.

Section 31. Electronic Pulltab Manufacturer Requirements. (1) A manufacturer shall affix to each electronic pulltab device an identification badge that shall include the following information:

(a) Manufacturer name;

(b) A unique serial number;

(c) The electronic pulltab device model number, if applicable; and

(d) The date of manufacture, if applicable.

(2) Each manufacturer selling, leasing, or otherwise furnishing electronic pulltab devices, site systems, point of sale stations, secondary components, and electronic pulltabs shall maintain a log

or other record showing the following:

(a) The name, address, and license number of the distributor to whom the electronic pulltab devices, site systems, point of sale stations, secondary components, or electronic pulltabs were sold, leased, or otherwise furnished;

(b) The date of the transaction with the distributor;

(c) The model, version, and serial number of each hand-held electronic pulltab device, if applicable;

(d) The account number or terminal number of each fixed base electronic pulltab device, if applicable;

(e) The quantity of each type of electronic pulltab device;

(f) The model and version number of the system software;

(g) The name, form number, and serial number of each game set of electronic pulltabs; and

(h) The quantity of game sets sold, the cost per game set, the selling price per ticket, the cash take-in per game set, and the cash payout per game set.

(3) A manufacturer selling, leasing, or otherwise providing electronic pulltab devices, site systems, point of sale stations, or secondary components to a distributor shall provide the distributor with an invoice or other documentation that contains, at a minimum, the following information:

(a) The manufacturer name, address, and license number;

(b) The distributor name, address, and license number;

(c) The address to which the shipment was delivered;

(d) The date of sale or credit and the time period covered by the invoice;

(e) The conditions of the sale or credit;

(f) A description of the type and the quantity of electronic pulltab devices, site systems, point of sale stations, and secondary components provided;

(g) The total invoice amount;

(h) The name of the person who ordered the supplies;

(i) The name of the person making the delivery;

(j) The date of delivery or date the item was picked up for sale or credit;

(k) The place or manner of delivery; and

(l) The name and signature of the person taking delivery, if any.

(4) A manufacturer providing electronic pulltabs to a distributor for distribution to a licensed charitable organization shall provide the distributor with an invoice or other documentation that contains, at a minimum, the following information:

(a) The manufacturer name, address, and license number;

(b) The distributor name, address, and license number;

(c) The organization name, address, and license number;

(d) The date of sale or credit and the time period covered by the invoice;

(e) The conditions of the sale or credit;

(f) The quantity of electronic pulltabs sold including the number of game sets, the name of each game set, the number of tickets per game set, and the serial number and form number of the game set; and

(g) The total invoice amount.

(5) The manufacturer shall maintain physical or electronic copies of the documentation required by this section for a period of not less than three (3) years.

(6) A manufacturer shall supply any available financial reports to distributors and organizations, upon request, that provide detailed pulltab sales activity for the requesting distributor or organization for a selected date range.

(7) A manufacturer may conduct routine maintenance activities and replace secondary components of an electronic pulltab system without additional testing and certification as long as this activity does not affect the operation of any proprietary software, the manner in which an electronic pulltab game is played, the integrity of any critical or controlled software, or the outcome of an electronic pulltab game. A record of all activities shall be maintained and provided to the department within ten (10) days of the maintenance or replacement.

(8) A licensed manufacturer of charitable gaming supplies and equipment shall sell, lease, distribute, or otherwise provide in the Kentucky market only those electronic pulltab systems and

electronic pulltabs that conform to the requirements of these administrative regulations. A licensed charitable organization shall provide to the public only those electronic pulltab systems and electronic pulltabs that conform to the requirements of this administrative regulation.

Section 32. Electronic Pulltab Distributor Requirements. (1) Before initial use by a charitable organization, the distributor shall ascertain that the particular electronic pulltab system, electronic pulltab device, and associated software version are approved by the department for use in Kentucky.

(2) A distributor shall not display, use, or otherwise furnish an electronic pulltab device, site system, or secondary component which has in any manner been marked, defaced, or tampered with, or which is otherwise intended to deceive the public or affect a person's chances of winning.

(3) Before the complete removal of any electronic pulltab system, the distributor shall supply a copy of the data files to each charitable organization which used the electronic pulltab system and to the department.

(4) Each distributor selling, leasing, or otherwise furnishing electronic pulltab devices, site systems, point of sale stations, secondary components, or electronic pulltabs shall maintain a log or other record showing the following information, if applicable:

(a) The name of the location, physical address, telephone number, and facility license number, if applicable, where the electronic pulltab devices, site systems, point of sale stations, and secondary components are located for play;

(b) A description, including the quantity, of all electronic pulltab devices, site systems, point of sale stations, and secondary components at each playing location;

(c) The date any electronic pulltab device, site system, point of sale station, or secondary component was installed in or removed from a playing location;

(d) The model, version, and serial numbers or terminal numbers of the electronic pulltab devices, site systems, point of sale stations, and secondary components, if applicable;

(e) The name and license number of the charitable organization or distributor to whom the electronic pulltab devices, site systems, point of sale stations, or secondary components were sold, leased, or otherwise furnished;

(f) The name and license number of the manufacturer or distributor from whom the electronic pulltab devices, site systems, point of sale stations, and secondary components were purchased, leased, or otherwise obtained;

(g) Each contract, lease, or purchase agreement between a distributor and the charitable organization or other distributor to which the electronic pulltab devices, site systems, point of sale stations, or secondary components are furnished; and

(h) The total dollar amount of electronic pulltab device, site system, point of sale station, and secondary component sales or lease transactions regarding each charitable organization to which the equipment was furnished during each calendar quarter.

(5) A distributor selling, leasing, or otherwise providing electronic pulltab devices, site systems, point of sale stations, or secondary components to a licensed charitable organization shall provide the organization with an invoice or other documentation that contains, at a minimum, the following information:

(a) The manufacturer name, address, and license number;

(b) The distributor name, address, and license number;

(c) The organization name, address, and license number;

(d) The date of sale or credit and the time period covered by the invoice;

(e) The conditions of the sale or credit;

(f) A description of the type and the quantity of electronic pulltab devices, site systems, point of sale stations, and secondary components provided;

(g) The total invoice amount;

(h) The name of the person who ordered the supplies;

(i) The name of the person making the delivery;

(j) The date of delivery or date the item was picked up for sale or credit;

(k) The place or manner of delivery; and

(l) The name and signature of the person taking delivery, if any.

(6) A distributor providing electronic pulltabs to a licensed charitable organization shall provide the organization with an invoice or other documentation that contains, at a minimum, the following information:

(a) The manufacturer name, address, and license number;

(b) The distributor name, address, and license number;

(c) The organization name, address, and license number;

(d) The date of sale or credit and the time period covered by the invoice;

(e) The conditions of the sale or credit;

(f) The quantity of electronic pulltabs sold including the number of game sets, the name of each game set, the number of tickets per game set, and the serial number and form number of the game set; and

(g) The total invoice amount.

(7) An invoice not challenged within seven (7) days of delivery shall be deemed accurate. Any challenge to an invoice shall be made in writing to the distributor and a copy shall be sent to the department.

(8) The distributor shall maintain physical or electronic copies of the documentation required by this section for a period of not less than three (3) years.

(9) A distributor shall deliver electronic pulltab devices, site systems, point of sale stations, and secondary components to an agreed secure location or to an identified person.

(10) A licensed distributor of charitable gaming supplies and equipment shall sell, lease, distribute, or otherwise provide in the Kentucky market only those electronic pulltab systems and electronic pulltabs that conform to the requirements of these administrative regulations. A licensed charitable organization shall provide to the public only those electronic pulltab systems and electronic pulltabs that conform to the requirements of this administrative regulation.

Section 33. Charitable Organization Requirements. (1) Before initial use, the organization shall ascertain that the particular electronic pulltab system, electronic pulltab device, and associated software version are approved by the department for use in Kentucky.

(2) An organization shall not display, use, or otherwise furnish an electronic pulltab device, site system, or secondary component which has in any manner been marked, defaced, or tampered with, or which is otherwise intended to deceive the public or affect a person's chances of winning.

(3) The use of electronic pulltab devices shall be limited to the following:

(a) A maximum of 20 electronic pulltab devices on or in the primary office location of a licensed charitable organization;

(b) A maximum of 32 electronic pulltab devices during the bingo session of a licensed charitable organization;

(c) A maximum of 32 electronic pulltab devices in a licensed charitable gaming facility; or

(d) With prior approval of the department, at any authorized charity fundraising event conducted by a licensed charitable organization at an off-site location.

(4) All electronic pulltab games shall be sold and played at the authorized locations and shall not be linked to other authorized locations.

(5) Electronic pulltab games shall not be transferred electronically or otherwise to any other location by the licensed organization.

(6) An organization may remove from play a device that a player has not maintained in an activated mode for a specified period of time determined by the organization. The organization shall provide the notice in its house rules and shall allow the player to cash-out.

(7) Before purchasing or being provided with an electronic pulltab device, a player shall present proof that the player is at least eighteen (18) years of age. Proof shall be in the form of a picture identification card that includes the player's date of birth. If an organization uses a self-service point of sale kiosk, identification

shall be presented and verified at the door.

(8) Each player shall be limited to the use of one (1) electronic pulltab device at a time.

(9) If a player's electronic pulltab device malfunctions during a game, it shall be repaired or the credits shall be transferred to another electronic pulltab device.

(10) The department shall be allowed access to examine and inspect any part of an electronic pulltab system. The department shall be granted access to all electronic pulltab devices in use by a charitable organization.

(11) The organization shall reasonably ensure that the connection to the electronic pulltab system's central computer system is operational at all times.

(12) If the organization sells electronic pulltab devices for a discounted price or gives them away as a promotion, the site system shall be programmed to account for the discounted item and priced separately from those sold at the regular price. A generic discount key shall not be allowed.

(13) The organization shall print an Electronic Pulltab Receipts and Payouts report at the end of each charitable gaming session and maintain it with the charitable gaming session records. The Electronic Pulltab Receipts and Payouts worksheet shall be completed in the format of Form CG-EPRP.

(14) A manufacturer's representative or distributor's representative may be present during a charitable gaming session only to consult, demonstrate, and train the organization on the operation of the electronic pulltab system.

Section 34. Incorporation by Reference. (1) Form CG-EPRP, "Electronic Pulltab Receipts and Payouts (2018)", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

CANNON G. ARMSTRONG, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2018, at 11:00 a.m., at the Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 p.m. on June 30, 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: Doug Hardin, Deputy Commissioner, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625, email Doug.Hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth standards for pulltab operation, including instructions for the construction of pulltabs, requirements of electronic pulltab gaming systems, and pulltab rules of play.

(b) The necessity of this administrative regulation: This regulation is necessary to set forth standards consistent with the department's statutory mission for pulltab operation, including instructions for the construction of pulltabs, requirements of electronic pulltab gaming systems, and pulltab rules of play.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 238.522, the Charitable Gaming Advisory Commission reviewed this regulation at the Commission's second quarter meeting on May 2, 2018. No written comments were received from the Commissioners. KRS 238.515 authorizes the department to promulgate administrative regulations to carry out and implement KRS Chapter 238. This administrative regulation sets forth standards consistent with the department's statutory mission for pulltab operation, including instructions for the construction of pulltabs, requirements of electronic pulltab gaming systems, and pulltab rules of play.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide for one comprehensive regulation governing pulltab operations.

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

(a) How the amendment will change this existing administrative regulation: The amendment to 820 KAR 1:032 brings together within one (1) regulation all of the regulations pertaining to pulltab charitable gaming requirements for licensed charitable organizations, manufacturers, distributors, and charitable gaming facilities. The amendment will consolidate into one administrative regulation the content of the following existing administrative regulations: 820 KAR 1:033, Electronic pulltab system, Electronic pulltab device, and Electronic pulltab construction; 820 KAR 1:034, Pulltab dispenser construction and use; and 820 KAR 1:036, Pulltab rules of play. In addition, those pulltab definitions formerly included in 820 KAR 1:001 have been moved into 820 KAR 1:032 as a new Section 1. 820 KAR 1:033, Electronic pulltab system, Electronic pulltab device, and Electronic pulltab construction; 820 KAR 1:034, Pulltab dispenser construction and use; and 820 KAR 1:036, Pulltab rules of play, as separate regulations, have been included in the repealer filed by the Department of Charitable Gaming. The amendment will make it easier for any person or entity engaging in activities relating to pulltab charitable gaming to find all pulltab regulations are placed in one section of the Chapter.

(b) The necessity of the amendment to this administrative regulation: Pulltab regulations were previously located in multiple sections of the regulations. Locating all regulations governing pulltabs in one regulation will make compliance and enforcement simpler.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 238.515(9) authorizes the department to promulgate administrative regulations in accordance with KRS Chapter 13A which are necessary to carry out the purposes and intent of Chapter 238. These amendments set forth the standards governing pulltab operations for charitable purposes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will make the regulations pertaining to pulltabs better organized and more user-friendly.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Charitable Gaming and its employees are affected by this administrative regulation. Manufacturers and distributors of paper and electronic pulltabs are also impacted by this administrative regulation. In addition, the licensees and exempt organizations will be affected by this administrative regulation. As of March 2018, the Department of Charitable Gaming regulated over 1,400 charitable gaming entities that will be affected by this administrative regulation, as follows:

- Over 600 charitable gaming organizations;
- Over 800 exempt charitable gaming organizations;

Twenty-four (24) manufacturers of charitable gaming supplies;
Twenty-three (23) distributors of charitable gaming supplies;
and

Thirty-four (34) charitable gaming facilities.

(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 questions (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question 3 will have to conform to the requirements of this regulation, which sets forth standards for construction of pulltabs, requirements of electronic pulltab gaming systems, and pulltab rules of play.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The amendment to 820 KAR 1:032 will impose no new costs on regulated persons or entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will make 820 KAR 1:032 more user friendly by incorporating all pulltab regulations within one section of the Chapter.

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

(a) Initially: There will be no additional cost to implement this administrative regulation initially.

(b) On a continuing basis: There will be no additional cost 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 additional funding necessary to implement this amendment to the administrative regulation.

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

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

(9) TIERING: Is tiering applied? No, tiering is not applied because the pulltab standards set forth in this administrative regulation apply equally to all licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming is the agency responsible for implementing this regulation. Local fire departments and school districts that use pulltabs for charitable gaming 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 238.515(1) and (9).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is not intended to generate revenue for any state or local government 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 administrative regulation is not intended to generate revenue for any state or local government agency.

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

for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no cost 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 (+/-): None.

Expenditures (+/-): None.

Other Explanation: None.

**PUBLIC PROTECTION CABINET
Department of Charitable Gaming
(Amendment)**

820 KAR 1:042. Bingo[Bingo paper standards].

RELATES TO: KRS 238.515[(2), (9)], 238.530, 238.545

STATUTORY AUTHORITY: KRS 238.515[(2), (4), (9)], 238.545

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515[(9)] authorizes the Department of Charitable Gaming to establish and enforce reasonable standards for the conduct of charitable gaming and [office] to promulgate administrative regulations necessary to carry out the purposes and intent of KRS Chapter 238. [KRS 238.515 (2) authorizes the office to establish charitable gaming standards.] This administrative regulation establishes standards for the construction and distribution of bingo paper; the construction and distribution of bingo equipment including card-minding devices; and the conduct of bingo play.

Section 1. Bingo Definitions. (1) "Bingo ball" means a ball imprinted with numbers and letters which is used in the selection process of a bingo game.

(2) "Bingo machine" means:

(a) A type of selection device with:

1. A receptacle for unselected bingo balls.

2. A blower for selecting, and

3. A ball tray that contains seventy-five (75) holes in which to place the ball once it is called; or

(b) A generator that randomly selects the balls and displays them on the face of the device.

(3) "Bingo paper pack" means a group of bingo paper sheets that are manufactured, collated, and sold by the manufacturer as a unit.

(4) "Bingo paper package" means a group of bingo paper sheets or packs that are assembled together by a charitable organization for sale at a charitable gaming session that becomes a unique item for sale with a specific price.

(5) "Bingo paper sheet" means a single piece of paper on which one (1) or multiple bingo faces are printed.

(6) "Break open bingo" means a bingo game in which the numbers on the face are hidden until after purchase.

(7) "Bundle" means to price a certain amount of bingo paper faces for a certain price with the patron choosing the type of packs that make up the total faces.

(8) "Called" means that a number located on a bingo ball has been:

(a) Selected by the selection device;

(b) Verbally announced by the caller;

(c) Displayed on the flashboard or other device; and

(d) Placed in a ball tray or otherwise continuously displayed until completion of the bingo game.

(9) "Continuation game" means a multipart bingo game in which more than one (1) game with more than one (1) pattern may be played on one (1) bingo paper sheet.

(10) "Covered" means daubed or smeared with indelible ink if using a disposable paper bingo face, or marked electronically if using a card-minding device.

(11) "Disposable paper bingo face" means a non-reusable bingo face assembled in a single sheet, multiple face sheet, pad, or pack form.

(12) "Face" means a paper or an electronic representation containing:

(a) Five (5) rows of five (5) squares with numbers or symbols;

(b) A free center space;

(c) The letters "B", "I", "N", "G", "O" printed in order over the five (5) columns; and

(d) A unique perm number identifying each face.

(13) "Fixed-base card-minding device" means a computer system, not necessarily manufactured by a licensed manufacturer, that [which] has been loaded with proprietary software by a licensed manufacturer to enable it to function as a card-minding device.

(14) "Flashboard" or "display board" means a board that displays the bingo numbers called.

(15) "Hand-held card-minding device" means a hand-held computer that is either manufactured or customized by the manufacturer to operate as a card-minding device.

(16) "Hard card" means a reusable card bearing a bingo face or faces.

(17) "Perm number" means the number located on a bingo face that identifies the unique pattern of numbers appearing on that face.

(18) "Pickle jar, bonanza ball, or hot ball" means games played in conjunction with other bingo games in which:

(a) A bingo ball is selected by the selection device prior to the start of certain bingo games or all bingo games; and

(b) A patron is awarded the amount of money associated with the pickle jar, bonanza ball, or hot ball, if the selected bingo ball is called, and because of that selected ball being called, a patron wins the bingo game being played.

(19) "Player pick bingo" means that the patron picks the numbers which constitute a bingo on his or her face or faces and a machine prints those numbers on the bingo face at the charitable gaming session before the game is played.

(20) "Progressive bingo" means a bingo game in which the value of the prize is carried forward to the next bingo session if no player wins at that session.

(21) "Selected" means a bingo number that has been obtained by the selection device and is ready to be called next by the bingo caller.

(22) "Selection device" means a device that:

(a) May be operated manually or automatically; and

(b) Is used to randomly select bingo numbers.

(23) "Selection pool" means the bingo numbers in a selection device that have not been selected.

(24) "Series number" means the number of unique faces contained in a series.

(25) "Set" means a case or cases of paper that contain one (1) of each face in a series.

(26) "Verification system" means a book of bingo faces compiled by the manufacturer or an electronic device created by the manufacturer that:

(a) Lists the unique patterns of numbers on each face by perm number; and

(b) Is used to verify the authenticity of a winning face.

Section 2. Bingo Paper Standards[Conformity]. (1) A licensed distributor of charitable gaming supplies and equipment shall only distribute, in Kentucky, bingo paper conforming to the requirements of this administrative regulation.

(2) A [licensed] charitable organization shall sell to the public only bingo paper conforming to the requirements of this administrative regulation.

(3) Reusable bingo hard cards shall be used only at charity fundraising events.

Section 3[2]. Bingo Paper Construction Standards. (1) The paper used to construct paper bingo cards or faces shall be of sufficient weight and quality to allow for clearly readable numbers and to prevent ink from spreading or bleeding through a pack thereby obscuring other numbers or cards.

(2) Perm numbers shall be displayed on the face.

(3) Numbers displayed on the face shall be randomly assigned.

(4) Each set of bingo paper shall be comprised of faces

bearing the same serial number on the top sheet of the pack. A serial number shall not be repeated by the same manufacturer within one (1) year.

(5) Bingo paper assembled in packs shall be glued. Staples shall not be used.

(6) A label shall be placed on, or be visible from, the exterior of each bingo paper carton. The label shall list the following information:

- (a) Type of product;
- (b) Number of packs, pads, or loose sheets;
- (c) Series numbers;
- (d) Serial number of the top sheet;
- (e) Number of cases;
- (f) Cut of paper; and
- (g) Color of paper.

Section 4[3]. Tracking by Manufacturer. Every manufacturer of bingo paper shall maintain records sufficient to track the bingo paper, by the serial number on the top sheet, from the point of manufacture[manufacturer] to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by department[office] staff.

Section 5[4]. Tracking by Distributor. (1) Every distributor of bingo paper shall maintain records sufficient to track the bingo paper, by the serial number on the top sheet, from the point of purchase by the distributor to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by department[office] staff.

(2) The records required under this section shall be deemed sufficient if the distributor:

- (a) Records the name and charitable gaming license or exemption number of the purchaser at the next point of sale; or
- (b) Makes and retains a copy of a valid state identification card which contains the name, address, date of birth, and state identification number of the purchaser at the next point of sale.

Section 6[5].[Requirements—of] Distributor Invoice Requirements. (1) Distributors selling bingo paper to charitable organizations or other distributors shall provide the charitable organization or other distributor with an invoice that contains, at a minimum, the following information:

- (a) The purchaser's name, address, and license number;
- (b) The address to which the shipment was delivered;
- (c) The date of sale or credit;
- (d) The conditions of the sale or credit;
- (e) The quantity of bingo paper sold including the number of sheets or packs in a set;
- (f) The serial number of the bingo sets sold;
- (g) The series number of the bingo sets sold;
- (h) The cut of bingo paper sold;
- (i) The color of bingo paper sold;
- (j) The total invoice amount;
- (k) The name of the person who ordered the supplies;
- (l) The name of the person making the delivery;
- (m) The date of delivery or date item was picked up for sale or credit; and
- (n) The place or manner of delivery, including the name and signature of the person taking delivery, if any.

(2) A distributor may deliver bingo paper to an agreed place or to an identified person. An invoice not challenged within seven (7) days of delivery shall be deemed accurate. Any challenge shall be made in writing to the distributor and a copy shall be sent to the department[office].

Section 7. Bingo Selection and Display Devices. (1) Bingo ball machines and other selection devices, flashboards and other display devices, and other bingo equipment used in the selection and display of game numbers shall be made available for inspection or testing by the department at any reasonable time.

(2) Equipment shall be designed to produce randomness and be free of any defects when used in a bingo game.

(3) A charitable organization shall not use a selection or

display device with a defect that was apparent at the beginning of the session. All bingo balls used in the machine or other device shall:

- (a) Be of the same size, shape, weight, and balance;
 - (b) Have all other characteristics that control their selection the same; and
 - (c) Be clean and free of defects.
- (4) A manufacturer may conduct routine maintenance activities and replace secondary components of equipment without prior approval of the department or additional testing as long as this activity does not affect the operation of any equipment or the manner in which a bingo game is played. A record of all routine maintenance activities shall be maintained for one (1) year and provided to the department upon request.

Section 8. Card-Minding Devices. (1) A card-minding device site system shall:

- (a) Be located at the gaming premises;
- (b) Be operated by the charitable organization;
- (c) Interface with, connect with, control, or define the operational parameters of the card-minding devices;
- (d) Report and transmit the game results as prescribed by 820 KAR 1:057;

(e) Provide security and access levels sufficient so that the internal control objectives are met as prescribed by Section 9 of this administrative regulation; and

(f) Contain a point of sale station.

(2) The card-minding device site system may include the following components:

- (a) A caller verification system;
- (b) Required printers;
- (c) Modem;
- (d) Proprietary executable software;
- (e) Report generation software; and
- (f) An accounting system or database.

(3)(a) A card-minding device and associated site system shall not be sold, leased, or otherwise furnished to any person for use in the conduct of bingo until it has first been tested and certified by an independent testing facility approved by the department, demonstrated to the department by the manufacturer if requested, and approved by the department.

(b) For a hand-held card-minding device, a device and software which is identical to the device and software intended to be sold, leased, or otherwise furnished to any person for use in the conduct of bingo shall be tested and approved.

(c) For a fixed-base card-minding device, a device which contains identical software to the fixed-based card-minding device intended to be sold, leased, or otherwise furnished shall be tested and approved.

(4) The cost of testing and certification shall be the responsibility of the manufacturer.

(5) The independent testing facility shall certify in writing that the device and proprietary software conform to the restrictions and conditions set forth in this administrative regulation.

(6) Any modifications to a hand-held card-minding device, a fixed base card-minding device, or software, except as provided in subsection (8) of this section, shall be tested and certified by an independent testing facility, demonstrated to the department by the manufacturer if requested, and approved by the department in the same manner as a new device or new software. Testing and certification shall be at the manufacturer's expense.

(7)(a) The department, in consultation with the independent testing facility, shall determine if all proprietary software and card-minding devices required to be tested by this administrative regulation, as well as other components of card-minding device systems, conform to the requirements and restrictions contained in this administrative regulation and shall notify the manufacturer of its decision in writing.

(b) Upon receipt of the test results from the independent testing facility, the department may request a demonstration of the product within thirty (30) days thereof.

(c) The department shall either approve or disapprove the card-minding device and software. The department shall inform the

manufacturer of its decision within thirty (30) days of the demonstration, or no later than sixty (60) days after the department receives the test results from the independent testing facility. Approval shall be granted in accordance with paragraph (a) of this subsection.

(8) A manufacturer may conduct routine maintenance activities and replace secondary components of a card-minding device system without prior department approval or additional testing as long as this activity does not affect the operation of any proprietary software or the manner in which a bingo game is played, the integrity of any critical or controlled software, or the outcome of a bingo game. A record of all routine maintenance activities shall be maintained for one (1) year and made available to the department upon request.

(9)(a) If a licensee has knowledge of any defect, malfunction, or problem with a card-minding device system, card-minding device or software that affects the security or the integrity of the bingo game or the card-minding device or system, the licensee shall immediately notify the department. The charitable organization shall also immediately notify the distributor of the defect, malfunction, or problem. The distributor shall immediately notify the manufacturer of the defect, malfunction, or problem.

(b) If the department has knowledge of any problem with a card-minding device system, card-minding device, or software that affects the security or the integrity of the bingo game or the card-minding device or system, the department shall direct the manufacturer, distributor, and charitable organization to immediately cease the sale, lease, or use of the affected card-minding device system, card-minding device, or software until the problem can be assessed by the department in consultation with the manufacturer or distributor.

(c) If the department determines that a defect actually exists, and the defect affects game security or otherwise threatens public confidence in the game, the department shall require the manufacturer to issue a total recall of all affected card-minding device systems, card-minding devices, or software, as necessary.

(d) In choosing and directing a particular recall in accordance with paragraph (c) of this subsection, the department shall be guided in each circumstance by any combination of the following factors:

1. The nature of the defect;
 2. Whether the defect affected game security;
 3. Whether the defect affected game playability;
 4. Whether the defect was limited to a specific number of bingo faces;
 5. Whether the defect was easily detectable by a charitable organization;
 6. Whether the defect was easily detectable by members of the general public;
 7. Whether the defect threatens public confidence in the game;
- or

8. Whether the defect is capable of being used to adversely affect the fair play of the game.

(e) The manufacturer or distributor may correct the defect, if possible, without the issuance of a total recall if the affected card-minding devices and software are not offered for sale, lease, or use until the department allows. The manufacturer or distributor shall make all corrections within a reasonable time, not to exceed thirty (30) days, and the manufacturer or distributor shall demonstrate the correction to the department. If the department believes the defect has been corrected and that the defect no longer affects game security or otherwise threatens public confidence in the game, the department may issue written notification that the affected card-minding device system, devices, or software may again be offered for sale, lease, or use.

(f) If a recall is necessary, the department shall determine a specific date for the recall of any affected card-minding device system, card-minding device, or software to be completed.

(g) The department shall also determine whether the manufacturer is required to reimburse the charitable organization or distributor.

(10)(a) A distributor or charitable organization shall not add or remove any software programs to an approved card-minding

device system without the permission of the manufacturer and the department.

(b) If the department detects or discovers a card-minding device system at a playing location that is using components or software that were required to have been approved by the manufacturer and the department but have not been approved, the card-minding device system shall be determined to have an unauthorized modification and the use of the system shall cease immediately.

Section 9. Card-Minding Device Systems Manufacturer Requirements. (1) A manufacturer of a card-minding device system shall manufacture each site system to include a point of sale station and an internal accounting system that is capable of recording the charitable organization's sale of all charitable gaming supplies.

(2) (a) A manufacturer of a card-minding device system shall ensure that the site system has internet capability so that the department has the ability to remotely verify the operation, compliance, and internal accounting systems of the site system at any time. The department shall have real time and complete read-only access to all data for all systems and devices.

(b) The manufacturer shall provide to the department all current protocols, passwords, and any other required information needed to access the system prior to the operation of the system in Kentucky.

(c) The department shall be notified of any changes in the protocols, passwords, and any other required information needed to access the system at least three (3) days prior to the change.

(d) Any reports maintained or generated by the card-minding device system shall be capable of being downloaded or otherwise accessed via the internet by the department.

(3) A manufacturer of a card-minding device system shall manufacture each site system to ensure that an internal accounting system is capable of recording and retaining for a period of not less than twelve (12) months following:

(a) The serial number of each bingo face sold for card-minding device use;

(b) The price of each face or package sold;

(c) The total amount of the card-minding device sales for each session;

(d) The total number of faces sold for use with card-minding devices for each session;

(e) The serial number of each hand-held card-minding device sold; and

(f) The terminal number or account number associated with each fixed base card-minding device sold.

(4)(a) The information referenced in subsection (3) of this section shall be secure and shall not be accessible for alteration during the session.

(b) The site system shall have report generation software with the capability to print all information required to be maintained on the site system's active or archived databases. The total sales activity report shall be completed in the format of Form CG-CMD.

(5) A manufacturer of a card-minding device system shall manufacture each site system to ensure that the applicable point of sale station is capable of printing a receipt for each sale or voided sale of a card-minding device. The receipt shall include the following information:

(a) The date and time of the transaction;

(b) The dollar value of the transaction and quantity of associated products;

(c) The sequential and consecutive transaction number;

(d) The session in which the product was sold;

(e) The serial number of each hand-held card-minding device sold; and

(f) The terminal number or account number for each fixed base card-minding device sold.

(6) A card-minding device system may include player tracking software. Player tracking records shall at all times be the property of the charitable organization and neither the manufacturer nor the distributor shall utilize or make available to any person, other than the department or as otherwise authorized by law, the information

contained within the player tracking software without the express permission of the charitable organization.

(7) A manufacturer of a card-minding device system shall manufacture each associated site system to include a caller station verifier that is able to verify winning cards and to print the cards for posting. The caller station verifier shall be capable of posting all balls called for verification purposes and printing an ordered list of the called balls.

(8)(a) Each card-minding device system shall employ safeguards to verify that proprietary software components are authentic copies of approved software components and all components of the card-minding device system are operating with identical copies of approved software programs.

(b) The system shall have sufficient security safeguards to ensure that any restrictions or requirements of the department or any approved proprietary software are protected from alteration by unauthorized personnel.

(c) Examples of security measures that may be employed to comply with these provisions include the use of dongles, digital signature comparison hardware and software, secure boot loaders, encryption, and key and callback password systems.

(9) A manufacturer of a card-minding device system shall ensure that a card-minding device shall not allow any bingo cards or faces other than those verifiably purchased by the patron to be available for play.

(10) A manufacturer shall not display, use, or otherwise furnish a card-minding device which has in any manner been marked, defaced, or tampered with, or which is otherwise intended to deceive the public or affect a person's chances of winning.

(11) If the card-minding device system is capable of using radio frequency, it shall not be dual frequency.

(12) The card-minding device system shall provide password protection for each charitable organization.

(13) The card-minding device system shall erase, deactivate, or render unplayable the electronic faces on each card-minding device prior to the next scheduled charitable gaming session:

(a) Upon turning off the device after the last bingo game of the charitable gaming session has been played or upon placing the device into a charging unit; and

(b) By a secondary timing method established by the manufacturer.

(14) The card-minding device system shall ensure that patrons purchase additional electronic bingo faces at the site system only.

Section 10. Tracking by Manufacturer of Card-minding Device Systems. (1) Each licensed manufacturer selling, leasing, or otherwise furnishing card-minding device systems in Kentucky shall maintain a single log or other record showing the following:

(a) The date of the transaction with the distributor;

(b) The model, version, and serial number of each hand-held card-minding device;

(c) The account number or terminal number of each fixed base card-minding device;

(d) The model and version number of the site system software; and

(e) The name and license number of the distributor to whom the card-minding device system was sold, leased, or otherwise furnished.

(2) A licensed manufacturer selling, leasing, or otherwise providing a card-minding device system to a distributor for use in Kentucky shall provide the distributor with an invoice or other documentation that contains, at a minimum, the following information:

(a) The date of sale and the time period covered by the invoice;

(b) The quantity sold or leased; and

(c) The total invoice amount.

(3) The licensed manufacturer shall maintain physical or electronic copies of the documentation required by this section for a period of thirty-six (36) months.

Section 11. Distributor Requirements for Card-Minding Device Systems. (1) Before initial use by a charitable organization, the

distributor shall ascertain that the particular device and associated software version have been approved by the department according to this administrative regulation.

(2) If the card-minding devices are used at multiple locations, each location shall have its own separate site system.

(3) Before the complete removal of any card-minding device system, the distributor shall supply a copy of the data files to each charitable organization which used the card-minding device system and to the department.

(4) A distributor shall not display, use, or otherwise furnish a card-minding device which has in any manner been marked, defaced, tampered with, or which is otherwise intended to deceive the public or affect a person's chances of winning.

(5) Each distributor selling, leasing, or otherwise furnishing card-minding device systems shall maintain a single log or other record showing the following information, to be submitted to the department upon request:

(a) The playing location name, physical address, telephone number, and facility license number, if applicable, where the card-minding device system is located;

(b) The model number and quantity of card-minding devices at each playing location;

(c) The date the card-minding device system was installed or removed;

(d) The model, version, and serial numbers or terminal numbers of the card-minding devices and site system equipment;

(e) The name and license number of the charitable organization or distributor to whom the card-minding device system was sold, leased, or otherwise furnished;

(f) The name and license number of the manufacturer or distributor from whom the card-minding device system was purchased, leased, or otherwise obtained;

(g) Each contract, lease, or purchase agreement between a distributor of a card-minding device and the charitable organization or other distributor to which a device is furnished; and

(h) The total dollar amount of card-minding device sales or lease transactions regarding each charitable organization to which any card-minding device was furnished during each calendar quarter.

(6) A distributor selling, leasing, or otherwise providing a card-minding device system to a charitable organization or distributor shall provide the charitable organization or distributor with an invoice or other documentation that contains, at a minimum, the following information:

(a) The date of sale and the time period covered by the invoice;

(b) The quantity sold or leased; and

(c) The total invoice amount.

(7) The distributor shall maintain physical or electronic copies of the documentation required by this section for a period of thirty-six (36) months.

Section 12. Requirements for Use of Card-Minding Device Systems. (1) Before initial use of a card-minding device system, the charitable organization shall ascertain that the particular device and associated software version have been approved by the department for use in Kentucky.

(2) A charitable organization shall not display, use, or otherwise furnish a card-minding device which has in any manner been marked, defaced, tampered with, or which otherwise may deceive the public or affect a player's chances of winning.

(3) If a player's card-minding device malfunctions during a bingo game, it may be repaired or the faces transferred to another card-minding device if it will not interrupt the game.

(4) Each card-minding device shall be limited to offering for play a maximum of seventy-two (72) card faces during any one (1) game of a session.

(5) The charitable organization shall ensure that the card-minding device system does not allow a card-minding device to be used to obtain a bingo prize for any bingo game other than for a game within the bingo session for which the card-minding device was sold.

(6) The department may examine and inspect any card-

minding device and site system. The department shall be granted reasonable access to the card-minding devices and unlimited inspection of all parts of the site system.

(7) The charitable organization shall provide the player with a receipt printed on a receipt printer for each sale detailing the transaction. The receipt shall contain, at a minimum, the following information:

(a) A unique transaction number that is printed in continuous, consecutive order and which cannot be reset or altered;

(b) The serial number of the card-minding device issued;

(c) The date and time the receipt was issued;

(d) The name of the charitable organization and license number; and

(e) A description, quantity, purchase price, and total dollar amount of each item purchased.

(8) The charitable organization shall void the original transaction and issue a new receipt if a player requests a partial or full refund. Additional purchases shall not require voiding of the original transaction.

(9) A voided transaction shall be treated in the manner established by this section.

(a) A voided transaction shall be processed immediately.

(b) If a voided transaction involves a card-minding device, the card-minding device shall be connected to the site system to ensure all electronic bingo cards are erased or deactivated.

(c) The player shall possess the receipt issued at the time of the purchase of the card minding device before the purchase is voided.

(d) The word "void" shall be clearly printed on the receipt.

(e) The player shall write his or her name, address, telephone number, signature, and amount of refund on the back of the receipt before a partial or full refund may be issued.

(f) All voided receipts shall be attached to the Total Sales Activity Report printed at the end of each charitable gaming session and maintained with the gaming records.

(10) If the charitable organization loads the card-minding devices prior to selling them, all unsold card-minding devices shall be voided by the start of the subsequent game.

(11) If the receipt printer malfunctions or printed receipts are not legible, manual receipts shall be issued that contain the same information required by subsection (7) of this section.

(12) If the department or any player requests verification of a winning card face played on a card-minding device, the session chairperson shall print the winning card face and post it in a conspicuous location where it may be viewed in detail. Winning card faces requested for posting shall remain posted for at least thirty (30) minutes after the completion of the last bingo game at that particular charitable gaming session.

(13) The charitable organization shall reasonably ensure that the internet connection to the site system is operational at all times.

(14) If the charitable organization sells card-minding devices for a discounted price, or gives them away as a promotion, the site system shall be programmed to account for the discounted item and shall be priced separately from those sold at the regular price. A generic discount key shall not be allowed.

(15) The charitable organization shall print a Total Sales Activity Report reflecting activity from the time of the initial sale to the end of each bingo session. These records shall be maintained with the charitable gaming session records.

(16) A manufacturer's representative or distributor's representative may be present during a bingo session only to consult, demonstrate, or train charitable organizations on the operation of the card-minding device system.

Section 13. Bingo Rules of Play: General Provisions. (1) All individuals involved in the conduct of a bingo session shall be trained in the proper conduct of the game and the control of funds.

(2) The chairperson of the licensed charitable gaming session shall be in full charge of the licensed charitable gaming session, supervise and direct all volunteers, and be responsible for assuring the proper receipt and recording of gaming funds.

(3) Except for braille cards intended for use by blind players, bingo paper or card minding devices shall not be reserved by the

charitable organization for any player. Legally-blind players may use their own cards if the charitable organization does not make braille cards available. In accordance with KRS 238.505(15), braille cards shall not be considered gaming supplies and equipment and may be purchased from ordinary sources of supply.

(4) More than one (1) charitable organization shall not conduct gaming at the same time and location as another charitable organization except for a licensed charity fundraising event.

(5) If a bingo session is cancelled once it is commenced, a charitable organization may refund a portion of the purchase price of the bingo paper or card-minding device. A charitable organization shall not continue the session or award the prizes at a later date.

(6) Each charitable organization's gaming supplies shall be maintained in a location separate from another charitable organization's gaming supplies. This location shall be locked and access shall be limited. An extra set of bingo balls shall not be stored at the caller's stand but shall be stored with the other charitable gaming supplies.

(7) A volunteer at a charitable gaming session at which bingo cards or faces are sold shall not purchase or play bingo cards or faces at that session unless the volunteer's duties are complete for the session. Once a volunteer starts playing bingo, that person shall not work as a volunteer for the remainder of that charitable gaming session.

(8) If the charitable organization has house rules concerning its bingo session, the house rules shall:

(a) Be posted in at least two (2) conspicuous locations at the charitable gaming session and announced prior to the commencement of the charitable gaming session, or be listed on the program;

(b) Not be in conflict with KRS Chapter 238 or 820 KAR Chapter 1;

(c) Be followed; and

(d) Include the charitable organization's name and license number.

(9) Every ball in the bingo machine or other selection device shall be displayed for verification at the commencement and at the completion of each bingo session.

(10) Individual bingo paper sheets in a pack shall not be sold as individual bingo paper sheets.

(11) The charitable organization shall buy a complete set of paper and use that paper before starting another set.

(12) A charitable organization shall not separate faces on one (1) paper sheet or any paper sheets in a pack prior to play.

(13) The price for each type of bingo sheet, pack, or package shall be listed on the bingo program.

(14) Bingo paper sheets, bingo paper packs, and bingo paper packages shall be used during the bingo session for which they were purchased. A charitable organization shall not allow a player to carry over purchased, but unused, bingo paper sheets, bingo paper sheet packs, or bingo paper packages to a subsequent bingo session.

(15) A charitable organization shall not allow a player to play bingo paper that was not purchased at that session, except for braille cards as provided in Section 13(3) of this administrative regulation.

(16) The charitable organization shall not duplicate or otherwise make copies of bingo paper.

(17) If a charitable organization sells the same paper packs or paper sheets for different prices, the packs or sheets shall be distinguishable by serial number.

(18) A charitable organization shall not sell bingo paper in a bundle.

(19) If a charitable organization sells bingo paper as a package, the package shall become a unique item with a certain price and the items in the package shall not be sold individually unless a separate serial number is used.

(20) If a charitable organization games in back-to-back sessions, it may pre-sell paper for the second session if a different set of paper is used with a different color or border and a different serial number. The money from the preselling of paper shall be deposited with the second session receipts and the sales recorded

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on the second session charitable gaming session records. If the price for the presold paper is discounted, the charitable organization shall list this discount on the charitable gaming session program and use a third set of paper with a different serial number.

Section 14. Playing. (1) All players shall be physically present at the location where the bingo game is held in order to play the game or claim a prize.

(2) The bingo session shall start when the balls are verified. The balls shall be verified before the pickle jar, bonanza ball, or hot ball is selected and called. If an licensed charitable organization is authorized to sell paper or electronic pulltabs during its bingo session, the licensed charitable organization may commence selling paper or electronic pulltabs no more than two (2) hours prior to the start of the bingo session. All paper or electronic pulltabs sold in this manner shall be reported on the licensed charitable organization's bingo session records.

(3) The caller shall turn off all personal electronic devices and shall not use any personal electronic devices while engaged in the calling of a bingo game.

(4) Before selecting or calling the first number in a game, the bingo caller shall call out the amount of the game prize to be awarded.

(5) Before selecting and calling the first number in a game, the bingo caller shall announce the pattern or arrangement of squares to be covered to win the game, which shall also be listed in the bingo program.

(6) After selecting each number, the bingo caller shall:

(a) Clearly announce the number;

(b) With the exception of a speed game, display the ball or other device used in a manner allowing the players to see the number;

(c) Cause the ball or other device to be placed in a ball tray or other device so as to prevent it from being placed back into the selection pool; and

(d) Enter each letter and number called on a flashboard or similar device for player viewing.

(7) A winner shall be determined when the preannounced pattern of squares is covered by a player on a card.

(8) It shall be the player's responsibility to notify a volunteer including the chairperson or caller that the player has a winning bingo combination.

Section 15. Pickle Jar, Bonanza Ball, or Hot Ball. (1) When additional prize is to be awarded if a patron wins on a certain number, the rules of play, the maximum payout, and cost to enter shall be listed on the bingo program. These numbers may be selected and posted before the first game is called.

Section 16. Break Open Bingo. (1) A break-open bingo game shall begin when, in the presence of players attending the bingo session, the charitable organization calls and posts, either manually or by use of a flashboard, a predetermined quantity of randomly selected bingo numbers from a selection device or a separate bingo number container. If a flashboard is used, these numbers shall be posted on a board separate from the regular bingo board unless the regular board is capable of keeping track of these numbers separately. The balls shall then be placed back into the selection pool until the game is played on the program.

(2) Sealed bingo paper sheets for a break open game may be sold throughout the bingo session. Additional bingo paper sheets for a break open game shall not be sold after the charitable organization resumes calling letters and numbers when the game is played on the program.

(3) A charitable organization may allow players to trade break open bingo faces for new faces.

(4) If the charitable organization allows players to trade break open bingo faces for new faces, two (2) sets of the game faces shall be maintained. One (1) set shall be known as the "original set" and shall be of a different serial number than the second set, known as the "trade in" set.

(5) A charitable organization shall list on the bingo program the

price of the original set and the trade-in set.

Section 17. Player Pick. (1) If the charitable organization offers a Player Pick game, the requirements in this section shall apply.

(2) A player shall select numbers between one (1) and seventy-five (75). A player shall not select more than five (5) numbers for each column. The player may allow the machine to select the numbers.

(3) Duplicate numbers shall not be played on a purchased face. If duplicate numbers appear on a face, the card shall be void.

(4) Once selected, the machine shall print a face with the selected numbers.

(5) The faces shall conform to the construction and randomization standards set forth in this administrative regulation.

(6) The price of each face and the amount of numbers that will be chosen shall be listed on the bingo program.

(7) The numbers shall be daubed as the balls are called when the game is played as listed on the bingo program.

(8) A player shall win if he or she is the first person to cover the numbers.

Section 18. Continuation Games. (1) Multiple patterns may be played on one (1) bingo face. Each portion of the continuation game shall be considered a single bingo game, even though the bingo balls shall not be returned to the selection pool after a winner has been determined and verified.

(2) Each winning pattern shall be verified independently.

Section 19. Progressive Bingo Games. (1)(a) Progressive games or prizes connected to a bingo game or conditioned on winning a bingo game shall be permitted only if prizes awarded on progressive games are included in the prize limit established in KRS 238.545(1), regardless of the method by which a player is eligible to participate.

(b) The charitable organization shall be responsible for ensuring that the value of any progressive bingo game prize, when added to the values of the other prizes of the same date or session, does not exceed the statutory prize limit.

(c) All receipts on progressive bingo games shall be reported to the department as gross receipts for the date collected pursuant to KRS 238.550.

(2) Once a progressive bingo game has been started, the game shall be played in the same manner at every session until the prize is awarded. The jackpot prize shall be offered at each successive bingo session for that charitable organization until the jackpot prize has been won.

Section 20. Lucky Ball. (1) If the charitable organization offers Lucky Ball play, the requirements in this Section shall apply.

(2) Players may purchase one (1) Lucky Ball ticket prior to the beginning of a bingo session, and before purchasing any other bingo paper. Each player shall be limited to one (1) Lucky Ball ticket per bingo session.

(a) Lucky Ball tickets shall consist of a pre-printed form with space provided for the player's Lucky Ball number, name, date, and the name of the ticket seller to be written in. The Lucky Ball tickets shall also have pre-printed sequential ticket numbers for tracking and verification purposes.

(b) The cost of a Lucky Ball ticket shall not exceed five (5) dollars. Money from Lucky Ball ticket sales shall be retained by the charitable organization as part of the gaming proceeds from the gaming session.

(c) Each player may choose his or her own Lucky Ball number at the time of purchase of the ticket, and shall immediately write that number, in ink, on the Lucky Ball ticket, along with the player's name, the date, and the name of the ticket seller.

(d) Once the information is written on the Lucky Ball ticket, the carbon copy or electronic duplicate copy of the ticket shall be retained by the charitable organization, and all ticket copies shall be placed in numerical order as soon as possible after the start of a gaming session. The charitable organization shall verify that the player has written a correct name on the ticket by checking photo ID at the time of sale, and shall keep a log of tickets sold and

Lucky Ball numbers to verify that any tickets are used only by the ticket buyer and are not traded or sold during the session.

(e) Once the player purchases bingo paper for play in that session, the player shall write their Lucky Ball number on the back of each piece of bingo paper to be put into play.

(3) During bingo play, any player who purchased a Lucky Ball number may mark that number as a free space, or "wildcard" number to mark their bingo paper to form bingos, regardless of whether that number is selected by the caller in regular play.

(4) No selling, trading, or exchange of any kind of Lucky Ball tickets or bingo paper may take place during a bingo session between players of their chosen Lucky Ball numbers. All monitors, sellers, and volunteers shall observe whether a player's Lucky Ball number matches the number written on the back of the bingo paper to prevent selling, trading, or exchange of Lucky Ball tickets or bingo paper.

(5) Verifying a bingo.

(a) Once a player announces a bingo, a volunteer or monitor reads the perm number from the bingo paper to the caller. The caller then enters the perm number into the console.

(b) If the console does not verify a bingo, and if the Lucky Ball tickets cannot be verified electronically by the perm numbers, the caller must ask if there is a Lucky Ball.

(c) If there is a Lucky Ball, the volunteer calls out only the receipt number on the Lucky Ball ticket to the caller, in the presence of a neutral player.

(d) The caller then communicates the receipt number to the office or to the person holding the carbon copies of the Lucky Ball tickets in numerical order. The charitable organization shall verify that the Lucky Ball ticket had not been sold, traded, or exchanged by the players, by checking the photo ID of the winning player and checking to ensure the Lucky Ball number was written on the back of the bingo paper.

(e) After the receipt is located and the receipt numbers verified, the Caller shall announce the Lucky Ball number to the Monitor and the audience. The neutral player shall still be viewing the ticket to verify the bingo. The Lucky Ball number of the winning player may or may not be the last number called.

(f) Once a bingo is verified, the caller shall announce the last number called and the number of valid bingos for that game. The same verification procedure shall be followed in the case of multiple bingos until all are verified.

Section 21. Winner Verification and Registration. (1) A manufacturer of bingo paper shall make available for purchase a verification book or other verification system for all paper manufactured.

(2) The charitable organization conducting a bingo game shall use a reliable verification system that corresponds with the set of paper in play.

(3) When a player declares a winning bingo, the steps established in this subsection shall be followed for winner verification.

(a) The game shall be stopped before the next number is called. If the next number has been selected, it shall be secured to ensure that if the declared "bingo" is invalid, the game will continue.

(b) If an electronic verifier or verifier book is used, a volunteer for the charitable organization shall:

1. Show the winning face to a neutral player, who shall be a player other than the winner; and

2. Call back the perm number while in front of the neutral player.

(c) If any other verification system is used, a volunteer for the charitable organization shall:

1. Show the winning face to a neutral player, who shall be a player other than the winner; and

2. Call back the winning combination while in front of the neutral player.

(4) The caller shall ask at least twice if there are any other winners before announcing the close of the game. If playing a continuation game, the caller shall ask at least twice if there are any other winners before the close of that part of the game.

(5) If more than one (1) winner is declared in a bingo game, prizes shall be awarded as established in this subsection.

(a) Cash prizes shall be divided equally among the verified winners.

(b) If the prize is something other than cash and cannot be divided among winners, prizes of equal proportionate value shall be awarded.

Section 22. Prizes. (1) If a merchandise prize or discount is available to everyone, it shall be considered a promotional item and counted as an expense.

(2) If a merchandise prize or discount is not available to everyone, it shall be included in the prize limit established in KRS 238.545(1) at its fair market value. It shall be included in expenses for purchased prizes at actual cost. If the merchandise prize is a gaming supply, it shall be included in supplies expense at actual cost.

(3) The fair market value of bingo paper, a card-minding device, electronic pulltab device, or paper pulltabs awarded as a merchandise prize shall be the price that a patron would have paid for the same bingo paper, card-minding device, electronic pulltab device, or paper pulltab at that charitable gaming session.

(4)(a) If bingo paper is awarded as a door prize or a bingo game prize, the patron shall be given a voucher.

(b) The voucher shall be completed with:

1. The name, address, and phone number of the patron redeeming the voucher;

2. The date on which it was awarded;

3. The date on which it was redeemed;

4. The amount of paper given in exchange for the voucher; and

5. The serial number of the bingo paper.

(c) Once the voucher is completed, it shall be redeemed for the bingo paper.

(d) The charitable organization shall retain the voucher with its session records.

(5) If bingo paper is awarded as a promotional item, the description of the paper shall be listed on the program with "free" or "promotional" listed as the price. If the charitable organization also sells that type of paper, a separate set of paper with a separate serial number shall be used.

(6)(a) If a card-minding device or electronic pulltab device is awarded as a door prize or a bingo game prize, the patron shall be given a voucher.

(b) The voucher shall be completed with:

1. The name, address, and phone number of the patron redeeming the voucher;

2. The date on which it was awarded;

3. The date on which it was redeemed; and

4. The number of card-minding devices and the number of faces loaded on each device, or the number of electronic pulltab devices and credits loaded on each device, if any, given in exchange for the voucher.

(c) Once the voucher is completed, it shall be redeemed for the card-minding device or electronic pulltab device. No more than one (1) card-minding device or one (1) electronic pulltab device may be redeemed per player per session.

(d) The charitable organization shall retain the voucher with its session records.

(e) There shall be a specific button on the point of sale programmed for each type of voucher and package involving a card-minding device or electronic pulltab device.

(7) If a card-minding device is awarded as a promotional item, the description of the promotional package shall be listed on the program with "free" or "promotional" listed as the price. The point of sale shall have a specifically described discount button for this promotion.

(8) If a charitable organization offers coupons for bingo paper or a card-minding device, a voucher shall be completed when the coupon is redeemed, and the coupon and the voucher shall be retained with the charitable gaming session records.

(9) If the charitable organization sells gift certificates for bingo paper or a card-minding device, the receipts for the sale shall be counted as gaming receipts on the day they are received. When

the gift certificate is redeemed, a voucher shall be completed and the gift certificate and the voucher shall be retained with the charitable gaming session records.

(10) If a paper pulltab or electronic pulltab device is awarded as a bingo prize, the person in charge of bingo payouts shall purchase the pulltabs or electronic pulltab device and any credits loaded to the device from the pulltab manager by transfer of cash from bingo payout to pulltab sales and it shall be recorded as a sale on the session records.

(11) Each bingo winner shall be determined and every prize shall be awarded and delivered on the same day on which the bingo was conducted.

(12) A voucher shall be redeemed on the same day as awarded.

Section 23. Incorporation by Reference. (1) Form CG-CMD, "Total Sales Activity Report (2018)" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

CANNON G. ARMSTRONG, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2018, at 11:00 a.m., at the Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 p.m. on June 30, 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: Doug Hardin, Deputy Commissioner, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625, email Doug.Hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth standards for the construction of Bingo paper, requirements of Bingo gaming equipment, requirements for electronic card-minding devices and systems, and Bingo rules of play applicable to licensed or exempt charitable organizations and licensed manufacturers, distributors, and gaming facilities.

(b) The necessity of this administrative regulation: This regulation is necessary to set forth standards for the construction of Bingo paper, requirements of Bingo gaming equipment, requirements for electronic card-minding devices and systems, and Bingo rules of play.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 238.522, the

Charitable Gaming Advisory Commission reviewed this regulation at the Commission's second quarter meeting on May 2, 2018. No written comments were received from the Commissioners. KRS 238.515 authorizes the department to promulgate administrative regulations to carry out and implement KRS Chapter 238. This administrative regulation forth standards for the construction of Bingo paper, requirements of Bingo gaming equipment, requirements for electronic card-minding devices and systems, and Bingo rules of play for use in charitable gaming.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide for one comprehensive regulation governing use of Bingo as a charitable game.

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

(a) How the amendment will change this existing administrative regulation: The amendment to 820 KAR 1:042 brings together within one (1) regulation all of the regulations pertaining to Bingo charitable gaming requirements for licensed and exempt charitable organizations and licensed manufacturers, distributors, and gaming facilities. The proposed amendment will move the substance and content of 820 KAR 1:044, Bingo equipment; and 820 KAR 1:046, Bingo rules of play, into 820 KAR 1:042 as separate sections. In addition, those Bingo definitions formerly included in 820 KAR 1:001 have been moved into 820 KAR 1:042 as a new Section 1. 820 KAR 1:044, Bingo equipment; and 820 KAR 1:046, Bingo rules of play, as separate regulations, have been included in the repeal regulation submitted by the Department of Charitable Gaming. The amendment will make it easier for any person or entity engaging in activities relating to Bingo charitable gaming to locate all reporting regulations, since all requirements will be in one section of the Chapter. Section 20 of this proposed administrative regulation amendment also allows for charitable organizations to play Lucky Ball and provides the rules of play for that game.

(b) The necessity of the amendment to this administrative regulation: Bingo regulations were previously located in multiple sections of the regulations. Locating all regulations governing Bingo in one regulation will make compliance and enforcement simpler.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 238.515(9) authorizes the department to promulgate administrative regulations in accordance with KRS Chapter 13A which are necessary to carry out the purposes and intent of Chapter 238. These amendments set forth the standards governing Bingo operations for charitable purposes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will make the regulations pertaining to Bingo better organized and more user-friendly.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Charitable Gaming and its employees are affected by this administrative regulation. In addition, the licensees and exempt organizations will be affected by this administrative regulation. As of March 2018, the Department of Charitable Gaming regulated over 1,400 charitable gaming entities that will be affected by this administrative regulation, as follows:

Over 600 charitable gaming organizations;
Over 800 exempt charitable gaming organizations;
Twenty-four (24) manufacturers of charitable gaming supplies;
Twenty-three (23) distributors of charitable gaming supplies;
and
Thirty-four (34) charitable gaming facilities.

(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 questions (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question (3) will have to conform to the requirements of this regulation, which sets forth standard for the construction of Bingo paper, requirements of

Bingo gaming equipment, requirements for electronic card-minding devices and systems, and Bingo rules of play.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The amendment to 820 KAR 1:042 will impose no new costs on regulated persons or entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will make 820 KAR 1:042 more user friendly by incorporating all Bingo regulations within one section of the Chapter.

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

(a) Initially: There will be no additional cost to implement this administrative regulation initially.

(b) On a continuing basis: There will be no additional cost 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 additional funding necessary to implement this amendment to the administrative regulation.

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

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

(9) TIERING: Is tiering applied? No, tiering is not applied because the Bingo standards set forth in this administrative regulation apply equally to all licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming is the agency responsible for implementing this regulation. Local fire departments and school districts that use Bingo for charitable gaming 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 238.515(1) and (9).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is not intended to generate revenue for any state or local government agency 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 is not intended to generate revenue for any state or local government agency in subsequent years.

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

(d) How much will it cost to administer this program for subsequent years? There is no additional cost 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 (+/-): No Impact.

Expenditures (+/-): No Impact.

Other Explanation: None.

PUBLIC PROTECTION CABINET Department of Charitable Gaming (Amendment)

820 KAR 1:050. Raffles[~~Raffle standards~~].

RELATES TO: KRS 238.545[(3)], 238.550[(5)]

STATUTORY AUTHORITY: KRS 238.515[(2), (4), (9)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515[(2)] authorizes the Department of Charitable Gaming to establish and enforce reasonable standards for the conduct of charitable gaming and [KRS 238.515(9) authorizes the department] to promulgate administrative regulations necessary to implement KRS Chapter 238. This administrative regulation establishes standards [for the construction and distribution of raffle materials and] for the conduct of raffles.

Section 1. Raffle Ticket Construction. (1) Raffles may be conducted either with paper tickets or electronic tickets.

(2) Raffle tickets shall have a detachable section or duplicate ticket and shall be consecutively numbered.

(3) The detachable section or duplicate of the ticket shall bear a duplicate number corresponding to the number on the ticket and shall provide space for the purchaser's name, complete address, and telephone number.

(4) The following information shall be on each ticket:

(a) The date and time for each drawing;

(b) The location of each drawing;

(c) The name of the charitable organization conducting the raffle;

(d) The charitable organization's license number or exemption number;

(e) The price of the ticket; and

(f) Each prize to be awarded with a fair market value over five hundred (500) dollars.

(5) The requirements of subsections (3) and (4) of this section shall be waived if:

(a) The raffle tickets sell for five (5) dollars or less, or

(b) The raffle sales are initiated and concluded and all winners are selected at a licensed charity fundraising event or a licensed special limited charity fundraising event.

Section 2. Raffle Prizes. (1) A charitable organization conducting a raffle in which real or personal property prizes are to be awarded shall be responsible for the transfer and delivery of the prize without lien or interest of others.

(2) All raffle prizes shall be awarded as indicated on the raffle ticket unless the event at which the raffle was to be conducted is postponed. If the raffle is postponed, all reasonable efforts shall be made to notify ticket holders of the new drawing date.

(3) If the prize to be awarded is the jackpot of a progressive raffle board, the charitable organization's charitable gaming session records shall report in the gross receipts total all startup cash, monies derived from raffle ticket sales, and any other contribution to the jackpot.

Section 3. Conduct of Raffles. (1) Any person holding a raffle ticket shall be permitted to observe the raffle drawing.

(2) A person shall not be required to be present at a raffle drawing in order to be eligible for the prize drawing.

(3) Each ticket seller shall return to the charitable organization the stubs or other detachable sections or duplicates of all tickets sold prior to the drawing.

(4) Raffles may not be conducted with both paper and electronic tickets in the same raffle.

(5) Before drawing, the charitable organization shall place the seller's portion of each ticket sold into a receptacle from which the winning tickets are to be drawn. The receptacle shall be designed so that each ticket placed in it has an equal chance to be drawn.

Section 4. Random Number Generator Requirements. (1) Random number generators shall not be sold, leased, or otherwise furnished to a charitable organization for use in the conduct of

raffles until an identical sample device containing identical proprietary software has been certified by an independent testing facility that upholds the standards of integrity established by the department. The cost of testing shall be borne by the manufacturer of such equipment.

(2) The random number generator shall conform, at a minimum, to the requirements and restrictions set forth in KRS 238.505 and KRS 238.545.

(3) A random number generator used in the conduct of raffles shall produce output that is statistically random.

(4) A random number generator used in the conduct of raffles shall produce output that is unpredictable.

(5) A random number generator used in the conduct of raffles shall produce output that is nonrepeating. A random number generator shall not be initialized to reproduce the same output stream that it has produced before, nor shall any two instances of a random number generator produce the same stream as each other.

(6) A random number generator used in the conduct of raffles that provides output scaled to given ranges shall be capable of producing every possible outcome of a game according to its rules, and use an unbiased algorithm.

(7) If the department determines that a defect actually exists, and it affects game's security or otherwise threatens public confidence in the game, the department may require the manufacturer to issue a total recall of all affected random number generators.

Section 5. Claiming Raffle Prizes. (1) If the winner is not present at the drawing, the charitable organization shall notify the winner within seven (7) days of the drawing that the winner shall claim the prize within thirty (30) days.

(2) If a winner does not wish to claim the prize but wishes to donate it to the charitable organization, the charitable organization shall obtain a written statement of the winner's intention within the thirty (30) day period. A charitable organization shall not accept the donation to the charitable organization of a prize won if doing so would violate KRS 238.540.

(3) If a raffle winner does not claim the prize or donate it to the charitable organization within thirty (30) days after having been contacted by certified mail, or if the raffle winner is ineligible by law to claim the prize, the charitable organization shall notify the department and draw another ticket in the presence of department personnel.

(4) The requirements of subsections (1), (2), and (3) of this section shall be waived, and the charitable organization shall be allowed to draw tickets until a winner is present if:

(a) The raffle tickets sell for five (5) dollars or less;

(b) The raffle sales are initiated and concluded and all winners are selected at a licensed charity fundraising event; or

(c) The raffle sales are initiated and concluded and all winners are selected at a licensed special limited charity fundraising event.
[Raffle Ticket Construction. (1) Raffle tickets shall have a detachable section or duplicate ticket and shall be consecutively numbered.

(2) The detachable section or duplicate of the ticket shall bear a duplicate number corresponding to the number on the ticket and shall provide space for the purchaser's name, complete address, and telephone number.

(3) The following information shall be printed on each ticket:

(a) The date and time for each drawing;

(b) The location of each drawing;

(c) The name of the charitable organization conducting the raffle;

(d) The charitable organization's license number or exemption number, if any;

(e) The price of the ticket; and

(f) Each prize to be awarded with a fair market value over \$500.

(4) The requirements of subsections (2) and (3) of this section shall be waived if:

(a) The raffle tickets sell for one (1) dollar or less;

(b) The raffle sales are initiated and concluded and all winners

are selected at a special charity fundraising event; or

(c) The raffle sales are initiated and concluded and all winners are selected at licensed special limited charity games.

Section 2. Raffle Prizes. (1) A charitable organization conducting a raffle in which real or personal property prizes are to be awarded shall be responsible for the transfer and delivery of the prize without lien or interest of others.

(2) All raffle prizes shall be awarded as indicated on the raffle ticket unless the event at which the raffle was to be conducted is postponed. If the raffle is postponed, all reasonable efforts shall be made to notify ticket holders of the new drawing date.

Section 3. Conduct of Raffles. (1) Any person holding a raffle ticket shall be permitted to observe the raffle drawing.

(2) A person shall not be required to be present at a raffle drawing in order to be eligible for the prize drawing.

(3) Each ticket seller shall return to the charitable organization the stubs or other detachable sections or duplicates of all tickets sold prior to the drawing, and all tickets that were not sold. If all sold tickets are not returned or accounted for, the organization shall not conduct the raffle and shall refund all raffle ticket purchases.

(4) Before drawing, the charitable organization shall place each stub or other detachable section or duplicate of each ticket sold into a receptacle from which the winning tickets are to be drawn. The receptacle shall be designed so that each ticket placed in it has an equal chance to be drawn.

(5) If the winner is not present at the drawing, the organization shall notify the winner by certified mail within seven (7) days of the drawing that the winner shall claim the prize within thirty (30) days.

(6) If a winner does not wish to claim the prize but wishes to donate it to the organization, the winner shall provide the organization a written statement within the thirty (30) day period stating that the winner wishes to donate the prize to the organization. A prize winner shall not donate the prize back to the organization if to do so would violate KRS 238.540(7).

(7) If a raffle winner does not claim the prize or donate it to the organization within thirty (30) days after having been contacted, the organization shall notify the Department of Charitable Gaming and draw another ticket in the presence of department personnel.

(8) The requirements of subsections (5), (6), and (7) of this section shall be waived, and the organization shall be allowed to draw tickets until a winner is present if:

(a) The raffle tickets sell for one (1) dollar or less;

(b) The raffle sales are initiated and concluded and all winners are selected at a licensed charity fundraising event; or

(c) The raffle sales are initiated and concluded and all winners are selected at a licensed special limited charity fundraising event.]

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

CANNON G. ARMSTRONG, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2018, at 11:00 a.m., at the Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written

comments shall be accepted if received at or before 11:59 p.m. on June 30, 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: Doug Hardin, Deputy Commissioner, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625, email Doug.Hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for the construction and distribution of raffle materials and for the conduct of raffles.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the standards for the construction and distribution of raffle materials and for the conduct of raffles.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 238.522, the Charitable Gaming Advisory Commission reviewed this regulation at the Commission's second quarter meeting on May 2, 2018. No written comments were received from the Commissioners. KRS 238.515 authorizes the department to promulgate administrative regulations to carry out and implement KRS Chapter 238. This administrative regulation establishes the standards for the construction and distribution of raffle materials and for the conduct of raffles for use in charitable gaming.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide for one comprehensive regulation governing use of raffles in the conduct of charitable gaming. The revisions made to this regulation now allow for raffle winners to be selected by random number generator.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment eliminates the requirement that any unsold raffle tickets be returned to the charitable organization prior to the drawing and sets out a process in the event a raffle winner is ineligible by law to claim a prize. It also removes the requirement that the organization cancel the raffle and refund raffle ticket purchases if all sold tickets are not returned or accounted for. The revisions made to this regulation now allow for raffle winners to be selected by random number generator.

(b) The necessity of the amendment to this administrative regulation: Charitable organizations experience difficulty getting individuals to return sold and unsold tickets when conducting a raffle. The amendment eliminates the harsh consequence to the organization of having to cancel a raffle when someone selling tickets does not cooperate by returning sold or unsold tickets. The revisions made to this regulation now allow for raffle winners to be selected by random number generator.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 238.515(9) authorizes the department to promulgate administrative regulations in accordance with KRS Chapter 13A which are necessary to carry out the purposes and intent of KRS Chapter 238. These amendments set forth the standards governing the use of raffles in the conduct of charitable gaming.

(d) How the amendment will assist in the effective administration of the statutes: The amendment permits charitable organizations to conduct raffles when sellers of raffle tickets fail to return sold or unsold tickets. The revisions made to this regulation now allow for raffle winners to be selected by random number generator.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Charitable Gaming and its employees are affected by this administrative regulation.

New applicants who may apply as a result of the passage of House Bill 164 will also be affected by this administrative regulation amendment. In addition, the licensees and exempt organizations will be affected by this administrative regulation. As of March 2018, the Department of Charitable Gaming regulated over 1,400 charitable gaming entities that will be affected by this administrative regulation, as follows:

- Over 600 charitable gaming organizations;
- Over 800 exempt charitable gaming organizations;
- Twenty-four (24) manufacturers of charitable gaming supplies;
- Twenty-three (23) distributors of charitable gaming supplies;
- and
- Thirty-four (34) charitable gaming facilities.

(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 questions (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question 3 will have to conform to the requirements of this regulation, which establishes the standards for the construction and distribution of raffle materials and for the conduct of raffles.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to 820 KAR 1:050 will impose no new costs on charitable organizations. Manufacturers of random number generator software may incur additional costs for testing and approval of equipment before it may be leased or sold in the Commonwealth.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Charitable organizations will benefit from being able to conduct raffles as planned as opposed to having to cancel raffles when there are unsold tickets. The revisions made to this regulation now allow for raffle winners to be selected by random number generator. Manufacturers and distributors will be able to sell or lease the equipment, and charitable organizations will benefit from another method of charitable gaming.

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

(a) Initially: There will be no additional cost to implement this administrative regulation initially.

(b) On a continuing basis: There will be no additional cost 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 additional funding necessary to implement this amendment to the administrative regulation.

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

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

(9) TIERING: Is tiering applied? No, tiering is not applied because the standards set forth in this administrative regulation apply equally to all licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming is the agency responsible for implementing this regulation. Local fire departments and school districts that offer raffles for charitable gaming 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 238.515(2) and (9).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is not intended to generate revenue for any state or local government 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 administrative regulation is not intended to generate revenue for any state or local government agency.

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

(d) How much will it cost to administer this program for subsequent years? There is no additional cost 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 (+/-): See Other Explanation below.

Expenditures (+/-): No impact.

Other Explanation: The amendment permits charitable organizations to conduct scheduled raffles when sold or unsold tickets are not accounted for, through no fault of their own. The revisions made to this regulation also allow for raffle winners to be selected by random number generator. Charitable organizations may see an increase in revenue because of these revisions.

**PUBLIC PROTECTION CABINET
Department of Charitable Gaming
(Amendment)**

820 KAR 1:055. Charity fundraising event standards.

RELATES TO: KRS 238.505, 238.515[(2), (4), (9)], 238.535, 238.545, 238.547

STATUTORY AUTHORITY: KRS 238.515[(2), (4), (9)], 238.545[(4)]

NECESSITY, FUNCTION, AND CONFORMITY: The Department of Charitable Gaming is authorized by KRS 238.515[(2)] to establish and enforce reasonable standards for the conduct of charitable gaming. [KRS 238.545(4) requires a license in order to conduct a charity fundraising event.] This administrative regulation establishes standards, fees, and procedures for the conduct of charity fundraising events and special limited charity fundraising events.

Section 1. Charitable Fundraising Event Licensing and Standards. [Issuance of License] (1) At least thirty (30) days prior to the scheduled date for a charity fundraising event, a licensed charitable[An] organization shall submit a complete and[.] accurate[, and verifiable] application on Form CG-Schedule A, Charity Fundraising Event or Special Limited Charity Fundraising Event License Application[, for a charity fundraising event at least thirty (30) days prior to the scheduled date for the charity fundraising event].

(2) Each application for licensure under this administrative regulation shall be accompanied by:

(a) A twenty-five (25) dollar fee; and

(b) A copy of the executed lease for the charitable gaming facility, if applicable[A processing fee of twenty-five (25) dollars shall accompany each application for licensure].

(3) [When the application is filed, the organization shall provide the department with a copy of the executed lease, if applicable.]

(4) All information requested by the department shall be submitted and reviewed before a license may be granted.

(5) The department shall issue a license if the applicant:

(a) possesses a regular charitable gaming license; and

(b) has met the requirements for licensure set forth in KRS 238.505[(8) and 238.545(4)].

(4)[(6)] The event shall not be advertised nor preregistrations taken until a license is issued.

(5)[(7)] Once a license is issued, players may preregister for the event prior to the day of the event only if payment is received by the charitable organization[credit card, check, or electronic fund transfer].

(6)[(8)] [Pursuant to its discretion under KRS 238.505(8), the department has determined that] Charity[charity] game tickets [or pulltabs] shall not be an approved game of chance at a charity fundraising event held by an exempt charitable organization.

Section 2. Special Limited Games Played at a Charity Fundraising Event. The department shall grant approval to play special limited games at a charity fundraising event if the information contained in the application shows[and the totality of the circumstances show] that the event meets the requirements of KRS 238.545[(4)(d)].

Section 3. Volunteers. (1) All individuals involved in the conduct of a charity fundraising event or a special limited charity fundraising event shall be trained in the proper conduct of the game and the control of funds.

(2) The chairperson shall:

(a) Be in charge of the charity fundraising event or special limited charity fundraising event[licensed gaming occasion];

(b) Supervise and direct all volunteers; and

(c) Be responsible for assuring the proper receipt and recording of gaming funds.

Section 4. Equipment Used for Events. (1) Poker tables, blackjack tables, prize wheels, and chips, scrip, or imitation money shall not be considered charitable gaming supplies or equipment and may be purchased from ordinary sources of supply. The licensed charitable organization shall not pay for poker tables, blackjack tables, prize wheels or chips, scrip, or imitation money from the charitable gaming account.

(2) Roulette wheels and craps tables shall be considered charitable gaming supplies and shall be obtained from a licensed distributor. The licensed charitable organization shall pay for roulette wheels and craps tables from the charitable gaming account.

(3) If special limited charity games are played, the licensed charitable organization shall provide the department with a copy of the executed contract for the use of those supplies no later than thirty (30) days following the event. This contract shall specify exactly the items provided, at what cost, and from whom.

Section 5. Expenses. (1) The licensed charitable organization shall pay the gaming expenses for the charity fundraising event or special limited charity fundraising event from the gaming account. All other expenses shall be paid from the general account.

(2) If an expense is both a gaming expense and a general expense, the expense shall be prorated pursuant to the amount of gross receipts obtained from gaming and nongaming events. The full amount shall be paid from the general account and the amount attributable to gaming shall be reimbursed from the gaming account to the general account.

(3) Food, beverages, and other items provided to participants without additional payment at an event where only gaming activity takes place shall be considered a promotional expense, if all participants are equally eligible.

Section 6. Special Limited Charity Fundraising Event Licensing and Standards. (1) A licensed charitable organization shall submit a complete, accurate, and documented application on Form CG-Schedule A, Charity Fundraising Event or Special Limited Charity Fundraising Event License Application, for a special limited charity fundraising event, at least thirty (30) days prior to the scheduled date for the event.

(2) A fee of twenty-five (25) dollars shall accompany each

application for licensure under this administrative regulation.

(3) When the application is filed, the licensed charitable organization shall provide the department with a copy of the executed lease for a licensed gaming facility, if applicable.

(4) The department shall issue a license, if the applicant possesses a regular charitable gaming license and has met the requirements for licensure set forth in KRS 238.505.

(5) The event shall not be advertised nor preregistrations taken until a license is issued.

(6) Once a license is issued, players may preregister for the event prior to the day of the event only if payment is received by the licensed charitable organization.

(7) A central bank shall be maintained in accordance with KRS 238.547.

(8) For all games that require a central bank to be used:

(a) The amount of money received for selling chips, scrip, or imitation money shall be the gross receipts:

(b) All chips, scrip, or imitation money redeemed shall be the payouts; and

(c) All money remaining shall be the adjusted gross receipts.

(9) Games requiring a predetermined amount of chips, scrip, or imitation money shall be pre-counted. Accurate records shall be kept of all chips, scrip, or imitation money sales, whether the sale is an initial entry fee or a later purchase of chips, scrip, or imitation money.

(10) If the special limited charity games are played as a tournament, then:

(a) A record of attendance shall be kept for the special limited charity games; and

(b) The cost to enter, the cost of the buy backs, the cost of the add ons, the rules of the game, the manner for raising blinds or closing tables, and the prizes shall be listed on the gaming session program. The prizes may be listed as a percentage of the receipts.

Section 7[6]. Incorporation by Reference. The following items are incorporated by reference:

(1) Form CG-Schedule A, "Charity Fundraising Event or Special Limited Charity Fundraising Event License Application (2018)", [5/45] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

CANNON G. ARMSTRONG, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2018, at 11:00 a.m., at the Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 p.m. on June 30, 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: Doug Hardin, Deputy Commissioner,

Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625, email Doug.Hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for conducting charity fundraising events in Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to establish reasonable standards for the conduct of charity fundraising events in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 238.522, the Charitable Gaming Advisory Commission reviewed this regulation at the Commission's second quarter meeting on May 2, 2018. No written comments were received from the Commissioners. KRS 238.515(9) authorizes the department to promulgate administrative regulations in order to carry out and implement KRS Chapter 238. KRS 238.515(2) grants the department the power to establish and enforce reasonable standards for the conduct of charitable gaming.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Department of Charitable Gaming is charged with the responsibility of licensing and regulating charitable gaming in Kentucky. This regulation establishes reasonable standards for the conduct of charity fundraising events 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 proposed amendment combines into one regulation the standards for conducting a charity fundraising event, 820 KAR 1:055, and a special limited charity fundraising event, 820 KAR 1:056. The amendment makes the regulation more convenient for those involved in charity fundraising by locating standards in one place. 820 KAR 1:056 has been enumerated in the repealer regulation filed by the Department of Charitable Gaming.

(b) The necessity of the amendment to this administrative regulation: The proposed amendment combines into one regulation the standards for conducting a charity fundraising event and a special limited charity fundraising event thus making the regulation more user-friendly by locating these standards together.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 238.515(9) authorizes the department to promulgate administrative regulations in accordance with KRS Chapter 13A which are necessary to carry out the purposes and intent of KRS Chapter 238. KRS 238.515(2) authorizes the department to establish reasonable standards for the conduct of charitable gaming. These amendments establish the standards for conducting charity fundraising events in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: KRS 238.515 requires the Department to regulate the conduct of charitable gaming, and authorizes the department to establish charitable gaming standards. The proposed amendment combines into one regulation the standards for conducting a charity fundraising event and a special limited charity fundraising event.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Charitable Gaming and its employees are affected by this administrative regulation. In addition, the licensees and exempt organizations will be affected by this administrative regulation. As of March 2018, the Department of Charitable Gaming regulated over 1,400 charitable gaming entities that will be affected by this administrative regulation, as follows:

Over 600 charitable gaming organizations;

Over 800 exempt charitable gaming organizations;

Twenty-four (24) manufacturers of charitable gaming supplies;

Twenty-three (23) distributors of charitable gaming supplies;

and

Thirty-four (34) charitable gaming facilities.

(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 questions (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question 3 will have to conform to the requirements of this regulation to hold charitable fundraising events.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost for compliance with the regulation for licensed charitable organizations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proposed amendment combines into one regulation the standards for conducting a charity fundraising event and a special limited charity fundraising event, so that the regulation is more user-friendly since these standards are in one section of charitable gaming requirements.

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

(a) Initially: There will be no additional cost to implement this administrative regulation initially.

(b) On a continuing basis: There will be no additional cost 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 additional funding necessary to implement this amendment to the administrative regulation.

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

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

(9) TIERING: Is tiering applied? No, tiering is not applied because the standards for offering the referenced events must apply equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming is the agency responsible for implementing this regulation. Local fire departments and school districts wanting to offer charitable fundraising events for charitable gaming 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 238.515(2) and (9).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue for local government. This administrative regulation generates \$25 per application fee for Charitable Fundraising event. In 2016, the department licensed 215 such events, resulting in approximately \$5,375 in revenue for the state government. The exact amount of revenue to the state for the first year after this amendment will depend upon the number of Charitable Fundraising events that seek licensure.

(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 does not generate revenue for local government. This administrative regulation generates \$25 per application fee for Charitable Fundraising event. In 2016, the department licensed 215 such events, resulting in approximately \$5,375 in revenue for the state government. The exact amount of revenue to the state for subsequent years after this amendment will depend upon the number of Charitable Fundraising events that seek licensure each year.

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

(d) How much will it cost to administer this program for subsequent years? There is no additional cost to administer this amendment to the 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 (+/-): No impact.

Expenditures (+/-): No impact.

Other Explanation: None.

PUBLIC PROTECTION CABINET Department of Charitable Gaming (Amendment)

820 KAR 1:057. Recordkeeping[Accurate records].

RELATES TO: KRS 238.536, 238.550[(5)], 238.560[(2)]

STATUTORY AUTHORITY: KRS 238.515[(4),—(9)], 238.550[(3)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515[(4)] and 238.550[(5)] authorize the Department of Charitable Gaming[department] to establish and enforce standards of[for] accounting, recordkeeping, and reporting to the department to ensure charitable gaming receipts are properly accounted for[accounted—and—reported]. This administrative regulation establishes the minimum requirements for accounting, recordkeeping, and reporting to the department and establishes allowable charitable gaming expenses[accurate records].

Section 1. Bank Account and Records. (1) A charitable[A licensed charitable gaming] organization shall maintain a single bank account for charitable gaming receipts. This account shall be separate from any other account maintained by the charitable organization.

(2) Disbursements for charitable gaming expenses and charitable donations shall be made by check or electronic fund transfer directly from the charitable gaming account.

(3) All receipts and donations from each charitable gaming session[occasion] shall be deposited by the second business day following the charitable gaming session[occasion] at which they were received. The deposit for each charitable gaming session[occasion] shall be made separately and shall not be combined with the deposit from any other charitable gaming session[occasion].

(4) All types of deposits, including startup cash, returned[bad] checks collected and check collection fees, progressive game carry forward, cash prizes not awarded, and adjusted gross receipts, shall be listed separately on the deposit reconciliation sheet[—] and the deposit slip[—if possible]. Each individual check shall be listed separately on the deposit slip. If a register tape is run listing the amounts of the individual checks, it may be attached to the deposit slip. Total cash and coins shall be listed separately. The charitable organization shall keep a copy of the deposit slip.

(5) Checks that have been returned for insufficient funds that have not been collected shall be retained by the charitable organization for three (3) years following the close of the calendar year in which the check was issued. If the check has been turned over[to someone else] for collection, the charitable organization shall retain[keep] a copy of the check with contact information for[regarding] the person or entity collecting the check.

(6) Monthly bank statements and reconciliations for all

accounts shall be maintained by the charitable organization for three (3) years following the close of a calendar year.

(7) ~~Bank image copies of the fronts and backs of checks from any account into which charitable gaming funds are deposited or transferred shall be made available to the department upon request.~~ Copies of the fronts and backs of checks from any account into which charitable gaming funds are deposited or transferred shall be provided to the department upon request.

(8) Gross receipts shall include the money received from the sale of raffle tickets, bingo cards or faces, pickle jars, bonanza balls, ~~hot balls~~, card-minding devices, pulltabs, electronic pulltab devices and electronic pulltabs, charity fundraising event games, special limited charity fundraising event games, ~~returned~~ bad check collections, credit card fees collected by a charitable organization at a charitable gaming session, and ~~any~~ reasonable check collection fees minus ~~returned~~ bad checks.

Section 2. Start-up Cash. (1) If the source of start-up cash is not the charitable gaming account, the source of the start-up cash shall be identified on the charitable gaming session ~~session~~ sheet and signed by the chairperson of the charitable organization.

(2) Start-up cash from one (1) charitable organization shall not be commingled with the start-up cash from another charitable organization. The start-up cash shall be identified on the check withdrawing the funds and on the deposit slip ~~if possible~~.

Section 3. Charitable Organization Records. (1) The chief financial officer shall be the custodian of the gaming records and shall be responsible for ensuring that the records are accurate, complete, and maintained regularly for inspection by the department.

(2) A charitable ~~an~~ organization that hand-writes data and later enters the information onto another form or computer program shall retain the hand-written records along with the other form or computer generated record.

(3) Charitable organizations shall prepare and maintain accurate and adequate corporate or other organizational records, such as ~~including~~ articles of incorporation, minutes of board of directors meetings, and resolutions.

(4) Charitable organizations shall maintain detailed records of all expenditures made in furtherance of its charitable purpose, including all charitable contributions.

(5) All records shall be made available for inspection and audit at the request of the department.

(6) Charitable organization's records, or copies of those records, deemed necessary to complete an inspection, audit, or investigation may be obtained ~~retained~~ by the department ~~or its employees or agents~~. The department shall provide a written receipt of the records at the time of taking possession ~~removal~~.

(7) Charitable organizations shall provide records requested by the department ~~or any of its employees~~ within ten (10) calendar days, unless a longer response time is granted ~~allowed by the request~~. ~~(8) An organization shall perform an inventory and obtain permission of the department before destroying a bulk amount of gaming supplies. The gaming supplies shall be destroyed by burning in compliance with state and federal law, shredding, destroying or defacing in some manner to prevent reuse of any pulltab, flare, prize board, seal card, bingo paper or any portion thereof. An organization may also donate gaming supplies to the department for demonstration and training purposes if the department so requests.~~

(9) When an organization ceases to game, the organization shall:

(a) Perform a final inventory;

(b) 1. Return all unused product to a distributor;

2. Donate the product to another organization with the permission of the department or, if another organization does not want the gaming supplies, they may be donated to the department, upon request, for training and demonstration purposes; or

3. Destroy the product with the permission of the department; and

(c) Spend or disburse the charitable gaming funds consistent with its charitable purpose.]

Section 4. Charitable Gaming Session Records. (1) Each charitable organization shall prepare and maintain records for each charitable gaming session. The charitable gaming session records shall be prepared or completed by a volunteer or chairperson of the charitable organization. The charitable gaming session records shall not be completed by an independently compensated bookkeeper.

(2) Gaming proceeds shall be counted by an officer or a chairperson of the charitable organization and the count shall be verified. A count may be verified by a volunteer.

(3) A charitable gaming session record shall contain:

(a) The date of the charitable gaming session;

(b) The name and license number of the charitable organization conducting the charitable gaming session;

(c) The name and address of the donor of every donated prize with a fair market value in excess of \$500; and

(d) A deposit reconciliation worksheet which records:

1. All currency, coins, checks, and credit card receipts available for deposit;

2. All profit or loss from each gaming activity, all start-up cash, all cash from incomplete pulltab sales, any progressive game carry forward, returned checks collected and check collection fees, and all other gaming receipts that should be available for deposit;

3. Any variance between the amount of currency, coins, checks, and credit card receipts actually available for deposit, and the amount that should be available for deposit according to the charitable gaming session records;

4. The amount of donations received at the charitable gaming session which will be deposited into the general account;

5. The printed name and signature of the chairperson in charge of the charitable gaming session;

6. The printed name and signature of the person taking the deposit from the charitable gaming session;

7. The printed name and signature of the person making the deposit, if different from the person taking the deposit; and

8. The printed name and signature of the person in possession of the start-up cash, and the amount and source of the start-up cash.

(4) If a charitable organization offers coupons for bingo paper or a card-minding device, a voucher shall be completed when the coupon is redeemed, and the coupon and the voucher shall be retained with the charitable gaming session records.

(5) If a charitable organization offers coupons for pulltabs or electronic pulltab devices, the type and number of pulltabs, electronic pulltab devices, and credits loaded on each device, if any, given away shall be recorded on the charitable gaming session records and on CG-FIN Attachment C and D. The coupon shall be retained with the charitable gaming session records.

(6) If the charitable organization sells gift certificates for bingo paper or a card-minding device, the receipts for the sale shall be counted as gaming receipts on the day they are received. When the gift certificate is redeemed, a voucher shall be completed and the gift certificate and the voucher shall be retained with the charitable gaming session records.

(7) If the charitable organization sells gift certificates for pulltabs or electronic pulltab devices, the receipts for the sale shall be counted as gaming receipts on the day they are received. When the gift certificate is redeemed, the type and number of pulltabs, electronic pulltab devices, and credits loaded on each device, if any, given away shall be recorded on the charitable gaming session records and on CG-FIN Attachment C and D. The gift certificate shall be retained with the charitable gaming session records.

(8) If the charitable organization plays a paper pulltab game which contributes in whole or in part to a progressive raffle jackpot, the charitable organization shall report its deposits and receipts on Worksheet WS-06c, Worksheet WS-14b, and Worksheet WS-15a.

(9) All charitable gaming receipts and records shall be kept separate from noncharitable gaming receipts and records.

(10) All charitable gaming session records shall be retained by the charitable organization for a period of three (3) years. Charitable gaming session records shall be made available for

inspection and audit by the department upon request.

(11) Charitable organizations shall provide records requested by the department within ten (10) calendar days unless a longer response time is requested and granted by the department.

Section 5. Bingo Paper Sale Records. Bingo paper sale records shall contain the following information:

(1) Attendance determined by headcount of number of people playing bingo at a charitable gaming session;

(2) Each type of bingo paper being sold;

(3) The serial number of the set of each type of paper sold;

(4) The number of each type of bingo paper given away with the voucher being redeemed attached to the charitable gaming session records, if applicable;

(5) Number of each type of bingo paper destroyed;

(6) The number of each type of bingo paper sold;

(7) The price of each type of bingo paper sold;

(8) The number of pickle jar, bonanza ball, or hot ball games sold;

(9) The price of pickle jar, bonanza ball, or hot ball games and whether the price is per person or per pack;

(10) The number of player pick bingo games sold;

(11) The price of each player pick bingo game sold;

(12) The amount of money expected to be received from the sale of bingo paper, player pick, and pickle jar, bonanza ball, or hot ball for that charitable gaming session;

(13) The amount of money actually received from the sale of bingo paper, player pick, and pickle jar, bonanza ball, or hot ball for that charitable gaming session;

(14) The cash short or cash over from the sale of bingo paper, player pick, and pickle jar, bonanza ball, or hot ball for that charitable gaming session; and

(15) The sales report printed from the player pick machine that includes the number of games sold, price for each game, and the amount of money expected from the sale of player pick games for that charitable gaming session;

(16) Records of all carryover or cumulative bingo games played which shall contain the following information:

(a) The name of each progressive bingo game in play;

(b) The amount carried over from the previous charitable gaming session;

(c) The receipts from the current charitable gaming session;

(d) The amount paid out for the current charitable gaming session; and

(e) The amount carried forward to the next charitable gaming session;

(17) A copy of the charitable gaming session program, which shall include:

(a) The charitable organization name and license number;

(b) A specific description of all bingo products for sale and the price of each product; and

(c) All bingo games played and the payout and alternate payout, if any, for each game; and

(18) Form CG-Vol.

Section 6. Bingo Payout Records. (1) Bingo payout records shall contain the following information:

(a) A list of all bingo games that will be played at that charitable gaming session;

(b) Each pickle jar, bonanza ball, or hot ball game available to be awarded;

(c) The prize expected or available to be awarded for each bingo game and door prize;

(d) The prize that was actually awarded for each bingo game and door prize;

(e) A notation for the prize awarded for each bingo game and door prize, specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise, the cost of the merchandise and the fair market value of the merchandise;

(f) If a voucher was issued for card-minding devices or bingo paper, the fair market value of the card-minding devices or bingo paper;

(g) The total amount of all cash awarded for bingo prizes and door prizes;

(h) The total amount of all checks issued as bingo prizes and door prizes;

(i) The total cost and fair market value of all merchandise awarded for bingo prizes and door prizes;

(j) A grand total of cash, checks, and fair market value of merchandise awarded for bingo prizes and door prizes, which shall not exceed \$5,000; and

(k) If a check from the charitable organization's charitable gaming account was issued as a prize instead of cash, the number of the check.

(2) If a paper pulltab or electronic pulltab device is awarded as a bingo prize, door prize, and/or promotional item, the person in charge of bingo payouts shall purchase the pulltabs or electronic pulltab device and any credits loaded on the device from the pulltab manager by transfer of cash from bingo payout to pulltab sales. It shall be recorded as a cash payout on the bingo payout session record, and it shall be included as a gross receipt on the charitable gaming session's pulltab record and on CG-FIN Attachment C and D.

Section 7. Card-minding Device Records. Card-minding device records shall contain the following information:

(1) The type of programs loaded, including the number of faces;

(2) The number of units rented for each type of program;

(3) The number of each type of card-minding device rental given away, with the redeemed voucher attached to the charitable gaming session records;

(4) The number of units voided for each type of program;

(5) The price per unit for each type of program;

(6) The amount of money expected to be received from the rental of card-minding devices;

(7) The actual amount of money received from the rental of card-minding devices for that charitable gaming session;

(8) The cash short or cash over from the rental of card-minding devices for that charitable gaming session;

(9) A total sales activity report completed on Form CG-FIN;

(10) A copy of the charitable gaming session program, which shall include:

(a) The charitable organization name and license number;

(b) A specific description of all bingo products for sale and the price of each product;

(c) All bingo games played and the payout and alternate payout, if any, for each game; and

(11) Form CG-Vol.

Section 8. Pulltab Records. (1) Pulltab records shall contain the following information for each charitable gaming session:

(a) The name, serial number, and form number of all games played;

(b) The name of all progressive jackpot games in play during that charitable gaming session;

(c) The ticket count for each pulltab game sold;

(d) The price for each ticket;

(e) The prize expected or available to be awarded for each pulltab game, including the progressive jackpot games;

(f) If a pulltab is awarded as a pulltab prize, the information required by subsection (2) of this section.

(g) The prize that was actually awarded for each pulltab game, including the progressive jackpot games;

(h) A notation for the prize awarded for each pulltab game specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost;

(i) If a pulltab game was played in conjunction with a progressive jackpot game, as designed by the manufacturer, the amount contributed to the progressive jackpot;

(j) The cash short or cash over for each charitable gaming session with pulltabs;

(k) The total amount of all cash awarded for pulltab prizes;

(l) The total amount of all checks issued as pulltab prizes;

(m) The total cost of all merchandise awarded for pulltab

prizes:

(n) If a check from the charitable organization's charitable gaming account was issued as a pulltab prize instead of cash, the number of the check;

(o) The total amount of money from any incomplete sale of pulltab games;

(p) Records of any progressive pulltab games sold which shall contain the following information:

1. The name of each progressive pulltab jackpot game in play;

2. The amount carried over from the previous charitable gaming session;

3. The receipts from the current charitable gaming session;

4. The amount paid out for the current charitable gaming session;

5. The amount carried forward to the next charitable gaming session;

6. The serial number of all games that contributed to the prize pool; and

(q) Form CG-Vol.

(2) If a pulltab is awarded as a pulltab prize, the person in charge of pulltab payouts shall purchase the pulltabs from the deal being awarded as the prize by transfer of cash from the deal being sold to the deal being awarded as the prize. It shall be recorded as a cash payout for the deal being sold and it shall be included as a gross receipt for the deal being awarded as a pulltab prize and on CG-FIN Attachment C and D.

Section 9. Electronic Pulltab Device Records. Electronic pulltab device records shall contain the following information:

(1) The name, serial number, and form number of all electronic pulltab games played;

(2) The ticket count for each electronic pulltab game sold;

(3) The price for each electronic pulltab ticket sold;

(4) The name of all electronic progressive jackpot games in play during that charitable gaming session;

(5) The prize expected or available to be awarded for each electronic pulltab game;

(6) The amount of money expected to be received from the sale of electronic pulltab devices and electronic pulltabs at a charitable gaming session;

(7) The actual amount of money received from the sale of electronic pulltab devices and electronic pulltabs at a charitable gaming session;

(8) The cash short or cash over from the sale of electronic pulltab devices and electronic pulltabs at a charitable gaming session;

(9) The electronic pulltab receipts and payouts report, Form CG-EPRP;

(10) All information required under Section 5 of this administrative regulation; and

(11) Form CG-Vol.

Section 10. Raffle Records. (1) If the raffle tickets sell for \$100 or more, the raffle records shall contain the following information:

(a) The number of raffle tickets printed;

(b) The sales price for each ticket;

(c) The date raffle ticket sales began;

(d) The date the raffle drawing was held;

(e) A voided raffle ticket or copy of a raffle ticket;

(f) If tickets are given to volunteers to sell, a list of each volunteer's name with the total number of the tickets and ticket numbers given to them;

(g) The total amount of money collected for the raffle event;

(h) The total number of ticket stubs collected from the sale of all raffle tickets for the raffle event;

(i) The total amount of money that should have been collected based on the number of ticket stubs collected for the raffle event;

(j) Total cash short or cash over amount from raffle ticket sales for the raffle event;

(k) A list of all raffle prizes awarded;

(l) A notation for the prize awarded for each raffle specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost;

(m) The total amount of all cash awarded for raffle prizes;

(n) The total amount of all checks issued as raffle prizes;

(o) If a check from the charitable organization's charitable gaming account was issued as a prize instead of cash, the number of the check;

(p) Each winning ticket stub;

(q) All unsold tickets;

(r) A list of all raffle expenses including a copy of all invoices supporting each expense; and

(s) If the raffle is being conducted on a special event raffle license issued by the department pursuant to KRS 238.535(14)(b), the organization shall report its session record using Worksheet WS-23d, Worksheet-23e, and, when applicable, Worksheet, WS-23f.

(2) If the raffle tickets sell for fifty (50) dollars to \$100, the raffle records shall contain the following information:

(a) The number of raffle tickets printed;

(b) The sales price for each ticket;

(c) The date raffle ticket sales began;

(d) The date the raffle drawing was held;

(e) A voided raffle ticket or copy of a raffle ticket;

(f) If tickets are given to volunteers to sell, a list of each volunteer's name with the total number of the tickets and ticket numbers given to them;

(g) The total amount of money collected for the raffle event;

(h) The total number of ticket stubs collected from the sale of all raffle tickets for the raffle event;

(i) The total amount of money that should have been collected based on the number of ticket stubs collected for the raffle event;

(j) Total cash short or cash over amount from raffle ticket sales for the raffle event;

(k) A list of all raffle prizes awarded;

(l) A notation for the prize awarded for each raffle specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost;

(m) The total amount of all cash awarded for raffle prizes;

(n) The total amount of all checks issued as raffle prizes;

(o) If a check from the charitable organization's charitable gaming account was issued as a prize instead of cash, the number of the check;

(p) Each winning ticket stub;

(q) A list of all raffle expenses including a copy of all invoices supporting each expense; and

(r) If the raffle is being conducted on a special event raffle license issued by the department pursuant to KRS 238.535(14)(b), the organization shall report its session record using Worksheet WS-23c, Worksheet-23e, and, when applicable, Worksheet, WS-23f.

(3) If the raffle tickets sell for more than five (5) dollars but less than fifty (50) dollars, the raffle records shall contain the following information:

(a) The number of raffle tickets printed;

(b) The sales price for each ticket;

(c) The date raffle ticket sales began;

(d) The date the raffle drawing was held;

(e) A voided raffle ticket or copy of a raffle ticket;

(f) The total amount of money collected for the raffle event;

(g) The total number of ticket stubs collected from the sale of all raffle tickets for the raffle event;

(h) The total amount of money that should have been collected based on the number of ticket stubs collected for the raffle event;

(i) Total cash short or cash over amount from raffle ticket sales for the raffle event;

(j) A list of all raffle prizes awarded;

(k) A notation for the prize awarded for each raffle specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost;

(l) The total amount of all cash awarded for raffle prizes;

(m) The total amount of all checks issued as raffle prizes;

(n) If a check from the charitable organization's charitable gaming account was issued as a prize instead of cash, the number of the check;

(o) Each winning ticket stub;

(p) A list of all raffle expenses including a copy of all invoices supporting each expense; and

(q) If the raffle is being conducted on a special event raffle license issued by the department pursuant to KRS 238.535(14)(b), the organization shall report its session record using Worksheet WS-23b, Worksheet-23e, and, when applicable, Worksheet, WS-23f.

(4) If the raffle ticket sells for five (5) dollars or less, the raffle records shall contain the following information:

(a) The beginning and ending serial number or ticket number for each roll of tickets sold or the beginning and ending number of the tickets printed;

(b) The quantity of tickets sold;

(c) The sales price of the tickets;

(d) The date of the raffle;

(e) The total amount of money collected for the raffle event;

(f) The total amount of money that should have been collected based on the number of ticket stubs collected for the raffle event;

(g) Total cash short or cash over amount from raffle ticket sales for the raffle event;

(h) A list of all raffle prizes awarded;

(i) A notation for the prize awarded for each raffle specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost;

(j) The total amount of all cash awarded for raffle prizes;

(k) The total amount of all checks issued as raffle prizes;

(l) If a check from the charitable organization's charitable gaming account was issued as a prize instead of cash, the number of the check;

(m) Each winning ticket stub; and

(n) A list of all raffle expenses, including a copy of all invoices supporting each expense.

(o) Nothing in this subsection shall prohibit an organization from using preprinted tickets for raffle tickets that sell for five (5) dollars or less, but the organization shall maintain a session record that complies with Section 10(3) of this administrative regulation if it sells preprinted tickets for five (5) dollars or less.

(p) If the raffle is being conducted on a special event raffle license issued by the department pursuant to KRS 238.535(14)(b), the organization shall report its session record using Worksheet WS-23a, Worksheet-23e, and, when applicable, Worksheet, WS-23f.

Section 11. Charity Fundraising Event Records. (1) Charity fundraising event records shall contain the following information:

(a) The name of each game of chance played;

(b) The price to play each game of chance;

(c) The adjusted gross receipts from the sale of each game of chance;

(d) The grand total of adjusted gross receipts received from the play of all games of chance;

(e) The total amount of all checks issued for each game of chance prize and door prize;

(f) The total cost of all merchandise awarded for each type of game of chance prize and door prize;

(g) If a check from the charitable organization's charitable gaming account was issued as a prize instead of cash, the number of the check;

(h) If bingo games are conducted, accurate bingo paper sale records, card-minding device records, and bingo payout records;

(i) If pulltabs are sold, accurate pulltab records;

(j) If a raffle is conducted, accurate raffle records; and

(k) If the charity fundraising event continues for more than one (1) day, a summary of the required information for each day.

(2) Special limited game records for a charity fundraising event shall contain:

(a) The name of each game to be played;

(b) The adjusted gross receipts for each game for each day of the charity fundraising event; and

(c) A list of all merchandise prizes awarded and the cost.

Section 12. Special Limited Charity Fundraising Event Records. (1) Special limited charity fundraising event records shall contain the following information for special limited charitable gaming events:

(a) The name of each game played;

(b) The quantity of scrip, chips, or imitation money the central bank started with prior to any sales, and the corresponding cash amount associated with each denomination of scrip, chips, or imitation money;

(c) The quantity of scrip, chips, or imitation money the central bank sold during the special limited charity fundraising event;

(d) The amount of money received by the central bank from the sale of scrip, chips, or imitation money;

(e) Cash short or cash over from the sale of scrip, chips, or imitation money;

(f) The quantity of scrip, chips, or imitation money collected by the central bank and redeemed for prizes;

(g) Prizes awarded by the central bank;

(h) A notation for prizes awarded specifying whether each prize was cash, check, or merchandise, and if merchandise, a description of that merchandise and the cost.

(2) The amount of money corresponding to the scrip, chips, or imitation money collected by the central bank shall be compared to the sale of scrip, chips, or imitation money by the central bank at the conclusion of the special limited charity fundraising event. Any variance shall be documented and cash short or cash over shall be determined.

(3) For all tournaments played during special limited charity fundraising events, the special limited charity fundraising event records shall contain the following information in addition to the regular records required at special limited charity fundraising events:

(a) A record of attendance shall be kept for the special limited charitable games; and

(b) A copy of the charitable gaming session program, which shall include the:

1. Charitable organization name and license number;

2. Cost to enter, the cost of the buy backs, and the cost of the add ons;

3. Rules of the game;

4. Manner for raising blinds or closing tables; and

5. Prizes. The prizes may be listed as a percentage of the receipts.

(4) If bingo games are conducted, accurate bingo paper sale records, card-minding device records, and bingo payout records shall be maintained.

(5) If pulltabs are sold, accurate pulltab records shall be maintained.

(6) If raffles are conducted at a special limited charity fundraising event, accurate raffle records shall be maintained.

(7) The organization shall complete Form CG-Vol and keep it with the charitable gaming session record for that event.

Section 13. Other Allowable Expenses. In addition to those authorized expenses provided for in KRS 238.550, each of the following expenses is determined to be legitimate and shall be allowable charitable gaming expenses of a charitable organization:

(1) The following customary and usual banking fees or charges paid to any financial institution, check reader, or verification company in connection with a charitable organization's charitable gaming account and activities:

(a) Monthly service charges;

(b) Check verification service charges;

(c) Check printing charges;

(d) Charges relating to returned checks;

(e) Copying charges for bank records; and

(f) Credit card processing charges;

(2) Volunteer food, to be consumed on gaming premises, not to exceed fifteen (15) dollars per volunteer, per day;

(3) Any noncash item not to exceed fifty (50) dollars in fair market value given upon achieving a predetermined goal in a raffle;

(4) Clothing provided to volunteers as authorized in these administrative regulations;

(5) Payments made to the Department of Charitable Gaming;

(6) Printing costs incurred in connection with a charitable organization's charitable gaming activities;

(7) Payments for the purchase of prizes to be awarded during the charitable organization's conduct of charitable gaming;

(8) Promotional items:

(9) Federal excise taxes levied under 26 U.S.C. 4401 and 4411, or fees associated with the filing of Internal Revenue Service Form 11-C and paid by a charitable organization during the calendar year; and

(10) Customary and usual fees or charges incurred in the collection of checks dishonored for insufficient funds.

Section 14. Charitable Gaming Expense Categories. (1) The items that may be included as a utilities expense, pursuant to KRS 238.550(9)(c), shall be the money paid for electric, gas, water, sewer, telephone, and trash collection. It may also include any cable or internet expenses that are incurred by the charitable organization for credit card services, card-minding devices, or electronic pulltab systems.

(2) The items that may be included as an advertising expense, pursuant to KRS 238.550, shall be the expenses for a handout, flyer, radio, television, advertising sign, billboard, or other media used to promote an event or activity required to be licensed under KRS Chapter 238 and any printing costs associated with them.

(3) The items that may be included as a bookkeeping expense, pursuant to KRS 238.550, shall be the costs of completing the financial report, the federal excise tax form, and the federal gaming forms. Bookkeeping expenses shall not include expenses associated with handling charitable gaming funds, preparing charitable gaming session records, or ordering supplies.

(4) The items that may be included as security services, pursuant to KRS 238.550, shall be the expenses associated with paying a person whose sole duty is to promote and provide peace, order, and safety at a charitable gaming event which:

(a) May include patrolling the parking lot or accompanying the charitable organization's personnel to the bank or night depository with the charitable gaming receipts; and

(b) Shall not include costs for security or alarm systems or for special lighting for the building or parking lot.

Section 15. Raffle Recipient Account. (1) A licensed charitable organization receiving distributions from an organization licensed pursuant to KRS 238.535(14)(b) shall maintain a separate bank account which shall be referred to as the "raffle recipient account," in addition to the charitable gaming account and general account maintained by the licensed charitable organization. The raffle recipient account shall be for the sole purpose of receiving distributions from organizations licensed pursuant to KRS 238.535(14)(b) to hold special event raffles. The funds distributed into the raffle recipient account shall not be commingled with any other account maintained by the licensed charitable organization or any personal account or business account. If the license charitable organization receives distributions from more than one organization licensed pursuant to KRS 238.535(14)(b), the licensed charitable organization shall maintain a separate raffle recipient account for each relationship.

(2) Any distributions received by a licensed charitable organization from an organization licensed pursuant to KRS 238.535(14)(b) shall be by check drawn on the charitable gaming account or electronic fund transfer from the charitable gaming account from the organization licensed pursuant to KRS 238.535(14)(b). All distributions shall be made within five (5) days of the date that charitable gaming receipts are deposited into the charitable gaming account of the organization licensed pursuant to KRS 238.535(14)(b).

(3) Any expenditures from the raffle recipient account shall be directly to forward the charitable purpose of the licensed charitable organization. No other expenses shall be paid from the raffle recipient account. Distributions into the raffle recipient account shall not be transferred to any other account maintained by the licensed charitable organization or any other person or business.

Section 16. Incorporated by Reference. (1) Form CG-Vol, "Charitable Gaming Volunteer Sign Up Sheet (2018)", is incorporated by reference.

(2) Worksheet WS-06c, "Pulltabs Contributing to a Progressive Raffle Jackpot (2018)", is incorporated by reference.

(3) Worksheet WS-14b, "Progressive Raffle Receipts and Payouts with Pulltab Contributions to Jackpot (2018)", is incorporated by reference.

(4) Worksheet WS-15a, "Progressive Raffle with Pulltab Contribution to Jackpot Deposit Reconciliation (2018)", is incorporated by reference.

(5) Worksheet WS-23a, "Raffle Receipts and Payouts with a Ticket Price of \$5 or Less (2018)", is incorporated by reference.

(6) Worksheet WS-23b, "Raffle Receipts and Payouts with a Ticket Price of More than \$5, but Less than \$50 (2018)", is incorporated by reference.

(7) Worksheet WS-23c, "Raffle Receipts and Payouts with a Ticket Price of \$50 or More, but Less than \$100 (2018)", is incorporated by reference.

(8) Worksheet WS-23d, "Raffle Receipts and Payouts with a Ticket Price of \$100 or More (2018)", is incorporated by reference.

(9) Worksheet WS-23e, "501(c)(7) Raffle Deposit Reconciliation (2018)", is incorporated by reference.

(10) Worksheet WS-23f, "Deposit Accountability (When Charitable Gaming Receipts Are Deposited Before the Raffle Draw (2018)", is incorporated by reference.

(11) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601-3714, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

CANNON G. ARMSTRONG, Commissioner

DAVID A. DICKERSON, SECRETARY

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2018, at 11:00 a.m., at the Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 p.m. on June 30, 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: Doug Hardin, Deputy Commissioner, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625, email Doug.Hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes recordkeeping standards for charitable gaming in Kentucky pursuant to KRS Chapter 238. This administrative regulation also incorporates changes required by the passage of House Bill 164 in the 2018 Regulation Session.

(b) The necessity of this administrative regulation: This regulation is necessary for the Department of Charitable Gaming to establish recordkeeping standards pursuant to KRS Chapter 238 for charitable gaming in Kentucky. Additionally, House Bill 164 passed during the 2018 legislative session creates a new license type, and

this administrative regulation includes guidance regarding the raffle recipient account required by House Bill 164.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 238.522, the Charitable Gaming Advisory Commission reviewed this regulation at the Commission's second quarter meeting on May 2, 2018. No written comments were received from the Commissioners. KRS 238.515 authorizes the department to promulgate administrative regulations to carry out and implement KRS Chapter 238. This administrative regulation forth the standards for recordkeeping consistent with KRS Chapter 238.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes recordkeeping standards for charitable gaming in Kentucky pursuant to KRS 238.515(4).

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment combines into one regulation the requirements for charitable gaming recordkeeping in Kentucky pursuant to KRS Chapter 238. The substantive content of the following regulations are included in this regulation amendment as new sections: 820 KAR 1:058, Gaming occasion records, and 820 KAR 1:120, Allowable expenses. 820 KAR 1:058, Gaming occasion records, and 820 KAR 1:120, Allowable expenses, as individual regulations, are included in the repealer regulation filed by the Department of Charitable Gaming. This amendment will assist any person seeking to know and comply with recordkeeping requirements since they are now all in one regulation. Lastly, this administrative regulation incorporates changes required by the passage of House Bill 164 in the 2018 Regulation Session which included the creation of a new license type and maintenance of a separate raffle recipient account by certain organizations licensed by the Department.

(b) The necessity of the amendment to this administrative regulation: The proposed amendment combines into one regulation all regulations related to recordkeeping, to make the regulation more user-friendly.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 238.515(9) authorizes the department to promulgate administrative regulations in accordance with KRS Chapter 13A which are necessary to carry out the purposes and intent of Chapter 238. These amendments establish the recordkeeping standards for charitable gaming in Kentucky pursuant to KRS 238.515(4).

(d) How the amendment will assist in the effective administration of the statutes: KRS 238.515 requires the department to regulate the conduct of charitable gaming, and authorizes the department to establish charitable gaming standards. The proposed amendment combines into one regulation, 820 KAR 1:057, all regulations related to recordkeeping. It is anticipated that this change will assist those required to comply with recordkeeping rules.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Charitable Gaming and its employees are affected by this administrative regulation. New applicants who may apply as a result of the passage of House Bill 164 will also be affected by this administrative regulation amendment. In addition, the licensees and exempt organizations will be affected by this administrative regulation. As of March 2018, the Department of Charitable Gaming regulated over 1,400 charitable gaming entities that will be affected by this administrative regulation, as follows:

- Over 600 charitable gaming organizations;
- Over 800 exempt charitable gaming organizations;
- Twenty-four (24) manufacturers of charitable gaming supplies;
- Twenty-three (23) distributors of charitable gaming supplies; and
- Thirty-four (34) charitable gaming facilities.

(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

questions (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question 3 will have to conform to the requirements of this regulation for recordkeeping, including provision and maintenance of the referenced documents.

(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 increase costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment combines into one regulation the standards for recordkeeping for organizations, which should make compliance simpler due to being able to locate the rules more easily.

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

(a) Initially: There will be no additional cost to implement this administrative regulation initially.

(b) On a continuing basis: There will be no additional cost 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 additional funding necessary to implement this amendment to the administrative regulation.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applied because all charitable organizations are subject to the same standard.

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 Charitable Gaming and any local fire department or school licensed as a charitable organization and which chooses to conduct charitable gaming will be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.515(2), (4), and (9).

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not incur administrative cost for the first year.

(d) How much will it cost to administer this program for subsequent years? This amendment will not incur administrative cost for subsequent years.

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

Revenues (+/-): No impact.

Expenditures (+/-): No impact.

Other Explanation: None.

**PUBLIC PROTECTION CABINET
Department of Charitable Gaming
(Amendment)**

820 KAR 1:060. Prohibited conduct~~[Tipping prohibited]~~.

RELATES TO: KRS 238.510, 238.540~~[(4)]~~, 238.550~~[(4)]~~
STATUTORY AUTHORITY: KRS 238.515~~[(2), (4), (9)]~~

NECESSITY, FUNCTION, AND CONFORMITY: The ~~Department~~~~[Office]~~ of Charitable Gaming is authorized by KRS 238.515~~[(2)]~~ to establish and enforce reasonable standards for the conduct of charitable gaming. This administrative regulation prohibits tips or other gratuities for volunteers working at charitable gaming events and prohibits employees of the Department of Charitable Gaming from playing any charitable games, removing any potential conflict of interest or appearance of impropriety~~[KRS 238.540(4) provides that charitable gaming be conducted and administered only by the charitable organization using volunteer personnel and prohibits persons engaged in the conduct and administration of charitable gaming from receiving compensation of any kind. This administrative regulation prohibits tips or other gratuitous conduct].~~

Section 1. Tipping Prohibited. (1) The charitable organization conducting gaming shall take one (1) or more of the following measures to inform the public that, pursuant to KRS 238.540(4), its volunteers are unable to accept tips or other forms of ~~gratuities~~~~[gratuitous conduct]~~:

(a) Post signs in a conspicuous location that volunteers are not permitted to accept tips;

(b) State prominently on the charitable gaming session~~[include a notation in a conspicuous location on an occasion]~~ program that volunteers are not permitted to accept tips; or

(c) Announce during~~[Make an announcement immediately prior to the beginning of]~~ the charitable gaming session~~[or event]~~ that volunteers are not permitted to accept tips.

(2) Except as provided in subsection (3) of this section, a charitable organization shall not pay remuneration or expenses other than those authorized in KRS 238.550(4), ~~[or]~~ award, or otherwise provide any sort of benefits, to, ~~[or]~~ for, or on behalf of any person engaged as a volunteer in the conduct of charitable gaming~~[sponsored by the charitable organization]~~.

(3) A charitable organization may~~[shall be permitted to]~~ provide volunteer workers the following:

(a) Food or drink of incidental~~[a]~~ value not to exceed fifteen~~[(15)]~~~~ten (10)]~~ dollars per day to be consumed on the premises where charitable gaming occurs;

(b) Any article of clothing worn by the volunteers on the premises where charitable gaming occurs which identifies the volunteer worker as a volunteer~~[for the charitable organization]~~; ~~and~~~~[or]~~

(c) Any noncash item not to exceed twenty-five (25) dollars in fair market value given to volunteers upon achievement of predetermined goals in the conduct of a raffle.

(4) All allowable expenditures made by charitable organizations for volunteers~~[as allowed under subsection (3) of this section]~~ shall be reported on the charitable organization's financial reports~~[quarterly report required by 820 KAR 1:025]~~.

Section 2. Rebuttable Presumption of Compensation. (1) There is~~[It shall create]~~ a rebuttable presumption of compensation if a person volunteers at more than four (4) charitable gaming sessions~~[occasions]~~ a week excluding charity fundraising events as defined~~[outlined]~~ in 820 KAR 1:055.

(2) There is~~[It shall create]~~ a rebuttable presumption of compensation if a person volunteers at more than four (4) special limited charitable fundraising events per year.

Section 3. Department Employees Prohibited From Playing Charitable Games. (1) No Department of Charitable Gaming employee, during his or her term of employment, shall play any charitable game authorized in KRS Chapter 238 unless the employee's participation in the game is authorized in advance by

the Commissioner as a necessary function of the employee's job duties.

Section 4. Officers, Agents, or Employees of Manufacturers and Distributors. (1) No distributor, distributor's agent, or distributor's employee may play or participate in any charitable gaming in the Commonwealth of Kentucky while such person is employed by a licensed distributor.

(2) No manufacturer, manufacturer's agent, or manufacturer's employee may play or participate in any charitable gaming in the Commonwealth of Kentucky while such person is employed by a licensed manufacturer.

(3) Servicing of electronic gaming devices shall not be considered conduct or participation in charitable gaming.

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

CANNON G. ARMSTRONG, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2018, at 11:00 a.m., at the Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 p.m. on June 30, 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: Doug Hardin, Deputy Commissioner, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625, email Doug.Hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prohibits certain acts in the conduct of charitable gaming.

(b) The necessity of this administrative regulation: This regulation is necessary to prohibit certain acts in the conduct of charitable gaming.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 238.522, the Charitable Gaming Advisory Commission reviewed this regulation at the Commission's second quarter meeting on May 2, 2018. No written comments were received from the Commissioners. KRS 238.515(9) authorizes the department to promulgate administrative regulations in order to carry out and implement KRS Chapter 238. KRS 238.515(2) grants the department the power to establish and enforce reasonable standards for the conduct of charitable gaming.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Department of Charitable Gaming is charged with the responsibility of licensing and regulating charitable gaming in Kentucky. This regulation establishes certain acts as prohibited conduct by persons involved in licensed charitable gaming.

(2) If this is an amendment to an existing administrative

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The proposed amendment combines into one regulation previously promulgated prohibitions. The content and substance of 820 KAR 1:100, department employees prohibited from playing charitable games, which previously had been separately located in 820 KAR Chapter 1, has been moved into 820 KAR 1:060. 820 KAR 1:100, as an individual regulation, has been included in the repealer regulation filed by the Department of Charitable Gaming. The proposed amendment combines into one regulation prohibited conduct by persons involved in licensed charitable gaming so that the rules are more easily located.

(b) The necessity of the amendment to this administrative regulation: The proposed amendment combines into one regulation certain acts as prohibited conduct by persons involved in licensed charitable gaming.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 238.515(9) authorizes the department to promulgate administrative regulations in accordance with KRS Chapter 13A which are necessary to carry out the purposes and intent of Chapter 238. KRS 238.515(2) authorizes the department to establish reasonable standards for the conduct of charitable gaming. This regulation prohibits certain acts in the conduct of charitable gaming.

(d) How the amendment will assist in the effective administration of the statutes: KRS 238.515 requires the department to regulate the conduct of charitable gaming, and authorizes the department to establish charitable gaming standards. The proposed amendment combines into one regulation certain acts as prohibited conduct by persons involved in licensed charitable gaming, which previously had been separately located in 820 KAR Chapter 1. Thus the requirements for proper conduct are now more easily located.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Charitable Gaming and its employees are affected by this administrative regulation. New applicants who may apply as a result of the passage of House Bill 164 will also be affected by this administrative regulation amendment. In addition, the licensees and exempt organizations will be affected by this administrative regulation. As of March 2018, the Department of Charitable Gaming regulated over 1,400 charitable gaming entities that will be affected by this administrative regulation, as follows:

Over 600 charitable gaming organizations;

Over 800 exempt charitable gaming organizations;

Twenty-four (24) manufacturers of charitable gaming supplies;

Twenty-three (23) distributors of charitable gaming supplies;

and

Thirty-four (34) charitable gaming facilities.

(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 questions (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question (3) will have to conform to the requirements of this regulation by not engaging in the prohibited conduct.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no additional cost for compliance with the regulation for licensed charitable organizations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proposed amendment combines into one regulation prohibited conduct by certain persons involved in charitable gaming to make the regulation more user-friendly by locating these standards in one place.

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

(a) Initially: There will be no additional cost to implement this administrative regulation initially.

(b) On a continuing basis: There will be no additional cost 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 additional funding necessary to implement this amendment to the administrative regulation.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applied because all entities are subject to the same standard and prohibited from engaging in the conduct outlined.

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 Charitable Gaming is the agency responsible for implementing this regulation. Local fire departments and school districts that conduct charitable gaming 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 238.515(2) and (9).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is not intended to generate revenue for any state or local government 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 administrative regulation is not intended to generate revenue for any state or local government agency in subsequent years.

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

(d) How much will it cost to administer this program for subsequent years? There is no additional cost 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 (+/-): No impact.

Expenditures (+/-): No impact.

Other: None.

PUBLIC PROTECTION CABINET Department of Charitable Gaming (Amendment)

820 KAR 1:125. Gaming inspections.

RELATES TO: KRS 238.515[(2)], 238.560

STATUTORY AUTHORITY: KRS 238.515[(2), (9)], 238.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515[(2)] authorizes the Department of Charitable Gaming[department] to establish and enforce reasonable standards for the conduct of charitable gaming. KRS 238.560 authorizes the department to inspect and examine charitable gaming operations. This administrative regulation establishes how

the department will investigate~~[enforce]~~ the conduct of charitable gaming through inspections.

Section 1. Inspections. A compliance officer, investigator, auditor, or any other employee authorized by the department may, to ensure compliance with all statutes and administrative regulations relating to charitable gaming, inspect the conduct of gaming by the following:

- (1) Exempt organizations;
- (2) Licensed charitable organizations;
- (3) Licensed charitable gaming facilities;
- (4) Licensed manufacturers; and
- (5) Licensed distributors.

~~[Organizations. A compliance officer, investigator, auditor, or any other employee authorized by the department may inspect the conduct of gaming by a licensed or exempt organization to ensure that it complies with all the statutes and administrative regulations of the department.]~~

~~Section 2. Facilities. A compliance officer, investigator, auditor, or any other employee authorized by the department may inspect the operation of a charitable gaming facility to ensure that it complies with all the statutes and administrative regulations of the department.~~

~~Section 3. Manufacturers and Distributors. A compliance officer, investigator, auditor, or any other employee authorized by the department may inspect the operation of a licensed manufacturer or distributor to ensure that it complies with all the statutes and administrative regulations of the department.]~~

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

CANNON G. ARMSTRONG, Commissioner
DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2018, at 11:00 a.m., at the Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 p.m. on June 30, 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: Doug Hardin, Deputy Commissioner, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625, email Doug.Hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes how the Department of Charitable Gaming will conduct inspections of entities regulated by the department.

(b) The necessity of this administrative regulation: This regulation is necessary to establish procedures for inspections of licensed entities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 238.522, the Charitable Gaming Advisory Commission reviewed this regulation at the Commission's second quarter meeting on May 2, 2018. No written comments were received from the Commissioners. KRS 238.515(9) authorizes the department to promulgate administrative regulations in order to carry out and implement KRS Chapter 238. KRS 238.515(2) grants the department the power to establish and enforce reasonable standards for the conduct of charitable gaming.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Department of Charitable Gaming is charged with the responsibility of licensing and regulating charitable gaming in Kentucky. This regulation establishes procedures for inspections of all entities regulated by the department.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment is grammatical in nature, is to clarify the regulation for ease of use, and is filed in combination with the wholesale revision of the department's regulatory regime.

(b) The necessity of the amendment to this administrative regulation: The proposed amendment is grammatical in nature, is to clarify the regulation for ease of use, and is filed in combination with the wholesale revision of the department's regulatory regime.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 238.515(9) authorizes the department to promulgate administrative regulations in accordance with KRS Chapter 13A which are necessary to carry out the purposes and intent of Chapter 238. KRS 238.515(2) authorizes the department to establish reasonable standards for the conduct of charitable gaming.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment is grammatical in nature, is to clarify the regulation for ease of use, and is filed in combination with the wholesale revision of the department's regulatory regime.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Charitable Gaming, its employees, licensees, and exempt organizations will be affected by this administrative regulation. As of March 2018, the Department of Charitable Gaming regulated over 1,400 charitable gaming entities that will be affected by this administrative regulation, as follows:

- Over 600 charitable gaming organizations;
 - Over 800 exempt charitable gaming organizations;
 - Twenty-four (24) manufacturers of charitable gaming supplies;
 - Twenty-three (23) distributors of charitable gaming supplies;
- and
- Thirty-four (34) charitable gaming facilities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment requires no new compliance standards for the entities identified in question (3). Those entities may be inspected by the department to ensure compliance with KRS Chapter 238 and 820 KAR Chapter 1.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost for compliance with the regulation for licensed charitable organizations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proposed amendment is grammatical in nature and is to clarify the regulation for ease of use.

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

(a) Initially: There will be no additional cost to implement this administrative regulation initially.

(b) On a continuing basis: There will be no additional cost 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 additional funding necessary to implement this amendment to the administrative regulation. The department utilizes restricted funds to execute its inspections.

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

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

(9) TIERING: Is tiering applied? No, tiering is not applied because similarly situated entities are treated similarly under the 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? The Kentucky Department of Charitable Gaming is the agency responsible for implementing this regulation. Local fire departments and school districts engaging in charitable gaming 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 238.515(2) and (9).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is not intended to generate revenue for any state or local government agency 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 is not intended to generate revenue for any state or local government agency in subsequent years.

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

(d) How much will it cost to administer this program for subsequent years? There is no additional cost 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 (+/-): No impact.
Expenditures (+/-): No impact.
Other Explanation: None.

PUBLIC PROTECTION CABINET Department of Charitable Gaming (Amendment)

820 KAR 1:130. Administrative actions.

RELATES TO: KRS 238.510, 238.515[(6)], 238.530, 238.555, 238.560[(3)], 238.995

STATUTORY AUTHORITY: KRS 238.515[(6),—(9)], 238.560[(3)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515[(6)] and 238.560[(3)] authorize the Department of

Charitable Gaming to take appropriate disciplinary action against licensed charitable organizations, charitable gaming facilities, manufacturers, distributors, or persons who do not operate in compliance with KRS Chapter 238 and the administrative regulations promulgated thereunder. KRS 238.560[(3)] directs the department[~~to promulgate an administrative regulation~~] to classify[~~administrative~~] offenses and[~~describe the~~] recommended[~~penalties and other~~] administrative actions[~~for those offenses~~]. This administrative regulation establishes the required classifications and penalties.

Section 1. Department Enforcement Powers. (1) The department may issue a letter of warning, letter of reprimand, or a cease and desist order to any license holder for any violation of KRS Chapter 238 or 820 KAR Chapter 1.

(2) The department may[shall] impose[~~this~~] administrative action in accordance with KRS 238.560[(3)] if the department determines that the action will deter future violations and promote efforts to correct the violation cited.

Section 2. Fines. (1) The department may assess fines against any license holder in accordance with the following schedule:~~[- All fines shall be assessed in accordance with KRS 238.560(3).]~~

(2)[(4)] A violation of KRS Chapter 238 or 820 KAR Chapter 1 relative to charitable gaming recordkeeping and reporting requirements, except for failure to file quarterly reports[~~as required in 820 KAR 1:025~~], may[shall] be subject to a fine not to exceed \$500 for each offense. A second or subsequent violation of the same statutory or regulatory provision during the same year may[shall] be subject to a fine not to exceed \$1,000 for each offense.

(3)[(2)] A violation of KRS Chapter 238 or 820 KAR Chapter 1 relative to the conduct of charitable games,[~~including conducting unauthorized games, participation by unauthorized persons, violations of rules of play for bingo, charity game tickets, raffles, games of chance approved for charity fundraising events, and special limited charitable games;~~] may[shall] be subject to a fine not to exceed \$500 for each offense. A second or subsequent violation of the same statutory or regulatory provision during the same year may[shall] be subject to a fine not to exceed \$1,000 for each offense.

(4)[(3)] A violation of KRS Chapter 238 or 820 KAR Chapter 1 relative to manufacture, packaging, and distribution of charitable gaming supplies and equipment may[shall] be subject to a fine not to exceed \$500 for each offense. A second or subsequent violation of the same statutory or regulatory provision during the same year may[shall] be subject to a fine not to exceed \$1,000 for each offense.

(5)[(4)] A violation of the provisions of KRS 238.530(10) or 238.555(3) relative to conflicts of interest among types of licensees may[shall] be subject to a fine not to exceed \$750 for each offense. A second or subsequent violation during the same year may[shall] be subject to a fine not to exceed \$1,000 for each offense.

(6)[(5)] A violation for conducting[~~without a license~~] any activity without a license for which a license is required under KRS Chapter 238 and 820 KAR Chapter 1 may[shall] be subject to a fine not to exceed \$1,000 for each offense.

(7)[(6)] A violation for making false statements in any[reports or other] documents submitted to the department[~~including quarterly reports, license applications or records of charitable gaming sessions and events;~~] may[shall] be subject to a fine not to exceed \$1,000 for each offense.

(8)[(7)] A violation of KRS Chapter 238 or 820 KAR Chapter 1 relative to diversion of net receipts from authorized expenses or charitable purposes, unlawful compensation to an individual involved in the conduct of charitable gaming, or any other inurement of net receipts to the private benefit or financial gain of an individual or person, may[shall] be subject to a fine not to exceed \$1,000 for each offense.

(9)[(8)] A violation of KRS 238.510(5) relative to gambling offenses committed on licensed charitable gaming premises or in conjunction with charitable gaming may[shall] be subject to a fine not to exceed \$1,000 for each offense.

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~~(10)(9)~~ Any other violation of KRS Chapter 238 or 820 KAR Chapter 1 for which a fine is not established in this section ~~may~~shall be subject to a fine not to exceed \$1,000 for each offense.

Section 3. Probation. (1) The department may impose upon any license holder a term of probation for any violation of KRS Chapter 238 or 820 KAR Chapter 1.

(2) The department may impose this administrative action, in accordance with KRS 238.560(3), if it determines that department oversight and monitoring of the license holder's activities will promote efforts to correct the cited violation and deter future violations.

Section 4. Revocation, Suspension, or Denial of License.~~The department may revoke, suspend or deny a license or application for license for any violation of KRS Chapter 238 or 820 KAR Chapter 1 under the following circumstances:~~ (1) The department shall revoke, suspend, or deny a license or application for a license if:

(a) An applicant, ~~or~~ license holder, license holder seeking renewal, or individual associated with the applicant or license holder in a capacity listed in KRS 238.525(3) fails to meet the requirements of KRS 238.525(4) or 820 KAR Chapter 1~~has been convicted of a felony, gambling offense, criminal fraud, forgery, theft, falsifying business records, violation of KRS 238.995, or and two (2) misdemeanor crimes in federal court or the courts of any state, the District of Columbia, or any territory, consistent with the provisions of KRS Chapter 335B during the term of licensure];~~

(b) A license holder fails to file any reports required pursuant to KRS Chapter 238 or 820 KAR Chapter 1; or

(c) A license holder, upon notice of delinquency, fails to remit to the department ~~any~~of the charitable gaming fee required pursuant to KRS 238.570(1); and

~~(d) With respect to license renewal applications, a license holder fails to fulfill any requirement, qualification or eligibility restriction for licensure set forth in KRS Chapter 238 or 820 KAR Chapter 1.]~~

(2) The department may revoke, suspend, or deny the license or application of a licensed charitable organization, a manufacturer, a distributor, or charitable gaminga facility for violations of KRS Chapter 238 or 820 KAR Chapter 1 if the nature, frequency, and severity of the offenses charged, orand the license holder's or applicant's history of previous violations, demonstrate an unwillingness or inability to operate in compliance with the law.

Section 5. Written Notice of Violation. The department shall issue a written notice of violation to a license holder determined to have violated any provisions of KRS Chapter 238 or 820 KAR Chapter 1. This notice shall be provided on a Form CG-NOV, Notice of Violation(s). Any Notices of Violation issued to a license holder shall be considered by the department in evaluating the license holder's history of previous violation. A Notice of Violation shall state the provisions alleged to have been violated and shall notify the license holder that the department may take administrative action against the license holder as a result of the violations.

Section 6. Investigations. A person ~~may~~shall submit a request, in writing, to the department to initiate an investigation of an alleged violation.

Section 7. Incorporation by Reference. (1) Form CG-NOV, "Notice of Violation(s) (2018)", ~~07/04,~~ is incorporated by reference.

(2) This material may be inspected, copied, or obtained, ~~or copied,~~ subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601-3714, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming

Advisory Commission prior to its adoption, as required by KRS 238.522(1).

CANNON G. ARMSTRONG, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2018, at 11:00 a.m., at the Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 p.m. on June 30, 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: Doug Hardin, Deputy Commissioner, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625, email Doug.Hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes administrative actions that may be taken by the Department of Charitable Gaming in the event of violations of KRS Chapter 238 and 820 KAR Chapter 1.

(b) The necessity of this administrative regulation: This regulation is necessary to establish disciplinary actions that may be taken by the Department of Charitable Gaming in the event of violations of KRS Chapter 238 and 820 KAR Chapter 1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 238.522, the Charitable Gaming Advisory Commission reviewed this regulation at the Commission's second quarter meeting on May 2, 2018. No written comments were received from the Commissioners. KRS 238.515(9) authorizes the department to promulgate administrative regulations in order to carry out and implement KRS Chapter 238. KRS 238.515(2) grants the department the power to establish and enforce reasonable standards for the conduct of charitable gaming. KRS 238.515(6) authorizes the department to take appropriate disciplinary action and make criminal referrals against persons who fail to comply with KRS Chapter 238. KRS 238.560 authorizes the department to investigate allegations of wrongdoing and administrative action against any person licensed under KRS Chapter 238 for violations of the chapter or administrative regulations promulgated thereunder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the Department of Charitable Gaming in effectively carrying out KRS Chapter 238 by establishing administrative actions that may be taken by the Department of Charitable Gaming in the event of violations of KRS Chapter 238 and 820 KAR Chapter 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: The proposed amendment is grammatical in nature to clarify the regulation.

(b) The necessity of the amendment to this administrative regulation: The proposed amendment is grammatical in nature to clarify the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 238.515(9) authorizes the department to promulgate administrative regulations in order to carry out and implement KRS Chapter 238. KRS 238.515(2) grants the department the power to establish and enforce reasonable standards for the conduct of charitable gaming. KRS 238.515(6) authorizes the department to take appropriate disciplinary action and make criminal referrals against persons who fail to comply with KRS Chapter 238. KRS 238.560 authorizes the department to investigate allegations of wrongdoing and administrative action against any person licensed under KRS Chapter 238 for violations of the chapter or administrative regulations promulgated thereunder.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will assist the Department of Charitable Gaming in effectively carrying out KRS Chapter 238 by clarifying administrative actions that may be taken by the Department of Charitable Gaming in the event of violations of KRS Chapter 238 and 820 KAR Chapter 1.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Charitable Gaming and its employees are affected by this administrative regulation. New applicants who may apply as a result of the passage of House Bill 164 will also be affected by this administrative regulation amendment. In addition, the licensees and exempt organizations will be affected by this administrative regulation. As of March 2018, the Department of Charitable Gaming regulated over 1,400 charitable gaming entities that will be affected by this administrative regulation, as follows:

- Over 600 charitable gaming organizations;
- Over 800 exempt charitable gaming organizations;
- Twenty-four (24) manufacturers of charitable gaming supplies;
- Twenty-three (23) distributors of charitable gaming supplies;

and

- Thirty-four (34) charitable gaming facilities.

(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 questions (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not have to take any new 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 cost to regulated entities to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment is grammatical in nature and will facilitate compliance for regulated entities.

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

(a) Initially: There will be no additional cost to implement this administrative regulation initially.

(b) On a continuing basis: There will be no additional cost 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: The implementation and enforcement of this amendment does not require additional funding.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applied because all charitable organizations are treated equally and subject to the same standards.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming is the agency responsible for implementing this regulation. Local fire departments and school districts that use charitable gaming 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 238.515(2), (6), and (9).

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

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

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

(d) How much will it cost to administer this program for subsequent years? There is no additional cost 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 (+/-): No impact.

Expenditures (+/-): No impact.

Other Explanation: None.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Epidemiology and Health Planning (Amendment)

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

RELATES TO: KRS 158.035, 158.037, 211.090(3), [244.180, 244.032-244.036,] 45 C.F.R. 164.512(b)

STATUTORY AUTHORITY: KRS[158.035, 158.037,] 194A.050(1)[244.090(3)], 211.180(1)(a) and (e), 214.034, 214.036[-, 45 C.F.R. 164.512(b)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.180 requires the Cabinet for Health and Family Services to implement a statewide program for the detection, prevention and control of communicable diseases. KRS 214.034 requires public or private primary or secondary schools, day-care centers, certified family child-care homes, or any other licensed facility which cares for children to maintain a current immunization certificate on file for each child in attendance, unless exempted by KRS 214.036[KRS 158.035 prohibits a child from enrolling as a student in a public or private elementary or secondary school unless the child presents with a current immunization certificate issued by a licensed medical or osteopathic physician or an advanced practice registered nurse. KRS 158.037 requires the Cabinet for Health and Family Services to promulgate administrative regulations for public or private schools to report immunization results to local health departments. 45 C.F.R. 164.512(b), an implementing regulation for the Health Insurance Portability and Accountability Act (HIPAA), Pub. L. 104-191, permits a covered entity to disclose protected health information (PHI) for public health activities and purposes to a public authority that is authorized by law to collect or receive that information for prevention or controlling disease or surveillance.

Vaccinations prevent disease and are a core public health function. Reporting vaccination status constitutes infectious disease control and surveillance]. This administrative regulation establishes requirements for reporting immunization results in schools by the public health immunization reporting entity and permits recording and exchange of immunization data.

Section 1. Definitions. (1) "Public health immunization reporting entity" means a:

- (a) Health care provider;
- (b) Health insurer;
- (c) Public or private kindergarten, elementary or secondary school;
- (d) Childcare facility;
- (e) Preschool;
- (f) Public or private postsecondary educational institution; or
- (g) State or local health department.

(2) "Public health interest" means [participation in] core public health functions of such as:

- (a) Surveillance;
- (b) Data collection;
- (c) Vaccination;
- (d) Vaccination certification;[or]
- (e) Prevention of communicable diseases for the protection of the public's health and safety; and
- (f) Outbreak investigation.

Section 2. Immunization Reporting. (1) Kindergartens and public and private elementary and secondary schools shall submit to the local health department in their area immunization results for kindergartens, seventh[and sixth] grades, eleventh grades; and

(2) Twelfth grades only for the first twelve (12) months this administrative regulation is effective[on the:

- (a) ~~Commonwealth of Kentucky School/Facility Annual Immunization Survey: Kindergarten; and~~
- (b) ~~Commonwealth of Kentucky School/Facility Annual Immunization Survey: Sixth Grade].~~

(3)[(2)] The annual survey shall include the number of:

- (a) Students in the grade surveyed;
- (b) Missing immunization records;
- (c) Religious exemptions declinations;
- (d) Medical exemptions;[and]
- (e) Children who have received age-appropriate immunizations; and

(f) Vaccine-specific exemptions.

(4) All immunization reporting for the annual school survey shall be submitted using an electronic reporting system provided by the Kentucky Department for Public Health.

Section 3. Immunization Data Exchange. (1) A public health immunization reporting entity may record and exchange immunization data if the person requesting the data provides health related or educational services on behalf of the patient or has a public health interest in compliance with the Health Insurance Portability and Accountability Act (HIPAA), Pub. L. 104-191.

(2) Immunization data may be recorded and exchanged electronically via an immunization registry.

(3) Immunization data that may be recorded and exchanged may include:

- (a) Patient's name;
- (b) Patient's address;
- (c) Date of birth;
- (d) Sex[Gender];
- (e) Social Security number;
- (f) Medicaid number;
- (g) Birth state;
- (h) Birth County;
- (i) Mother's name;
- (j) Mother's maiden name;
- (k) Mother's date of birth;
- (l) Mother's Social Security number;
- (m) Father's name;

- (n) Father's date of birth;
- (o) Father's Social Security number;
- (p) Guardian's name;
- (q) Date vaccines were administered;
- (r) Vaccine type;
- (s) Vaccine lot number;
- (t) Vaccine manufacturer;[and]
- (u) Vaccine contraindications or adverse reaction indications;

and

(v) Vaccine-specific exemptions.

(4) This section shall apply to immunization data regardless of when the immunizations occurred or the medium used to collect and exchange the data.[Section 4. Incorporation by Reference. (4) The following material is incorporated by reference:

- (a) ~~"Commonwealth of Kentucky School/Facility Annual Immunization Survey: Kindergarten", 7/2011; and~~
- (b) ~~"Commonwealth of Kentucky School/Facility Annual Immunization Survey: Sixth Grade", 7/2011~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Commissioner's Office, Cabinet for Health and Family Services, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

JEFFREY D. HOWARD, JR., M.D., Acting Commissioner

SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 15, 2018 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 25, 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 June 18, 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 June 30, 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: Julie Brooks, phone (502)564-3970, email julied.brooks@ky.gov, and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the requirements for reporting immunization results for kindergarteners, seventh graders, eleventh graders and twelfth graders enrolling in private and public schools by the public health immunization reporting entity, and permits recording and exchange of immunization data.

(b) The necessity of this administrative regulation: This regulation ensures all elementary and secondary school students are properly immunized to prevent the spread of communicable diseases.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the secretary of the cabinet to adopt administrative regulations necessary to protect the health of the individual citizens of the

Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.180 requires the Cabinet for Health and Family Services to implement a statewide program for the detection, prevention and control of communicable diseases. KRS 214.034 (3) requires all public and private primary and secondary schools to obtain a current immunization certificate for all students enrolled for regular attendance. This amendment establishes the timeline for immunization data reporting, and helps to ensure that children enrolling in public and private schools are protected from communicable diseases.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The statutes require immunizations for all those enrolling in a private or public primary or secondary school, unless exempted by KRS 214.036, and this regulation helps to monitor immunization information for all students enrolling in kindergarten, seventh (7th) grade, eleventh (11th) grade and twelfth (12th) grade.

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

(a) How the amendment will change this existing administrative regulation: Currently immunization monitoring is completed when children enroll in kindergarten and the sixth (6th) grade. This amendment will give the cabinet the authority to monitor immunization certificates for students entering kindergarten, seventh (7th), eleventh (11th) and twelfth (12th) grades.

(b) The necessity of the amendment to this administrative regulation: The Centers for Disease Control and Prevention (CDC) and the American Academy of Pediatrics recommend a booster of Meningococcal vaccines (MenACWY) for sixteen (16) year olds as the single dose does not assure lasting immunity. This amendment will allow the department to monitor the administration of this recommended booster.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 214.034 states that all children should be immunized against specific diseases in accordance with testing and immunization schedules established by regulations of CHFS. All public or private kindergarten, primary or secondary schools require a current immunization certificate as provided by regulation of CHFS. KRS 158.035 requires an immunization certificate be presented in order to enroll as a student in a kindergarten, elementary or secondary school. KRS 211.180 tasks CHFS with the detection, prevention, and control of communicable diseases and the protection and improvement of the health of infants, preschool, and school-age children. This amendment establishes the timeline for immunization data reporting to ensure students in public and private kindergartens, primary and secondary schools are protected against communicable diseases.

(d) How the amendment will assist in the effective administration of the statutes: The additional reporting requirements will help keep Kentucky children safe as well as ensure CHFS is monitoring immunization status as required by statute.

(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 Kentucky Immunization Program in the Department for Public Health; the Kentucky Department of Education; local school boards; local health departments; and approximately 1,220 public and private kindergarten, primary and secondary schools; and the children that enroll in or participate at these facilities.

(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 questions (3) will have to take to comply with this administrative regulation or amendment: This amendment requires that a current certificate be provided upon entry of kindergarten, seventh grade, eleventh grade; and twelfth grade for the first year of this amendment. All public and private kindergarten, primary and secondary schools will have to submit the immunization data on a more frequent basis as a result of this amendment.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the identities identified in question (3): Schools will have additional certificate reviews to complete as a result of this amendment but will not incur any additional costs as immunization certificates are currently required for school enrollment. This amendment should not require additional costs to local health departments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Vaccine preventable diseases should decrease as a result of compliance with this administrative regulation. This will result in a decrease in absenteeism related to illness.

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

(a) Initially: There are no costs to the administrative body associated with this amendment.

(b) On a continuing basis: There are no costs to the administrative body associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Immunization Program is almost entirely funded by federal grants. The program receives approximately \$200,000 in state funds annually, spent solely on purchasing vaccines.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. No fees are associated with this amendment.

(9) TIERING: Is tiering applied? No. All children attending a public or private school are required by statute to be immunized.

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 health departments, Kentucky Department for Public Health, Kentucky Department of Education, school districts, and local school boards are affected 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) requires the secretary of the Cabinet for Health and Family Services to adopt administrative regulations necessary to protect the health of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the Cabinet. KRS 214.034 states that all children should be immunized against specific diseases in accordance with testing and immunization schedules established by regulations of CHFS. All public or private kindergarten, primary or secondary schools require a current immunization certificate as provided by regulation of CHFS. KRS 158.035 requires a child to present an immunization certificate in order to enroll as a student in kindergarten, elementary or secondary school. KRS 211.180 tasks CHFS with the detection, prevention, and control of communicable diseases and the protection and improvement of the health of infants, preschool, and school-age children.

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 Immunization Program operates almost solely on federal grant funding.

(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 Immunization Program operates almost solely on federal grant funding.

(c) How much will it cost to administer this program for the first year? Vaccines are provided by the federal government and the

cost of the Immunization Program is funded almost entirely by federal funding. The Immunization Program receives approximately \$200,000 in state funds annually, spent solely on purchasing additional vaccines.

(d) How much will it cost to administer this program for subsequent years? Vaccines are provided by the federal government and the cost of the Immunization Program is funded almost entirely by federal funding. The Immunization Program receives approximately \$200,000 in state funds annually, spent solely on purchasing additional vaccines.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Operations and Support
(Amendment)

910 KAR 2:030. Accounting provisions for adult guardianship.

RELATES TO: KRS 210.290(3), (4), (5), 387.500-387.990, 42 C.F.R. 483.10, 42 U.S.C. 1320b-20

STATUTORY AUTHORITY: KRS 387.600(1), 387.760, 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 387.600(1) authorizes the Cabinet for Health and Family Services to be appointed as limited guardian, guardian, limited conservator, or conservator to conduct an active guardianship or conservatorship program. KRS 387.760 authorizes reasonable compensation for services rendered and for reasonable and necessary expenses incurred in the exercise of guardianship or conservatorship duties and powers from the financial resources of the ward. KRS 194A.050(1) requires the secretary of the cabinet 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. This administrative regulation establishes accounting provisions for adult guardianship.

Section 1. Definitions. (1) "Best interest" means a course of action that maximizes what is best for a ward and that includes consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of a ward.

(2) "Budget" means a financial spending plan that estimates revenues and expenditures of an individual for a stated period of time by examining and analyzing available financial information.

(3) "Division" means the Division of Operations and Support[Guardianship].

(4) "Emergency" means unexpected expenses such as:

(a) Medical needs not paid by Medicare or Medicaid;

(b) Home repair; or

(c) Transportation for a medical appointment.

(5) "Fiduciary Management[Services] Branch" means a central office branch under the Division of Operations and Support[Guardianship].

(6) "Field Services Branch" means a central office branch under the Division of Guardianship.

(7) "Order of appointment" means a type of guardianship appointment pursuant to KRS 387.590(6).

(8) "Ordinary and necessary expenses" means those expenses that are requested by a field services worker to maintain a ward's[client's] quality of life such as clothing, snacks, and non-medical transportation.

(9) "Personal needs" means an individual's need to purchase varied goods such as:

(a) Clothing;

(b) Personal care items; or

(c) Social support items such as:

1. A telephone;

2. Stationery;

3. Books;

4. Snacks; or

5. Occasional outings.

(10) "Personal spending accounts" means money maintained by the facility for the client's personal use in accordance with[is defined by] 42 C.F.R. 483.10.

(11) "Provider" means a facility or entity providing services for a ward such as:

(a) Self;

(b) Caretaker;

(c) Family,

(d) Group home placement;

(e) Hospital; or

(f) Psychiatric hospital.

(12) "Ward" is defined by KRS 387.510(15).

(13) "Work allowance" means a portion of a ward's wage check sent to the ward to use for personal spending.

Section 2. Budget. (1)~~[Within thirty (30) working days of placement;]~~ The Field Services Branch[division] shall complete a budget upon receipt of the ward's funds or when the ward moves to a facility without an established rate[process for a ward].

(2) The Fiduciary Management Branch shall revise the budget once the guardianship compensation has been determined, pursuant to KRS 387.760.

(3) The budget[process] shall include:

(a) The ward's monthly income and expenses;

(b) Other expenses of the ward, including any applicable guardianship compensation that are on a monthly basis, to calculate a monthly amount;

(c) The ward's net amount; and

(d) Submission[Transfer] of the completed budget to the Fiduciary Management[Services] Branch for review and processing[implementation].

Section 3. Bed Holds. (1) The facility, provider agency, or the Division of Guardianship shall notify the Fiduciary Management Branch, within twenty-four (24) hours, or if on a weekend or holiday by noon on the next business day, that a ward is leaving the facility or placement.

(2) The Fiduciary Management Branch may:

(a) Give verbal authorization for the bed to be reserved, including the number of days; and

(b) Authorize bed hold days in excess of the period covered by Medicaid, or other funding source, only if the availability of the ward's funds has been verified.

(3) If authorizing a bed hold, the Fiduciary Management Branch shall:

(a) Verify the verbal authorization of a bed hold; and

(b) Provide written notification of the number of days approved.

(4) If a ward is in a public assistance eligible placement and moves to a temporary stay at a hospital, or a state or privately run psychiatric hospital, the ward may be entitled to retain the public assistance for ninety (90) days in accordance with 42 U.S.C. 1382(e)(1)(G) and 20 C.F.R. 416.212. Eligible placements include a:

(a) Licensed personal care home;

(b) Licensed family care home;

(c) Caretaker; or

(d) A private residence in accordance with Section 4(2)(d) of 921 KAR 2:015 supported by the community integration supplementation.

(5) In order to continue public assistance, the following requirements shall be met:

(a) A bed hold has been approved;

(b) A physician has certified in writing within ten (10) calendar days of admission that the recipient is unlikely to be confined for longer than ninety (90) full, consecutive days; and

(c) The Fiduciary Management Branch provides the Department for Community Based Services with the following:

1. Notification of the temporary admission; and
2. The physician statement as specified in paragraph (b) of this subsection.

(6) If the bed hold is not approved or a physician statement is not received within ten (10) calendar days, the ward shall lose eligibility for public assistance and all public assistance shall be returned by the Fiduciary Management Branch to the Kentucky State Treasury from the date of admission.

(7)(a) The Field Services Branch may only authorize a bed hold for a ward residing in other levels of care by verifying and documenting the availability of the ward's funds with the Fiduciary Management Branch.

(b) If funds are verified by the Fiduciary Management Branch, the Field Services Branch shall verify the verbal authorization of a bed hold as specified in subsection (3) of this section.

Section 4. Work Allowances. The Field Services Branch shall complete a budget for a ward based on individual needs, taking into account Social Security Administration work incentive rules, 42 U.S.C. 1320b-20.

Section 5[4]. Quarterly Reports and Personal Spending Accounts. (1)(a) Providers shall submit a quarterly report to the cabinet, which includes documentation of a ward's personal needs income and expenses[On a quarterly basis, 42 C.F.R. 483.10 and 907 KAR 1:145 require an accounting report of a ward's personal needs income and expenses for Long Term Care and Supports for Community Living (SCL) providers].

(b) The maximum allowable balance to be held in a personal spending account shall be \$100 on the last day of a calendar month.

(2) The division shall review the ward's account for a discrepancy and to ensure:

(a) The accounting report includes all personal needs income received on behalf of the ward;

(b) Receipts are attached to the accounting report including special requests that may have been initiated by the provider such as:

1. Clothing;
2. Furniture; and
3. Electronics;

(c) All personal needs expenditures incurred for that ward are ordinary and necessary; and

(d) The balance does not exceed \$100.

(3) If no discrepancies are found, the ~~Fiduciary Management~~[Field Services] Branch shall:

(a) ensure the balance is in compliance and that appropriate backup receipts are attached to the accounting report[; and

(b) Sign, date, and write "approved" on the accounting report].

(4) If a discrepancy is found, the ~~Fiduciary Management~~[Field Services] Branch shall:

(a) Sign, date, and write disapproved on the accounting report with the reason the statement is not approved; and

(b) contact the provider to resolve the issue.

(5) Upon completion, the Field Services Branch shall ~~provide~~ [mail] the review to the ~~Fiduciary Management~~[Services] Branch for final review and processing.

(6) The ~~Field Services Branch shall notify the~~ ~~Fiduciary Management~~[Services] Branch with input from the Field Services Branch, may:

(a) ~~te~~ Request a refund[;]

(b) Modify the amount[;]

(c) Suspend the disbursement of funds[;] or

(d) Resume the disbursement of personal needs funds for the ward [as necessary].

(7) If the ~~Field Services Branch indicates a refund is appropriate, the Fiduciary Services Branch shall generate a letter to the provider asking that any funds over \$100 be refunded to the cabinet for the ward by the end of the month].~~

Section 6[5]. Negotiable Checks. (1) The Field Services Branch shall promptly forward all checks and money orders received on behalf of a ward to the Fiduciary Management

[Services] Branch[by certified mail].

(2) Any cash received on behalf of a ward shall be converted to a money order or cashier's check as allowable by the banking institution[by the ~~Field Services Branch~~] and forwarded to the Fiduciary Management[Services] Branch as specified in subsection (1) of this section.

(3) Each field services office shall have and maintain a tracking system for cash and checks received on behalf of a ward.

Section 7[6]. Personal Checking Accounts of a Ward. (1) Establishment of a checking account for a ward shall be at the direction of the court.

(2) The Field Services Branch shall ensure that the facility where the ward resides is aware that:

(a) An individual savings or checking account shall not be established for the ward unless the account is listed in the provider's name for the benefit of the ward; and

(b) The ward shall not legally write or endorse checks from this account unless directed by the court.

Section 8[7]. Checks Sent to a Ward as Payee. (1) The Field Services Branch shall ensure that a ward of the cabinet does not receive or endorse checks made payable directly to the ward unless:

(a) The court has directed that the ward may receive and endorse checks; or

(b) The order of appointment is for a limited type of appointment that does not specify that the ward cannot execute instruments or enter into a contractual relationship.

(2) Unless the ward can endorse a check through an AOC-775, Order of Appointment of Guardianship that is issued by the Administrative Office of the Courts[Court] and available at www.courts.ky.gov, the division shall ensure that no payment requests with the ward as payee is made.

Section 9 [8]. Requests for Payments and Supporting Documentation. A ward's expenses shall be paid through a payment request system that has been developed by the Fiduciary Management[Services] Branch to meet accounting internal control best practice and reporting required by the courts.

Section 10[9]. Medical Payments and Medical Spend Downs, Pharmacy and Health Insurance Premium Payments. (1) The ~~Fiduciary Management Branch shall review for payment~~[For] a ward's expenses such as medical, medical spend down, pharmacy and health insurance premium payments[, the Field Services Branch shall forward an expense statement to The Fiduciary Services Branch for review and payment].

(2) The ~~Field Services Branch shall submit to the~~ ~~Fiduciary Management~~[Services] Branch shall arrange payments when the ward has financial means to pay[a request for] medical expenses not reimbursable or covered by insurance, such as:

- (a) Glasses;
- (b) Diabetic shoes; or
- (c) Dental services.

Section 11[10]. Provider Payments.[(1)] The Fiduciary Management[Field Services] Branch shall:

(1)[(a)] Review a provider statement received; and

(2)[(b)] Ensure that the provider statement does not include inappropriate expenses such as medical, medical co-payments, pharmacy charges, or personal needs[unless these expenses had been pre-approved by the Field Services Branch].

(2) After reviewing a statement for a provider payment, the Field Services Branch shall forward the statement on behalf of a ward to the Fiduciary Services Branch for review and payment].

Section 12[11]. General Expenses. (1)[General expense payments may include:

- (a) Additional personal needs such as:
 1. Birthday;
 2. Christmas; and
 3. Change in seasonal needs; and

(b) Other items such as:

1. Furniture;
2. Vacation;
3. Outing;
4. Utilities;
5. Cable television; and
6. Household item.

(2) For all general expense statements, the Field Services Branch shall analyze the request or statement to ensure:

- (a) It is an expense of the ward;
- (b) The expense is in the best interest of the ward; and
- (c) The expense reflects what was requested by the ward through:

1. Self;
2. Case manager of the ward; or
3. The Field Services Branch.

(3)(a) Extra personal needs shall be personal needs that exceed the budgeted or regulatory personal needs such as for personal care in accordance with 921 KAR 2:015[and Long Term Care facilities already being sent on a monthly basis in accordance with 907 KAR 1:655].

(b) The Field Services Branch may request the extra personal needs specified in paragraph (a) of this subsection at any time.

(c) The Field Services Branch shall follow the procedures for requests for payment and supporting documentation in accordance with Section 9[8] of this administrative regulation.

(2)(4) The Fiduciary Management[Services] Branch shall review and approve any payment request[exceeding \$500 dollars or over].

(3)(5) The Fiduciary Management[Services] Branch shall approve or disapprove a payment request based on if:

- (a) If funding is available; and
- (b) If the back-up documentation supporting the request indicates that the expense is supported through documentation, when required, including:

1. Utility bills; or
2. House hold items[ordinary and necessary].

Section 13[12]. Burial Policies and Related Issues. (1) If funds are available beyond providing for the ward's needs, a[the Field Services Branch shall establish] preneed burial may be arranged[arrangements] for the ward.

(2) Prior to purchasing a burial policy or making any other funeral arrangements, the Field Services Branch shall:

(a) Request a[Confirm that funds in the ward's account are available for] burial policy by contacting the Benefits Management[Fiduciary Services] Branch;

(b) Take into consideration a ward's desires and cultural and religious views, if known;

(c) Review a ward's records to:

1. Assess what burial policies or arrangements have previously been acquired; and

2. Ensure the[use of the] same funeral home is listed on all policies;

3. Determine the value of an existing policy so the total value does not exceed Medicaid and Social Security Administration (SSA) standards; and

4. Review the adequacy of the arrangements, and if the arrangements are not adequate verify with the Fiduciary Services Branch that the ward has funds available to:

- a. Add to the burial policy;
- b. Procure a monument or plot; or
- c. Make any other necessary burial arrangements;

(d) Determine that all needs of the ward are being met and that a minimum of fifty (50) dollars in the ward's account is available for an emergency; and

(e) Review the ward's accounts to ensure bills have been paid].

(3) The Field Services Branch may discuss with the ward, relative, or other individual with knowledge of the ward's[client's] wishes concerning burial arrangements.

(4) If the Field Services Branch is unable to obtain information regarding a burial preference from the ward, relative, or other

individual with knowledge of the ward's[client's] wishes, the Field Services Branch shall:

(a) Examine the ward's record for information pertaining to burial;[and]

(b) Decide the location for the burial and the funeral director who will handle the arrangements; and

(c) Submit burial request information to the Benefits Management Branch for determining purchase of a burial policy.

[(5) If purchasing a burial contract, the Field Services Branch shall:

(a) Contact a funeral director to initiate the process of establishing a burial contract;

(b) Submit the contract to the Fiduciary Services Branch to ensure that the contract meets Medicaid and SSA standards;

(c) Upon receipt of a check from the Fiduciary Services Branch, forward the check and contract signed by the Field Services Branch on behalf of the ward, to the funeral home; and

(d) Send a copy of the signed and completed contract to the Fiduciary Services Branch.

(6) If a ward has lost any body part due to amputation or surgery and it is appropriate to bury this body part with the ward, arrangements shall be made by the Field Services Branch with the funeral home selected to ensure the body part is preserved for burial with the ward's body at the time of death.]

TIMOTHY E FEELEY, Commissioner

SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 15, 2018 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 25, 2018, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by June 18, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on this proposed administrative regulation until June 30, 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: Phyllis W. Sosa, email Phyllis.sosa@ky.gov phone (502) 564-6930, and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the accounting provisions for wards of the state when the cabinet is appointed as conservator or limited conservator of an individual.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the provisions of KRS 387.680-720 and 42 C.F.R.483.10,42 U.S.C. 1320b-20. The CHFS is responsible for accounting for the ward's personal assets, benefits and liabilities and to ensure the ward's assets are utilized for the best interest of the ward.

(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 requirements for staff to establish budgets for wards and the processes to account for the ward's assets.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the accounting process for the ward's assets and liabilities.

(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 place the accounting provisions for adult guardianship under the correct division within the Department for Aging and Independent Living. Establishes that the ward's budget is completed when the ward's funds are received or when the ward moves to a facility without an established rate, and revised when the guardianship compensation has been determined pursuant to KRS 387.760. This amendment establishes requirements for bed holds when a ward must temporarily leave the current facility. This amendment also clarifies quarterly reports and personal spending accounts with providers, medical payments and medical spend down requirements, provider payments, general expenses and purchasing of burial policies and related issues.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to meet the requirements of the authorizing statutes and the appointment orders issued by the district courts. This amendment also adds the provisions of KRS 387.760 which allows the CHFS to take a guardianship fee from the assets of those individuals appointed a ward of the state. The CHFS needs to enact this provision as the guardianship program as it currently exists is not sustainable. The number of new appointments exceeds the number of individuals that expire or are resigned monthly and there is no additional funding to continue to increase staff to keep up with the demands of the program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through modification of the accounting processes and fee determination.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of statutes through conformity with KRS 387.680-720, 387.760, and 42 C.F.R.483.10,42 U.S.C. 1320b-20. The amendment clarifies requirements and will assist in offsetting the program deficit.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects individuals that have been adjudicated dependent by the district court and appointed the CHFS as conservator. As of January 2018 there are 4,429 wards of the state that the CHFS has responsibility for their financial affairs. The number of wards fluctuates daily due to deaths and new appointments with an average of seventy (70) new wards per month. Wards with assets will be subject to the fees allowed pursuant to KRS 387.760.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities affected by this administrative regulation will not have any additional requirements placed upon them.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The average fee per ward would be \$50.35 a month. This amount is based on the current income of the 4,429 wards. The actual amount per ward will vary depending on the income, and assets of each individual.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this amended regulation wards of the state will have a quicker response to their needs as the collection of fees will allow additional staffing to be hired. Providers will be paid faster when bills are submitted and more oversight of the personal needs allowance funds will ensure wards don't lose their benefits and

jeopardize placements and services.

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

(a) Initially: There is no cost associated with the implementation of this administrative regulation.

(b) On a continuing basis: There is no ongoing cost associated with amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no funding associated with the implementation of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in the fees that are already allowed to be collected pursuant to KRS 387.760 but this administrative regulation as amended sets forth the provisions for collecting the fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There is no new fee associated with the amendment of 910 KAR 2:030 as language from 910 KAR 2:050 has been added to this administrative regulation with amendments, due to the repeal of 910 KAR 2:050. The amendment allows the CHFS to obtain the fees allowed under KRS 387.760(2) to those individuals appointed a state guardian that have funds available.

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

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, Department for Aging and Independent Living.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutes that authorize the action taken by this administrative regulation are KRS 194A.050; 387.500-387.990 and 42 C.F.R. 483.10, 42 U.S.C. 1320b-20.

(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 an estimated \$2,712,000 for the CHFS in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate an estimated \$2,712,000 for the CHFS in subsequent years. This is dependent upon the total number of wards appointed to the cabinet and the income of each individual.

(c) How much will it cost to administer this program for the first year? The Guardianship program currently operates with an \$8,000,000 budget.

(d) How much will it cost to administer this program for subsequent years? The program has to operate within the designated budget of \$8,000,000 which does not allow the program to keep up with the growing population and additional staffing needed. The fees will assist in helping the program to add the needed staffing to keep caseloads at a more workable level.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS

COUNCIL ON POSTSECONDARY EDUCATION
(New Administrative Regulation)

13 KAR 3:060. High school equivalency diploma awarded for credit hour completion at Kentucky Community and Technical College System institutions.

RELATES TO: KRS 164.0064, 164.0234

STATUTORY AUTHORITY: KRS 164.0064(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.0064(1) requires that the Kentucky Adult Education Program within the Council on Postsecondary Education promulgate administrative regulations to establish programs aligned with the College and Career Readiness Standards for Adult Education, or any other similar standards adopted by the federal Office of Career, Technical, and Adult Education, which upon successful completion, shall result in the issuance of a High School Equivalency Diploma. This administrative regulation establishes the criteria and conditions for the issuance of a high school equivalency diploma upon successful completion of credit hours at Kentucky Community and Technical College institutions in certain content areas.

Section 1. Definitions. (1) "Credit for prior learning" means college credit for the college-level knowledge and skills gained from non-college instructional programs or life experiences, including but not limited to credit awarded pursuant to 13 KAR 2:025 and KRS 164.2951(2)(e), employment, military experience, civic activities, and volunteer service. Credit is evaluated through nationally standardized exams in specific disciplines, challenge exams for specific courses at individual institutions, evaluations of non-college training programs, and individualized assessments.

(2) "Eligible candidate" means an individual that:

(a) Has reached his or her 19th birthday;

(b) Has not obtained a high school diploma or its equivalent;

(c) Meets the admission and placement requirements of 13 KAR 2:020; and

(d) Maintains a Kentucky address.

(3) "KCTCS" means the Kentucky Community and Technical College System as defined in KRS 164.001(13).

(4) "KYAE" means the Kentucky Adult Education program within the Council on Postsecondary Education.

(5) "OVAE" means the U.S. Department of Education Office of Vocational and Adult Education.

(6) "Successful completion" means:

(a) Passing with a course grade greater than or equal to "C" constituting a 2.0 on a 4.0 scale; or

(b) Being awarded credit for prior learning as indicated on an official KCTCS transcript.

Section 2. Course Requirements. (1) An eligible candidate shall qualify for a Commonwealth of Kentucky High School Equivalency Diploma upon successful completion of a minimum of three (3) credit hours in each of the following content areas as certified with an official KCTCS transcript:

(a) Written communication;

(b) Quantitative reasoning;

(c) Natural sciences; and

(d) Social and behavioral sciences.

(2) KCTCS and KYAE shall review the competencies gained in entry-level courses in these content areas. Those entry-level courses with competencies that meet or exceed the skills demonstrated through passing the GED® exam at college ready level shall be eligible for the program and published in a list on KYAE's Web site.

Section 3. Issuance of Commonwealth of Kentucky High School Equivalency Diploma. (1) An eligible candidate shall provide the following to Kentucky Adult Education for the High School Equivalency Diploma to be issued:

(a) Legal name, date of birth, social security number, phone

number, email address, home address, list of eligible courses, and signature;

(b) A twenty-five (25) dollar non-refundable application and processing fee; and

(c) An official KCTCS transcript documenting successful completion of the qualifying credit hours.

SHERILL ZIMMERMAN, Chair

TRAVIS POWELL, General Counsel

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2018 at 10:00 a.m. EST at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601 in Conference Room A. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 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: Travis Powell, General Counsel and Associate Vice President, Council on Postsecondary Education, 1024 Capital Center Dr., Suite 350, Frankfort, Kentucky 40601, phone 502.573.1555, ext. 142, fax 502.573.1535, email travis.powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Travis Powell

(1) Provide a brief summary of:

(a) What this administrative regulation does: Sets forth the criteria and conditions for the issuance of a Commonwealth of Kentucky high school equivalency diploma upon successful completion of three (3) credit hours from eligible courses in four (4) academic content areas.

(b) The necessity of this administrative regulation: KRS 164.0064 provides Kentucky Adult Education the ability to offer alternative programs for obtaining a high school equivalency diploma as long as one test is offered for this purpose. This program will allow adults without a high school diploma to earn college credit while simultaneously working toward obtaining a high school diploma. It also provides an alternative for adults without a high school diploma to obtain one outside a single test setting for which they may find uncomfortable.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation conforms explicitly to the authorizing statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation provides the qualification requirements for obtaining a high school equivalency diploma through course work at KCTCS institutions and the process by which the diploma may be awarded. KRS 164.0064(1) requires that the Council establish programs that, upon completion, lead to the issuance of a high school equivalency 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: N/A

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

(c) How the amendment conforms to the content of the

authorizing statutes: N/A

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KCTCS institutions and the 347,000 working age Kentuckians without a high school diploma.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: KCTCS will work with KYAE to identify the eligible courses in the four content areas that align with the competencies demonstrated by meeting or exceeding college ready level scores on the GED® exam. KCTCS institutions must offer the courses and transcribe the credit earned. Eligible adults must complete three (3) credit hours in each identified content area, obtain a transcript identifying those credits, prove Kentucky residency, and apply for a high school equivalency diploma with Kentucky Adult Education.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost for KCTCS institutions. Eligible adults must provide a \$50 application and processing fee to KYAE in order to be awarded the high school equivalency diploma.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): KCTCS institutions will be afforded a new marketing tool to attract adults without a high school diploma. Adults without a high school diploma will be provided an alternative route to receiving a high school equivalency diploma outside the standard GED® test that also allows them to earn credit toward a postsecondary degree.

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

(a) Initially: Minimal additional staff time that can be accommodated by current staff.

(b) On a continuing basis: Same as 4(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Any available sources of funding can be used, most likely general operating expenses, along with application and processing fees collected.

(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: Yes, fees are assessed in order to recover processing costs.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes, a \$25 application and processing fee will be assessed.

(9) TIERING: Is tiering applied? No. All eligible individuals are subject to the same requirements for obtaining a high school equivalency diploma through this 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 Council on Postsecondary Education, Kentucky Adult Education, KCTCS, and KCTCS institutions will all 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 164.0064

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? Estimated \$1250.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See 3(a).

(c) How much will it cost to administer this program for the first year? Duties related to this regulation are generally assumed by two KYAE staff members as part of their many other responsibilities.

(d) How much will it cost to administer this program for subsequent years? See 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: N/A

PUBLIC PROTECTION CABINET Kentucky Real Estate Authority Kentucky Board of Auctioneers (Repealer)

201 KAR 3:006. Repeal of 201 KAR 3:005, 3:025, 3:035, 3:055, and 3:065.

RELATES TO: KRS 330.030, 330.032, 330.070, 330.100, 330.230, 426.522

STATUTORY AUTHORITY: KRS 330.050(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 330.050(8) authorizes the Kentucky Board of Auctioneers to promulgate administrative regulations with the approval of the executive director of the Kentucky Real Estate Authority in accordance with KRS Chapter 13A as required to fulfill the duties and functions assigned to the board by KRS Chapter 330. This administrative regulation repeals 201 KAR 3:005 and 201 KAR 3:035, which have been superseded by statute and are no longer necessary. This administrative regulation also repeals 201 KAR 3:025, which has subject matter more efficiently addressed as part of a concurrently promulgated new administrative regulation addressing licensing and continuing education to be found at 201 KAR 3:100. This administrative regulation also repeals 201 KAR 3:065, which has subject matter more efficiently addressed as part of 201 KAR 3:090. This administrative regulation also repeals 201 KAR 3:055, which the Kentucky Board of Auctioneers has determined is no longer necessary due to improvements in travel and communications.

Section 1. The following administrative regulations are hereby repealed:

(1) 201 KAR 3:005, Name required on advertising;

(2) 201 KAR 3:025, Reciprocity requirements;

(3) 201 KAR 3:035, Real estate sales by auction;

(4) 201 KAR 3:055, Apprenticeship residency requirements; and

(5) 201 KAR 3:065, Maintaining a license while on active military duty.

JOE GRIBBINS, Chair

H.E. CORDER, Executive Director

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2018 at 9:00 a.m. at the Kentucky Board of Auctioneers, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be

heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 p.m. on June 30, 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: Ryan Morrison, General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave. Suite B, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-1538, email Ryan.Morrison@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ryan Morrison

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals several administrative regulations within 201 KAR Chapter 3 because they have been superseded by statutory changes, are better addressed in another regulation, or are no longer necessary due to improved travel and communication technology. Specifically, this administrative regulation repeals 201 KAR 3:005, 201 KAR 3:025, 201 KAR 3:035, 201 KAR 3:055, and 201 KAR 3:065.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to reduce duplication and simplify the regulatory regime governing auctioneers in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 330.050(8) authorizes the board to promulgate administrative regulations with the approval of the executive director of the Kentucky Real Estate Authority in accordance with KRS Chapter 13A as required to fulfill the duties and functions assigned to the board by KRS Chapter 330.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Board of Auctioneers is charged with the responsibility of licensing and regulating auctioneers and auction house operators in Kentucky. This administrative regulation removes individual regulations that have become duplicative because of statutory changes or are otherwise unnecessary for regulation of licensed auctioneering in Kentucky.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Auctioneers is affected by this administrative regulation. Board licensees and persons seeking reciprocity from other states will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation repealer requires no action by the regulated entities identified in question (3).

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3): The administrative regulation repealer will impose no new costs on regulated persons or entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation repealer does not require any action from the entities identified in question 3.

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

(a) Initially: There is no initial cost to implement this administrative regulation repealer.

(b) On a continuing basis: There is no cost to implement this administrative regulation repealer 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 funding necessary to implement this administrative regulation 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: The implementation of this administrative regulation repealer requires no increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation repealer neither directly nor indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation repeals the subject 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 Kentucky Board of Auctioneers will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 330.050(8) authorizes the board to promulgate administrative regulations with the approval of the executive director of the Kentucky Real Estate Authority in accordance with KRS Chapter 13A as required to fulfill the duties and functions assigned to the board by KRS Chapter 330.

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 first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for subsequent years.

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

(d) How much will it cost to administer this program for subsequent years? There is no cost 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 (+/-): No impact.

Expenditures (+/-): No impact.

Other Explanation: None.

**PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Kentucky Board of Auctioneers
(New Administrative Regulation)**

201 KAR 3:100. Education requirements.

RELATES TO: KRS 330.050

STATUTORY AUTHORITY: KRS 330.050(8), 330.060(1), 330.070(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 330.050(8) authorizes the Board of Auctioneers to promulgate administrative regulations with the approval of the executive director of the Kentucky Real Estate Authority in accordance with KRS Chapter 13A as required to fulfill the duties and functions assigned to the board by KRS Chapter 330. KRS 330.060(1) requires applicants for an apprentice auctioneer or auction house operator's license to successfully complete instruction as prescribed by the board from a board-approved auction education provider. KRS 330.070(7) authorizes the board to require as a condition precedent to the renewal of any license, that each licensee complete continuing education up to ten (10) hours per license year. This administrative regulation establishes pre-licensing and continuing education requirements for all board of auctioneer licensees.

Section 1. Education Providers. (1) All required education shall be obtained from a board-approved provider.

(2) A request to become an approved provider shall be made on the Continuing Education Approved Provider Application form provided by the board.

(3) A prospective or approved provider shall notify the board in writing within thirty (30) days of any material change in information submitted on the application or attachments. Notification shall be made on the Information Update and License Documentation form.

(4) An approved provider shall submit to the board advance notification of each course offering on the Continuing Education Course Notification form.

(5) An approved provider shall submit to the board a roster of attendees completing a course within ten (10) days of completion. The roster shall include each attendee's name, address, license number, and e-mail address.

(6) An approved provider shall disclose to all potential students prior to enrollment:

(a) The full cost of each course, including tuition, books, and required materials; and

(b) The number of continuing education hours to be earned by attending and completing each course.

(7) An approved provider shall maintain clear and correct written or electronic records for a minimum of five (5) years, including:

(a) Course handouts;

(b) Attendance records; and

(c) Course evaluations.

(8) The board may withdraw a provider's approval for any violation of KRS Chapter 330 or 201 KAR Chapter 3.

Section 2. Instructors. (1) An instructor for a course provided pursuant to this administrative regulation shall hold or have previously held:

(a) Current and comprehensive knowledge of the subject matter they will be teaching;

(b) The ability to effectively teach, interact, and communicate with the attendees; and

(c) The ability to provide a controlled and positive learning classroom environment.

(2) An instructor for a course provided pursuant to this administrative regulation shall not have:

(a) Had a professional license revoked or suspended;

(b) Been convicted of a felony;

(c) Been convicted of any crime involving auction, real estate, or any abuse of fiduciary responsibilities; or

(d) Been disciplined in any jurisdiction for falsifying student

attendance records, completion of course requirements; or other improper educational actions related to licensure.

(3) An instructor who is also a licensee may receive continuing education credit for teaching an acceptable course once per educational year for the same course.

Section 3. Pre-licensing education requirements. (1) An applicant for a license may obtain the required education from an approved provider or combination of approved providers.

(2) An applicant for an Auctioneer license shall have successfully completed at least eighty (80) hours of approved classroom instruction.

(a) Up to eight (8) hours may include approved outside activities and field instruction, such as attendance at auctions;

(b) Up to forty (40) hours may include approved distance learning.

(3) The board may waive the approved classroom instruction requirement if an applicant demonstrates sufficient previous auction experience and competency.

Section 4. Licensee Continuing Education Requirements. (1) A licensee shall attend a minimum of six (6) course hours of continuing education from any approved provider or combination of approved providers per license year.

(2) A licensee shall attend the Kentucky Auction Core Course at least once every four (4) years.

(a) A licensee seeking to reactivate a license from escrow shall complete the Kentucky Auction Core Course.

(b) A licensee with at least twenty-five (25) years of continuous licensure shall be exempt from the Kentucky Auction Core Course requirement.

(3) A licensee licensed prior to January 1, 1980 shall be exempt from this administrative regulation.

Section 5. Continuing Education Courses. (1) A licensee may attend a live course or participate in a distance learning course in which the instructor and attendee are not physically present at the same location.

(2) A continuing education course shall focus on auctions or auction law.

(a) An approved provider shall keep all course material current with KRS Chapter 330 and 201 KAR Chapter 3.

(b) The Kentucky Auction Core Course shall include instruction in the core subjects of KRS Chapter 330, 201 KAR Chapter 3, ethics, and any other applicable subject matter.

(c) Real estate education classes shall not qualify for continuing education.

(3) Courses sponsored by the National Auctioneers Association and the Certified Auctioneer's Institute shall qualify for continuing education.

(4) General business meetings and non-educational portions of auctioneer conventions shall not qualify for continuing education.

(5) In the event the board receives information calling into question a provider or a licensee's compliance with this regulation, the board may require the submission of specified handouts or presentations to attendees.

Section 6. Oversight. (1) Live courses shall be subject to monitoring visits from board personnel.

(2) Distance learning shall be subject to periodic review by board personnel. For internet based courses, approved providers shall include "test" login information with the course notification to the board, which shall authorize the board to review the material.

(3) Complaints regarding a licensee or an approved provider may be filed on the Complaint Form.

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

(a) "Continuing Education Approved Provider Application", May 2018;

(b) "Information Update and License Documentation", May 2018;

(c) "Continuing Education Course Offering Notice", May 2018;

and

(d) "Complaint Form", May 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Auctioneers, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601 Monday through Friday, 8 a.m. to 4:30 p.m.

JOE GRIBBINS, Chair
H.E. CORDER, Executive Director
DAVID DICKERSON, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2018, at 9:00 a.m. at the Kentucky Board of Auctioneers, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 p.m. on June 30, 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: Ryan Morrison, General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave. Suite B, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-1538, email Ryan.Morrison@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ryan Morrison

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation sets forth the requirements for education for auctioneers in Kentucky. KRS 330.060 and 330.070 permit the board to set pre-licensure and continuing education requirements for license applicants and licensees.

(b) The necessity of this administrative regulation: To date, the Board of Auctioneers has operated its continuing education requirements by guidelines rather than regulation. This administrative regulation is necessary to codify the board's requirements and provide certainty for applicants, licensees, and the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 330.050 permits the board to promulgate administrative regulations to fulfill the duties and functions assigned to it. KRS 330.060 specifies pre-licensure requirements for license applicants and 330.070 permits the board to condition license renewal on completion of specified continuing education up to ten (10) hours per year.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation will assist the board's effort to carry out its duties and functions under KRS 330.050 by codifying and clarifying continuing education requirements to enhance consumer protection.

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

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

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

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

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

regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This new administrative regulation will affect the Kentucky Board of Auctioneers. The new administrative regulation will also affect all persons seeking either initial or continued licensure as apprentice auctioneers, principal auctioneers, and auction house operators in the Commonwealth, as well as continuing education providers seeking approval from the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Persons seeking licensure as apprentice auctioneers and auction house operators will be required to complete twelve (12) hours of approved classroom instruction to receive a license. Apprentice auctioneers seeking licensure as principal auctioneers will be required to complete eighty (80) hours of approved classroom training to receive a license. Current licensees will be required to complete six (6) hours of continuing education per license year, and be required to complete the Kentucky Auction Core Course once every four (4) years. Continuing education providers will be required to submit an application for approved provider status and submit notices to the board of course offerings.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs of required education will vary for each entity identified in question (3) depending on the providers and courses they choose to use in order to fulfill the requirements set by this new administrative regulation. However, these costs are unlikely to differ significantly from current costs incurred with the board's guidelines.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All applicants, licensees, and continuing education providers will have additional certainty surrounding continuing education requirements because they have been codified by this new administrative regulation.

(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 implement this administrative regulation.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is necessary to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applied because this regulation applies equally to similarly situated 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 Auctioneers will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 330.050(8), 330.060(1), and 330.070(7).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any revenue for subsequent years.

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

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

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

Revenues (+/-): No impact.

Expenditures (+/-): No impact.

Other Explanation: None.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Repealer)**

401 KAR 5:039. Repeal of 401 KAR 5:035, 5:057, 5:070, and 5:300.

RELATES TO: KRS 224.10-100, 224.10-110

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-110(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. KRS 224.10-100 and 224.10-110 authorize the Secretary of the Cabinet to promulgate administrative regulations to accomplish those objectives. These administrative regulations are being repealed because the language of each administrative regulation is being consolidated with other regulations in 401 KAR Chapter 5.

Section 1. The following administrative regulations are hereby repealed:

- (1) 401 KAR 5:035, Treatment requirements; compliance;
- (2) 401 KAR 5:057, KPDES pretreatment requirements;
- (3) 401 KAR 5:070, Provisions of the KPDES permit; and
- (4) 401 KAR 5:300, Permit timetables for 401 KAR Chapter 5.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2018 at 6:00 p.m. Eastern Time at the Department for Environmental Protection, Training Room A, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30,

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: Carole J. Catafo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catafo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 401 KAR 5:035 Treatment requirements; compliance, 401 KAR 5:057 KPDES pretreatment requirements; 401 KAR 5:070 Provisions of the KPDES permit, and 401 KAR 5:300 Permit timetables for 401 KAR Chapter 5.

(b) The necessity of this administrative regulation: The language from the administrative regulations being repealed is being consolidated with other regulations in 401 KAR Chapter 5. The administrative regulations are necessary to maintain the Commonwealth's delegated authority over state implementation and enforcement of the federal Clean Water Act.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. KRS 224.10-100 and 224.10-110 authorize the Secretary of the Cabinet to promulgate administrative regulations to accomplish those objectives.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The language of the administrative regulations being repealed will be consolidated into other regulations in 401 KAR Chapter 5. This will allow streamlined regulations for ease and convenience.

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

(a) How the amendment will change this existing administrative regulation: This is not applicable because this is a repeal of, rather than an amendment to, existing regulations.

(b) The necessity of the amendment to this administrative regulation: This is not applicable because this is a repeal of, rather than an amendment to, existing regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This is not applicable because this is a repeal of, rather than an amendment to, existing regulations.

(d) How the amendment will assist in the effective administration of the statutes: This is not applicable because this is a repeal of, rather than an amendment to, existing regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This is not applicable because this is a repeal of, rather than an amendment to, existing regulations.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The repeal will not require any additional or different action by the regulated community.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This repeal will not impose any new costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The language of the administrative regulations being repealed will be consolidated into other regulations in 401 KAR Chapter 5. This will allow streamlined regulations for ease and convenience.

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

(a) Initially: This repeal will have no impact on costs.

(b) On a continuing basis: This repeal will have no impact on

costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This repeal will have no impact on funding for implementation or enforcement.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this repealer administrative 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? This administrative regulation applies to public and semipublic water systems. Some units of state or local governments own a public water system.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100 and 224.10-110.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This repeal will not generate any revenue.

(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 repeal will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This repeal will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No costs will be incurred from this repeal.

(d) How much will it cost to administer this program for subsequent years? No costs will be incurred.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The Division of Water does not anticipate any fiscal impact because this administrative regulation is a repealer.

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits (Repealer)

405 KAR 1:011. Repeal of 405 KAR 1:005, 007, 1:010, 1:015, 1:020, 1:030, 1:040, 1:050, 1:051, 1:060, 1:070, 1:080, 1:090, 1:100, 1:110, 1:120, 1:130, 1:141, 1:150, 1:160, 1:170, 1:180, 1:190, 1:200, 1:210, 1:220, 1:230, 1:240, 1:250, 1:260.

RELATES TO: KRS 350.060, 350.070, 350.085, 350.090, 350.093, 350.100, 350.130, 350.135, 350.200, 350.210, 350.220, 350.405-350.455, 350.465

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.050, 350.060, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1) provides the Energy and Environment Cabinet the authority to promulgate administrative regulations. This administrative regulation repeals 405 KAR Chapter 1. The administrative regulations in 405 KAR Chapter 1 were established

as interim program administrative regulations related to the strip mining of coal and are no longer needed once the Commonwealth's permanent program administrative regulations were approved by the Office of Surface Mining, Reclamation, and Enforcement. 405 KAR Chapters 7 to 24 now contain the administrative regulations pertaining to coal mining in the Commonwealth.

Section 1. The following administrative regulations are hereby repealed:

- (1) 405 KAR 1:005, Applicability of chapter;
- (2) 405 KAR 1:007, Termination and reassertion of jurisdiction;
- (3) 405 KAR 1:010, Definitions;
- (4) 405 KAR 1:015, Documents incorporated by reference;
- (5) 405 KAR 1:020, General provisions;
- (6) 405 KAR 1:030, Small operator exemption;
- (7) 405 KAR 1:040, Operations affecting two (2) acres or less;
- (8) 405 KAR 1:050, Permit requirements;
- (9) 405 KAR 1:051, Incremental bonding;
- (10) 405KAR 1:060, Inspection and enforcement procedures;
- (11) 405 KAR 1:070, Postmining land use;
- (12) 405 KAR 1:080, Signs and markers;
- (13) 405 KAR 1:090, Use of explosives;
- (14) 405 KAR 1:100, Topsoil handling;
- (15) 405 KAR 1:110, Revegetation;
- (16) 405 KAR 1:120, Access roads, haul roads, and other transport facilities;
- (17) 405 KAR 1:130, Backfilling and grading;
- (18) 405 KAR 1:141, Disposal of excess spoil;
- (19) 405 KAR 1:150, Acid and toxic materials and waste materials;
- (20) 405 KAR 1:160, Protection of the hydrologic system;
- (21) 405 KAR 1:170, Water quality standards and surface water monitoring;
- (22) 405 KAR 1:180, Groundwater;
- (23) 405 KAR 1:190, Diversions of surface and underground flows;
- (24) 405 KAR 1:200, Sediment control measures;
- (25) 405 KAR 1:210, Coal waste dams;
- (26) 405 KAR 1:220, Permanent impoundments;
- (27) 405 KAR 1:230, Steep slope mining;
- (28) 405 KAR 1:240, Mountaintop removal;
- (29) 405 KAR 1:250, Prime farmland; and
- (30) 405 KAR 1:260, Contemporaneous reclamation.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: April 27, 2018

FILED WITH LRC: April 27, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2018 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

- (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 405 KAR Chapter 1.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to repeal 405 KAR Chapter 1. This information is no longer necessary. This chapter was part of the commonwealth's interim program and with the approval of the state's permanent program, is no longer needed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.028(1) authorizes the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining. This administrative regulation repeals the interim program regulations in 405 KAR Chapter 1 related to strip mining.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals the administrative regulations in 405 KAR Chapter 1. The administrative regulations in 405 KAR Chapters 7 – 24 are the permanent program regulations and replaced these interim program administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: The amendment repeals the regulation pertaining to the Commonwealth's interim program related to strip mining.

(b) The necessity of the amendment to this administrative regulation: The repeal is necessary because the information in 405 KAR Chapter 1 is no longer relevant.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by repealing the regulations pertaining to the Commonwealth's interim program administrative regulations related to strip mining.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will repeal the requirements pertaining to the Commonwealth's interim program administrative regulations pertaining to strip mining.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of this regulation will have no impact, as these are interim program regulations and are no longer needed. All permits issued under these administrative regulations are either no longer active or were moved under the permanent program administrative regulations in 405 KAR Chapters 7 - 24.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will need to be taken to comply with this repealer.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no benefits associated with complying with this repealer.

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

(a) Initially: There are no costs associated with the repeal of this administrative regulation.

(b) On a continuing basis: There are no costs associated with the repeal of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required to repeal these administrative regulations.

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

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

This repealer does not involve any fees.

(9) TIERING: Is tiering applied? No, this is a repeal of an administrative 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 Division of Mine Permits and the Division of Mine Reclamation and Enforcement.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.465, 30 C.F.R. Part 710 - 725.

(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 repeal will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This repeal will not generate revenue.

(c) How much will it cost to administer this program for the first year? This repeal will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This repeal will not cost the agency additional funding.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 710 to 725

2. State Compliance Standards. KRS Chapter 350.

3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above set the minimum information related to the initial program administrative regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This repealer is deleting the cabinet's interim program administrative regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits (Repealer)

405 KAR 3:011. Repeal of 405 KAR 3:005, 3:007, 3:010, 3:015, 3:020, 3:030, 3:040, 3:050, 3:060, 3:070, 3:080, 3:090, 3:100, 3:111, 3:120, 3:130, 3:140, 3:150, 3:160, 3:170, 3:180, 3:190.

RELATES TO: KRS 350.060, 350.070, 350.085, 350.090, 350.093, 350.130, 350.135, 350.151, 350.200, 350.210, 350.220, 350.405-350.440, 350.450, 350.455, 350.465

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.050, 350.060, 350.151, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1) provides the Energy and Environment Cabinet the authority to promulgate administrative regulations. This

administrative regulation repeals 405 KAR Chapter 3. The administrative regulations in 405 KAR Chapter 3 were established as interim program administrative regulations related to the surface effects of the underground mining of coal and are no longer needed once the Commonwealth's permanent program administrative regulations were approved by the Office of Surface Mining, Reclamation, and Enforcement. KRS Chapters 7 to 24 now contain the administrative regulations pertaining to coal mining in the Commonwealth and have been approved by the Office of Surface Mining, Reclamation, and Enforcement.

Section 1. The following administrative regulations are hereby repealed:

- (1) 405 KAR 3:005, Applicability of chapter;
- (2) 405 KAR 3:007, Termination and reassertion of jurisdiction;
- (3) 405 KAR 3:010, Definitions;
- (4) 405 KAR 3:015, Documents incorporated by reference;
- (5) 405 KAR 3:020, General provisions;
- (6) 405 KAR 3:030, Small operator exemption;
- (7) 405 KAR 3:040, Operations affecting two (2) acres or less;
- (8) 405 KAR 3:050, Permit requirements;
- (9) 405 KAR 3:060, Inspection and enforcement procedures;
- (10) 405 KAR 3:070, Signs and markers;
- (11) 405 KAR 3:080, Topsoil handling and revegetation;
- (12) 405 KAR 3:090, Access roads, haul roads, and other transport facilities;
- (13) 405 KAR 3:100, Backfilling and grading;
- (14) 405 KAR 3:111, Disposal of excess rock and earth;
- (15) 405 KAR 3:120, Acid and toxic materials and waste materials;
- (16) 405 KAR 3:130, Protection of the hydrologic system;
- (17) 405 KAR 3:140, Water quality standards and surface water monitoring;
- (18) 405 KAR 3:150, Groundwater systems;
- (19) 405 KAR 3:160, Diversions of surface and underground flows;
- (20) 405 KAR 3:170, Sediment control measures;
- (21) 405 KAR 3:180, Coal waste dams; and
- (22) 405 KAR 3:190, Permanent impoundments.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: April 27, 2018

FILED WITH LRC: April 27, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2018 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 405 KAR Chapter 3.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to repeal 405 KAR

Chapter 3. This information is no longer necessary. This chapter was part of the Commonwealth's interim program and with the approval of the state's permanent program, is no longer needed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.028(1) authorizes the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining. This administrative regulation repeals the interim program regulations in 405 KAR Chapter 3 related to underground mining.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals the administrative regulations in 405 KAR Chapter 3. The administrative regulations in 405 KAR Chapters 7 – 24 are the permanent program regulations and replaced these administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: The amendment repeals the regulation pertaining to the Commonwealth's interim program related to underground mining.

(b) The necessity of the amendment to this administrative regulation: The repeal is necessary because the information in 405 KAR Chapter 3 is no longer relevant.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by repealing the regulations pertaining to the Commonwealth's interim program administrative regulations related to underground mining.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will repeal the requirements pertaining to the Commonwealth's interim program administrative regulations pertaining to underground mining.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of this regulation will have no impact, as these are interim program regulations and are no longer needed. All permits issued under these administrative regulations are either no longer active or were moved under the permanent program administrative regulations in 405 KAR Chapters 7 -24.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will need to be taken to comply with this repealer.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no benefits associated with complying with this repealer. These administrative regulations

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

(a) Initially: There are no costs associated with the repeal of this administrative regulation.

(b) On a continuing basis: There are no costs associated with the repeal of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required to repeal these administrative regulations.

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

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

(9) TIERING: Is tiering applied? No, this is a repeal of an administrative 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 Division of Mine Permits and the Division of Mine Reclamation and Enforcement.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.465, 30 C.F.R. Part 700.

(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 repeal will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This repeal will not generate revenue.

(c) How much will it cost to administer this program for the first year? This repeal will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This repeal will not cost the agency additional funding.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 710 to 725

2. State Compliance Standards. KRS Chapter 350.

3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above set the minimum information related to the initial program administrative.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This repealer is deleting the cabinet's interim program administrative regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Repealer)**

810 KAR 1:111. Repeal of 810 KAR 1:110.

RELATES TO: KRS 230.215, 230.225(5), 230.240, 230.260

STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2), 230.260(11)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215 vests in the racing commission forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty

and integrity of horse racing in the Commonwealth. The necessary content of this repealed regulation has been updated and incorporated as part of a new administrative regulation at 810 KAR 8:040, which is replacing three current regulations regarding out of competition testing.

Section 1. 810 KAR 1:110, Out of competition testing, is hereby repealed.

FRANKLIN S. KLING, JR., Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2018 at 10:00 a.m. in the North Theater of the Kentucky Horse Park Visitor Center, 4089 Ironworks Parkway, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 p.m. on June 30, 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: John Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Ironworks Parkway, Bldg. B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email John.Forgy@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals the out of competition testing regulation for thoroughbred racing because a new, contemporaneously promulgated administrative regulation at 810 KAR 8:040 will replace this regulation and other breed-specific regulations with updated and comprehensive out of competition testing protocols and procedures applicable to all horses seeking to race in the Commonwealth.

(b) The necessity of this administrative regulation: This administrative regulation repealer, in concert with two (2) contemporaneously filed repealers and one (1) new administrative regulation at 810 KAR 8:040, is necessary to revise the regulatory regime governing out of competition testing for horses seeking to race in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215 authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. KRS 230.240(2) requires the racing commission to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation repealer, in concert with two (2) contemporaneously filed repealers and one (1) new administrative regulation at 810 KAR 8:040, will ensure there is no regulatory duplication or inconsistency regarding out of competition testing for horses seeking to race in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Kentucky Horse Racing Commission is charged with the responsibility to regulate the conduct of horse racing and pari-mutuel wagering on

horse racing, and related activities within the Commonwealth of Kentucky. The Commission is further required to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation repealer, in concert with two (2) contemporaneously filed repealers and one (1) new administrative regulation at 810 KAR 8:040, will assist the effective administration of KRS Chapter 230 by eliminating any potential duplication or inconsistency regarding out of competition testing for horses seeking to race in the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is a repealer. Necessary substantive provisions from this regulation are being re-promulgated as part of a new, comprehensive out of competition testing regulation at 810 KAR 8:040.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission is affected by this administrative regulation, as well as Kentucky's licensed thoroughbred racetracks. Licensed owners, trainers, and veterinarians are affected by and required to comply with this administrative regulation. Kentucky's racing horses, jockeys, and others who come into contact with horses will benefit from the enhanced safety and welfare of horses that are free from prohibited and potentially dangerous substances. In the year 2017, the Kentucky Horse Racing Commission licensed approximately 6,000 thoroughbred owners, trainers, and owner/trainers, 194 jockeys, and 122 veterinarians. These numbers remain consistent from year to year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation requires no action by regulated persons or entities.

(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 impose no new costs on regulated persons or entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation does not require any action from regulated persons or entities.

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

(a) Initially: There is no initial cost to implement this administrative regulation.

(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: No funding is necessary 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: No increase in fees or funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation neither directly nor indirectly

increases any fees.

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation repeals the subject administrative 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 Kentucky Horse Racing Commission will be affected.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215(2), 230.240(2), 230.260(11).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for state or local government for subsequent years.

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

(d) How much will it cost to administer this program for subsequent years? There is no cost 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 (+/-): No impact.

Expenditures (+/-): No impact.

Other Explanation: None.

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

810 KAR 8:040. Out-of-competition testing.

RELATES TO: KRS 230.215, 230.225(5), 230.240, 230.260, 230.290, 230.300, 230.310, 230.320, 230.370

STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2), 230.260(11)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the commission to regulate conditions under which horse racing shall be conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. KRS 230.060(11) requires the commission to promulgate administrative regulations regarding license revocations, suspensions, fines, and other penalties. This administrative regulation establishes new out-of-competition sampling and testing procedures for prohibited substances, and establishes penalties for individuals found to be in violation.

Section 1. Definitions. (1) "Endogenous" means a substance that is naturally produced by the healthy body.

(2) "Exogenous" means a substance that is not naturally produced by the healthy body.

(3) "Out of competition testing" means all testing other than:

(a) Pre-race TCO2 testing; and

(b) Post-race testing at a licensed association under the jurisdiction of the commission.

(4) "Sample" means that portion of a specimen subjected to testing by the commission laboratory.

(5) "Sampling" means the act of collecting a specimen from a horse.

(6) "Specimen" means blood, urine, or other biologic matter taken or drawn from a horse for testing.

(7) "Split sample" means the split sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the split sample laboratory.

Section 2. Eligibility. This administrative regulation shall apply to any horse presumed eligible to race in Kentucky. A horse is presumed eligible to race in Kentucky if:

(1) Under the care, custody, or control of a trainer licensed by the commission;

(2) Owned by an owner licensed by the commission;

(3) Nominated to a race at an association licensed by the commission;

(4) Raced at an association licensed by the commission within the previous twelve (12) calendar months;

(5) Stabled on the grounds of an association licensed by the commission or a training facility subject to the jurisdiction of the commission; or

(6) Nominated to participate in the Kentucky Thoroughbred Development Fund.

Section 3. Consultation Permitted. The Commission or its designee may consult with the Association of Racing Commissioners International, the Racing and Medication Testing Consortium, or their successors to determine whether to authorize use of a particular substance in accordance with Section 4(1)(m) of this administrative regulation.

Section 4. Prohibited Substances. (1) Substances listed in this subsection shall be prohibited at all times:

(a) Beta-2 agonists, including all optical isomers except clenbuterol and albuterol;

(b) Corticotrophin releasing factors and corticotrophin releasing hormones (CCRH), except Adrenocorticotrophic Hormone (ACTH);

(c) Erythropoiesis-Stimulating Agents (ESAs), including darbepoetin (dEPO); erythropoietins (EPO); EPO-Fc; EPOmimetic peptides (EMP), e.g., CNTO 530 and peginesatide; and methoxypolyethylene glycol-epoetin beta (CERA);

(d) Growth Hormone (GH); Growth Hormone Releasing Hormone (GHRH); CJC-1295, sermorelin and tesamorelin; Growth Hormone Secretagogues (GHS); anamorelin; ipamorelin; GH-Releasing Peptides (GHRPs); alexamorelin; GHRP-6; hexarelin; and pralmorelin;

(e) Growth factors, including Fibroblast Growth Factors (FGFs), Hepatocyte Growth Factor (HGF), Insulin-like Growth Factor-1 (IGF-1) and its analogues, Mechano Growth Factors (MGFs), Platelet-Derived Growth Factor (PDGF), Vascular-Endothelial Growth Factor (VEGF), and any other growth factor affecting muscle, tendon, or ligament protein synthesis/degradation, vascularization, energy utilization, regenerative capacity, or fiber type switching;

(f) Hormone and metabolic modulators, including:

1. Aromatase inhibitors, including aminoglutethimide, anastrozole, androsta-1,4,6-triene-3,17-dione (androstatrienedione), 4-androstene-3,6,17 trione (6-oxo), exemestane, formestane, letrozole, and testolactone;

2. Selective estrogen receptor modulators (SERMs), including raloxifene, tamoxifen, toremifene;

3. Other anti-estrogenic substances, including clomiphene, cyclofenil, and fulvestrant;

4. Agents modifying myostatin function, including myostatin inhibitors;

5. Activators of the AMP-activated protein kinase (AMPK), including 5-Aminoimidazole-4-carboxamide ribonucleotide (AICAR); and Peroxisome Proliferator Activated Receptor δ (PPAR δ) agonists including GW 1516;

6. Insulins; and

7. Trimetazidine;

(g) Hypoxia-inducible factor (HIF) stabilizers, including cobalt and roxadustat (FG-4592);

(h) Hypoxia-inducible factor (HIF) activators, including argon and xenon;

(i) Masking agents, including desmopressin, plasma expanders (including glycerol; and intravenous administration of albumin, dextran, and hydroxyethyl starch), and probenecid;

(j) Non-erythropoietic EPO-Receptor agonists, including ARA-290, asialo EPO, and carbamylated EPO;

(k) Thyroid modulators or hormones, except thyroxine (T4) and altrenogest;

(l) Venoms and toxins from sources, including snails, snakes, frogs, and bees and their synthetic analogues, including ziconotide; and

(m) Any pharmacological substance not listed in this administrative regulation and without current approval by the U.S. Food and Drug Administration for human or veterinary use, unless approved by the Commission in advance.

(2) Substances listed in subsections (3), (4), and (5) of this section shall be prohibited unless:

(a) Currently approved for human or veterinary use by the U.S. Food and Drug Administration;

(b) Permitted by federal law and the law of the state where the horse is located when treated;

(c) Administered pursuant to a veterinary prescription issued in the context of a valid veterinarian-patient-client relationship; and

(d) Entered into the horse's medical record by the administering veterinarian.

(3) Substances listed in this subsection shall be prohibited unless they meet all the requirements of subsection (2) of this section and are reported to the Commission at the time of sampling if administered within the preceding twenty-four (24) hours:

(a) Therapeutic substances;

(b) Compounded medications;

(c) Platelet rich plasma (PRP);

(d) Autologous conditioned plasma (IRAP);

(e) Furosemide; and

(f) Trichlormethiazide.

(4) Substances listed in this subsection shall be prohibited unless they meet all the requirements of subsection (2) of this section and are reported to the commission no later than twenty-four (24) hours after administration or dispensing of the medication:

(a) Anabolic Androgenic Steroids (AAS) or anabolic agents, including exogenous AAS, endogenous AAS, or their synthetic esters if administered exogenously, clenbuterol, selective androgen receptor modulators (SARMs), ractopamine, tibolone, zeranol, and zilpaterol. After the last administration of an anabolic steroid or agent, the horse shall be placed on the Veterinarian's list for six (6) months;

(b) Adrenocorticotrophic Hormone (ACTH);

(c) Albuterol;

(d) Altrenogest, for fillies and mares only;

(e) Diuretics, including acetazolamide, amiloride, bumetanide, canrenone, chlorthalidone, etacrynic acid, indapamide, metolazone, spironolactone, and thiazides including bendroflumethiazide, chlorothiazide, hydrochlorothiazide, torsemide, triamterene, and vasopressin receptor antagonists or vaptans, including tolvaptan; and

(f) Thyroxine (T4).

(5) Substances listed in this subsection shall be prohibited in male horses unless they meet all the requirements of subsection (2) of this section and the administering veterinarian files a treatment plan with the commission prior to administering the medication:

(a) Altrenogest;

(b) Chorionic Gonadotropin (CG); and

(c) Luteinizing Hormone (LH).

Section 5. Prohibited Acts. (1) Acts listed in this subsection shall be prohibited at all times:

(a) The administration or reintroduction of any quantity of autologous, allogenic (homologous), or heterologous blood or red blood cell products of any origin into the circulatory system;

(b) Artificially enhancing the uptake, transport, or delivery of oxygen, with perfluorochemicals, efaproxiral (RSR13), hemoglobin products, hemoglobin-based blood substitutes, and microencapsulated hemoglobin products (excluding supplemental oxygen);

(c) The use of normal or genetically modified hematopoietic cells; and

(d) Intravascular manipulation of blood or blood components by physical or chemical means other than a hyperbaric oxygen chamber.

(2) Acts listed in this subsection shall be prohibited unless approved by the commission or its designee in advance, pursuant to a valid veterinary prescription, entered into the horse's medical record by the veterinarian, and reported to the commission's representative at the time of sampling.

(a) Transfer of polymers of nucleic acids or nucleic acid analogues; and

(b) Use of mesenchymal stem cells for treatment of musculo-skeletal disorders.

Section 6. Out-of-Competition Testing. (1) Any horse presumed eligible to race in Kentucky pursuant to Section 1 of this administrative regulation shall be subject to testing without advance notice for any substance specified in this administrative regulation.

(2) A horse may be designated for testing by the executive director, the chief state steward, chief judge, or their respective designee.

(3) An owner, trainer, or any authorized designee shall fully cooperate with the commission veterinarian, or his or her designee, by:

(a) Locating and identifying any horse designated for out-of-competition testing;

(b) Making the horse available for the collection of the specimen at a place designated by the commission veterinarian, or his or her designee; and

(c) Observing the collection of the specimen.

1. If the owner, trainer, or their authorized designee, is not available to observe the collection of the specimen, the collection shall be deferred until the trainer, owner, or their authorized designee becomes reasonably available, but the collection shall occur no later than six (6) hours after notice of intent to collect a specimen from a horse is issued by the commission veterinarian or his or her designee.

2. If the collection does not occur within the time provided for in this subsection, any horse that is designated for testing may be barred from racing in Kentucky and placed on the Veterinarian's list and the steward's list or judge's list, for a period of 180 days, and the owner and trainer of the horse may be subject to the penalties described in Section 12 of this administrative regulation.

(4) Responsible persons.

(a) The trainer of the horse shall be responsible for the condition of a horse sampled for an out-of-competition test while on the grounds of a licensed training facility or racetrack.

(b) If the horse is sampled while not on the grounds of a licensed training facility or racetrack, the owner shall be presumed to be the responsible person unless the owner can establish, by substantial evidence, that another licensed person had accepted the responsibility for the care, custody, and control of the horse, making that person the responsible person.

(c) If a horse sampled for an out-of-competition test was claimed, sold, or otherwise transferred during the time the substance giving rise to the positive test may have been administered, then the commission shall investigate to determine, by a preponderance of the evidence, the identity of the responsible person at the time the substance may have been administered.

(d) If the commission cannot determine a responsible person, then the commission may deem the owner responsible and may place the horse on the Veterinarian's list for such time as is necessary to protect the integrity of racing.

(e) If a horse designated for testing is sampled at a location not under the jurisdiction of the commission, the trainer or his designee may declare verbally or in writing at the time of sampling any

reportable substances that have been administered to the horse but have not previously been disclosed to the commission.

Section 7. Specimen Collection. (1) A specimen shall be collected from any horse designated by the executive director, the chief state steward, or their designees, whether the horse is located in Kentucky or in another jurisdiction.

(2) If a designated horse is located in another jurisdiction, the executive director or commission veterinarian may select a veterinarian from that jurisdiction's regulatory authority to collect the specimen.

(3) At a licensed association or training facility under the jurisdiction of the commission, the commission veterinarian, or his or her designee, may collect a specimen from a horse designated for testing at any time.

(4) At a location other than the grounds of a licensed association or a training facility under the jurisdiction of the commission, the commission veterinarian, or his or her designee, shall collect the specimen between the hours of 7 a.m. and 6 p.m., prevailing time, and shall notify orally or in writing the owner, trainer, or their designee before arriving to collect the specimen.

(5) A licensed association or training facility under the jurisdiction of the commission at which a horse designated for testing is located shall cooperate fully in the collection of the specimen.

Section 8. Minimum and Split Samples. The commission veterinarian, in consultation with the official laboratory, shall determine minimum and split sample requirements as established in 810 KAR 1:018, 811 KAR 1:090, and 811 KAR 2:096.

Section 9. Sample Storage, Testing, and Expenses. (1) Any out of competition sample collected pursuant to this administrative regulation shall be stored in a temperature controlled unit at a secure location chosen by the commission until the sample is submitted for testing. Samples shall be secured under conditions established by the commission veterinarian in accordance with 810 KAR 1:018, 811 KAR 1:090, and 811 KAR 2:096.

(2) The commission is the owner of an out of competition specimen.

(3) A trainer or owner of a horse receiving notice of a report of finding from the commission may request that a split sample corresponding to the portion of the sample tested by the commission laboratory be sent to a split sample laboratory that has documented its proficiency in detecting the substance associated with the report of finding and has been approved by the commission.

(4) Split samples and their chain of custody shall be maintained in accordance with 810 KAR 1:018, 811 KAR 1:090, and 811 KAR 2:096.

(5) Expenses related to the testing of samples, including shipping, shall be assessed as follows:

(a) For stakes races, all costs shall be assessed to the licensed racing association hosting the stakes race;

(b) For non-stakes races, costs may be assessed to any licensed racing association running at the time the sample is taken; and

(c) If a split sample is requested, costs shall be borne by the owner or trainer requesting the test.

Section 10. Positive Findings. A positive finding by the commission laboratory of a substance prohibited by this administrative regulation in a specimen taken from a horse designated for testing by a commission veterinarian or his or her designee shall be prima facie evidence that a violation has occurred.

Section 11. Notice of Violation and Hearing. Within five (5) business days of receipt by the stewards of notification of a violation of this administrative regulation, the stewards shall notify the owner and trainer of the violation orally or in writing, and shall schedule a steward's hearing within fourteen (14) calendar days of the notification. The hearing may be continued if the stewards

determine a continuation is necessary to accommodate the parties.

Section 12. Penalty. A trainer, owner, responsible person, or any other individual who violates this administrative regulation shall be subject to the following penalties:

(1) A positive finding of a substance prohibited by this administrative regulation shall be subject to the penalties for that substance as established in 810 KAR 1:018, 810 KAR 1:028, 810 KAR 1:040, 811 KAR 1:090, 811 KAR 1:095, 811 KAR 1:093, 811 KAR 2:096, 811 KAR 2:100, or 811 KAR 2:093.

(2) Upon finding a violation of this administrative regulation, the horse in which the presence of a substance described in Section 4 of this administrative regulation was detected shall be barred from racing in Kentucky and placed on the Veterinarian's list and the steward's list, for a period of up to 180 days.

(3) If the owner, trainer, or any authorized designee fails to cooperate or otherwise prevents a horse from being tested, the horse designated for testing shall be barred from racing in Kentucky and placed on the Veterinarian's list and the steward's list or judge's list, for 180 days, and the individual or individuals responsible for the failure to cooperate or prevention of the horse from being tested shall be subject to the penalties described in this section.

(4) A horse that is barred from racing in Kentucky and placed on the Veterinarian's list and the steward's list, or judge's list pursuant to this administrative regulation shall remain barred from racing and shall remain on the Veterinarian's list and the steward's list or judge's list:

(a) Upon sale or transfer of the horse to another owner or trainer until the expiration of 180 days; and

(b) Until the horse is determined by the commission to test negative for any substance prohibited by this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward.

(5) Willful failure to make a horse available for sampling, tampering with or attempting to tamper in order to alter the integrity and validity of a sample, including urine substitution or adulteration, or any other deceptive acts or interference in the sampling process, shall be penalized as follows:

(a) For a first offense, a Class A penalty as established in 810 KAR 1:028, 811 KAR 1:095, or 811 KAR 2:100.

(b) For a second offense, permanent license revocation.

(c) A horse that is not produced for out of competition testing shall be placed on the Veterinarian's list for a minimum of 180 days.

(6) Failure to report treatment as required by this administrative regulation:

(a) For a first offense, a warning.

(b) For a second or subsequent offense, a Class D penalty as established in 810 KAR 1:028, 811 KAR 1:095, or 811 KAR 2:100.

FRANKLIN S. KLING, JR., Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2018 at 10:00 a.m. in the North Theater of the Kentucky Horse Park Visitor Center, 4089 Ironworks Parkway, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 p.m. on June 30, 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: John Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Ironworks Parkway, Bldg. B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email John.Forgy@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation authorizes out of competition sampling and testing procedures that allow the Commission to detect the presence of certain substances in a horse that are prohibited by this regulation as well as 810 KAR 1:018, 811 1:090, and 2:090, but cannot be effectively detected through the existing post-race sampling and testing procedures. These procedures, which allow the commission to collect specimens from a horse prior to the horse being entered in a race, apply to substances identified in the regulation that have the ability to affect a horse's performance on the racetrack long after they can be detected in the horse's system through post-race sampling and testing. The regulation also establishes a procedure for the adjudication of violations of this administrative regulation.

(b) The necessity of this administrative regulation: This regulation is necessary because the substances identified in the regulation cannot be effectively regulated through existing post-race sampling and testing procedures. The prohibited substances remain in a horse's system for a limited period of time, but their ability to affect a horse can last for weeks or even months beyond the period during which they can be detected. Because the effects far outlast the substances' detection period, these substances are generally administered well in advance of a race and are not detectable through post-race specimen testing. Therefore, it is necessary for the commission to be able to collect a specimen from a horse at or close to the time a prohibited substance may have been administered, which in many instances is before a horse is even entered in a race. This regulation allows the commission to collect such specimens. While this is a new regulation that addresses all breeds of horses racing in Kentucky, it replaces three regulations that are separately applicable to 1) thoroughbred racing (810 KAR 1:110), 2) Standardbred racing (811 KAR 1:240), and 3) Quarter Horse, Paint Horse, Appaloosa and Arabian Racing (811 KAR 2:250). This regulation includes new provisions setting forth a detailed list of prohibited substances modeled on the prohibited substance lists of the World Anti-Doping Agency (WA-DA) and the United States Anti-Doping Agency (USADA). Additionally, the Racing Medication and Testing Consortium (RMTC) has established permissible exemptions – supported by veterinary declaration of use or dispensing – for certain substances on the prohibited substances list that do have legitimate use in the treatment of horses in training. These substances – which include anabolic steroids, clenbuterol, thyroxine, and others – while having therapeutic uses, also have illicit uses. Investigations conducted in Kentucky, New York, California, and other states have determined that these substances have been extensively used in non-therapeutic ways to enhance performance. This regulation regulates the use of these exempted substances through reporting requirements and restricted administration intervals for these exempted substances. The regulation also revises and simplifies the adjudication and penalty procedures in the previous regulations that are to be followed upon the finding of a violation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free

of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This regulation allows the commission to sample horses in such a way as to effectively restrict or prohibit "the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race," and further allows the commission to "maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The commission's current post-race sampling and testing procedures are not adequate to detect the administration of the prohibited substances identified in the regulation. This regulation rectifies that problem by allowing the commission to sample and test a horse at the time and in the manner necessary to detect the presence of those prohibited substances, thus fulfilling its statutory mandate.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect owners and trainers with horses seeking to race in the Commonwealth; the seven currently-licensed racing associations offering horse racing in Kentucky; any training center under the jurisdiction of the commission; jockeys and any other persons who come into contact with horses racing or training in the Commonwealth; patrons who place pari-mutuel wagers on horse races in the Commonwealth; and the Kentucky Horse Racing Commission. In the year 2017, the Kentucky Horse Racing Commission licensed approximately 6000 thoroughbred owners, trainers, and owner/trainers, 194 jockeys, and 122 veterinarians; approximately 1100 standardbred owners, trainers, drivers, and owner/trainers/drivers, and 9 veterinarians; and 14 individuals specifically to participate in an Arabian horse race conducted at Churchill Downs. These numbers remain generally consistent from year to year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Owners and trainers will be required to cooperate with the commission in the sampling of horses by locating and identifying any horse designated for testing, making the horse available at a stall or other safe location for the collection of a specimen and witnessing the collection of the specimen. The licensed racing associations and training centers under the jurisdiction of the commission will be required to cooperate, if necessary, by locating horses to be sampled. As is the case with post-race sampling and testing, and as set forth in KRS

230.240(2), racing associations will continue to pay the cost of testing the specimens. Jockeys and other licensees that come into contact with horses racing in the Commonwealth will not have any additional responsibilities as a result of this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The commission will not have any out of pocket expenses, but will devote employee time toward identifying horses to be tested and collecting specimens for testing. As is the case with post-race sampling and testing, and as set forth in KRS 230.240(2), racing associations will continue to pay the cost of testing the specimens. Owners and trainers will continue to bear any costs associated with the testing of split samples if a primary sample collected from one of their horses tests positive for a prohibited substance and the owner or trainer elects to have a split sample tested.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Each of the entities identified above will benefit from sampling and testing procedures that will allow the commission to detect the presence of the prohibited substances identified in the regulation. The horses, jockeys, and any other individuals who come into contact with horses racing or training in the Commonwealth will benefit because the regulation provides a strong deterrent to putting their health, safety, and welfare at risk through the use of the prohibited substances; the owners and trainers will benefit from the knowledge that they are competing on a level playing field with each other and will be less likely to feel the need to take their horses to race in other jurisdictions; the patrons placing pari-mutuel wagers on horse racing in the Commonwealth will benefit from the knowledge that certain horses cannot gain an advantage over others through the use of prohibited substances; the racing associations and the commission will benefit from increased public confidence in the integrity of horse racing in the Commonwealth; the Commonwealth will benefit from the tax revenue generated when owners and trainers remain in state rather than racing in other jurisdictions and from the tax revenue generated when the betting public wagers their money on races run in Kentucky.

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

(a) Initially: The commission will not have any out of pocket expenses related to the regulation but will devote additional employee time toward designating horses to be tested and collecting samples from those horses.

(b) On a continuing basis: The commission will not have any out of pocket expenses related to the regulation but will devote additional employee time toward designating horses to be tested and collecting samples from those horses.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission will not incur any out of pocket expenses as a result of this regulation. It will compensate employees for any additional time spent on designating horses to be tested and collecting samples from those horses from its general operating budget.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The regulation does not establish any fees or directly or indirectly increase any fees. However, as is the case with post-race sampling and testing, and as set forth in KRS 230.240(2), racing associations will continue to pay the cost of testing the specimens. To the extent that these expenses could be characterized as "fees," this regulation will result in an increase in testing and the associations may see a corresponding increase in their expenses. There associations, however, have expressed support for this regulation because of the manner in which it ensures public confidence in the integrity of racing.

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

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aspects of this regulation will be applied equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320, 230.370.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The Kentucky Horse Racing Commission will not incur any monetary expenses, but will devote some employee time toward designating horses for testing and collecting specimens to be tested.

(d) How much will it cost to administer this program for subsequent years? The Kentucky Horse Racing Commission will not incur any monetary expenses, but will devote some employee time toward designating horses for testing and collecting specimens to be tested.

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: Current KHRC staff will devote time to implementing and enforcing this regulation, but no fiscal impact is anticipated at this time.

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Repealer)

811 KAR 1:241. Repeal of 811 KAR 1:240.

RELATES TO: KRS 230.215, 230.225(5), 230.240, 230.260

STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2), 230.260(11)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215 vests in the racing commission forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth. The necessary content of this repealed administrative regulation has been updated and incorporated as part of a new administrative regulation at 810 KAR 8:040, which is replacing three current

administrative regulations regarding out of competition testing.

Section 1. 811 KAR 1:240, Out of competition testing, is hereby repealed.

FRANKLIN S. KLING, JR., Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2018 at 10 a.m. in the North Theater of the Kentucky Horse Park Visitor's Center, 4089 Ironworks Parkway, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 p.m. on June 30, 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: John Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Ironworks Parkway, Bldg. B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email John.Forgy@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals the out of competition testing regulation for harness racing because a new, contemporaneously promulgated administrative regulation at 810 KAR 8:040 will replace this regulation and other breed-specific regulations with updated and comprehensive out of competition testing protocols and procedures applicable to all horses seeking to race in the Commonwealth.

(b) The necessity of this administrative regulation: This administrative regulation repealer, in concert with two (2) contemporaneously filed repealers and one (1) new administrative regulation at 810 KAR 8:040, is necessary to revise the regulatory regime governing out of competition testing for horses seeking to race in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215 authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. KRS 230.240(2) requires the racing commission to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation repealer, in concert with two (2) contemporaneously filed repealers and one (1) new administrative regulation at 810 KAR 8:040, will ensure there is no regulatory duplication or inconsistency regarding out of competition testing for horses seeking to race in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Kentucky Horse Racing Commission is charged with the responsibility to regulate the conduct of horse racing and pari-mutuel wagering on horse racing, and related activities within the Commonwealth of Kentucky. The Commission is further required to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to

horses prior to the horse participating in a race. This administrative regulation repealer, in concert with two (2) contemporaneously filed repealers and one (1) new administrative regulation at 810 KAR 8:040, will assist the effective administration of KRS Chapter 230 by eliminating any potential duplication or inconsistency regarding out of competition testing for horses seeking to race in the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is a repealer. Necessary substantive provisions from this regulation are being repromulgated as part of a new, comprehensive out of competition testing regulation at 810 KAR 8:040.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission is affected by this administrative regulation, as well as Kentucky's licensed standardbred racetracks. Licensed owners, trainers, and veterinarians are affected by and required to comply with this administrative regulation. Kentucky's racing horses, drivers, and others who come into contact with horses will benefit from the enhanced safety and welfare of horses that are free from prohibited and potentially dangerous substances. In the year 2017, the Kentucky Horse Racing Commission licensed approximately 1100 standardbred owners, trainers, drivers, and owner/trainers/drivers, and 9 veterinarians. These numbers remain consistent from year to year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation requires no action by regulated persons or entities.

(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 impose no new costs on regulated persons or entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation does not require any action from regulated persons or entities.

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

(a) Initially: There is no initial cost to implement this administrative regulation.

(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: No funding is necessary 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: No increase in fees or funding is necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation repeals the subject administrative 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 Kentucky Horse Racing Commission will be affected.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215(2), 230.240(2), 230.260(11).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for state or local government for subsequent years.

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

(d) How much will it cost to administer this program for subsequent years? There is no cost 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 (+/-): No impact.

Expenditures (+/-): No impact.

Other Explanation: None.

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Repealer)**

811 KAR 2:151. Repeal of 811 KAR 2:150.

RELATES TO: KRS 230.215, 230.225(5), 230.240, 230.260
STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2), 230.260(11)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215 vests in the racing commission forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth. The necessary content of this repealed administrative regulation has been updated and incorporated as part of a new administrative regulation at 810 KAR 8:040, which is replacing three current administrative regulations regarding out of competition testing.

Section 1. 811 KAR 2:150, Out of competition testing, is hereby repealed.

FRANKLIN S. KLING, JR., Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on June 21, 2018 at 10 a.m. in the North Theater of the Kentucky Horse Park Visitor's Center, 4089 Ironworks Parkway, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 p.m. on June 30, 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: John Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Ironworks Parkway, Bldg. B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, John.Forgy@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals the out of competition testing regulation for quarter horse, paint horse, appaloosa, and arabian racing because a new, contemporaneously promulgated administrative regulation at 810 KAR 8:040 will replace this regulation and other breed-specific regulations with updated and comprehensive out of competition testing protocols and procedures applicable to all horses seeking to race in the Commonwealth.

(b) The necessity of this administrative regulation: This administrative regulation repealer, in concert with two (2) contemporaneously filed repealers and one (1) new administrative regulation at 810 KAR 8:040, is necessary to revise the regulatory regime governing out of competition testing for horses seeking to race in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215 authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. KRS 230.240(2) requires the racing commission to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation repealer, in concert with two (2) contemporaneously filed repealers and one (1) new administrative regulation at 810 KAR 8:040, will ensure there is no regulatory duplication or inconsistency regarding out of competition testing for horses seeking to race in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Kentucky Horse Racing Commission is charged with the responsibility to regulate the conduct of horse racing and pari-mutuel wagering on horse racing, and related activities within the Commonwealth of Kentucky. The Commission is further required to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation repealer, in concert with two (2) contemporaneously filed repealers and one (1) new administrative regulation at 810 KAR 8:040, will assist the effective administration of KRS Chapter 230 by eliminating any potential duplication or inconsistency regarding out of competition testing for horses seeking to race in the Commonwealth.

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

(a) How the amendment will change this existing administrative

regulation: This administrative regulation is a repealer. Necessary substantive provisions from this regulation are being re-promulgated as part of a new, comprehensive out of competition testing regulation at 810 KAR 8:040.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission is affected by this administrative regulation, as well as Kentucky's licensed racetracks that host Quarter Horse, Paint Horse, Appaloosa, and Arabian racing. Licensed owners, trainers, and veterinarians are affected by and required to comply with this administrative regulation. Kentucky's racing horses, jockeys, and others who come into contact with horses will benefit from the enhanced safety and welfare of horses that are free from prohibited and potentially dangerous substances. In the year 2017, the Kentucky Horse Racing Commission licensed 14 individuals specifically to participate in an Arabian horse race conducted at Churchill Downs. Races involving quarter horses, paint horses, appaloosas, and Arabians are conducted on an irregular basis in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation requires no action by regulated persons or entities.

(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 impose no new costs on regulated persons or entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation does not require any action from regulated persons or entities.

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

(a) Initially: There is no initial cost to implement this administrative regulation.

(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: No funding is necessary 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: No increase in fees or funding is necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation repeals the subject administrative 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 Kentucky Horse Racing Commission will be affected.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

regulation. KRS 230.215(2), 230.240(2), 230.260(11).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for state or local government for subsequent years.

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

(d) How much will it cost to administer this program for subsequent years? There is no cost 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 (+/-): No impact.

Expenditures (+/-): No impact.

Other Explanation: None.

**PUBLIC PROTECTION CABINET
Department of Charitable Gaming
(Repealer)**

820 KAR 1:011. Repeal of 820 KAR 1:010; 1:015; 1:016; 1:017; 1:026; 1:027; 1:028; 1:029; 1:033; 1:034; 1:036; 1:044; 1:046; 1:056; 1:058; 1:100; 1:110; 1:120.

RELATES TO: KRS 238.515

STATUTORY AUTHORITY: KRS 238.515

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515 authorizes the Department of Charitable Gaming to exercise jurisdiction over all charitable gaming in the Commonwealth and to promulgate administrative regulations to carry out the provisions of KRS Chapter 238. This administrative regulation repeals 820 KAR 1:010; 1:015; 1:016; 1:017; 1:026; 1:027; 1:028; 1:029; 1:033; 1:034; 1:036; 1:044; 1:046; 1:056; 1:058; 1:100; and 1:120. The necessary content of these repealed provisions has been moved to subject-matter specific administrative regulations within this chapter. This administrative regulation also repeals 820 KAR 1:110, Keno. No charitable organization has offered Keno in several years.

Section 1. The following regulations are hereby repealed:

- (1) 820 KAR 1:010, Temporary license;
- (2) 820 KAR 1:015, Issuance of annual license for a charitable organization;
- (3) 820 KAR 1:016, Distributor and manufacturer licenses;
- (4) 820 KAR 1:017, Licensing inspections;
- (5) 820 KAR 1:026, Quarterly reports of a licensed charitable gaming facility;
- (6) 820 KAR 1:027, Quarterly reports of a licensed distributor and licensed manufacturer;
- (7) 820 KAR 1:028, Late quarterly report filings;
- (8) 820 KAR 1:029, Facility licensees;
- (9) 820 KAR 1:033, Electronic pulltab system, electronic pulltab device, and electronic pulltab construction;
- (10) 820 KAR 1:034, Pulltab dispenser construction and use;
- (11) 820 KAR 1:036, Pulltab rules of play;
- (12) 820 KAR 1:044, Bingo equipment;
- (13) 820 KAR 1:046, Bingo rules of play;
- (14) 820 KAR 1:056, Special limited charity fundraising event standards;
- (15) 820 KAR 1:058, Gaming occasion records;

(16) 820 KAR 1:100, Department employees prohibited from playing charitable games;

(17) 820 KAR 1:110, Keno; and

(18) 820 KAR 1:120, Allowable expenses.

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

CANNON G. ARMSTRONG, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2018, at 11:00 a.m., at the Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 p.m. on June 30, 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: Doug Hardin, Deputy Commissioner, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625, email Doug.Hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals several administrative regulations within 820 KAR Chapter 1 because contemporaneous amendments to the charitable gaming regulatory regime will render the individual regulations unnecessary. Specifically, this administrative regulation repeals 820 KAR 1:010; 1:015; 1:016; 1:017; 1:026; 1:027; 1:028; 1:029; 1:033; 1:034; 1:036; 1:044; 1:046; 1:056; 1:058; 1:100; 1:110, and 1:120. These administrative regulations are no longer required because by separate regulation amendments, the content has been moved to subject-matter specific regulations within this chapter.

(b) The necessity of this administrative regulation: This administrative regulation, in concert with contemporaneously filed administrative regulations, is necessary to revise the regulatory regime governing charitable gaming in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 238.522, the Charitable Gaming Advisory Commission reviewed this regulation at the Commission's second quarter meeting on May 2, 2018. No written comments were received from the Commissioners. KRS 238.515 authorizes the department to promulgate administrative regulations to carry out and implement KRS Chapter 238. This administrative regulation, in concert with contemporaneously filed administrative regulations, is necessary to revise the regulatory regime governing charitable gaming in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Department of Charitable Gaming is charged with the responsibility of licensing and regulating charitable gaming in Kentucky. The department must remove individual regulations that have become duplicative because of amendments to 820 KAR Chapter 1, or otherwise unnecessary for regulation of licensed charitable gaming

in Kentucky.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Charitable Gaming is affected by this administrative regulation. In addition, the licensees and exempt organizations will be affected by this administrative regulation. As of March 2018, the Department of Charitable Gaming regulated over 1,400 charitable gaming entities that will be affected by this administrative regulation, as follows:

Over 600 charitable gaming organizations;

Over 800 exempt charitable gaming organizations;

Twenty-four (24) manufacturers of charitable gaming supplies;

Twenty-three (23) distributors of charitable gaming supplies; and

Thirty-four (34) charitable gaming facilities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation requires no action by the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The administrative regulation will impose no new costs on regulated persons or entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation does not require any action from the entities identified in question 3.

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

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

(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 funding necessary 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: The implementation of this administrative regulation requires no increase in fees or funding.

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

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation repeals the subject administrative regulations, and all regulated entities are treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. KRS 238.515.

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 first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for subsequent years.

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

(d) How much will it cost to administer this program for subsequent years? There is no cost 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 (+/-): No impact.

Expenditures (+/-): No impact.

Other Explanation: None.

PUBLIC PROTECTION CABINET Department of Charitable Gaming (New Administrative Regulation)

820 KAR 1:135. Disposal of gaming supplies.

RELATES TO: KRS 238.515

STATUTORY AUTHORITY: KRS 238.515

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515 authorizes the Department of Charitable Gaming to establish and enforce reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities. This administrative regulation establishes standards for the disposal of charitable gaming supplies and equipment.

Section 1. Cessation of Gaming. When a charitable organization ceases to game, the charitable organization shall:

(1) Perform a final inventory of all charitable gaming supplies and equipment;

(2) Spend or disburse remaining charitable gaming funds:

(a) In a manner that is consistent with the charitable organization's charitable purpose, or

(b) Donate the charitable gaming funds to another charitable organization's charitable purpose; and

(3) Dispose of all unused charitable gaming supplies and equipment by:

(a) Returning to a distributor;

(b) Donating to another charitable organization with the permission of the department;

(c) Donating to the department for demonstration and training purposes; or

(d) Destruction pursuant to Section 2 of this administrative regulation.

Section 2. Method of Destruction. When a charitable organization must destroy gaming supplies, the gaming supplies shall be destroyed by:

(1) Burning in compliance with state and federal law;

(2) Shredding;

(3) Defacing the gaming supplies in some manner that prevents its reuse; or

(4) Any combination of the above-referenced methods.

Section 3. Abandoned Charitable Gaming Supplies and Equipment. Abandoned charitable gaming supplies and equipment shall be seized by the department and destroyed or kept for demonstration and training purposes.

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

CANNON G. ARMSTRONG, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2018, at 11:00 a.m., at the Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 p.m. on June 30, 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: Doug Hardin, Deputy Commissioner, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625, email Doug.Hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for the disposal of charitable gaming supplies and equipment.

(a) The necessity of this administrative regulation: This administrative regulation is necessary to clearly articulate requirements for disposal of charitable gaming supplies and equipment by charitable organizations under the department's regulatory authority.

(b) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 238.522, the Charitable Gaming Advisory Commission reviewed this regulation at the Commission's second quarter meeting on May 2, 2018. No written comments were received from the Commissioners. This administrative regulation conforms to the authority set forth in KRS 238.515(9), which requires the department to promulgate administrative regulations to carry out and implement KRS Chapter 238.

(c) 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 KRS Chapter 238 by establishing standards for the disposal of charitable gaming supplies and equipment in a manner that they can no longer be used or by donation to the department.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation intended to facilitate and clarify standards for disposal of charitable gaming supplies and equipment.

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

(c) How the amendment conforms to the content of the

authorizing statutes: This is a new administrative regulation.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Charitable Gaming, its employees, and all licensees disposing of or destroying gaming supplies. As of March 2018, the Department of Charitable Gaming regulated over 1,400 charitable gaming entities that will be affected by this administrative regulation, as follows:

Over 600 charitable gaming organizations;

Over 800 exempt charitable gaming organizations;

Twenty-four (24) manufacturers of charitable gaming supplies;

Twenty-three (23) distributors of charitable gaming supplies; and

Thirty-four (34) charitable gaming facilities.

(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 questions (3) will have to take to comply with this administrative regulation or amendment: Regulated entities seeking to cease gaming will be required to perform a final inventory of charitable gaming supplies and equipment and dispose of all unused charitable gaming supplies and equipment by returning, donating, or destroying the equipment by methods specified in the regulation. These requirements are not new, but previously were codified in multiple regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): Regulated entities will face minimal additional costs, if any, to comply with this administrative regulation, as the destruction methods are consistent with previous regulatory requirements and have been moved into this new regulation for improved ease of understanding and compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the certainty of specific guidelines for the disposal of gaming equipment.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

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

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

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

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

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulations applies to all licensees and exempt charitable organizations.

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 Charitable Gaming and any local fire department or school district choosing to dispose of charitable gaming supplies will be impacted 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 238.515(9).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for any state or local government agency for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for any state or local government agency for subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in administrative costs for the first year.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in administrative costs for subsequent years.

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

Revenues (+/-): No impact.

Expenditures (+/-): No impact.

Other Explanation: The department may receive donations of charitable gaming supplies and equipment for demonstration and training purposes as a result of this regulation.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Guardianship
(Repealer)

910 KAR 2:052. Repeal of 910 KAR 2:050.

RELATES TO: KRS 210.290(5), 387.510(15), 387.760

STATUTORY AUTHORITY: KRS 194A.050(1), 387.760(2)

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 387.760(2), the Cabinet for Health and Family Services is entitled to receive reasonable compensation for services rendered and for reasonable and necessary expenses incurred in the exercise of its assigned guardianship or conservatorship duties and powers. This administrative regulation establishes procedures used by the cabinet to assess a monthly compensation fee for guardianship program services. This administrative regulation repeals 910 KAR 2:050, which unnecessarily restricts the cabinet from collecting fees for services pursuant to KRS 387.760(2).

Section 1. 910 KAR 2:050, Compensation for guardianship program services, is hereby repealed.

TIMOTHY E FEELEY, Acting Commissioner

SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 15, 2018 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 25, 2018, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by June 18, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on this proposed administrative

regulation until June 30, 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: Phyllis W. Sosa, phone (502) 564-6930, email Phyllis.sosa@ky.gov, and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 910 KAR 2:050.

(b) The necessity of this administrative regulation: This administrative regulation is necessary as a result of 910 KAR 2:050 being outdated and unnecessarily limits the cabinet's ability to obtain the fees allowed pursuant to KRS 387.760(2) and needed to offset some of the financial burdens of the guardianship program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The only purpose of this administrative regulation is to repeal 910 KAR 2:050.

(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 910 KAR 2:050, which will allow effective administration of KRS 387.760(2).

(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, but a repealer. By repealing 910 KAR 2:050 the CHFS will be able to fully enact KRS 377.760 to collect a fee for guardianship services provided regardless if the guardian is private or public guardian.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The only purpose of this administrative regulation is to repeal 910 KAR 2:050. The repealer allows for KRS 387.760 to be enforced. This affects any individual appointed to the CHFS guardianship program, currently over 4400 individuals. By repealing 910 KAR 2:050, the fees for guardianship are the same for private or public guardianship.

(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 only purpose of this administrative regulation is to repeal 910 KAR 2:050. The individuals under guardianship will not have to take any action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The only purpose of this administrative regulation is to repeal 910 KAR 2:050. The costs allowed are determined in KRS 387.760(2), and based on the individual's income and assets. On average, the cost will be approximately \$50.00 per month dependent upon the individual's resources and liabilities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The only purpose of this administrative regulation is to repeal 910 KAR 2:050. All individuals appointed private or public guardian will be treated the same for

the purpose of fees pursuant to KRS 387.760(2). By collecting fees, the CHFS will have some additional resources to fund staffing to keep the high caseloads from growing, which will allow more time for the wards to be seen and their needs met.

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

(a) Initially: There is no cost associated with the repeal of 910 KAR 2:050.

(b) On a continuing basis: There is no ongoing cost associated with the repeal of 910 KAR 2:050.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source of funding associated with the repeal of 910 KAR 2:050.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The only purpose of this administrative regulation is to repeal 910 KAR 2:050.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There is no new fee associated with the repeal of 910 KAR 2:050. The repeal of 910 KAR 2:050 allows the CHFS to obtain the fees allowed under KRS 387.760(2) to those individuals appointed a state guardian that have funds available.

(9) TIERING: Is tiering applied? There is no tiering applied in the repeal of 910 KAR 2:050.

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, Department for Aging and Independent Living, will no longer have the obsolete administrative regulation under its purview.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The only purpose of this administrative regulation is to repeal 910 KAR 2:050.

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? The only purpose of this administrative regulation is to repeal 910 KAR 2:050. This repealer will allow the CHFS to collect the fees allowed under KRS 387.760(1). The dollars collected are subject to the number of wards and their income and resources that are available to collect a fee from. On average, the monthly cost is approximately \$50.00 per month +/- . As of January 2018, if the number remained static the total fee collection would be \$2,712,000.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The only purpose of this administrative regulation is to repeal 910 KAR 2:050. The repeal of this regulation will allow collection of fees pursuant to KRS 387.760(1) estimated at \$2,712,000 dependent upon the number of wards and their income.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of May 8, 2018

Call to Order and Roll Call

The May meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, May 8, 2018, at 1:00 p.m. In Room 149 of the Capitol Annex. Senator Harris, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the April 2018 meeting were approved.

Present were:

Members: Senators Ernie Harris, Perry Clark, and Alice Forgy Kerr; and Representatives David Hale, Mary Lou Marzian, 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: Arica Brandford, Ruby King, Board of Nursing; Louis Kelly, Board of Physical Therapy; Amber Arnett, Steve Beam, Karen Waldrop, Department of Fish and Wildlife Resources; Clint Quarles, Department of Agriculture; Amy Barker, James Erwin, Hannah Gibson, Chris Klemyer, Randy White, Department of Corrections; Ann Dangelo, Jamir Davis, Wanda Ballard Repasky, Department of Transportation; Steve Humphress, Carol Beth Martin, Trena Summers, Department of Alcoholic Beverage Control; Elizabeth Caywood, Maribeth Schneber-Rhemrev, Department for Community Based Services.

The Administrative Regulation Review Subcommittee met on Tuesday, May 8, 2018, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:
BOARDS AND COMMISSIONS: Board of Nursing

201 KAR 20:056. Advanced practice registered nurse licensure and certification requirements. Arica Brandford, nursing consultant, and Ruby King, branch manager, represented the board.

In response to questions by Co-Chair Harris, Ms. King stated that all applicants were required to submit to a background check upon initial application; however, the annual renewal process did not include the background check. The board did not expect the background check requirements to overwhelm the system. The fee for the background check was paid for by the applicant.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1 and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 6 to include the simplified criminal background check requirements for a reinstatement applicant. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:070. Licensure by examination.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:110. Licensure by endorsement.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO 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.

201 KAR 20:225. Reinstatement of license.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:370. Applications for licensure.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 4 to comply with the drafting requirements of KRS Chapter 13A; and (2) to update the Annual Licensure Renewal Application. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 2, 7, 9, and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Sections 7 and 9 to include the simplified criminal background check requirements for a SANE credential applicant; and (3) to update the annual credential renewal applications. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:470. Dialysis technician credentialing requirements and training program standards.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 2, 4, and 15 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Sections 2 and 4 to include the simplified criminal background check requirements for a dialysis technician applicant; (3) to amend Section 12 to lower the name change fee from thirty-five (35) dollars to twenty-five (25) dollars for consistency; and (4) to update the Application for Renewal of Dialysis Technician Credential. Without objection, and with agreement of the agency, the amendments were approved.

Board of Physical Therapy

201 KAR 22:020 & E. Eligibility and credentialing procedure. Louis Kelly, general counsel, represented the board.

In response to questions by Co-Chair Harris, Mr. Kelly stated that the background check requirements applied to initial application or application after licensure lapse. The background check did not apply to renewals. The board did not anticipate the background check requirements to overwhelm the system. The fee for the background check was paid for by the applicant.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 22:040 & E. Procedure for renewal or reinstatement of a credential for physical therapist or physical therapist assistant.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 3, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 22:070 & E. Requirements for foreign-educated physical therapists.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 2:049. Small game and furbearer hunting and trapping on public areas. Amber Arnett, staff attorney; Steve Beam, Division of Wildlife Director; and Karen Waldrop, deputy

commissioner, represented the department.

In response to questions by Representative Turner, Mr. Beam stated that the check-in and check-out procedures were performed at kiosks at the entrance or entrances to the WMA. The purpose was for data collection regarding intensity of small game hunting. The kiosks might not be at each gate, but will be at multiple, convenient locations. The tag or card will be provided at the kiosks. Employees will not continuously monitor the kiosks but will ensure that an adequate supply of tags or cards is always available.

A motion was made and seconded to approve the following amendment: to amend Section 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

GENERAL GOVERNMENT: Department of Agriculture: Division of Regulation: Amusement Rides

302 KAR 16:020. Inspection and operation of amusement rides or amusement attractions. Clint Quarles, staff attorney, represented the division.

In response to questions by Co-Chair Harris, Mr. Quarles stated that requirements for aerial recreational devices were already established in 302 KAR Chapter 17. This package included "clean-up" amendments. There was not a gap in coverage for these requirements.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 6 through 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 16:081. Repeal of 302 KAR 16:080.

302 KAR 16:091. Rides and attractions not included in the definition of amusement ride or attraction.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 1 to include "turbo bungees," which was the synonym for "Euro bungees." Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:170. Green River Correctional Complex. Amy Barker, assistant general counsel; James Erwin, interim commissioner; and Hannah Gibson, program administrator, represented the department.

In response to a question by Co-Chair Harris, Mr. Erwin stated that restricted housing was the segregation unit for inmates who exhibited disciplinary problems during incarceration. These inmates were served three (3) daily meals; however, they were not allowed to have much extra food from the canteen in the unit. Graduation from the restricted unit to a transition unit incentivized good behavior by allowing extra food from the canteen.

501 KAR 6:270. Probation and parole policies and procedures.

In response to questions by Representative Petrie, Ms. Gibson stated that these policies were being updated to ensure efficiency and effectiveness. Changes included eliminating the pre-sentence investigation update, which was duplicative. Ms. Barker stated that some changes were for compliance with interstate commerce requirements.

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.

Capital Punishment

501 KAR 16:290. Preliminary and post-execution procedures concerning condemned person. Amy Barker, assistant general

counsel, and James Erwin, interim commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 16:300. Execution procedures concerning attorneys representing the condemned, witnesses, visitors, and demonstrators.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 4, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 16:310. Pre-execution medical actions.

In response to questions by Representative Marzian, Ms. Barker stated that this administrative regulation required, under certain circumstances, a psychologist to review the condemned inmate's department medical records for a diagnosis of intellectual disability or an IQ test score of seventy-five (75) or lower. For an intellectual disability, it was the responsibility of the condemned person to pursue the matter through the court system, and the Department of Corrections had limited ability to participate. The process was intended to occur within thirty (30) days of the warrant if it had not been initiated prior.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 16:330. Lethal injection protocols.

Representative Marzian requested to be recorded as voting in opposition to this administrative regulation and 501 KAR 16:340.

A motion was made and seconded to approve the following amendments: to amend Section 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 16:340. Electrocution protocol.

TRANSPORTATION CABINET: Office of Civil Rights and Small Business Development: Office of Minority Affairs

600 KAR 4:010. Certification of disadvantaged business enterprises. Ann D'Angelo, assistant general counsel; Jamir Davis, executive director; and Wanda Repasky, contract attorney, represented the office.

In response to questions by Co-Chair Harris, Ms. Repasky stated that the Office of Civil Rights and Small Business Development had been operating, although under various names, since at least 1989. Mr. Davis stated that the office processed certifications of disadvantaged businesses pursuant to the federal program. Approximately 400 businesses were certified as disadvantaged businesses with the cabinet.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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. Steve Humphress, general counsel; Carol Beth Martin, malt beverage administrator; and Trena Summers, distilled spirits administrator, represented the department.

In response to questions by Co-Chair Harris and Representative Petrie, Mr. Humphress stated that because the package license quotas were established by statute, the administrative regulation being repealed was no longer necessary. There would no longer be a quota for drink licenses.

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Cities still had authority to establish related ordinances. A licensee could transfer or sell a license, but the licenses had very little value. The department did not expect an increase in sales of these licenses. There was no policy shift other than no arbitrary limit on the number of licenses.

In response to a question by Co-Chair Hale, Mr. Humphress and Ms. Martin stated that the repeal applied essentially to the quota for drink licenses because the package license quotas were established by statute.

In response to a question by Co-Chair Harris, Ms. Martin stated that the prior package license quotas were set at one (1) license per 2,300 population. Mr. Humphress stated that there would always be at least two (2) licenses available to prevent a monopoly.

HEALTH AND FAMILY SERVICES CABINET: 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. Elizabeth Caywood, chief of staff, and Maribeth Schneber-Rhemrev, represented the division.

The following administrative regulations were deferred or removed from the May 8, 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.

BOARDS AND COMMISSIONS: Board of Podiatry

201 KAR 25:090. Prescribing and dispensing controlled substances.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division for Air Quality: Attainment and Maintenance of the National Ambient Air Quality Standards

401 KAR 51:240. Cross-State Air Pollution Rule (CSAPR) NO_x annual trading program.

401 KAR 51:250. Cross-State Air Pollution Rule (CSAPR) NO_x ozone season group 2 trading program.

401 KAR 51:260. Cross-State Air Pollution Rule (CSAPR) SO₂ group 1 trading program.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:030. Kentucky State Reformatory.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Driver Licensing: Administration

601 KAR 2:030 & E. Ignition interlock.

HEALTH AND FAMILY SERVICES CABINET: Department for Public Health: Division of Public Health Protection Safety: Sanitation

902 KAR 10:040. Kentucky youth camps.

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 Child Care: Day Care

922 KAR 2:090 & E. Child-care center licensure.

922 KAR 2:100 & E. Certification of Family Child-Care Homes.

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 June 12, 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

L - 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

L - 19

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*.

Certifications Index

L - 35

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

L - 36

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

L - 37

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
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VOLUME 43

The administrative regulations listed under VOLUME 43 are those administrative regulations that were originally published in Volume 43 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the *2017 Kentucky Administrative Regulations Service* was published.

SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, not in effect within 1 year of publication
- *** Withdrawn before being printed in Register
- ‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- 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.

EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

301 KAR 2:225E	2112	5-12-2017
Replaced	2199	8-3-2017
501 KAR 1:030E	2115	4-17-2017
Replaced		See 44 Ky.R.
787 KAR 2:040E	1922	3-31-2017
Replaced		See 44 Ky.R.
907 KAR 1:041E(r)	1924	3-31-2017
Expired		9-27-2017
907 KAR 3:206E(r)	1925	3-31-2017
Expired		9-27-2017
907 KAR 23:001E	1927	3-31-2017
Expired		9-27-2017
907 KAR 23:010E	1930	3-31-2017
Replaced		See 44 Ky.R.
907 KAR 23:020E	1935	3-31-2017
Replaced		See 44 Ky.R.

ORDINARY ADMINISTRATIVE REGULATIONS:

4 KAR 1:010		
Amended	2176	See 44 Ky.R.
4 KAR 1:040		
Amended	2178	See 44 Ky.R.
4 KAR 1:050	2239	See 44 Ky.R.
16 KAR 2:020		
Amended	2005	See 44 Ky.R.
16 KAR 5:020		
Amended	2008	See 44 Ky.R.
16 KAR 6:020		
Amended	1627	7-7-2017
16 KAR 8:040		
Amended	2011	See 44 Ky.R.
30 KAR 2:010		
Amended	2180	See 44 Ky.R.
30 KAR 5:060		
Amended	2182	See 44 Ky.R.
40 KAR 2:145		
Amended	2013	See 44 Ky.R.
40 KAR 2:150		
Amended	2015	See 44 Ky.R.
200 KAR 5:080		
Repealed	2240	9-1-2017
200 KAR 5:081(r)	2240	9-1-2017
201 KAR 2:074		
Amended	1796	See 44 Ky.R.
201 KAR 2:076		
Amended	2184	See 44 Ky.R.

201 KAR 20:056		
Amended	1799	
As Amended	2125	6-21-2017
201 KAR 20:057		
Amended	1802	6-21-2017
201 KAR 20:070		
Amended	2187	See 44 Ky.R.
201 KAR 20:110		
Amended	2189	See 44 Ky.R.
201 KAR 20:225		
Amended	2191	8-16-2017
201 KAR 20:480		
Amended	2193	8-16-2017
201 KAR 22:070		
Amended	2022	See 44 Ky.R.
201 KAR 26:125		
Amended	1805	See 44 Ky.R.
201 KAR 26:130		
Amended	1807	See 44 Ky.R.
201 KAR 26:140		
Amended	1809	See 44 Ky.R.
201 KAR 26:145		
Amended	1811	See 44 Ky.R.
201 KAR 26:155		
Amended	1814	See 44 Ky.R.
201 KAR 26:160		
Amended	1816	See 44 Ky.R.
201 KAR 26:165		
Amended	1818	See 44 Ky.R.
201 KAR 26:171		
Amended	1819	See 44 Ky.R.
201 KAR 26:175		
Amended	1823	
Reprint	2109	
Am Comments	2156	See 44 Ky.R.
201 KAR 26:180		
Amended	1826	
Am Comments	2158	See 44 Ky.R.
201 KAR 26:185		
Amended	1827	See 44 Ky.R.
201 KAR 26:190		
Amended	1829	See 44 Ky.R.
201 KAR 26:200		
Amended	1831	See 44 Ky.R.
201 KAR 26:210		
Amended	1833	See 44 Ky.R.
201 KAR 26:215		
Amended	1834	See 44 Ky.R.
201 KAR 26:225	1900	See 44 Ky.R.
201 KAR 26:250		
Amended	1836	See 44 Ky.R.
201 KAR 26:280		
Amended	1838	See 44 Ky.R.
201 KAR 26:290		
Amended	1840	See 44 Ky.R.
201 KAR 32:050		
Amended	1841	See 44 Ky.R.
201 KAR 32:060		
Amended	1843	See 44 Ky.R.
201 KAR 34:020		
Amended	2023	See 44 Ky.R.
201 KAR 34:030		
Amended	2025	See 44 Ky.R.
201 KAR 34:050		
Amended	2029	See 44 Ky.R.

LOCATOR INDEX - EFFECTIVE DATES

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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	See 44 Ky.R.	Amended	2060	
301 KAR 3:022			Withdrawn	**	6-5-2017
Amended	2038	See 44 Ky.R.	725 KAR 2:070		
400 KAR 1:001			Amended	2063	See 44 Ky.R.
Amended	1853	See 44 Ky.R.	787 KAR 1:070		
400 KAR 1:030			Amended	612	See 44 Ky.R.
Repealed	1901	8-4-2017	787 KAR 2:040		
400 KAR 1:031(r)	1901	8-4-2017	Amended	2065	See 44 Ky.R.
400 KAR 1:090			804 KAR 4:230		
Amended	1855		Amended	2222	See 44 Ky.R.
Am Comments	2164	See 44 Ky.R.	804 KAR 10:010		
400 KAR 1:100	1902	See 44 Ky.R.	Amended	2224	
401 KAR 8:010			As Amended		See 44 Ky.R.
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401 KAR 8:011(r)	2078	9-8-2017	815 KAR 7:120		
401 KAR 8:020			Amended	2067	See 44 Ky.R.
Amended	2043	See 44 Ky.R.	900 KAR 6:125		
401 KAR 8:040			Amended	2225	See 44 Ky.R.
Amended	2047	9-8-2017	900 KAR 7:030		
401 KAR 8:070			Amended	2228	See 44 Ky.R.
Repealed	2078	9-8-2017	900 KAR 7:040		
401 KAR 8:075			Amended	2232	See 44 Ky.R.
Amended	2049	See 44 Ky.R.	900 KAR 10:041(r)	1908	6-21-2017
401 KAR 8:100			900 KAR 10:050		
Amended	2051	See 44 Ky.R.	Repealed	1908	6-21-2017
401 KAR 8:101			900 KAR 10:060		
Repealed	2078	9-8-2017	Repealed	1908	6-21-2017
401 KAR 8:250			901 KAR 5:060		
Amended	2055	9-8-2017	Repealed	2242	8-16-2017
401 KAR 8:550			901 KAR 5:061(r)	2242	8-16-2017
Repealed	2078	9-8-2017	901 KAR 5:120	2243	See 44 Ky.R.
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Repealed	2078	9-8-2017	Amended	1454	
401 KAR 49:011			Am Comments	1989	

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902 KAR 20:054			Repealed	2086	7-17-2017
Repealed	2082	7-17-2017	906 KAR 1:081(r)	2086	7-17-2017
902 KAR 21:030	1910		906 KAR 1:090		
As Amended	2148	6-21-2017	Repealed	2087	7-17-2017
902 KAR 22:010			906 KAR 1:091(r)	2087	7-17-2017
Repealed	2084	7-17-2017	907 KAR 1:065		
902 KAR 22:011(r)	2084	7-17-2017	Amended	1485	
902 KAR 22:030			Am Comments	1997	
Repealed	2084	7-17-2017	As Amended	2149	7-7-2017
902 KAR 55:075			907 KAR 23:001	2088	10-6-2017
Repealed	2085	7-17-2017	907 KAR 23:010	2091	See 44 Ky.R.
902 KAR 55:076(r)	2085	7-17-2017	907 KAR 23:020	2096	See 44 Ky.R.
902 KAR 55:100			910 KAR 1:210		
Repealed	2085	7-17-2017	Amended	2070	7-17-2017
902 KAR 95:040					

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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EMERGENCY ADMINISTRATIVE REGULATIONS

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

17 KAR 3:020E	494	8-1-2017	Expired		5-14-2018
Replaced	902	12-1-2017	803 KAR 2:425E	185	6-26-2017
31 KAR 3:010E	1914	1-23-2018	Replaced	337	11-3-2017
31 KAR 4:100E	2300	3-19-2018	803 KAR 2:505E	1485	12-4-2017
Withdrawn		5-22-2018	Replaced	2018	4-6-2018
31 KAR 4:120E	2301	3-19-2018	900 KAR 11:010E	187	6-29-2017
Withdrawn		5-22-2018	Replaced	956	11-15-2017
32 KAR 1:020E	496	8-15-2017	902 KAR 20:360E	191	6-16-2017
Replaced	1209	1-5-2018	Replaced		10-11-2017
32 KAR 1:045E	876	9-29-2017	907 KAR 3:066E	6	6-14-2017
Replaced	1493	1-29-2018	Replaced	152	10-6-2017
101 KAR 2:210E	725	9-15-2017	907 KAR 23:010E	See 43 Ky.R.	3-31-2017
Replaced	769	1-5-2018	Replaced		10-6-2017
105 KAR 1:140E	1474	12-15-2017	907 KAR 23:020E	See 43 Ky.R.	3-31-2017
Replaced	1959	4-6-2018	Replaced		10-6-2017
201 KAR 2:390E	498	8-15-2017	921 KAR 2:015E	1799	12-28-2017
Replaced	1501	1-18-2018	921 KAR 2:040E	881	9-29-2017
201 KAR 2:400E	500	8-15-2017	Replaced	1150	3-15-2018
Replaced	1502	1-18-2018	921 KAR 3:090E	883	9-29-2017
201 KAR 12:082E	2303	4-13-2018	Replaced	1155	1-18-2018
201 KAR 12:082E	877	10-13-2017	922 KAR 1:140E	199	6-29-2017
Replaced	1502	2-2-2018	Replaced	1060	1-5-2018
201 KAR 20:505E	727	1-5-2018	922 KAR 1:490E	203	6-29-2017
Expired		3-11-2018	Replaced	1082	1-5-2018
201 KAR 22:020E	2180	3-14-2018	922 KAR 1:550E	207	6-29-2017
201 KAR 22:040E	2182	3-14-2018	Replaced	1086	1-5-2018
201 KAR 22:070E	2184	3-14-2018	922 KAR 2:090E	1916	2-14-2018
301 KAR 1:152E	4	5-26-2017	922 KAR 2:100E	1925	2-14-2018
Replaced	132	9-8-2017	922 KAR 2:111E	1936	2-14-2018
501 KAR 1:030E	See 43 Ky.R.	4-17-2017	922 KAR 2:120E	1937	2-14-2018
Replaced	218	9-1-2017	922 KAR 2:160E	886	9-29-2017
501 KAR 6:270E	183	6-28-2017	Replaced	2025	3-15-2018
Replaced	731	11-3-2017	922 KAR 2:171E(r)	2306	4-13-2018
601 KAR 2:030E	1479	11-15-2017	922 KAR 2:180E	1946	2-14-2018
			922 KAR 2:190E	1952	2-14-2018
			922 KAR 2:260E	895	9-29-2017
			Replaced	1166	3-15-2018
			922 KAR 2:270E	2308	4-13-2018
			922 KAR 2:280E	1487	12-14-2017

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4 KAR 1:040		See 43 Ky.R.	32 KAR 1:020		
As Amended	211	9-1-2017	Amended	550	
4 KAR 1:050		See 43 Ky.R.	As Amended	1209	1-5-2018
As Amended	212	9-1-2017	32 KAR 1:045	1170	
11 KAR 4:080			As Amended	1493	1-29-2018
Amended	1367	3-9-2018	40 KAR 2:145		See 43 Ky.R.
11 KAR 15:090			As Amended	9	8-4-2017
Amended	107		40 KAR 2:150		See 43 Ky.R.
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Amended	1368		45 KAR 1:030		
As Amended	1805	3-9-2018	Amended	258	11-3-2017
13 KAR 2:120	443		45 KAR 1:040		
As Amended	899	12-1-2017	Amended	260	11-3-2017
13 KAR 2:130	445		45 KAR 1:050		
As Amended	900	12-1-2017	Amended	262	
13 KAR 3:050			As Amended	729	11-3-2017
Amended	257		101 KAR 1:325		
As Amended	901	12-1-2017	Amended	1374	
13 KAR 3:060	2702		As Amended	1809	3-9-2018
16 KAR 1:015	698		Amended	2542	
Withdrawn	*	10-13-2017	101 KAR 2:210		
16 KAR 1:016	1453		Amended	769	1-5-2018
As Amended	1956	4-6-2018	102 KAR 1:070		
16 KAR 2:010			Amended	264	
Amended	1584		As Amended	903	12-1-2017
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16 KAR 2:020		See 43 Ky.R.	Amended	1595	
Am Comments	225		As Amended	2186	5-4-2018
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16 KAR 5:020		See 43 Ky.R.	As Amended	1209	1-5-2018
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Amended	1589		Amended	1089	
Am Comments	2039		As Amended	1493	2-2-2018
16 KAR 5:040			103 KAR 16:020		
Amended	1591		Repealed	835	1-5-2018
As Amended	1956	4-6-2018	103 KAR 16:240		
16 KAR 8:040		See 43 Ky.R.	Amended	1091	
Am Comments	231	10-6-2017	As Amended	1810	3-9-2018
17 KAR 3:020			103 KAR 16:360		
Amended	548		Amended	1094	
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As Amended	213	9-1-2017	103 KAR 16:391(r)	835	1-5-2018
30 KAR 5:060		See 43 Ky.R.	103 KAR 17:150		
As Amended	214	9-1-2017	Repealed	836	1-5-2018
31 KAR 3:010			103 KAR 17:151(r)	836	1-5-2018
Withdrawn	***	1-23-2018	103 KAR 18:070		
Amended	2086		Amended	1096	2-2-2018
As Amended	2314		103 KAR 26:110		
Withdrawn		5-22-2018	Amended	770	1-5-2018
Amended			103 KAR 26:120		
31 KAR 4:010			Amended	1097	2-2-2018
Amended	112		As Amended	1494	
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Amended	113	10-6-2017	As Amended	1495	2-2-2018
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Withdrawn		3-19-2018	Amended	1101	
Amended	2358		As Amended	1496	2-2-2018
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31 KAR 4:120			Amended	772	1-5-2018
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Amended	774		201 KAR 2:400	701	
As Amended	1211	1-5-2018	As Amended	1502	1-18-2018
103 KAR 31:102			201 KAR 3:006(r)	2703	
Amended	1107	2-2-2018	201 KAR 3:045		
103 KAR 31:111			Amended	2544	
Amended	1109		201 KAR 3:090		
As Amended	1499	2-2-2018	Amended	2546	
103 KAR 31:170			201 KAR 3:100	2705	
Amended	1110		201 KAR 5:090		
As Amended	1500	2-2-2018	Amended	2548	
103 KAR 31:180			201 KAR 5:130		
Amended	775		Amended	1613	
As Amended	1211	1-5-2018	Withdrawn		2-12-2018
103 KAR 31:190			Amended	2549	
Amended	777	1-5-2018	201 KAR 6:020		
103 KAR 31:200			Amended	2552	
Amended	778		201 KAR 6:050		
As Amended	1212	1-5-2018	Amended	2554	
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Amended	1112		Amended	2361	
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Amended	780		Amended	2363	
As Amended	1212	1-5-2018	201 KAR 9:260		
103 KAR 44:070			Amended	265	
Amended	782		Am Comments	736	
As Amended	1211	1-5-2018	As Amended	905	11-15-2017
103 KAR 44:100			201 KAR 9:310		
Amended	783		Amended	1871	
As Amended	1214	1-5-2018	201 KAR 9:480	1725	5-4-2018
103 KAR 44:120			As Amended	1970	3-15-2018
Amended	785	1-5-2018	201 KAR 12:010		
103 KAR 50:020			Amended	1376	
Repealed	837	1-5-2018	Withdrawn		1-2-2018
103 KAR 50:021(r)	837	1-5-2018	Amended	2556	
103 KAR 50:030			201 KAR 12:020		
Repealed	837	1-5-2018	Repealed	1726	4-6-2018
103 KAR 50:040			201 KAR 12:025		
Repealed	837	1-5-2018	Repealed	1726	4-6-2018
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Amended	1610		Repealed	1972	4-6-2018
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As Amended	2314		Repealed	1972	4-6-2018
108 KAR 1:011(r)	2149		201 KAR 12:055		
As Amended	2314		Repealed	1972	4-6-2018
200 KAR 38:020			201 KAR 12:060		
Repealed	839	1-5-2018	Amended	1618	
200 KAR 38:021(r)	839	1-5-2018	As Amended	1973	4-6-2018
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Amended	1378		As Amended	2478	
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201 KAR 12:101			Amended	1382	
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201 KAR 12:105			201 KAR 20:411		
Repealed	1726	4-6-2018	Amended	2247	
201 KAR 12:110			As Amended	2479	
Repealed	1726	4-6-2018	201 KAR 20:470		
201 KAR 12:125			Amended	2250	
Repealed	1726	4-6-2018	As Amended	2481	
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Repealed	1726	4-6-2018	As Amended	2314	
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Amended	2561		As Amended	2314	
201 KAR 12:150			201 KAR 22:020		
Repealed	1726	4-6-2018	Amended	556	
201 KAR 12:190			As Amended	919	11-15-2017
Amended	2563		Amended	2255	
201 KAR 12:220			As Amended	2486	
Repealed	1726	4-6-2018	201 KAR 22:040		
201 KAR 12:230			Amended	248	
Amended	2565		As Amended	920	11-15-2017
201 KAR 12:260			Amended	2257	
Amended	1621		As Amended	2487	
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Repealed	1726	4-6-2018	As Amended	920	11-15-2017
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Amended	552		As Amended	2487	
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Amended	2566		As Amended	18	7-17-2017
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201 KAR 31:010			Repealed	921	12-1-2017
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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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	922 KAR 5:040		103 KAR 44:070
61.876	922 KAR 1:470		103 KAR 44:100
61.878	603 KAR 2:015	138.460	103 KAR 28:051
	735 KAR 1:010		103 KAR 44:120
	735 KAR 1:020	138.463	103 KAR 28:051
64.530	45 KAR 1:040	138.990	103 KAR 44:070
64.810	45 KAR 1:030	139.010	103 KAR 26:110
	45 KAR 1:040		103 KAR 26:120
	45 KAR 1:050		103 KAR 27:180
61.870	401 KAR 39:060		103 KAR 28:051
61.884	401 KAR 39:060		103 KAR 28:150
65.7045	103 KAR 31:180		103 KAR 31:030
	103 KAR 50:021		103 KAR 31:050
65.7069	103 KAR 50:021		103 KAR 31:102
65.7073	103 KAR 50:021		103 KAR 31:200
65.7075	103 KAR 50:021	139.105	103 KAR 28:051
65.7083	103 KAR 50:021	139.200	103 KAR 26:110
67	401 KAR 5:006		103 KAR 26:120
67A	401 KAR 5:006		103 KAR 28:051
	815 KAR 7:110		103 KAR 28:150
67C	815 KAR 7:110		103 KAR 31:102
68.210	45 KAR 1:030	139.210	103 KAR 28:051
	45 KAR 1:040	139.260	103 KAR 26:110
	45 KAR 1:050		103 KAR 26:120
74	401 KAR 5:006		103 KAR 28:150
75.400	739 KAR 2:050		103 KAR 30:235
75.410	739 KAR 2:050		103 KAR 31:030
75.440	739 KAR 2:050		103 KAR 31:111
76	401 KAR 5:006	139.270	103 KAR 26:110
78.545	105 KAR 1:140		103 KAR 26:120
78.616	105 KAR 1:140		103 KAR 28:051
78.625	105 KAR 1:140		103 KAR 31:111
78.652	105 KAR 1:140	139.280	103 KAR 26:120
82.105	815 KAR 7:110		103 KAR 28:051
83	815 KAR 7:110		103 KAR 31:111
83A	815 KAR 7:110	139.290	103 KAR 28:051
95A.210	739 KAR 2:050		103 KAR 31:111
95A.262	739 KAR 2:050	139.300	103 KAR 31:111
96	401 KAR 5:006	139.310	103 KAR 26:110
96A.095	907 KAR 3:066		103 KAR 26:120
108	401 KAR 5:006		103 KAR 28:051
117.015	31 KAR 6:020	139.330	103 KAR 26:110
117.086	31 KAR 4:040		103 KAR 26:120
117.227	31 KAR 4:010		103 KAR 28:051
117.235	31 KAR 4:040	139.340	103 KAR 28:051
117.255	31 KAR 4:040	139.430	103 KAR 28:051
117.275	31 KAR 6:020		103 KAR 31:111
117.305	31 KAR 6:020	139.440	103 KAR 31:111

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	103 KAR 28:150	150.090	301 KAR 1:015
	103 KAR 30:235	150.092	301 KAR 2:049
139.471	103 KAR 28:051	150.110	301 KAR 1:086
139.480	103 KAR 26:110	150.120	301 KAR 1:155
139.484	103 KAR 28:051	150.625	301 KAR 1:015
139.515	103 KAR 31:180	150.170	301 KAR 1:086
139.517	103 KAR 31:190		301 KAR 1:130
139.518	103 KAR 31:200		301 KAR 1:152
139.519	103 KAR 31:170		301 KAR 1:155
139.533	103 KAR 31:102		301 KAR 1:201
139.540	103 KAR 26:110		301 KAR 1:410
139.550	103 KAR 26:110		301 KAR 2:049
139.590	103 KAR 26:110		301 KAR 2:132
139.600	103 KAR 28:051		301 KAR 2:178
139.620	103 KAR 28:051	150.175	301 KAR 1:086
139.710	103 KAR 31:030		301 KAR 1:130
139.720	103 KAR 26:110		301 KAR 1:152
	103 KAR 28:150		301 KAR 1:201
	103 KAR 31:170		301 KAR 1:410
	103 KAR 31:190		301 KAR 2:176
139.760	103 KAR 31:111		301 KAR 5:010
139.770	103 KAR 31:170		301 KAR 5:020
139.990	103 KAR 31:111	150.177	301 KAR 2:172
141.010	103 KAR 16:240	150.180	301 KAR 2:132
	103 KAR 16:360		301 KAR 2:172
	103 KAR 17:151		301 KAR 2:195
	103 KAR 18:070		301 KAR 3:022
141.020	103 KAR 18:070	150.183	301 KAR 2:075
141.040	103 KAR 16:240		301 KAR 2:195
	103 KAR 16:360		301 KAR 3:022
141.042	103 KAR 15:050		301 KAR 3:120
141.160	103 KAR 15:050	150.195	301 KAR 2:075
141.170	103 KAR 15:050	150.235	301 KAR 1:410
141.180	103 KAR 17:151	150.240	301 KAR 3:022
141.206	103 KAR 16:240	150.275	301 KAR 3:022
141.210	103 KAR 17:151		301 KAR 3:120
141.300	103 KAR 15:050	150.280	301 KAR 3:022
141.310	103 KAR 18:070	150.290	301 KAR 2:081
141.315	103 KAR 18:070		301 KAR 2:195
141.388	103 KAR 17:151		301 KAR 3:022
141.0205	103 KAR 17:151	150.305	301 KAR 2:081
141.040	103 KAR 16:391		301 KAR 2:195
146.200 – 146.360	405 KAR 8:010		301 KAR 2:221
149.010	402 KAR 3:010		301 KAR 2:222
149.020	402 KAR 3:010		301 KAR 2:228
149.330	402 KAR 3:030	150.320	301 KAR 2:081
149.332	402 KAR 3:030		301 KAR 2:195
149.334	402 KAR 3:030	150.330	301 KAR 2:081
149.344	402 KAR 3:030		301 KAR 2:195
149.346	402 KAR 3:030		301 KAR 2:221
149.348	402 KAR 3:030		301 KAR 2:222
149.350	402 KAR 3:030	150.340	301 KAR 1:130
149.355	402 KAR 3:030		301 KAR 1:201
150.010	301 KAR 1:130		301 KAR 2:178
	301 KAR 1:152		301 KAR 2:221
	301 KAR 1:155		301 KAR 2:222
	301 KAR 1:201		301 KAR 2:228
	301 KAR 1:410	150.360	301 KAR 2:081
	301 KAR 2:049		301 KAR 2:176
	301 KAR 2:132		301 KAR 2:195
	301 KAR 2:172	150.370	301 KAR 2:049
	301 KAR 2:176		301 KAR 2:081
	301 KAR 2:178		301 KAR 2:178
	301 KAR 2:195	150.390	301 KAR 2:176
	301 KAR 2:221	150.399	301 KAR 2:049
	301 KAR 2:222	150.410	301 KAR 3:120
	301 KAR 2:228	150.411	301 KAR 2:172
150.015	301 KAR 2:075	150.445	301 KAR 1:152
	301 KAR 2:081		301 KAR 1:155
150.021	301 KAR 2:075		301 KAR 1:410
150.025	301 KAR 1:086	150.450	301 KAR 1:130
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	301 KAR 1:155	158.6455	13 KAR 3:050
	301 KAR 3:022		703 KAR 5:191
150.485	301 KAR 3:022		703 KAR 5:225
150.520	301 KAR 1:086		703 KAR 5:270
	301 KAR 3:022		703 KAR 5:280
150.525	301 KAR 3:022	158.782	703 KAR 5:191
150.600	301 KAR 3:022		703 KAR 5:280
150.603	301 KAR 3:022	159.140	922 KAR 1:330
150.620	301 KAR 1:195	160.151	922 KAR 1:470
	301 KAR 1:201	160.1590	701 KAR 8:010
	301 KAR 1:410		701 KAR 8:020
150.660	301 KAR 3:022		701 KAR 8:030
150.720	301 KAR 3:022		701 KAR 8:040
150.990	301 KAR 1:015	160.1591	701 KAR 8:010
	301 KAR 1:130		701 KAR 8:020
	301 KAR 1:152		701 KAR 8:030
	301 KAR 1:155		701 KAR 8:040
	301 KAR 1:201	160.1592	701 KAR 8:010
	301 KAR 1:410		701 KAR 8:020
	301 KAR 2:049		701 KAR 8:030
	301 KAR 2:081		701 KAR 8:040
	301 KAR 2:132	160.1593	701 KAR 8:010
	301 KAR 2:172		701 KAR 8:020
	301 KAR 2:176		701 KAR 8:030
	301 KAR 2:178		701 KAR 8:040
	301 KAR 2:221	160.1594	701 KAR 8:010
	301 KAR 2:222		701 KAR 8:020
	301 KAR 2:228		701 KAR 8:030
	301 KAR 5:020		701 KAR 8:040
150.995	301 KAR 2:049	160.1595	701 KAR 8:010
151	922 KAR 2:120		701 KAR 8:020
151.110	401 KAR 5:037		701 KAR 8:030
154.27-010	103 KAR 31:190		701 KAR 8:040
154.27-070	103 KAR 31:190	160.1596	701 KAR 8:010
154.030-010	103 KAR 31:180		701 KAR 8:020
154A	202 KAR 3:030		701 KAR 8:030
154A.130	11 KAR 15:090		701 KAR 8:040
156.010	11 KAR 15:090	160.1597	701 KAR 8:010
156.029	704 KAR 7:090		701 KAR 8:020
165.035	704 KAR 7:090		701 KAR 8:030
156.070	702 KAR 7:065		701 KAR 8:040
	704 KAR 3:540	160.1598	701 KAR 8:010
156.160	704 KAR 3:540		701 KAR 8:020
156.557	704 KAR 3:370		701 KAR 8:030
156.670	701 KAR 5:110		701 KAR 8:040
156.800	704 KAR 3:370	160.1599	701 KAR 8:010
156.808	780 KAR 3:072		701 KAR 8:020
	780 KAR 3:080		701 KAR 8:030
157	922 KAR 2:090		701 KAR 8:040
157.650	701 KAR 5:110	160.160	701 KAR 5:110
157.655	701 KAR 5:110	160.346	703 KAR 5:191
157.660	701 KAR 5:110		703 KAR 5:225
157.665	701 KAR 5:110		703 KAR 5:280
158.007	11 KAR 15:090	160.380	702 KAR 7:065
158.030	922 KAR 2:090		922 KAR 1:470
	922 KAR 2:100	160.445	702 KAR 7:065
	922 KAR 2:120	161.020	16 KAR 1:015
	922 KAR 2:270		16 KAR 2:010
158.035	902 KAR 2:055		16 KAR 5:030
158.037	902 KAR 2:055		16 KAR 5:040
158.135	13 KAR 3:050	161.028	16 KAR 1:015
158.143	13 KAR 3:050		16 KAR 2:010
158.148	704 KAR 7:051		16 KAR 5:040
158.150	704 KAR 7:051	161.030	16 KAR 1:015
158.645	703 KAR 5:225		16 KAR 2:010
	703 KAR 5:270		16 KAR 5:030
158.649	703 KAR 5:225		16 KAR 5:040
158.6451	703 KAR 5:225	161.042	16 KAR 5:040
	703 KAR 5:270	161.141	701 KAR 8:010
158.6453	703 KAR 5:191		701 KAR 8:020
	703 KAR 5:225		701 KAR 8:040
	703 KAR 5:270	161.600	102 KAR 1:070
	703 KAR 5:280	161.605	102 KAR 1:070

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161.675	102 KAR 1:070	189.340	603 KAR 5:025
161.740	704 KAR 3:370	189.910 – 189.950	202 KAR 7:560
163.510	735 KAR 2:010	189A.005	601 KAR 2:030
	735 KAR 2:020	189A.010	601 KAR 2:030
	735 KAR 2:030	189A.040	601 KAR 2:030
	735 KAR 2:040	189A.050	200 KAR 38:021
	735 KAR 2:050	189A.070	601 KAR 2:030
	735 KAR 2:060	189A.085	601 KAR 2:030
163.515	735 KAR 2:040	189A.090	601 KAR 2:030
163.525 – 163.527	735 KAR 1:010	189A.103	500 KAR 8:010
	735 KAR 1:020		500 KAR 8:030
164.001	13 KAR 2:120		601 KAR 2:030
	13 KAR 2:130	189A.105	601 KAR 2:030
164.002	11 KAR 15:090	189A.107	601 KAR 2:030
164.092	13 KAR 2:120	189A.200	601 KAR 2:030
	13 KAR 2:130	189A.240	601 KAR 2:030
164.0064	13 KAR 3:050	189A.250	601 KAR 2:030
	13 KAR 3:060	189A.340	601 KAR 2:030
164.0234	13 KAR 3:060	189A.345	601 KAR 2:030
164.518	11 KAR 4:080	189A.400	601 KAR 2:030
164.744	11 KAR 4:080	189A.410	601 KAR 2:030
164.748	11 KAR 4:080	189A.420	601 KAR 2:030
164.753	11 KAR 4:080	189A.440	601 KAR 2:030
164.769	11 KAR 4:080	189A.500	601 KAR 2:030
164.772	201 KAR 20:225	194A	921 KAR 2:015
	201 KAR 22:020		922 KAR 5:111
	201 KAR 22:040	194A.005	900 KAR 1:009
164.780	11 KAR 4:080		902 KAR 10:040
164.785	11 KAR 4:080		922 KAR 1:320
164.7535	11 KAR 4:080		922 KAR 1:330
164.7871	11 KAR 15:090		922 KAR 1:480
164.7874	11 KAR 15:090		922 KAR 2:260
164.7877	11 KAR 15:090	194A.025	907 KAR 17:005
164.7879	11 KAR 15:090		907 KAR 17:010
164.7881	11 KAR 15:090		907 KAR 17:015
164.7885	11 KAR 15:090		907 KAR 17:020
164.7889	11 KAR 15:090		907 KAR 17:026
164.7890	11 KAR 4:080		907 KAR 17:035
164.7894	11 KAR 4:080	194A.030	922 KAR 1:320
171.250	725 KAR 2:070		922 KAR 2:190
171.260	725 KAR 2:070		922 KAR 2:260
171.270	725 KAR 2:070	194A.050	900 KAR 10:031
171.450	815 KAR 8:100		906 KAR 1:200
174.504	602 KAR 15:030		922 KAR 2:100
176.090 - 176.110	603 KAR 2:015	194A.060	922 KAR 2:160
176.130 - 176.220	603 KAR 2:015		922 KAR 5:040
183.011	602 KAR 15:030	194A.062	900 KAR 1:009
186	922 KAR 2:120	194A.209	922 KAR 5:090
186.010	601 KAR 2:030	194A.381 – 383	902 KAR 10:040
	601 KAR 23:020	194A.540	201 KAR 20:070
186.020	601 KAR 23:020		201 KAR 20:110
	922 KAR 2:100		201 KAR 20:225
186.440	601 KAR 2:030		201 KAR 36:030
186.442	601 KAR 2:030	194A.550	922 KAR 5:040
186.450	922 KAR 1:550	196	501 KAR 6:020
186.470	922 KAR 1:550		501 KAR 6:030
186.480	601 KAR 2:030		501 KAR 6:070
	922 KAR 1:550		501 KAR 6:110
186.531	601 KAR 2:030		501 KAR 6:170
186.560	601 KAR 2:030		501 KAR 6:230
186.570	601 KAR 2:030		501 KAR 6:270
186.590	922 KAR 1:550	196.030	501 KAR 16:290
186.650	106 KAR 1:350		501 KAR 16:300
186A.070	601 KAR 23:020		501 KAR 16:310
186A.073	601 KAR 23:020		501 KAR 16:330
186A.115	601 KAR 23:020		501 KAR 16:340
186A.170	601 KAR 23:020	196.035	501 KAR 6:280
189.010	106 KAR 1:350	196.070	501 KAR 16:290
189.125	922 KAR 2:100		501 KAR 16:300
	922 KAR 2:120		501 KAR 16:310
	922 KAR 2:180		501 KAR 16:330
189.150	902 KAR 100:180		501 KAR 16:340

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196.180	501 KAR 16:290		922 KAR 2:270
	501 KAR 16:300		922 KAR 2:280
	501 KAR 16:310	199.895	922 KAR 2:090
	501 KAR 16:330		922 KAR 2:100
	501 KAR 16:340	199.896	922 KAR 1:470
197	501 KAR 6:020		922 KAR 2:090
	501 KAR 6:030		922 KAR 2:100
	501 KAR 6:070		922 KAR 2:120
	501 KAR 6:110		922 KAR 2:160
	501 KAR 6:170		922 KAR 2:180
	501 KAR 6:230		922 KAR 2:190
	501 KAR 6:270		922 KAR 2:270
197.020	501 KAR 6:280	199.897	922 KAR 2:100
198B.010	815 KAR 7:120	199.898	922 KAR 2:090
198B.040	815 KAR 7:110		922 KAR 2:100
	815 KAR 7:120		922 KAR 2:120
198B.050	815 KAR 7:110		922 KAR 2:160
	815 KAR 7:120		922 KAR 2:180
	922 KAR 5:040	199.8941	922 KAR 2:270
198B.060	815 KAR 7:110	199.8943	922 KAR 2:270
	815 KAR 7:120	199.8982	922 KAR 1:470
198B.070	815 KAR 7:110		922 KAR 2:100
198B.080	815 KAR 7:120		922 KAR 2:160
198B.260	815 KAR 7:120		922 KAR 2:180
	902 KAR 20:016		922 KAR 2:270
198B.650 – 198B.689	815 KAR 8:100	199.899	922 KAR 2:160
198B.654	815 KAR 8:011	199.8994	922 KAR 2:160
	815 KAR 8:070		922 KAR 2:180
198B.656	815 KAR 8:011	199.990	922 KAR 2:171
198B.658	815 KAR 8:011		922 KAR 2:190
198B.990	815 KAR 7:120		922 KAR 2:270
198B.6671	815 KAR 8:080	200.080 – 200.120	505 KAR 1:120
198B.6672	815 KAR 8:080		505 KAR 1:130
198B.6673	815 KAR 8:070		505 KAR 1:140
	815 KAR 8:080	202A	907 KAR 17:005
198B.6674	815 KAR 8:070		907 KAR 17:020
	815 KAR 8:080	202A.011	921 KAR 2:015
198B.6675	815 KAR 8:080		922 KAR 1:330
198B.6676	815 KAR 8:080	205.455	922 KAR 5:040
198B.6677	815 KAR 8:080	205.510	907 KAR 3:005
198B.6678	815 KAR 8:070	205.520	907 KAR 1:045
	815 KAR 8:080		907 KAR 1:047
199.011	922 KAR 1:140		907 KAR 1:102
	922 KAR 1:320		907 KAR 1:104
	922 KAR 1:490		907 KAR 1:479
	922 KAR 1:550		907 KAR 3:005
	922 KAR 2:090		907 KAR 3:066
	922 KAR 2:100	205.560	907 KAR 1:479
	922 KAR 2:120		907 KAR 3:005
	922 KAR 2:171		907 KAR 3:010
	922 KAR 2:180	205.565	907 KAR 3:010
	922 KAR 2:190	205.593	907 KAR 17:015
	922 KAR 2:280	205.622	907 KAR 1:047
199.462	922 KAR 1:140		907 KAR 1:102
	922 KAR 1:490		907 KAR 3:005
199.466	922 KAR 1:470	205.624	907 KAR 17:010
	922 KAR 2:280	205.646	907 KAR 17:035
199.555	907 KAR 17:005	205.712	601 KAR 2:030
	922 KAR 1:140	205.2005	921 KAR 3:025
	922 KAR 1:320	205.8451	907 KAR 1:045
199.557	922 KAR 1:140		907 KAR 1:047
	922 KAR 1:320		907 KAR 1:102
199.801	922 KAR 1:140		907 KAR 3:005
199.892	922 KAR 2:090	205.8451 – 205.8483	907 KAR 17:005
	922 KAR 2:160	209	902 KAR 20:016
199.892 – 199.8996	922 KAR 2:111		922 KAR 5:090
	922 KAR 2:171		922 KAR 5:111
199.894	922 KAR 2:090	209.020	921 KAR 2:015
	922 KAR 2:100		922 KAR 1:320
	922 KAR 2:120		922 KAR 5:040
	922 KAR 2:160	209.030	922 KAR 5:040
	922 KAR 2:180	209.140	922 KAR 5:040
	922 KAR 2:190	209A	922 KAR 5:040

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	922 KAR 1:320	216B.185	902 KAR 20:016
	922 KAR 5:090	216B.190	902 KAR 20:016
210.290	910 KAR 2:030	216B.230 – 216B.239	902 KAR 20:016
	910 KAR 2:052	216B.250	902 KAR 20:016
210.366	201 KAR 28:200	216B.330 - 216B.339	900 KAR 6:121
	201 KAR 36:030	216B.400	107 KAR 2:011
210.370 – 210.485	907 KAR 1:045		201 KAR 20:411
	907 KAR 1:047		802 KAR 3:010
	907 KAR 3:010		802 KAR 3:020
211.090	902 KAR 2:055	216B.400 – 216B.402	902 KAR 20:016
211.350 – 211.380	922 KAR 2:120	216B.990	900 KAR 6:090
	922 KAR 5:040		900 KAR 6:121
211.680 – 211.686	922 KAR 1:421		900 KAR 6:130
211.684	922 KAR 1:330		902 KAR 20:016
	922 KAR 1:490		902 KAR 20:145
211.842 – 211.852	902 KAR 20:016		902 KAR 20:360
211.842 – 211.990	902 KAR 100:180	216C.010	900 KAR 11:010
211.892	805 KAR 1:060	216C.030	900 KAR 11:010
211.893	805 KAR 1:060	216C.040	900 KAR 11:010
212.626	815 KAR 7:110	216C.050	900 KAR 11:010
213.101	902 KAR 20:360	216C.060	900 KAR 11:010
214	902 KAR 20:016	216C.070	900 KAR 11:010
214.010	922 KAR 2:090	216C.080	900 KAR 11:010
	922 KAR 2:100	216C.090	900 KAR 11:010
	922 KAR 2:180	216C.100	900 KAR 11:010
214.036	922 KAR 1:330	216C.110	900 KAR 11:010
	922 KAR 2:100	216C.120	900 KAR 11:010
	922 KAR 2:160	216C.160	900 KAR 11:010
214.610	201 KAR 9:310	216C.170	900 KAR 11:010
214.620	201 KAR 9:310	216C.180	900 KAR 11:010
216.510	902 KAR 55:095	216C.200	900 KAR 11:010
216.530	921 KAR 2:015	216C.210	900 KAR 11:010
216.557	921 KAR 2:015	216C.220	900 KAR 11:010
216.750	921 KAR 2:015	216C.230	900 KAR 11:010
216.755	921 KAR 2:015	217	922 KAR 2:120
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	802 KAR 3:020	218A.080	902 KAR 55:015
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216B.020	902 KAR 20:016	218A.172	201 KAR 5:130
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	401 KAR 36:002	224.18-100	401 KAR 5:055
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	401 KAR 38:002	224.18-760	401 KAR 5:080
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	401 KAR 45:060	224.20-110	401 KAR 51:240
	401 KAR 48:005		401 KAR 51:250
	401 KAR 48:090		401 KAR 51:260
224.1-010	401 KAR 5:002	224.20-120	401 KAR 51:240
	401 KAR 5:050		401 KAR 51:250
	401 KAR 5:055		401 KAR 51:260
	401 KAR 5:060	224.40	401 KAR 31:002
	401 KAR 5:065		401 KAR 32:002
	401 KAR 5:075		401 KAR 33:002
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	401 KAR 51:240		401 KAR 35:002
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224.1-070	401 KAR 5:002		401 KAR 38:002
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	401 KAR 5:065		401 KAR 44:002
	401 KAR 5:075		401 KAR 45:060
224.1-100	401 KAR 5:002		401 KAR 48:005
224.1-400	401 KAR 5:050		401 KAR 48:090
	401 KAR 5:055	224.40-310	410 KAR 1:002
	401 KAR 5:060	224.43	401 KAR 31:002
	401 KAR 5:065		401 KAR 34:002
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224.10	401 KAR 31:002		401 KAR 36:002
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	401 KAR 5:050	224.46-840	410 KAR 1:002
	401 KAR 5:080	224.46-850	410 KAR 1:002
	401 KAR 8:510	224.46-860	410 KAR 1:002
224.10-420	401 KAR 5:075	224.46-870	410 KAR 1:002
224.10-440	401 KAR 5:075	224.50	401 KAR 34:002
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224.50-760	410 KAR 1:002		811 KAR 1:220
224.70	401 KAR 34:002		811 KAR 1:241
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224.70-100	401 KAR 5:002	230.280	811 KAR 1:220
	401 KAR 5:005	230.290	810 KAR 8:040
	401 KAR 5:006		811 KAR 1:220
	401 KAR 5:045	230.300	810 KAR 8:040
	401 KAR 5:050	230.310	810 KAR 8:040
	401 KAR 5:052		811 KAR 1:220
	401 KAR 5:055	230.320	810 KAR 8:040
	401 KAR 5:060	230.370	810 KAR 8:040
	401 KAR 5:065	230.398	811 KAR 1:220
	401 KAR 5:075	230.770	811 KAR 1:215
224.70-110	401 KAR 5:320	230.802	811 KAR 1:215
	401 KAR 5:005	230.990	811 KAR 1:215
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	401 KAR 5:045	235.040	301 KAR 6:005
	401 KAR 5:050	235.050	301 KAR 6:005
	401 KAR 5:052	235.070	301 KAR 6:005
224.70-120	401 KAR 5:320	235.080	301 KAR 6:005
	401 KAR 5:002	235.990	301 KAR 1:015
	401 KAR 5:050	236	815 KAR 8:070
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	401 KAR 5:060		815 KAR 15:025
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224.71-120	402 KAR 3:030	236.010	815 KAR 15:026
224.99	402 KAR 3:030	236.030	815 KAR 15:026
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	401 KAR 38:002		820 KAR 1:055
	401 KAR 39:011	238.510	820 KAR 1:060
	401 KAR 39:060		820 KAR 1:130
	401 KAR 39:080	238.515	820 KAR 1:005
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	401 KAR 5:002		820 KAR 1:135
	401 KAR 5:050	238.525	820 KAR 1:005
	401 KAR 5:055	238.530	820 KAR 1:005
	401 KAR 5:060		820 KAR 1:025
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224.500	804 KAR 11:010	238.535	820 KAR 1:005
224.590	804 KAR 11:010		820 KAR 1:055
227.220	922 KAR 2:120	238.536	820 KAR 1:057
227.300	815 KAR 7:120	238.540	820 KAR 1:005
227.489	815 KAR 7:110		820 KAR 1:060
227.550	815 KAR 7:120	238.545	820 KAR 1:032
230.215	810 KAR 1:111		820 KAR 1:042
	810 KAR 8:040		820 KAR 1:050
	811 KAR 1:215		820 KAR 1:055
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	811 KAR 2:151		820 KAR 1:050
230.225	810 KAR 1:111		820 KAR 1:057
	810 KAR 8:040		820 KAR 1:060
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230.240	810 KAR 1:111		820 KAR 1:025
	810 KAR 8:040		820 KAR 1:130
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238.995	820 KAR 1:130	304.14-120	806 KAR 14:006
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241.060	804 KAR 4:241	304.14-135	907 KAR 17:015
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243.090	804 KAR 4:390	304.18-032	806 KAR 18:030
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243.200	804 KAR 8:050	304.18-140	806 KAR 18:011
243.240	804 KAR 9:051	304.18-150	806 KAR 18:011
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243.380	804 KAR 4:400	304.18-170	806 KAR 18:011
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243.390	804 KAR 4:400		806 KAR 20:021
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244.080	804 KAR 5:070	304.21-010	806 KAR 14:006
244.085	804 KAR 5:070	304.22-020	806 KAR 14:006
244.090	804 KAR 5:070	304.23-010	806 KAR 14:006
244.440	804 KAR 4:241	304.24-410	806 KAR 24:022
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247.232	302 KAR 16:020	304.32-145	806 KAR 18:030
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247.234	302 KAR 16:020	304.38-197	806 KAR 18:011
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247.236	302 KAR 16:020	309.0814	201 KAR 35:070
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260.010	302 KAR 38:011		201 KAR 35:070
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275.015	202 KAR 3:030	309.331	201 KAR 45:110
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278	807 KAR 5:026	309.334	201 KAR 45:120
278.485	807 KAR 5:022		201 KAR 45:170
278.5499	735 KAR 1:020	309.335	201 KAR 45:001
281.010	907 KAR 3:066		201 KAR 45:071
281.605	907 KAR 3:066		201 KAR 45:120
281.635	907 KAR 3:066		201 KAR 45:170
281.872	907 KAR 3:066	309.336	201 KAR 45:170
281.875	907 KAR 3:066	309.0813	201 KAR 35:080
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286.6-225	808 KAR 3:050	310	902 KAR 20:016
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286.6-715	808 KAR 3:050	310.021	201 KAR 33:080
292.330	808 KAR 10:082	310.031	201 KAR 33:080
292.370	808 KAR 10:082	310.041	201 KAR 33:080
292.390	808 KAR 10:082	310.070	201 KAR 33:070
292.410	808 KAR 10:082	310.200	201 KAR 33:070
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304.5-010	806 KAR 5:031		902 KAR 20:016
304.5-080	806 KAR 5:031	311.565	201 KAR 9:031
304.7-340	806 KAR 7:011		201 KAR 9:310
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311.695	201 KAR 9:480		201 KAR 20:370
311.697	201 KAR 9:480		902 KAR 20:016
311.699	201 KAR 9:480		902 KAR 20:360
311.710 – 311.830	902 KAR 20:360	314.051	201 KAR 20:070
311.840	907 KAR 3:010		201 KAR 20:095
311.840 – 311.862	907 KAR 3:005		201 KAR 20:110
311.990	201 KAR 9:260		201 KAR 20:225
311.992	902 KAR 20:016		201 KAR 20:370
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311A.060	202 KAR 7:565	314.091	201 KAR 20:056
311A.170	201 KAR 20:400		201 KAR 20:110
311A.180	202 KAR 7:550		201 KAR 20:225
	202 KAR 7:565		201 KAR 20:370
311A.190	202 KAR 7:501		201 KAR 20:400
	202 KAR 7:545		201 KAR 20:470
	202 KAR 7:550	314.103	201 KAR 20:056
	202 KAR 7:555		201 KAR 20:070
	202 KAR 7:560		201 KAR 20:110
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311B.020	201 KAR 46:010		201 KAR 20:411
	201 KAR 46:081	314.109	201 KAR 20:056
311B.050	201 KAR 46:020		201 KAR 20:070
	201 KAR 46:095		201 KAR 20:110
311B.080	201 KAR 46:035		201 KAR 20:225
311B.100	201 KAR 46:020	314.137	201 KAR 20:470
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311B.140	201 KAR 46:020	314.470	201 KAR 20:056
311B.150	201 KAR 46:081		201 KAR 20:070
311B.160	201 KAR 46:095		201 KAR 20:110
311B.170	201 KAR 46:095		201 KAR 20:370
311B.180	201 KAR 46:020		201 KAR 20:411
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311B.190	201 KAR 46:020	314.475	201 KAR 20:506
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314	902 KAR 20:058		201 KAR 20:470
314.011	201 KAR 20:056	315.002	201 KAR 2:390
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314.021	201 KAR 20:400	315.4108	201 KAR 2:390
314.031	201 KAR 20:110	315.4110	201 KAR 2:390
314.035	201 KAR 20:470	316.010	201 KAR 15:110
314.041	201 KAR 20:070	316.030	201 KAR 15:050
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317.450	201 KAR 14:180	333	902 KAR 20:360
317A.020	201 KAR 12:030	330.030	201 KAR 3:006
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317A.040	201 KAR 12:010	330.050	201 KAR 3:090
317A.050	201 KAR 12:010		201 KAR 3:100
	201 KAR 12:030	330.060	201 KAR 3:090
	201 KAR 12:082	330.070	201 KAR 3:006
	201 KAR 12:260		201 KAR 3:090
317A.060	201 KAR 12:030	330.095	201 KAR 3:090
	201 KAR 12:041	330.100	201 KAR 3:006
	201 KAR 12:060	330.110	201 KAR 3:045
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	201 KAR 12:230	330.230	201 KAR 3:006
317A.062	201 KAR 12:030	333.030	902 KAR 20:016
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317A.070	201 KAR 12:060	334.020	735 KAR 1:010
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317A.082	201 KAR 12:140	334A.020	907 KAR 1:047
317A.090	201 KAR 12:082	335.080	902 KAR 20:058
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317A.100	201 KAR 12:030	335.330	902 KAR 20:058
317A.130	201 KAR 12:100	335.500	201 KAR 36:060
317A.140	201 KAR 12:060		201 KAR 36:065
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317A.145	201 KAR 12:060	335.500 – 335.599	201 KAR 36:030
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317B.020	201 KAR 12:060		201 KAR 36:065
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	201 KAR 12:260	335.525	201 KAR 36:060
317B.025	201 KAR 12:030		201 KAR 36:065
	201 KAR 12:260		201 KAR 36:070
317B.045	201 KAR 12:060		902 KAR 20:058
317B.050	201 KAR 12:060	335.527	201 KAR 36:070
317B.055	201 KAR 12:060	335.540	201 KAR 36:050
318	922 KAR 2:120	335.545	201 KAR 36:050
319.050	902 KAR 20:058	335B.010	900 KAR 1:009
319.056	902 KAR 20:058	335B.020	900 KAR 1:009
319.064	902 KAR 20:058	336.165	803 KAR 6:011
319A.010	907 KAR 1:047	336.1661	803 KAR 3:051
319A.070	201 KAR 28:200	336.1662	803 KAR 3:051
319A.080	201 KAR 28:235	336.1663	803 KAR 3:051
319A.160	201 KAR 28:200	336.1664	803 KAR 3:051
319A.300	201 KAR 28:235	336.220	922 KAR 2:280
320.210	902 KAR 20:016	337	780 KAR 3:072
320.280	201 KAR 5:090		803 KAR 1:121
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322.340	405 KAR 8:010	341.090	103 KAR 18:070
322A.050	201 KAR 31:010	341.395	103 KAR 18:070
322A.060	201 KAR 31:010	349.025	805 KAR 9:041
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CERTIFICATION 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.

Regulation Number	Date Letter Filed	Action Taken	Regulation Number	Date Letter Filed	Action Taken
201 KAR 9:021	3-29-2018	Amendment due by 9-29-19			
201 KAR 9:023	3-29-2018	Effective – No Amendment			
201 KAR 9:024	3-29-2018	Effective – No Amendment			
201 KAR 9:031	3-29-2018	Amendment due by 9-29-19			
401 KAR 5:010	5-11-2018	Effective – No Amendment			
401 KAR 5:090	5-11-2018	Effective – No Amendment			
401 KAR 5:310	5-11-2018	Effective – No Amendment			

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	902 KAR 20:058	‡ 3-7-2018
101 KAR 1:375	1-22-2018	902 KAR 21:020	5-1-2018
103 KAR 18:060	6-22-2017	907 KAR 1:006	10-6-2017
103 KAR 18:080	6-22-2017	907 KAR 1:054	10-6-2017
103 KAR 18:090	6-22-2017	907 KAR 1:065	10-30-2017
103 KAR 18:120	6-22-2017	907 KAR 1:340	10-6-2017
103 KAR 26:010	8-3-2017	907 KAR 1:604	10-6-2017
201 KAR 9:024	‡ 5-31-2018	907 KAR 1:672	10-6-2017
201 KAR 12:060	4-3-2018	907 KAR 3:225	10-6-2017
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201 KAR 30:030	1-11-2018	907 KAR 9:005	10-6-2017
201 KAR 30:040	1-11-2018	907 KAR 9:010	10-6-2017
201 KAR 30:050	1-11-2018	907 KAR 10:015	11-16-2017
201 KAR 30:120	1-11-2018	907 KAR 17:015	‡ 3-7-2018
201 KAR 30:125	1-11-2018	907 KAR 20:050	10-6-2017
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401 KAR 5:037	7-14-2017		
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405 KAR 7:070	5-4-2018		
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401 KAR 8:050	12-11-2017		
401 KAR 8:150	12-11-2017		
401 KAR 8:150	10-10-2017		
401 KAR 8:200	10-10-2017		
401 KAR 101:030	4-11-2018		
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