



ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, June 15, 2018.

MEETING NOTICES

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on July 10, 2018, at 1:00 p.m. in room 149 Capitol Annex. ARRS Tentative Agenda - 1

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

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

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**Administrative Regulation Review Subcommittee
Tentative Meeting Agenda
Tuesday, July 10, 2018 1:00 PM
Annex Room 149**



1. **Call to Order and Roll Call**
2. **POSTSECONDARY EDUCATION: Adult Education and Literacy**
 - 013 KAR 003:060 **Proposed**
High school equivalency diploma awarded for credit hour completion at Kentucky Community and Technical College System institutions
3. **EDUCATION AND WORKFORCE DEVELOPMENT**
 - A. **Education Professional Standards Board: Teaching Certificates**
 - 016 KAR 002:010 **Proposed**
Kentucky Professional and Provisional Teacher Certificates (Deferred from June)
 - B. **Education Professional Standards Board: Administrative Certificates**
 - 016 KAR 005:030 **Proposed**
Proficiency evaluation (Deferred from June)
4. **BOARD OF ELECTIONS: Statewide Voter Registration**
 - ~~031 KAR 003:010 **Proposed**
Current address of Kentucky registered voters and distribution of voter registration lists (Withdrawn)~~
5. **PERSONNEL BOARD**
 - 101 KAR 001:325 **Proposed** Probationary periods
6. **BOARDS AND COMMISSIONS**
 - A. **Auctioneers**
 - 201 KAR 003:006 **Proposed**
Repeal of 201 KAR 3:005, 3:025, 3:035, 3:055, and 3:065
 - 201 KAR 003:045 **Proposed**
Recordkeeping and accounting
 - 201 KAR 003:090 **Proposed**
Fees
 - 201 KAR 003:100 **Proposed**
Education requirements
 - B. **Optometric Examiners**
 - 201 KAR 005:090 **Propose**
Annual renewal fees
 - 201 KAR 005:130 **Proposed**
Controlled substances
 - C. **Licensure for Long-term Care Administrators**
 - 201 KAR 006:020 **Proposed**
Other requirements for licensure
 - 201 KAR 006:050 **Proposed**
Licensure by endorsement
 - D. **Cosmetology**
 - 201 KAR 012:010 **Proposed**
Administrator's duties
 - 201 KAR 012:030 **Proposed**
Licensing, permits, and examinations
 - 201 KAR 012:140 **Proposed**
School equipment

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- 201 KAR 012:190 Proposed
Complaint and disciplinary process
- 201 KAR 012:230 Proposed
Code of ethics

E. Barbering

- 201 KAR 014:180 Proposed
Fees

F. Podiatry

- 201 KAR 025:090 Proposed
Prescribing and dispensing controlled substances (Deferred from March)

G. Licensure for Professional Art Therapists

- 201 KAR 034:060 Proposed
Qualifying experience under supervision

H. Private Investigators

- 201 KAR 041:100 Proposed
Verification of limited employees

7. TOURISM, ARTS AND HERITAGE CABINET

A. Department of Fish and Wildlife Resources: Fish

- 301 KAR 001:130 Proposed
Live bait for personal use

B. Department of Fish and Wildlife Resources: Game

- 301 KAR 002:172 Proposed
Deer hunting seasons, zones, and requirements (Not Amended After Comments)
- 301 KAR 002:176 Proposed
Deer control tags, deer destruction permits, and landowner designees
- 301 KAR 002:228 Proposed
Sandhill crane hunting requirements (Not Amended After Comments)

8. ENERGY AND ENVIRONMENT CABINET

A. Department for Environmental Protection: Division of Water: Water Quality

- 401 KAR 005:002 Proposed
Definitions for 401 KAR Chapter 5 (Comments Received, SOC due 7-15-2018)
- 401 KAR 005:005 Proposed
Permits to construct, modify, or operate a facility (Deferred from July)
- 401 KAR 005:006 Proposed
Wastewater planning requirements for regional planning agencies (Deferred from July)
- 401 KAR 005:015 Proposed
Releases to be reported to the division (Deferred from July)
- 401 KAR 005:037 Proposed
Groundwater protection plans (Deferred from July)
- 401 KAR 005:039 Proposed
Repeal of 401 KAR 5:035, 5:057, 5:070, and 5:300 (Deferred from July)
- 401 KAR 005:045 Proposed
Treatment requirements; compliance; biochemically degradable wastes (Deferred from July)
- 401 KAR 005:050 Proposed
General provisions of KPDES Permitting Program (Deferred from July)
- 401 KAR 005:052 Proposed
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) (Deferred from July)
- 401 KAR 005:055 Proposed
Scope and applicability of the KPDES Program and pretreatment requirements (Deferred from July)
- 401 KAR 005:060 Proposed
KPDES application requirements (Deferred from July)
- 401 KAR 005:065 Proposed
KPDES permit conditions (Deferred from July)

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401 KAR 005:075 Proposed

Cabinet review procedures for KPDES permits and permit timetables for 401 KAR Chapter 5 (Deferred from July)

401 KAR 005:080 Proposed

Criteria and standards for the Kentucky Pollutant Discharge Elimination System (Deferred from July)

401 KAR 005:320 Proposed

Wastewater Laboratory Certification Program (Deferred from July)

B. Department of Natural Resources: Division of Mine Permits: Strip Mining of Coal

405 KAR 001:011 Proposed

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

C. Department of Natural Resources: Division of Mine Permits: Surface Effects of Underground Coal Mining

405 KAR 003:011 Proposed

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

9. JUSTICE AND PUBLIC SAFETY CABINET

A. Department of Corrections: Office of the Secretary

501 KAR 006:070 Proposed

Kentucky Correctional Institution for Women

B. Department of Criminal Justice: Training Law Enforcement Foundation Program Fund

503 KAR 005:090 Proposed

Participation: requirements; application; withdrawal

C. Department of Juvenile Justice: Child Welfare

505 KAR 001:120 Proposed

Department of Juvenile Justice Policies and Procedures Manual: health and safety services (Comments Received; SOC ext., due 7-15-2018)

505 KAR 001:140 Proposed

Department of Juvenile Justice Policies and Procedures Manual: detention services (Comments Received; SOC ext., due 7-15-2018)

10. TRANSPORTATION CABINET

A. Department of Vehicle Regulation: Division of Driver Licensing: Administration

601 KAR 002:030 Emergency

Ignition interlock ("E" expires 6-14-2018) (Not Amended After Comments) (Deferred from April) (Withdrawn 6-14-2018)

601 KAR 002:030 Proposed

Ignition interlock ("E" expires 6-14-2018) (Not Amended After Comments) (Deferred from April) (Withdrawn 6-14-2018)

B. Department of Highways: Division of Contract Procurement: Preconstruction

603 KAR 002:015 Proposed

Prequalification for construction; certificate of eligibility; and contract claims dispute

11. ENERGY AND ENVIRONMENT CABINET

A. Public Service Commission: Utilities

807 KAR 005:022 Proposed

Gas service (Amended After Comments)

807 KAR 005:026 Proposed

Gas service; gathering systems (Amended After Comments)

12. PUBLIC PROTECTION CABINET

A. Horse Racing Commission: Thoroughbred Racing

810 KAR 001:111 Proposed

Repeal of 810 KAR 1:110

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B. Horse Racing Commission: Testing

810 KAR 008:040 Proposed

Out-of-competition testing

C. Horse Racing Commission: Harness Racing

811 KAR 001:241 Proposed

Repeal of 811 KAR 1:240

D. Horse Racing Commission: Quarter Horse, Paint Horse, Appaloosa, and Arabian Racing

811 KAR 002:151 Proposed

Repeal of 811 KAR 2:150

E. Department of Housing, Buildings and Construction: Division of Building Code Enforcement: Kentucky Building Code

815 KAR 007:110 Proposed

Criteria for expanded local jurisdiction (Deferred from June)

815 KAR 007:120 Proposed

Kentucky Building Code (Amended After Comments)

815 KAR 007:125 Proposed

Kentucky Residential Code (Amended After Comments)

F. Department of Housing, Buildings and Construction: Division of Heating, Ventilation and Air Conditioning: Heating, Ventilation, and Air Conditioning Licensing Requirements

815 KAR 008:011 Proposed

Repeal of 815 KAR 8:007 and 815 KAR 8:045 (Deferred from June)

815 KAR 008:070 Proposed

Installation permits (Not Amended After Comments)

815 KAR 008:080 Proposed

Inspections and tests (Deferred from June)

815 KAR 008:100 Proposed

Criteria for local jurisdiction HVAC programs (Deferred from June)

G. Department of Charitable Gaming

820 KAR 001:001 Proposed

Definitions

820 KAR 001:005 Proposed

Charitable gaming licenses and exemptions

820 KAR 001:011 Proposed

Repeal of 820 KAR 1:010, 1:015, 1:016, 1:017, 1:126, 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

820 KAR 001:025 Proposed

Reports

820 KAR 001:032 Proposed

Pulltabs

820 KAR 001:042 Proposed

Bingo

820 KAR 001:050 Proposed

Raffles

820 KAR 001:055 Proposed

Charity fundraising event standards

820 KAR 001:057 Proposed

Recordkeeping

820 KAR 001:060 Proposed

Prohibited conduct

820 KAR 001:125 Proposed

Gaming inspections

820 KAR 001:130 Proposed

Administrative actions

820 KAR 001:135 Proposed

Disposal of gaming supplies

13. CABINET FOR HEALTH AND FAMILY SERVICES

A. Department for Public Health: Division of Epidemiology and Health Planning: Communicable Diseases

902 KAR 002:055 Proposed

Immunization data reporting and exchange

B. Department for Public Health: Division of Public Health Protection

Safety: Sanitation

902 KAR 010:040 Proposed

Kentucky youth camps (Amended After Comments)

C. Department for Public Health: Division of Healthcare: Health Services and Facilities

902 KAR 020:016 Proposed

Hospitals; operations and services

D. Department for Aging and Independent Living: Division of Operations and Support: Guardianship

910 KAR 002:030 Proposed

Accounting Provisions for adult guardianship

910 KAR 002:052 Proposed

Repeal of 910 KAR 2:050

14. Adjournment

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

Filing and Publication

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

Public Hearing and Public Comment Period

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

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

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

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

Review Procedure

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

EMERGENCY ADMINISTRATIVE REGULATIONS

STATEMENT OF EMERGENCY
31 KAR 3:010E

This emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, or welfare. This administrative regulation will update the form which much be completed to request voter registration data as well as allow the cost of the voter registration data to be set by the State Board of Elections. This is being filed as an emergency administrative regulation in order to close the gap on General Assembly underfunding the Kentucky State Board of Elections despite request each biennium, allow Kentucky State Board of Elections to use funds to further ensure integrity of elections, and bring Kentucky into conformity with other states. This emergency administrative regulation will be replaced by an ordinary administrative regulation to further strengthen the security of Kentucky's elections for at least one (1) year. The ordinary administrative regulation is identical to this emergency administrative regulation. This emergency administrative regulation differs from one that was filed with the last nine (9) months. The prior version amended what voter data is given by the Kentucky State Board of Elections and the format in which it is given and this emergency regulation updates the form for requesting this data as well as the fees.

MATTHEW G. BEVIN, Governor
ALISON LUNDERGAN GRIMES, Secretary of State, Chair of the State Board of Elections

KENTUCKY STATE BOARD OF ELECTIONS
(Emergency Amendment)

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

RELATES TO: KRS 116.085, 116.155, 117.025, 117.225
STATUTORY AUTHORITY: KRS 117.015
EFFECTIVE: May 22, 2018

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

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

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

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

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

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

(b) Nomination papers with the Office of the Secretary of State or county clerk.

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

(6) "Household labels by zip code order" means labels that are generated from the statewide voter registration database and sorted by zip code within the county with as many as four (4) names per

label of the voters whose last name and address are an identical match.

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

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

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

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

Section 2. Correction of Voter Registration Records. (1) Each county clerk shall instruct the precinct election officers of the necessity for informing each voter that he or she shall correct any error existing in his or her address as it appears upon the precinct signature roster.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(7) Upon request, any of the above lists may be made available in a password-protected electronic format at like charge.]~~

Section 6. Incorporation by Reference. (1) "Request for Voter Registration Data", SBE 84, May 2018~~[October 2009]~~, is incorporated by reference.

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

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

APPROVED BY AGENCY: April 16, 2018

FILED WITH LRC: May 22, 2018 at 3 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lindsay Hughes Thurston

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for requesting voter registration data.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for requesting voter registration data.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the State Board of Elections to fulfill its duties under KRS 117.025(3)(h), this administrative regulation is necessary to establish the procedure for requesting voter registration data.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for requesting voter registration data.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the form SBE 84 to accurately reflect requirements in the regulation, which is incorporated by reference and update the fees.

(b) The necessity of the amendment to this administrative regulation: This amendment updates the form SBE 84 to accurately reflect requirements in the regulation, which is incorporated by reference, as well as allow the fees to be set by the State Board of Elections.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute, KRS 117.015(1).

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates the form SBE 84 to accurately reflect requirements in the regulation, which is incorporated by reference, as well as allow the fees to be set by the State Board of Elections.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect any candidate, representative of a political party committee or official, representative of a committee that advocates or opposes an amendment or public question and others, as approved by the State Board of Elections.

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

amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated individuals identified in question (3) will have to familiarize themselves with the law.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Individuals identified in question (3) will incur no costs in order to comply.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The changes to the SBE form 84 are neutral as it pertains to a benefit.

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

(a) Initially: There is no material cost of the State Board of Elections for new forms as they are provided electronically and updated within SBE.

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact requesters of voter registration data and registered Kentucky voters.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 117.025(3)(h).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional revenue for state or local governments during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any additional revenue for state or local governments during subsequent years of implementation.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

This emergency administrative regulation establishes the guidelines and requirements for the implementation and use of ignition interlock devices. It is filed to address the risk to public safety associated with driving under the influence. This emergency administrative regulation replaces the current emergency regulation that expires on June 14, 2018, and differs substantially by amending the language in the NECESSITY, FUNCTION, and CONFORMITY paragraph on page one (1), line nineteen (19), to correct the citation relating to driving under the influence. This emergency administrative regulation will be replaced by an ordinary administrative regulation which is being filed simultaneously with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
GREG THOMAS, Secretary

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

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

RELATES TO: KRS 45A, 186.010, 186.440, 186.442, 186.480, 186.531, 186.560, 186.570, 189A.005, 189A.010, 189A.040, 189A.070, 189A.085, 189A.090, 189A.103, 189A.105, 189A.107, 189A.200, 189A.240, 189A.250, 189A.340, 189A.345, 189A.400, 189A.410, 189A.420, 189A.440, 189A.500, 205.712, 18 U.S.C. 2721[57 C.F.R. 11772-41787]

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

EFFECTIVE: June 13, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189A.500 requires the Transportation Cabinet to promulgate administrative regulations to carry out provisions regarding the implementation of the commonwealth's ignition interlock program for motor vehicle drivers who violate KRS 189A.010. This administrative regulation establishes the duties and responsibilities of ignition interlock device providers wishing to enter into an agreement with the Commonwealth of Kentucky and the Transportation Cabinet for the administration and implementation of the ignition interlock device program and requirements for certifying ignition interlock devices under this program. This administrative regulation also establishes the requirements for a defendant charged with a violation of KRS 189A.010 to obtain an ignition interlock device and license[KRS 189A.085 states that, after a license plate suspension by a judge pursuant to that provision, the circuit court clerk shall transmit surrendered plates to the Transportation Cabinet in the manner set forth by the Transportation Cabinet in administrative regulation. KRS 189A.340(4)(f) states that the Transportation Cabinet shall promulgate administrative regulations to carry out the provisions of that subsection regarding interlock devices. This administrative regulation outlines the procedure for surrendering plates to the Transportation Cabinet pursuant to court order, providing registration information on a convicted violator to the court, approving ignition interlock device manufacturers, installers, and servicing entities and making an approved list available to the public].

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

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

(3) "Defendant" means an individual who is determined to be eligible and who is ordered by the court to drive only motor

vehicles that have certified ignition interlock devices installed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Diagnostic trouble shooting;

(b) Repair or replacement of a malfunctioning device; or

(c) Removal of a device from an inoperable vehicle.

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

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

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

(25) "Technician" means a service provider employee or contractor who installs, calibrates, and removes ignition interlock devices within the Commonwealth of Kentucky.

(26) "Violation" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) A defendant seeking a medical accommodation due to diminished lung capacity shall submit with the application a completed Breath Alcohol Ignition Interlock Physician Statement, TC 94-176.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) An ignition interlock device provider seeking certification to provide devices and services within the commonwealth shall comply in all respects with the requirements of solicitation issued by the cabinet. Non-compliance shall result in a denial of certification.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Device tampering or circumvention violations; or

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

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

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

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

(b) Device rental on a monthly basis;

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

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

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

(f) Missed appointments without notice;

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

(h) Device removal.

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

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

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

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

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

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

(7) An ignition interlock device provider shall ensure that technicians installing the device:

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

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

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

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

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

(8) The cabinet shall:

(a) Maintain a periodically updated, rotating list of certified ignition interlock device providers and approved facilities available

at <http://drive.ky.gov>:

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

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

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

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

(a) Photo identification;

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

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

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

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

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

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

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

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

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

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

(a) A device in use by that provider and previously certified by the cabinet is discontinued by the manufacturer or device provider;

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

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

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

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

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

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

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

(i) The device provider requests a voluntary suspension.

(2)(a) The device provider shall be given thirty (30) days

written notice of the existence of one (1) or more of the conditions specified in subsection (1) of this section by letter from the Commissioner of the Department of Vehicle Regulation, served by certified mail, and an opportunity to respond to the allegations or correct the deficiencies within that period.

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

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

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

(a) Providing notice to defendants; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(1) Upon receipt of a request for a vehicle registration inventory from a court, the Transportation Cabinet shall:~~

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

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

~~(c) Return the results of the search to the court by 12 noon Eastern time, the next working day after the request is received, provided the request is received by 12 noon Eastern time. Requests received after 12 noon Eastern time shall be returned to the court by the close of business the second working day after they are received.~~

~~(2) Upon receipt of a court order suspending a licensee's plates, pursuant to KRS 189A.085, the Transportation Cabinet shall suspend the licensee's registration. The cabinet shall not suspend the registration of any person pursuant to KRS 189A.085 unless a court order has been received.~~

~~(3) The court shall return all confiscated license plates to the Transportation Cabinet. The cabinet shall bear the responsibility for reasonable postage or shipping costs for the return of all confiscated license plates.~~

~~(4) After the motor vehicle registration suspension period has expired, the county clerk shall reissue a motor vehicle registration plate and registration receipt upon the request of the vehicle owner as follows:~~

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

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

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

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

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

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

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

~~(e) The ignition interlock device shall:~~

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

~~device;~~

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

~~(g) The ignition interlock device shall require:~~

~~1. That the operator of the vehicle submit to a retest within ten (10) minutes of starting the vehicle;~~

~~2. That retests continue at intervals not to exceed sixty (60) minutes after the first retest;~~

~~3. That retests occur during operation of the vehicle; and~~

~~4. That the device enter a lockout condition in five (5) days if a retest is not performed or the results of the test exceeds the maximum allowable alcohol concentration;~~

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

~~1. If the retest is not performed; or~~

~~2. If the results exceed the maximum allowable alcohol concentration; and~~

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

~~(2) An ignition interlock device shall be:~~

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

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

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

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

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

~~1. Name of the person performing the installation and calibration;~~

~~2. Dates of activity;~~

~~3. Value and type of standard used;~~

~~4. Unit type and identification number of the ignition interlock device checked; and~~

~~5. Description of the vehicle in which the ignition interlock device is installed, including the registration plate number and state, make, model, vehicle identification number, year and color.~~

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

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

~~(2) The list of manufacturers who provide appropriate devices, approved installers, and servicing and monitoring entities shall be published and periodically updated by the Division of Driver Licensing on the Transportation Cabinet Web site.~~

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

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

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

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

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

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

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subject to applicable copyright law, at the Transportation Cabinet, Division of Driver Licensing, 2nd Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.]

GREG THOMAS, Secretary
MATTHEW D. HENDERSON, Commissioner
D. ANN DANGELO, Office of Legal Services
APPROVED BY AGENCY: June 6, 2018
FILED WITH LRC: June 13, 2018 at 4 p.m.

CONTACT PERSON: D. Ann Dangelo, Asst. General Counsel,
Transportation Cabinet, Office of Legal Services, 200 Mero Street,
Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-
5238, email Ann.Dangelo@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the administration and implementation of the ignition interlock program.

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

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the regulatory requirements of KRS 189A.500.

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

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

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

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 189A.500 that requires the cabinet to implement the ignition interlock program. (d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify provisions in the current administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect: companies desiring to provide ignition interlock devices and services within Kentucky; motor vehicle drivers who violate KRS 189A.010 (defendants); the cabinet's Division of Drivers Licensing within the Division of Vehicle Regulation; circuit clerks, and the Administrative Office of the Courts.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Companies desiring to provide ignition interlock devices and services will apply to the cabinet for device certification and authorization; defendants will apply for both the ignition interlock device and authorization to operate with an ignition interlock license pursuant to court order; divisions within the department will approve and process the application forms; and circuit clerks will issue the ignition interlock licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Defendants will pay device and servicing fees

pursuant to KRS 189A.500, and an application fee in the amount of \$105 pursuant to KRS 189A.420(6).

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

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

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

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. For local government, costs should be minimal as the process is judicially driven and the regulatory actions will be performed within the context of DUI prosecutions.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is not expected to generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation is not expected to generate revenue.

(c) How much will it cost to administer this program for the first year? Up to approximately \$525,000.

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

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

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

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

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

**STATEMENT OF EMERGENCY
803 KAR 25:089E**

The Department of Workers' Claims must amend this administrative regulation by emergency to comply with KRS 342.035(1) which requires that the schedule of fees be reviewed and updated, if appropriate, every two (2) years on July 1. Medical costs in the workers' compensation system shall be fair, current, and reasonable for similar treatment in the same community where paid for by general insurers. The medical fee schedule meets this statutory guideline. By complying with that statutory guideline, the medical fee schedule update insures injured employees receive quality and appropriate health care and medical providers are appropriately compensated. This emergency administrative regulation complies with the statutory mandate of being in place by July 1 and protects human health and public health, safety, and welfare by updating medical costs. Our current administrative regulation incorporates the 2016 fee schedule which has been updated and revised to address the current medical costs. Because the medical fee schedule is updated pursuant to KRS 342.035(1), the current administrative regulation must be amended to incorporate the new schedule. This emergency administrative regulation will be replaced by an ordinary administrative regulation. This emergency administrative regulation is identical to the ordinary administrative regulation.

MATTHEW G. BEVIN, Governor
ROBERT L. SWISHER, Commissioner
APPROVED BY AGENCY: June 11, 2018
FILED WITH LRC: June 11, 2018 at 3 p.m.

**LABOR CABINET
Department of Workers' Claims
(Emergency Amendment)**

803 KAR 25:089E. Workers' compensation medical fee schedule for physicians.

RELATES TO: KRS 342.0011(32), 342.019, 342.020, 342.035
STATUTORY AUTHORITY: KRS 342.020, 342.035(1), (4)
EFFECTIVE: June 11, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035(1) requires the commissioner of the Department of Workers' Claims to promulgate administrative regulations to ensure that all fees, charges and reimbursements for medical services under KRS Chapter 342 are limited to charges that are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. KRS 342.035(4) requires the commissioner to promulgate an administrative regulation establishing the workers' compensation medical fee schedule for physicians. Pursuant to KRS 342.035, a schedule of fees is to be reviewed and updated, if appropriate, every two (2) years on July 1. This administrative regulation establishes the medical fee schedule for physicians.

Section 1. Definitions. (1) "Medical fee schedule" means the 2018 Kentucky Workers' Compensation Schedule of Fees for Physicians~~[2016 Kentucky Workers' Compensation Fee Schedule for Physicians]~~.

(2) "Physician" is defined by KRS 342.0011(32).

Section 2. Services Covered. (1) The medical fee schedule shall govern all medical services provided to injured employees by physicians under KRS Chapter 342.

(2) The medical fee schedule shall also apply to other health care or medical services providers to whom a listed CPT code is applicable unless:

(a) Another fee schedule of the Department of Workers' Claims applies;

(b) A lower fee is required by KRS 342.035 or a managed care plan approved by the commissioner pursuant to 803 KAR 25:110; or

(c) An insurance carrier, self-insured group, or self-insured employer has an agreement with a physician, medical bill vendor, or other medical provider to provide reimbursement of a medical bill at an amount lower than the medical fee schedule.

Section 3. Fee Computation. (1) The appropriate fee for a procedure or item covered by the medical fee schedule shall be the Maximum Allowable Reimbursement (MAR) listed in the 2018 Kentucky Workers' Compensation Schedule of Fees for Physicians for those procedures or items for which a specific monetary amount is listed~~[obtained by multiplying a relative value unit for the medical procedure by the applicable conversion factor]~~; and

(2) Procedures Listed Without Specified Maximum Allowable Reimbursement Monetary Amount: The appropriate fee for a procedure or item for which no specific monetary amount is listed shall be determined and calculated in accordance with numerical paragraph six (6) of the General Instructions of the medical fee schedule unless more specific Ground Rules are applicable to that service or item, in which case the fee shall be calculated in accordance with the applicable Ground Rules.~~[The resulting fee shall be the maximum fee allowed for the service provided.]~~

(3) The resulting fee shall be the maximum fee allowed for the service provided.

Section 4. (1) A physician or healthcare or medical services provider located outside the boundaries of Kentucky shall be deemed to have agreed to be subject to this administrative regulation if it treats a patient~~[accepts a patient for treatment]~~ who is covered under KRS Chapter 342.

(2) Pursuant to KRS 342.035, medical fees due to an out-of-state physician or healthcare or medical services provider shall be calculated under the fee schedule in the same manner as for an in-state physician.

Section 5. Incorporation by Reference. (1) "2018 Kentucky Workers' Compensation Schedule of Fees for Physicians", the edition effective July 1, 2018,~~"2016 Kentucky Workers' Compensation Fee Schedule for Physicians", May 12, 2016 edition,~~ is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT L. SWISHER, Commissioner
APPROVED BY AGENCY: June 11, 2018
FILED WITH LRC: June 11, 2018 at 3 p.m.

CONTACT PERSON: B. Dale Hamblin, Jr., Assistant General Counsel, Workers' Claims Legal Division, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, email dale.hamblin@ky.gov, phone (502) 782-446, fax (502) 564-0681

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. Dale Hamblin, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates the medical fee schedule for physicians and the requirements for using the fee schedule.

(b) The necessity of this administrative regulation: Pursuant to KRS 342.035, the commissioner is required to promulgate an administrative regulation regarding fee schedules.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation incorporates the extensive fee schedule for physicians and requirements for the fee schedule.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It is imperative to have fee schedules to control the medical costs of the workers' compensation system. Injured employees should receive quality medical care and physicians should be appropriately paid.

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

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(a) How the amendment will change this existing administrative regulation: The medical fee schedule has been updated and will be incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The statute requires the schedule of fees to be reviewed and updated every two (2) years, if appropriate.

(c) How the amendment conforms to the content of the authorizing statutes: The schedule of fees has been appropriately updated to insure that medical fees are fair, current, and reasonable for similar treatment in the same community for general health insurance payments.

(d) How the amendment will assist in the effective administration of the statutes: The schedule of fees assists the workers' compensation program by updating fees for physicians to insure injured workers get qualified and appropriate medical treatment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All physicians and medical providers providing services to injured workers pursuant to KRS Chapter 342, injured employees, insurance carriers, self-insurance groups, and self-insured employers and employers, third party administrators.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, 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: Insurance carriers, self-insured groups, self-insured employers, third party administrators, and medical providers must purchase the new schedule of fees to accurately bill and pay for medical services. Other parties to workers' compensation claims are only indirectly impacted by the new fee schedule.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Insurance carriers, self-insured groups, self-insured employers or third party administrators and medical providers can purchase the fee schedule book with disk for \$120 or the disk for \$60.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Medical providers will receive fair, current, and reasonable fees for services provided to injured workers. Injured workers will be treated by qualified medical providers.

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

(a) Initially: The contract for reviewing and updating the physicians fee schedule is \$66,935.00.

(b) On a continuing basis: No continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal budget is the source of funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding 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 sets forth a current schedule of fees to be paid to physicians. Fees have been updated to be fair, current, and reasonable for similar treatment in the same community as paid by health insurers.

(9) TIERING: Is tiering applied? Tiering is not applied, because the updated fee schedule applies to all parties equally.

be impacted by this administrative regulation? The Department of Workers' Claims and all parts of government with employees

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.035

3. Estimate the effect of this administrative regulation on the 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. As an employer, there may be some increased costs for medical services. It is impossible to estimate not knowing what medical services will be needed by injured workers.

(a) How much 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 generated

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

(c) How much will it cost to administer this program for the first year? No new administrative costs

(d) How much will it cost to administer this program for subsequent years? No new administrative 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:

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(As Amended at ARRS, June 12, 2018)

201 KAR 9:031. Examinations.

RELATES TO: KRS 311.565(1)(m), (p), (q), (r), (u)[(13), (16), (18), (22)]

STATUTORY AUTHORITY: KRS 311.565(1)(b), (m), (p), (q), (r), (u)[(13), (16), (18), (22)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565 authorizes the board to promulgate administrative regulations governing examinations. This administrative regulation establishes standards and requirements relating to examinations.

Section 1. Basic Requirement; Passing Score. (1) An applicant for a license or permit issued by the board shall provide written proof that he or she has received a score:

(a) Of seventy-five (75), on each step, part, or component or its numerical equivalent; or

(b) A FLEX weighted average (FWA) of seventy-five (75) in a single sitting.

(2) A passing score for an applicant who has taken Component I and Component II of the Federation Licensing Examination (FLEX) shall be a score of seventy-five (75) on each component.

(3) The board shall recognize a passing score on the above examinations listed in subsections (1) and (2) of this section if provided the applicant obtains a passing score within four (4) attempts for each step, component, part, or level.

(4) A passing score for an applicant who takes Step 1, 2, and 3 of the United States Medical Licensing Examination (USMLE) shall be a score of seventy-five (75) or its numerical equivalent. A passing score for an applicant who takes Levels 1, 2, and 3 of the Comprehensive Osteopathic Medical Licensing Examination (COMLEX-USA [COMPLEX-USA]) shall be a score of seventy-five (75) or its numerical equivalent.

(5) For an applicant who takes Parts 1 and 2 of the Medical Council of Canada Qualifying Examination, scores on each component deemed to be a "pass score" by the Medical Council of Canada in the year the examination was taken shall be deemed a passing score.

(6)[(5)] The board shall recognize the following combinations of examinations only if completed prior to the year 2000:

(a) NBME Part I or USMLE Step 1, plus NBME Part II or USMLE Step 2, plus NBME Part III or USMLE Step 3; ~~for~~

(b) FLEX Component I plus USMLE Step 3; or

(c) NBME Part I or USMLE Step 1, plus NBME Part II or USMLE Step 2, plus FLEX Component 2.

Section 2. Examinations Approved by the Board. The following examinations are approved by the board in regard to the fulfillment of the examination requirement for licensure:

(1) Examinations administered prior to 1972 by the licensure authority of another state, United States territory, or Canadian province upon sufficient proof that the examination consisted of comprehensive testing in the basic and clinical sciences;

(2) The examination administered by the Federation of State Medical Boards, (FLEX);

(3) The examination administered by the National Board of Medical Examiners (NBME);

(4) The examination administered by the National Board of Osteopathic Medical Examiners (NBOME) or Comprehensive Osteopathic Medical Licensing Examination (COMLEX-USA[COMPLEX-USA]);

(5) The examination administered jointly by the Federation of State Medical Boards and National Board of Medical Examiners entitled United States Medical Licensing Examination (USMLE);

and[.]

(6) The Medical Council of Canada Qualifying Examination administered by the Medical Council of Canada, if both Parts 1 and 2 have been successfully completed.

Section 3. The board may deny a license or permit if the board determines~~when in the board's opinion~~ the examination by which the applicant is seeking to fulfill the examination requirement inadequately tested the applicant's knowledge, education, training and competency.

RUSSELL L. TRAVIS, M.D., President

APPROVED BY AGENCY: April 11, 2018

FILED WITH LRC: April 12, 2018 at noon

CONTACT PERSON: Leanne K. Diakov, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118, email Leanne.Diakov@ky.gov.

GENERAL GOVERNMENT
Board of Cosmetology
(As Amended at ARRS, June 12, 2018)

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

RELATES TO: KRS 317A.020, 317A.050, 317A.090[; 317B.045, 317B.025]

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060(1)(h)[(2)(e)] requires the board to promulgate administrative regulations governing the hours and courses of instruction at schools of cosmetology, esthetic practices~~esthetic~~, and nail technology.~~KRS 317B.020(3)(i) authorizes the board to promulgate administrative regulations including the hours and courses of instruction in esthetic practices.]~~ KRS 317A.090 establishes licensing~~the~~ requirements for schools of cosmetology, esthetic practices~~esthetic~~, and nail technology. This administrative regulation establishes requirements for the hours and courses of instruction, reporting, education requirements, and administrative functions required for students and faculty for schools of cosmetology, esthetic practices~~esthetic~~, and nail technology.

Section 1. Subject Areas. The regular courses of instruction for cosmetology students shall contain courses relating to the subject areas identified in this section.

(1) Basics:

(a) History and Career Opportunities;

(b) Life Skills;

(c) Professional Image; and

(d) Communications.

(2) General Sciences:

(a) Infection Control: Principles and Practices;

(b) General Anatomy and Physiology;

(c) Skin Structure, Growth, and Nutrition;

(d) Skin Disorders and Diseases;

(e) Properties of the Hair and Scalp;

(f) Basic Chemistry; and

(g) Basics of Electricity.

(3) Hair Care:

(a) Principles of Hair Design;

(b) Scalp Care, Shampooing, and Conditioning;

(c) Hair Cutting;

(d) Hair Styling;

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- (e) Braiding and Braid Extensions;
- (f) Wig and Hair Additions;
- (g) Chemical Texture Services; and
- (h) Hair Coloring.

- (4) Skin Care:
 - (a) Hair Removal;
 - (b) Facials; and
 - (c) Facial Makeup.
- (5) Nails:

- (a) Manicuring;
- (b) Pedicuring;
- (c) Nail Tips and Wraps;
- (d) Monomer Liquid and Polymer Powder Nail Enhancements;

and

- (e) Light Cured Gels.
- (6) Business Skills:
 - (a) Preparation for Licensure and Employment;
 - (b) On the Job Professionalism; and
 - (c) Salon Businesses.

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

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

- (a) 375 lecture hours for science and theory;
- (b) 1,085 clinic and practice hours; and
- (c) Forty (40) hours on the subject of applicable Kentucky statutes and administrative regulations.

(2) A cosmetology student shall not perform chemical services on the public until the student has completed a minimum of 250 hours of instruction.

Section 4. Training Period for Cosmetology Students, Nail Technician Students, Esthetician Students, and Apprentice Instructors. (1) A training period for a student shall be no more than eight (8) hours per day, forty (40) hours per week.

(2) A student shall be allowed thirty (30) minutes per eight (8) hour day for meals or a rest break. This thirty (30) minute period shall not be credited toward a student's instructional hours requirement.

Section 5. Laws and Regulations. (1) At least one (1) hour per week shall be devoted to the teaching and explanation of the Kentucky law as set forth in KRS Chapter 317A[, 317B,] and 201 KAR Chapter 12.

(2) Schools of cosmetology, esthetic practices[esthetics], and nail technology, shall provide a copy of KRS Chapter 317A and 201 KAR Chapter 12 to each student upon enrollment.

Section 6. Nail Technician Curriculum. The nail technician course of instruction shall include the following:

- (1) Basics:
 - (a) History and Opportunities;
 - (b) Life Skills;
 - (c) Professional Image; and
 - (d) Communications.
- (2) General Sciences:
 - (a) Infection Control: Principles and Practices;
 - (b) General Anatomy and Physiology;
 - (c) Skin Structure and Growth;
 - (d) Nail Structure and Growth;
 - (e) Nail Diseases and Disorders;
 - (f) Basics of Chemistry;
 - (g) Nail Product Chemistry; and
 - (h) Basics of Electricity.
- (3) Nail Care:
 - (a) Manicuring;
 - (b) Pedicuring;
 - (c) Electric Filing;
 - (d) Nail Tips and Wraps;

- (e) Monomer Liquid and Polymer Powder Nail Enhancements;
- (f) UV and LED Gels; and
- (g) Creative Touch.
- (4) Business Skills:
 - (a) Seeking Employment;
 - (b) On the Job Professionalism; and
 - (c) Salon Businesses.

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

- (a) ~~150~~[240] lecture hours for science and theory;
- (b) Twenty-five (25) hours on the subject of applicable Kentucky statutes and administrative regulations; and
- (c) ~~275~~[365]-clinic and practice hours.

(2) A nail technician student shall have completed sixty (60)[~~eighty (80)~~] hours[in clinical and related theory class] before [~~working on and~~] providing services to the general public. Clinical practice shall be performed on other students or mannequins during the first sixty (60)[~~eighty (80)~~] hours.

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

- (1) Orientation;
- (2) Psychology of student training;
- (3) Introduction to teaching;
- (4) Good grooming and professional development;
- (5) Course outlining and development;
- (6) Lesson planning;
- (7) Teaching techniques (methods);
- (8) Teaching aids, audio-visual techniques;
- (9) Demonstration techniques;
- (10) Examinations and analysis;
- (11) Classroom management;
- (12) Recordkeeping;
- (13) Teaching observation;
- (14) Teacher assistant; and
- (15) Pupil teaching (practice teaching).

Section 9. Supervision. An apprentice instructor shall be under the immediate supervision and instruction of a licensed instructor during the school day. An apprentice instructor shall not assume the duties and responsibilities of a licensed supervising instructor.

Section 10. Additional Coursework. Apprentice Esthetics and Nail Technology Instructors shall also complete an additional fifty (50) hours of advanced course work in that field within a two (2) year period prior to the instructor examination.

Section 11. Schools may enroll persons for a special brush-up course in any subject.

Section 12[44]. Esthetician Curriculum. The regular course of instruction for esthetician students shall consist of courses relating to the subject areas identified in this section.

- (1) Basics:
 - (a) History and Career Opportunities;
 - (b) Professional Image; and
 - (c) Communication.
- (2) General Sciences:
 - (a) Infection Control: Principles and Practices;
 - (b) General Anatomy and Physiology;
 - (c) Basics of Chemistry;
 - (d) Basics of Electricity; and
 - (e) Basics of Nutrition.
- (3) Skin Sciences:
 - (a) Physiology and Histology of the Skin;
 - (b) Disorders and Diseases of the Skin;
 - (c) Skin Analysis; and
 - (d) Skin Care Products: Chemistry, Ingredients, and Selection.
- (4) Esthetics:

- (a) Treatment Room;
- (b) Basic Facials;
- (c) Facial Massage;
- (d) Facial Machines;
- (e) Hair Removal;
- (f) Advanced Topics and Treatments; and
- (g) Makeup.
- (5) Business Skills:
 - (a) Career Planning;
 - (b) The Skin Care Business; and
 - (c) Selling Products and Services.

Section 13[12]. Esthetician Hours Required. (1) An esthetician student shall receive no less than 750[4,000] hours in clinical and theory class work with a minimum of:

- (a) 250[365] lecture hours for science and theory;
 - (b) Thirty-five (35) hours on the subject of applicable Kentucky statutes and administrative regulations; and
 - (c) 465[600] clinic and practice hours.
- (2) An esthetician student shall have completed 115[450] hours [in clinical and related theory class] before providing services to the general public. Clinical practice shall be performed on other students or mannequins during the first 115[450] hours.

Section 14[13]. Extracurricular Events. Each cosmetology, nail technician, and esthetician student shall be allowed up to sixteen (16) hours for field trip activities pertaining to the profession of study, sixteen (16) hours for attending educational programs, and sixteen (16) hours for charitable activities relating to the field of study, totaling not more than forty-eight (48) hours and not to exceed eight (8) hours per day. Attendance or participation shall be reported to the board within ten (10) business days of the field trip, education show, or charitable event on the Certification of Student Extracurricular Event Hours form.

Section 15[14]. Student Records. Each school shall:

- (1) Maintain a daily attendance record for all full-time students, part-time students, and apprentice instructors;
- (2) Keep a record of each student's practical work and work performed on clinic patrons;
- (3) Maintain a detailed record of all student enrollments, withdrawals, and dismissals for a period of five (5) years; and
- (4) Make records required by this Section available to the board and its employees upon request.

Section 16[15]. Certification of Hours. (1) Schools shall forward to the board digital certification of a student's hours completed within ten (10) business days of a student's withdrawal, dismissal, completion, or the closure of the[cosmetology] school.

(2) No later than the 10th day of each month, a licensed[cosmetology] school shall submit to the board via electronic delivery a certification of each student's total hours obtained for the previous month and the total accumulated hours to date for all students enrolled. Amended reports shall not be accepted by the board without satisfactory proof of error. Satisfactory proof of error shall require, at a minimum, a statement signed by the school manager certifying the error and the corrected report.

Section 17[16]. No Additional Fees. Schools shall not charge students additional fees beyond the contracted amount.

Section 18[17]. Instructor Licensing and Responsibilities. (1) A person employed by a cosmetology, nail technology, or esthetic practices school for the purpose of teaching or instruction shall be licensed by the board as an[a cosmetologist] instructor and shall post his or her license as required by[in] 201 KAR 12:060.

- (2) A licensed instructor or apprentice instructor shall supervise all students during a class or practical student work.
- (3) An instructor or apprentice instructor shall render services only incidental to and for the purpose of instruction.
- (4) Licensed[Cosmetology] schools shall not permit an instructor to perform[cosmetology] services in the school for

compensation during school hours.

(5) An instructor shall not permit students to instruct or teach other students in the instructor's absence.

(6) Except as provided in subsection (7) of this section, schools may not permit a demonstrator to teach in a licensed school[ef cosmetology].

(7) A properly qualified, licensed individual may demonstrate a new process, preparation, or appliance in a licensed school if[in the presence of] a licensed instructor is present[in a licensed school].

(8) Licensed schools of cosmetology, esthetic practices[esthetics], and nail technology shall, at all times, maintain a minimum faculty to student ratio of one (1) instructor for every twenty (20) students enrolled and supervised.

(9) Licensed schools of cosmetology, esthetic practices[esthetics], and nail technology shall, at all times, maintain a minimum ratio of one (1) instructor for every two (2) apprentice instructors enrolled and supervised.

(10) Within ten (10) business days of the termination, employment, and other change in school faculty personnel, a licensed school shall notify the board of the change.

Section 19[18]. School Patrons. (1) All services rendered in a licensed[cosmetology] school to the public shall be performed by students. Instructors may teach and aid the students in performing the various services.

(2) A licensed school shall not guarantee a student's work.

(3) A licensed school shall display in the reception room, clinic room, or any other area in which the public receives services a sign to read: " Work Done by Students Only." The letters shall be a minimum of one (1) inch in height.

Section 20[19]. Enrollment. (1) Any person enrolling in a school for a cosmetology, nail technician, or esthetics course shall furnish proof that the applicant has:

- (a) A high school diploma,
- (b) A General Educational Development (GED) diploma; or
- (c) Results from the Test for Adult Basic Education indicating a score equivalent to the successful completion of the twelfth grade of high school.

(2) The applicant shall provide with the enrollment a passport photograph taken within thirty (30) days of submission of the application.

(3) A student enrolling in a licensed school[ef cosmetology] who desires to transfer hours from an out of state[cosmetology] school shall, prior to enrollment, provide to the board certification of the hours to be transferred from the state agency that governs the out of state[cosmetology] school[the credit hours obtained in that state].

(4) If the applicant is enrolled in a board approved[cosmetology] program at an approved Kentucky high school, the diploma, GED, or equivalency requirement of this Section is not necessary until examination.

Section 21[20]. Certificate of Enrollment. (1) Schools shall submit to the board the student's digital enrollment, accompanied by the applicant's proof of education, as established in Section 20[19] of this administrative regulation, within ten (10) business days of enrollment.

(2) All student identification information on the school's digital enrollment shall[must] exactly match a state or federal government-issued identification card to take the examination. If corrections shall[must] be made, the school shall submit the Enrollment Correction Application[form] and the enrollment correction fee in 201 KAR 12:260 within ten (10) days of the erroneous submission. Students with incorrect enrollment information shall[will] not be registered for an examination.

Section 22[24]. Student Compensation. (1) Schools shall not pay a student a salary or commission while the student is enrolled at the school.

(2) Licensed schools shall not guarantee future employment to students.

(3) Licensed schools shall not use deceptive statements and

false promises to induce student enrollment.

Section 23[22]. Transfer. A student desiring to transfer to another licensed[cosmetology] school shall:

- (1) Notify the school in which the student is presently enrolled of the student's withdrawal; and
- (2) Complete a digital enrollment as required for the new school.

Section 24[23]. Refund Policy. A school shall include the school's refund policy in school-student contracts.

Section 25[24]. Student Complaints. A student may file a complaint with the board concerning the school in which the student is enrolled, by following the procedures outlined in 201 KAR 12:190[060].

Section 26[25]. Student Leave of Absence. The school shall report a student's leave of absence to the board within ten (10) business days. The leave shall be reported:

- (1) In writing from the student to the school; and
- (2) Clearly denote the beginning and end dates for the leave of absence.

Section 27[26]. Student Withdrawal. Within ten (10) business days from a student's withdrawal, a licensed[cosmetology] school shall report the name of the withdrawing student to the board. [Section 27. Laws and Regulation Material. A cosmetology school shall provide an informational copy of KRS Chapter 317A[and 317B,] and 201 KAR Chapter 12 to each student upon enrollment.]

Section 28. Credit for hours completed. The board shall credit hours previously completed in a licensed school[of cosmetology] as follows:

- (1) Full credit (hour for hour) for hours completed within five (5) years of the date of school enrollment; and
- (2) No credit for hours completed five (5) or more years from the date of school enrollment.

Section 29. Incorporation by Reference. The following material is incorporated by reference: (1)(a)(4) "Certification of Student Extracurricular Event Hours", February 2018; and(September 2017,]

(b) "Enrollment Correction Application[Form]", March[April] 2018[is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky[State] Board of Cosmetology[Hairdressers and Cosmetologists], 111 St. James Court, Suite A, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

R. KAY SWANNER, Board Chair
 APPROVED BY AGENCY: April 6, 2018
 FILED WITH LRC: April 13, 2018 at 9 a.m.
 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.

**GENERAL GOVERNMENT
 Board of Cosmetology
 (As Amended at ARRS, June 12, 2018)**

201 KAR 12:260. Fees.

RELATES TO: KRS 317A.050, 317A.062[;—317B.020, 317B.025, 317B.030, 317B.040]

STATUTORY AUTHORITY: KRS 317A.062[;—317B.020]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.062 [and—317B.020] requires[require] the board to promulgate administrative regulations establishing a reasonable schedule of fees and charges for examinations[,] and the issuance, renewal, and restoration of licenses and permits[,] and renewal of

licenses]. This administrative regulation establishes a fee schedule for applications, permits, and licenses issued by the board[fees relating to cosmetology, esthetics, and nail technology].

Section 1. The initial license fees shall be as follows:

- (1)[Apprentice cosmetologist - twenty-five (25) dollars;
- (2)[Cosmetologist - fifty (50) dollars][twenty-five (25) dollars];
- (2)[(3) Nail technician - fifty (50) dollars][twenty-five (25) dollars];
- (3)[(4) Esthetician - fifty (50) dollars][seventy-five (75) dollars;
- (5) Apprentice instructor - thirty-five (35) dollars];
- (4)[(6) Cosmetology instructor - fifty (50) dollars;
- (5)[(7) Esthetic instructor - fifty (50) dollars][100];
- (6) Nail Technology instructor - fifty (50) dollars;
- (7)[(8) Beauty salon - \$100][thirty-five (35) dollars];
- (8)[(9) Nail salon - \$100][thirty-five (35) dollars];
- (9)[(10) Esthetic salon - \$100][125];
- (11) Esthetic independent contractor - \$125];
- (10)[(12) Cosmetology] School - \$1,500;[(13) Student enrollment permits - fifteen (15) dollars];
- (11)[(14) School [of cosmetology,] transfer of ownership - \$1,500;
- (12)[(15) Salon transfer of ownership - \$100;[School manager change - \$250];
- (13)[(16) Limited[Threading] facility permit **for a threading facility, lash extension facility, and makeup facility** - \$100][twenty-five (25) dollars];
- (14)[(17) Threading permit - fifty (50) dollars][twenty (20) dollars];[and]
- (15) Lash Extension Permit - fifty (50) dollars; and
- (16) Makeup Artistry Permit - fifty (50) dollars][(18) Out-of-state endorsement application fee - \$100].

Section 2. The[annual] renewal license fees shall be as follows:

- (1)[Apprentice cosmetologist - twenty (20) dollars;
- (2) Cosmetologist - fifty (50) dollars][twenty (20) dollars];
- (2)[(3) Nail technician - fifty (50) dollars][twenty (20) dollars];
- (3)[(4) Esthetician - fifty (50) dollars];
- (5) Apprentice instructor - twenty-five (25) dollars];
- (4)[(6) Cosmetology instructor - fifty (50) dollars][thirty-five (35) dollars];
- (5)[(7) Esthetic instructor - fifty (50) dollars][seventy-five (75) dollars];
- (6) Nail technology instructor - fifty (50) dollars;
- (7)[(8) Beauty salon - \$100][twenty-five (25) dollars];
- (8)[(9) Nail salon - \$100][twenty-five (25) dollars];
- (9)[(10) Esthetic salon - \$100][seventy-five (75) dollars]
- (11) Esthetic independent contractor - seventy-five (75) dollars];
- (10)[(12)][Cosmetology]School - \$250[\$150];
- (11)[(13)] Limited[Threading] facility permit **for a threading facility, lash extension facility, and makeup facility** - \$100][twenty-five (25) dollars];[and]
- (12)[(14) Threading permit - fifty (50) dollars;][twenty (20) dollars;]
- (13) Lash Extension Permit - fifty (50) dollars; and
- (14) Makeup Artistry Permit - fifty (50) dollars.

Section 3. Applications for examination including retake applications[required by KRS Chapter 317A] shall be accompanied by a[an examination] fee as follows:

- (1)[Apprentice cosmetologist - seventy-five (75) dollars;
- (2) Cosmetologist - seventy-five (75) dollars;
- (2)[(3) Nail technician - seventy-five (75) dollars;
- (3)[(4) Esthetician - seventy-five (75) dollars][125]; and
- (4)[(5) Cosmetology] Instructor - seventy-five (75) dollars][100];[(6) Esthetic instructor - \$125;
- (7) Out-of-state cosmetologist - \$120;
- (8) Out-of-state esthetician - \$175;
- (9) Out-of-state cosmetology instructor - \$200; and
- (10) Out-of-state esthetic instructor - \$250.

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Section 4. The fees for retaking an examination or any portion of an examination that an applicant has not successfully completed shall be as follows:

- (1) Apprentice cosmetologist - thirty-two (32) dollars;
(2) Cosmetologist - thirty-two (32) dollars;
(3) Nail technician - thirty-two (32) dollars;
(4) Esthetician - \$125;
(5) Cosmetology instructor - fifty (50) dollars;
(6) Esthetic instructor - \$125;
(7) Out-of-state cosmetologist - sixty (60) dollars;
(8) Out-of-state esthetician - \$175;
(9) Out-of-state cosmetology instructor - \$100; and
(10) Out-of-state esthetic instructor - \$250.

Section 5. The fee for the restoration of an expired license where the period of expiration does not exceed five (5) years from date of expiration, shall be as follows:

- (1) Apprentice cosmetologist - seventy-five (75) dollars;
(2) Cosmetologist - seventy-five (75) dollars;
(3) Nail technician - seventy-five (75) dollars;
(4) Esthetician - \$125;
(5) Beauty salon - seventy-five (75) dollars;
(6) Nail salon - seventy-five (75) dollars;
(7) Esthetic salon - \$150;
(8) Esthetic independent contractor - \$150;
(9) Cosmetology school - \$750;
(10) Apprentice Instructor - seventy-five (75) dollars;
(11) Cosmetology Instructor - \$100; and
(12) Esthetic instructor - \$150.]

Section 4[6]. Miscellaneous fees shall be as follows:

- (1) Demonstration permit - fifty (50) dollars;
(2) Certification of a license or school hours - twenty (20) dollars;
(3) Duplicate license - twenty-five (25) dollars;
(4)[Beauty or nail] Salon[owner,] manager[, or location] change - fifty (50) dollars[thirty-five (35) dollars];[and]
(5)[Esthetics salon owner, manager, or location change - \$125;] School manager change - \$125;
(6) Enrollment correction fee - fifteen (15) dollars;
(7) Out of state endorsement application fee - \$100;
(8) Apprentice instructor - fifty (50) dollars;
(9) Student enrollment permit - twenty-five (25) dollars;
(10) Individual license restoration Fee - fifty (50) dollars;
(11) Salon license restoration fee, or limited facility permit restoration fee for a threading facility, lash extension facility, and makeup facility - \$100; and
(12) School license restoration fee - \$500.

R. KAY SWANNER, Board Chair
APPROVED BY AGENCY: April 6, 2018
FILED WITH LRC: April 13, 2018 at 9 a.m.
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.

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

301 KAR 2:221. Waterfowl seasons and limits.

RELATES TO: KRS 150.010(41)[(40)], 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.990
STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600(1), 50 C.F.R. 20, 21
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and

private land. This administrative regulation establishes requirements for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Dark goose" means a Canada goose, cackling goose, white-fronted goose, or brant.

- (2) "Light Goose" means a snow goose or Ross's goose.
(3) "Light Goose Conservation Order" is defined by 50 C.F.R. 21.60.
(4) "Waterfowl" is defined by KRS 150.010(41)[(40)].

Section 2. (1) Except as established in 301 KAR 2:222, 2:225, or 2:226, a person shall not hunt waterfowl except during the seasons established in this administrative regulation.

(2) Hunting zones, special hunt areas, and reporting areas are established in 301 KAR 2:224.

Section 3. Season Dates. (1) The duck, coot, and merganser season shall:

- (a) Begin on Thanksgiving Day for four (4) consecutive days; and
(b) Be for fifty-six (56) consecutive days ending on the last Sunday in January of the following year.
(2) The dark goose season[Canada goose.
(a) In the Eastern, Pennyrile, and Western Goose Zones, the season shall be from Thanksgiving Day through February 15.
(b) In the Northeast Goose Zone, the season shall be from the third Saturday in December through January 31.
(3) The white-fronted goose and brant season] shall be from Thanksgiving Day through February 15.
(3)[(4)] The light goose season shall be from Thanksgiving Day through February 15.
(4)[(5)] The Light Goose Conservation Order season shall be from February 16 through March 31.
(5)[(6)] A person shall not hunt a light or dark goose in:
(a) The areas of Laurel River Lake as posted by sign; or
(b) Cave Run Lake and the public land inside the boundary formed by Highways 801, 1274, 36, 211, US 60, and Highway 826.

Section 4. Ballard Zone. (1) In the Ballard Zone, as[that is] established in 301 KAR 2:224, a person hunting waterfowl shall:

- (a)[Hunt from a blind unless hunting in flooded, standing timber;
(b)] Not hunt[from] or establish a blind:
1. Within 100 yards of another blind; or
2. Within fifty (50) yards of a property line; and
(b)[(c)] Not possess more than one (1) shotgun while in a blind.
(2) The requirements of subsection (1) of this section shall not apply if the Light Goose Conservation Order, as established in Section 3 of this administrative regulation[301 KAR 2:224], is the only waterfowl season open, excluding falconry seasons.

Section 5. Bag and Possession Limits. (1) Ducks. The daily limit shall be six (6), which shall not include more than:

- (a) Four (4) mallards;
(b) Two (2) hen mallards;
(c) Three (3) wood ducks;
(d) Two (2) black ducks;
(e) Two (2) redheads;
(f) Two (2) pintails[One (1) pintail];
(g) Three (3) scaup;
(h) One (1) mottled duck; or
(i) Two (2) canvasbacks[canvasback].
(2) Coot. The daily limit shall be fifteen (15).
(3) Merganser. The daily limit shall be five (5), which shall not include more than two (2) hooded mergansers.
(4) Dark goose. The daily limit shall be five (5), which shall not include more than:
(a) Three (3) Canada geese or cackling geese, in combination;
(b) Two (2) white-fronted geese; or
(c) One (1) brant.
(5) Light goose. The daily limit shall be twenty (20), except that

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there shall not be a limit during the Light Goose Conservation Order season.

(6) The possession limit shall be triple the daily limit, except that there shall not be a light goose possession limit.

Section 6. Shooting Hours. A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:

- (1) Sunset, except as established in 301 KAR 2:222; or
(2) One-half (1/2) hour after sunset if hunting light geese[goose] during the Light Goose Conservation Order season.

Section 7. Falconry Waterfowl Season and Limits. (1) The light goose season shall be from Thanksgiving Day through February 15.

(2) The Light Goose Conservation Order season shall be from February 16 through March 31.

(3) The season for all other waterfowl shall be from Thanksgiving Day through February 15.

(4) The daily limit shall be three (3) waterfowl, except that there shall not be a limit on light geese[goose] during the Light Goose Conservation Order season.

(5) The possession limit shall be nine (9) waterfowl, except that there shall not be a possession limit on light geese[goose] during the Light Goose Conservation Order season.

Section 8. Permit for the Light Goose Conservation Order season. (1) A person hunting light geese[goose] during the Light Goose Conservation Order season shall first obtain a free permit by completing the online Snow Goose Conservation Order Permit process on the department's Web site at fw.ky.gov.

(2) A person hunting light geese[goose] during the Light Goose Conservation Order season shall submit a Snow Goose Conservation Order Permit Survey to the department by April 10.

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

- (a) "Snow Goose Conservation Order Permit", January 2014; and
(b) "Snow Goose Conservation Order Permit Survey", January 2014.

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

FRANK JEMLEY, Interim Commissioner
DON PARKINSON, Secretary
APPROVED BY AGENCY: April 11, 2018
FILED WITH LRC: April 12, 2018 at 4 p.m.
CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

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

301 KAR 2:222. Waterfowl hunting requirements on public lands.

RELATES TO: KRS 150.010(41)[(40)], 150.305(1), 150.330, 150.340(1), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600(1), 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes

requirements for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Blind" means a:

- (a) Concealed enclosure;
(b) Pit; or
(c) Boat.

(2) "Department blind" means a permanently fixed blind structure built by the department.

(3) "Hunt site" means a specific location where waterfowl hunting is allowed, as approved by the department or the U.S. Army Corps of Engineers.

(4) "Layout blind" means a portable blind that when fully deployed allows one (1) person to be concealed above the surface of the ground.

(5) "Party" means:

- (a) A person hunting alone; or
(b) Two (2) to four (4) people who share a department blind or hunt site.

(6) "Permanent blind" means a blind left in place by a waterfowl hunter longer than twenty-four (24) hours.

(7) "Regular waterfowl season" means the open waterfowl season that does not include the Light Goose Conservation Order or the September wood duck, teal, and Canada goose seasons as established in 301 KAR 2:221 and 2:225.

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

- (a) Controlled by the department through ownership, lease, license, or cooperative agreement; and
(b) That has "Wildlife Management Area" or "WMA" as part of its official name.

Section 2. Shot Requirements. A person hunting waterfowl shall not use or possess a shotgun shell:

- (1) Longer than three and one-half (3 1/2) inches; or
(2) Containing:
(a) Lead shot;
(b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or
(c) Shot larger than size "T".

Section 3. (1) Except as established in this section or in Section 4 of this administrative regulation, on a Wildlife Management Area:

- (a) A person hunting waterfowl shall not:
1. Establish or hunt from a permanent waterfowl blind; or
2. Hunt within 200 yards of:
a. Another occupied hunt site;
b. Another legal waterfowl hunting party; or
c. An area closed to waterfowl hunting;
(b) A person shall not hunt in a designated recreation area or access point;
(c) More than four (4) persons shall not occupy a waterfowl blind or hunt site; and
(d) A hunter shall remove decoys and personal items daily, except that a hunter drawn for a multiday hunt may choose to leave decoys in place for the duration of the hunt.

(2) In order to establish or use a permanent waterfowl blind or hunt site on Lake Barkley, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake, Sloughs, or Doug Travis Wildlife Management Areas, a person:

- (a) Shall first obtain a waterfowl blind permit from the U.S. Army Corps of Engineers or the department;
(b) May designate one (1) other person as a partner; and
(c) Shall not hold more than one (1) permit per area.

(3) A person who participates in a drawing for a hunt site permit shall:

- (a) Be at least eighteen (18) years of age; and
(b) Possess:
1. A valid Kentucky hunting license;
2. A Kentucky migratory game bird and waterfowl permit; and

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3. A federal duck stamp.

(4) The holder of a hunt site permit shall:

(a) Construct or establish the blind or hunt site before November 20 or forfeit the permit;

(b) Not lock a waterfowl blind; and

(c) Remove the blind and blind materials within thirty (30) days after the close of the regular waterfowl season or be ineligible for a permit the following year, unless an extension of time is granted by the department due to weather or water level conflicts.

(5) A permanent blind, department blind, or blind site not occupied by the permit holder one (1) hour before sunrise shall be available to another hunter on a first-come, first-served basis.

(6) A waterfowl blind restriction established in this section shall not apply to a falconer if a gun or archery season is not open.

Section 4. Wildlife Management Area Requirements. (1) The regular waterfowl season provisions shall apply, as established in 301 KAR 2:221, except as established in this section.

(2) The provisions of this section shall not apply to a waterfowl hunting season that opens prior to October 15, as established in 301 KAR 2:225.

(3) A person shall not:

(a) Hunt on an area marked by a sign as closed to hunting;

(b) Enter an area marked by signs as closed to public access; or

(c) Hunt a species on an area marked by signs as closed to hunting for that species.

(4) On Wildlife Management Areas in Ballard County:

(a) The shotgun shell possession limit shall be fifteen (15), except that the shotgun shell possession limit shall be twenty-five (25) if:

1. The daily bag limit for ducks is greater than three (3); and

2. The daily bag limit for Canada goose is greater than or equal to two (2); and

(b) At least one (1) person~~[in a waterfowl blind]~~ shall be eighteen (18) years of age or older if hunting in a department waterfowl blind or hunt site.

(5) At Ballard WMA:

(a) The duck, coot, merganser, and goose season shall be the first Wednesday in December through the last Sunday in January;

(b) Youth waterfowl season shall be the first full weekend in February;

(c) A person hunting waterfowl shall not hunt on Monday, Tuesday, Christmas Eve, Christmas Day, or New Year's Day; and

(d) A person hunting waterfowl shall:

1. Apply for the waterfowl quota hunt as established in Section 5 of this administrative regulation;

2. Not hunt waterfowl on the Ohio River from fifty (50) yards upstream of Dam 53 to fifty (50) yards downstream from the southern border of Ballard ~~WMA~~~~[Wildlife Management Area]~~ from October 15 through March 15;~~and]~~

3. ~~Stop hunting and~~ exit the hunting area by 2 p.m. during the regular waterfowl season, except as authorized by the department; and

4. Check out of the area by accurately completing the Daily Post-Hunt Survey provided by the department and submitting the survey at the department-designated drop point by 3 p.m. the day of the hunt, or be declared ineligible to hunt at Ballard WMA for the remainder of the current and following waterfowl season.

(6) At Boatwright WMA, including the Olmsted, Peal, and Swan Lake units:

(a) A party shall:

1. Not hunt on Monday, Tuesday, Christmas Eve, Christmas Day, or New Year's Day;

2. Obtain a daily check-in card by 8 a.m. before entering the area from the first Wednesday in December through the last Sunday in January; and

3. Check out the same day by:

a. Visiting the designated Check station prior to 8 a.m.; or

b. Depositing the check-in card at a department-designated drop point after 8 a.m.;

(b) Duck season shall be open one-half (1/2) hour before sunrise to sunset beginning Thanksgiving Day for four (4) consecutive days

on areas of Boatwright WMA that are open to hunting;

(c) A department blind or hunt site shall be assigned through a daily drawing through the last Sunday in January;

(d) A department blind or hunt site shall be offered to another hunter on a first-come, first-served basis, if the blind or hunt site has not been assigned during the daily drawing;

(e) Waterfowl hunters shall exit the area by 2 p.m. during the regular waterfowl season;

(f) A boat blind shall not be permitted in flooded timber, except:

1. During periods of flood if no other access is possible; or

2. A mobility-impaired hunter may hunt from a boat; and

(g) A party shall only hunt waterfowl:

1. From a department blind; or

2. From layout blinds set so that all layout blinds in the party lie within a twenty-five (25) foot radius from the center of the party, and within 200 yards of a hunt site during the regular waterfowl season.

(7) On the Peal unit of Boatwright WMA:

(a) More than seven (7) parties shall not hunt at the same time on Buck Lake or Flat Lake;

(b) More than four (4) parties shall not hunt at the same time on Fish Lake;

(c) More than three (3) parties shall not hunt at the same time on First Lake or Second Lake; and

(d) A party shall not hunt waterfowl except within twenty-five (25) feet of a hunt site during the regular waterfowl season.

(8) On the Swan Lake Unit of Boatwright WMA:

(a) A person shall not hunt waterfowl from Thanksgiving Day through the first Tuesday in December;

(b) The area open to hunting during the regular waterfowl season shall be open for the Light Goose Conservation Order season as established in 301 KAR 2:221; and

(c) Blind restrictions shall not apply to the Light Goose Conservation Order season.

(9) Lake Barkley WMA.

(a) A permanent blind shall only be established within ten (10) yards of a blind site.

(b) Waterfowl refuge areas shall be:

1. The area west of the Cumberland River channel, as marked by buoys, between river mile 51, at Hayes Landing Light, south to the Tennessee Valley Authority's power transmission lines at river mile 55.5, shall be closed from November 1 through February 15; and

2. The area within Honker Bay and Fulton Bay, as marked by buoys and signs, which shall be closed from November 1 through March 15.

(c) A person shall not hunt from October 15 through March 15:

1. On Duck Island; or

2. Within 200 yards of Duck Island.

(10) Barren River Lake WMA. A person hunting waterfowl:

(a) May use a breech-loading shotgun along the shoreline of the Peninsula Unit; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(11) Big Rivers WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(12) Cedar Creek WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(13) Miller Welch-Central Kentucky WMA. A person shall not hunt waterfowl from October 15 through January 14.

(14) Lake Cumberland WMA. The following sections shall be closed to the public from October 15 through March 15:

(a) The Wesley Bend area, bounded by Fishing Creek, Beech Grove Road, and Fishing Creek Road; and

(b) The Yellowhole area, bounded by Fishing Creek Road and Hickory Nut Road.

(15) Dix River WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

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- (b) A person shall not enter a hunting area prior to 4 a.m. daily.
- (16) Doug Travis WMA.
 - (a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
 - (b) A person shall not enter a hunting area prior to 4 a.m. daily.
 - (c) A person hunting waterfowl shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.
 - (d) On Black Lake, Fish Lake, Forked Lake, Indian Camp Lake, Number Four Lake, Town Creek Moist Soil Unit, and Upper Goose Lake, all waterfowl hunting after November 1 shall be:
 - 1. From hunt sites assigned by a random preseason drawing; and
 - 2. Within ten (10) yards of a hunt site, including periods of Mississippi River flooding.
- (17) Grayson Lake WMA. A person shall not hunt waterfowl:
 - (a) Within the no-wake zone at the dam site marina;
 - (b) From the shore of Camp Webb;
 - (c) On Deer Creek Fork; or
 - (d) Within three-quarters (3/4) of a mile from the dam.
- (18) Green River Lake WMA.
 - (a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
 - (b) A person shall not enter a hunting area prior to 4 a.m. daily.
- (19) Kaler Bottoms WMA.
 - (a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
 - (b) A person shall not enter a hunting area prior to 4 a.m. daily.
- (20) Kentucky River WMA.
 - (a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
 - (b) A person shall not enter a hunting area prior to 4 a.m. daily.
 - (21) Land Between the Lakes National Recreation Area.
 - (a) The following portions shall be closed to the public from November 1 through March 15:
 - 1. Long Creek Pond;
 - 2. The eastern one-third (1/3) of Smith Bay, as marked by buoys; and
 - 3. The eastern two-thirds (2/3) of Duncan Bay, as marked by buoys.
 - (b) The following portions shall be closed to waterfowl hunting:
 - 1. The Environmental Education Center; and
 - 2. Energy Lake.
 - (c) A person shall possess an annual Land Between the Lakes Hunting Permit if hunting waterfowl:
 - 1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or
 - 2. From a boat on a flooded portion of Land Between the Lakes when the lake level is above elevation 359.
 - (d) A person shall not hunt waterfowl on inland areas during a quota deer hunt.
 - (e) A person shall not establish or use a permanent blind:
 - 1. On an inland area; or
 - 2. Along the Kentucky Lake shoreline of Land Between the Lakes.
 - (f) A person hunting waterfowl shall remove decoys and personal items daily.
- (22) Obion Creek WMA.
 - (a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
 - (b) A person shall not enter a hunting area prior to 4 a.m. daily.
- (23) Ohio River Islands WMA.
 - (a) A person shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to the power line crossing at approximately river mile 911.5.
 - (b) Stewart Island shall be closed to public access from October 15 through March 15.
 - (c) Shooting hours shall be one-half (1/2) ~~hour~~[hours] before sunrise until 2 p.m.
 - (d) A person shall not enter a hunting area prior to 4 a.m. daily.
- (24) Peabody WMA.
 - (a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
 - (b) A person shall not enter a hunting area prior to 4 a.m. daily.
 - (c) The following areas, as posted by signs, shall be closed to the public from October 15 through March 15:
 - 1. The Sinclair Mine area, bounded by Hwy 176, the haul road, and Goose Lake Road; and
 - 2. The Ken area, bounded by Wysox Road, H2 Road, H1 Road, and H6 Road.
 - (25) Pioneer Weapons WMA. A person hunting waterfowl:
 - (a) May use a breech-loading shotgun along the shoreline of Cave Run Lake; and
 - (b) Shall not use a breech-loading firearm elsewhere on the area.
 - (26) Robinson Forest WMA. The main block of the WMA shall be closed to waterfowl hunting.
 - (27) Sloughs WMA.
 - (a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
 - (b) A person shall not enter a hunting area prior to 4 a.m. daily.
 - (c) A person hunting waterfowl shall exit the area by 2 p.m. during the regular waterfowl season.
 - (d) On the ~~Jenny Hole~~Highlands Creek and Grassy Pond Powell's Lake units, a person hunting waterfowl shall:
 - 1. Hunt:
 - a. From a department blind;
 - b. Within twenty-five (25) yards of a hunt site; or
 - c. No closer than 200 yards of another hunting party; and
 - 2. Remove decoys and personal items from the area on a daily basis.
 - (e) If the Ohio River reaches a level that requires boat access, a waterfowl hunter:
 - 1. May hunt from a boat without regard to department blinds; and
 - 2. Shall not hunt closer than 200 yards from another boat.
 - (f) If hunting waterfowl on the Crenshaw and Duncan Tracts of the Sauerheber Unit ~~or the Jenny Hole Unit~~:
 - 1. A person shall not hunt on a Tuesday or Wednesday;
 - 2. A person shall hunt from a blind ~~or a hunt site~~ assigned by the department through a drawing as established in Section 5 of this administrative regulation;
 - 3. ~~A person may occupy a permitted blind if not claimed by the permittee within one (1) hour before sunrise;~~
 - 4. ~~A person shall not possess more than fifteen (15) shotgun shells, except that the shotgun shell possession limit shall be twenty-five (25) if:~~
 - a. The daily bag limit for ducks is greater than three (3); and
 - b. The daily bag limit for Canada goose is greater than or equal to two (2);
 - 4. ~~5.] If under eighteen (18) years of age, a person shall be accompanied by an adult,];~~ and
 - 6. ~~The waterfowl blind for a mobility-impaired person shall be open to the public if the permit holder or another mobility-impaired person has not claimed the blind on that day by one (1) hour before sunrise.]~~
 - (g) The Crenshaw and Duncan [H] tracts of the Sauerheber Unit shall be closed to hunting except for:
 - 1. Waterfowl from November 1 through March 15; and
 - 2. The modern gun deer season.
 - (h) The remainder of the Sauerheber Unit shall be closed to the public from November 1 through March 15.
 - (i) The Jenny Hole Unit shall be closed to boats from Thanksgiving Day through the last Sunday in January, except for persons participating in department-managed activities.
 - (j) A hunter participating in a quota waterfowl hunt at [drawn to hunt] Sloughs WMA [through a preseason draw] shall check out of the area by accurately completing the Daily Post-Hunt Survey provided by the department and submitting the survey at the designated drop point by 3 p.m. the day [submit a completed Sloughs WMA Waterfowl Hunter Survey Report at the conclusion] of the hunt or [shall] be ineligible to hunt [participate in the waterfowl blind or quota draw] at Sloughs WMA for the remainder of the current and [the] following waterfowl season [year].
 - (28) South Shore WMA.
 - (a) The WMA shall be closed to hunting from November 15

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through January 15, except for waterfowl and dove hunting.

(b) A hunter shall use a department blind.

(c) A department blind shall be available daily on a first-come, first-served basis.

(29) Taylorsville Lake WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(30) Yatesville Lake WMA. The following areas shall be closed to waterfowl hunting, unless authorized by Yatesville Lake State Park:

(a) The Greenbrier Creek embayment; and

(b) The lake area north from the mouth of the Greenbrier Creek embayment to the dam, including the island.

(31) Yellowbank WMA. The area designated by a sign and painted boundary marker shall be closed to the public from October 15 through March 15.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(32) J.C. Williams WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

Section 5. Ballard WMA and Sloughs WMA Quota Hunts. (1) A person applying to hunt waterfowl on Ballard WMA or the Sauerheber Unit of Sloughs WMA shall:

(a) Apply by:

1. ~~Calling 1-877-598-2401 and completing the telephone application process; or~~

2. completing the online Ballard or Sloughs Waterfowl Quota Hunt Form process on the department's Web site at fw.ky.gov;

(b) Apply from September 1 through September 30;

(c) Pay a three (3) dollar application fee for each application; and

(d) Not apply more than one (1) time for each hunt.

(2) A person drawn to hunt at Sloughs WMA shall check in on the Sunday prior to their hunt on the department's Web site at fw.ky.gov.

(3) A person drawn to hunt may bring up to three (3) additional hunters.

~~(4)(3)~~ A person shall be declared ineligible to hunt in department waterfowl quota hunts during the remaining portion of the waterfowl season and declared ineligible to apply for any department quota hunt the following year if the hunter violates state or federal regulations while waterfowl hunting on WMAs that have a preseason or daily drawing.

(5) A party applying to hunt waterfowl on the Jenny Hole Unit of Sloughs WMA shall:

(a) Apply by attending a weekly on-site drawing at the WMA; and

(b) Designate any other party members, if applicable, prior to the drawing.

(6) A party drawn to hunt on the Jenny Hole Unit of Sloughs WMA, as established in subsection (5) of this section, shall not be allowed to change any party members after being drawn.

Section 6. State Parks. (1) Waterfowl hunting shall be prohibited, except there shall be an open waterfowl hunt December 13 through January 31 on designated areas of state parks at:

(a) ~~Barren River;~~

(b) ~~Grayson Lake;~~

(c) ~~Greenbo Lake;~~

(d) ~~Lake Barkley;~~

(e) ~~Lincoln Homestead;~~

(f) ~~Nolin Lake;~~

(g) ~~Paintsville Lake; and~~

(h) ~~Pennyrite Lake;~~

(i) ~~Rough River Lake; and~~

(j) Yatesville Lake.

(2) Hunters shall check in and out each day at the ~~front desk of the state park or a~~ designated check station ~~check-in location on days that the park office is not open~~.

(3) During check-in, hunters shall be provided a map showing designated areas of the park that are open to waterfowl hunting. ~~[(4) Hunters shall check out each day at the front desk of the state park or a designated check-out location on days that the park office is not open.]~~

Section 7. Youth-Mentor and Mobility-Impaired Waterfowl Hunts. (1) There shall be youth-mentor waterfowl hunts on the Minor Clark and Peter W. Pfeiffer fish hatcheries each Saturday and Sunday in January.

(2) There shall be a mobility-impaired waterfowl hunt at Minor Clark Fish Hatchery that is held concurrently with each youth-mentor hunt.

(3) There shall be a waterfowl blind at Doug Travis WMA assigned by a random pre-season electronic drawing among all mobility-impaired applicants.

(4) A youth or mobility-impaired person shall:

(a) Apply on the department's Web site at fw.ky.gov between November 1 and November 15; and

(b) Carry a department provided postcard notification on the day of the hunt.

(5) A mobility-impaired person shall carry a mobility-impaired access permit pursuant to 301 KAR 3:026.

(6) Each youth shall be accompanied by an adult who is eighteen (18) years or older.

(7) At the youth-mentor hunts:

(a) Each youth shall not be accompanied by more than one (1) adult; and

(b) One (1) adult may accompany two (2) youths.

(8) A person shall:

(a) Hunt from an established blind; and

(b) Not change blinds.

(9) A blind shall not be used by more than four (4) hunters.

(10) A person shall only discharge a firearm from a blind.

(11) A person shall not possess more than twenty-five (25) shotshells.

(12) A waterfowl hunter, mentor, or assistant shall immediately retrieve downed birds.

(13) A person shall encase a firearm if traveling to and from a blind.

(14) A hunter at Minor Clark or Peter Pfeiffer Fish Hatcheries shall:

(a) Cease hunting by noon; and

(b) Exit the area by 1 p.m.

(15) All decoys and equipment shall be removed at the end of each day's hunt.

(16) A hunter at Minor Clark or Peter Pfeiffer Fish Hatcheries shall report harvest by depositing a completed hunt permit at the designated location.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Sloughs WMA Waterfowl Hunter Survey Report", 2014 edition;

(b) "Ballard or Sloughs Waterfowl Quota Hunt Form", 2014 edition;

(c) "Hatcheries Youth-Mentor/Mobility-Impaired Canada Goose Hunt Application", 2017 edition; and

(d) "Doug Travis WMA Mobility-Impaired Waterfowl Hunt Application", 2017 edition.

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

FRANK JEMLEY, Acting Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: April 11, 2018

FILED WITH LRC: April 12, 2018 at 4 p.m.

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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at Education Assessment and Accountability
Review Subcommittee, June 19, 2018)

703 KAR 5:225. Continuous improvement planning for schools and districts~~[School and district accountability, recognition, support, and consequences].~~

RELATES TO: KRS 158.645, ~~158.649~~, 158.6451, 158.6453, 158.6455, ~~160.346~~, 20 U.S.C. 6311~~[7864]~~

STATUTORY AUTHORITY: KRS ~~158.649~~, 158.6453, 158.6455, ~~160.346~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide accountability system~~[assessment program]~~ that measures the achievement of students, schools, and districts; complies with the federal Elementary and Secondary Education Act~~[No Child Left Behind Act of 2001]~~, 20 U.S.C. secs. 6301 et seq., as amended by the Every Student Succeeds Act (ESSA), or its successor; and ensures accountability. KRS 158.6455 requires the Kentucky Board of Education, following the revision of academic standards and development of a student assessment program, to create an accountability system to classify schools and districts, including a formula for accountability, goals for improvement, and rewards and consequences. This administrative regulation establishes the comprehensive school and district improvement plan process. The requirements are key components of the continuous improvement process in Kentucky and ultimately fulfillment of school, district, and state goals under the Kentucky State Plan as required by the ESSA~~[statewide system of accountability, recognition, support, and consequences, and meets requirements of the U.S. Department of Education to receive approval of a state-level waiver of specific requirements of the federal No Child Left Behind Act of 2001 pursuant to 20 U.S.C. 7864].~~

Section 1. Definitions. (1) "Charter school" means a "public charter school" as defined in KRS 160.1590(12). ~~[;]~~ "Annual measurable objective" or "AMO" means the improvement goal for each school or district calculated from the total score of the next-generation learners component.]

(2) "Charter school board of directors" or "governing board" means charter school board of directors as defined [has the same meaning as] in KRS 160.1590(6).~~[;]~~

(3)~~[(2)]~~ "Comprehensive District Improvement Plan" or "CDIP" means a plan developed by the local school district with the input of parents, faculty, staff, and representatives of school councils from each school in the district, based on a review of relevant data that includes targets, strategies, activities, and a time schedule to support student achievement and student growth, and to eliminate achievement gaps among groups of students.

(4)~~[(3)]~~ "Comprehensive School Improvement Plan" or "CSIP" means a plan developed by the school council, or successor, and charter schools~~[pursuant to KRS 160.346]~~ with the input of parents, faculty, and staff, based on a review of relevant data that includes targets, strategies, activities, and a time schedule to support student achievement and student growth, and to eliminate achievement gaps among groups of students. [(4) "District of distinction" means a highest-performing district that:

(a) Meets its current year AMO, student participation rate, and graduation rate goal;

(b) Has a graduation rate above eighty (80) percent for the prior two (2) years;

(c) Does not have a school categorized as a focus school or priority school; and

(d) Scores at the ninety-fifth (95th) percentile or higher on the Overall Score.

(5) "Focus district" means a district that has a non-duplicated student gap group score in the bottom ten (10) percent of non-duplicated student gap group scores for all districts. Focus calculations shall combine two (2) years of data.

(6) "Focus school" means a school that has a non-duplicated student gap group score in the bottom ten (10) percent of non-duplicated student gap group scores for all elementary, middle, and high schools; schools with an individual student subgroup by level that falls in the bottom five (5) percent for individual subjects; or high schools that have a graduation rate that has been less than eighty (80) percent for two (2) consecutive years. Focus calculations shall combine two (2) years of data; focus calculations for new or reconfigured schools shall use one (1) year of data.

(7) "Graduation rate goal" means the annual graduation rate goal set by the department for each high school and district that measures progression toward the statewide goal of ninety-eight (98) percent by 2024 and is computed by dividing, by ten (10), the difference between the 2014 baseline percent and ninety-eight (98) percent.

(8) "High-progress district" means a district that:

(a) Meets its current year AMO, student participation rate, and graduation rate goal;

(b) Has a graduation rate above eighty (80) percent for the prior two (2) years; and

(c) Has an improvement score indicating the district is in the top ten (10) percent of improvement of all districts as determined by the difference in the two (2) most recent calculations of the overall score.

(9) "High-progress school" means:

(a) A Title I school that:

1. Meets its current year AMO, student participation rate, and graduation rate goal;

2. Has a graduation rate above eighty (80) percent for the prior two (2) years; and

3. Has an improvement score indicating the school is in the top ten (10) percent of improvement of all Title I elementary, middle, or high schools as determined by the difference in the two (2) most recent calculations of the overall score; or

(b) A Non-Title I school that:

1. Meets its current year AMO, student participation rate, and graduation rate goal;

2. Has a graduation rate above eighty (80) percent for the prior two (2) years; and

3. Has an improvement score indicating the school is in the top ten (10) percent of improvement of all non-Title I elementary, middle, or high schools as determined by the difference in the two (2) most recent calculations of the overall score.

(10) "Highest-performing district" means a district that:

(a) Meets its current year AMO, student participation rate, and graduation rate goal;

(b) Has a graduation rate above eighty (80) percent for the prior two years; and

(c) Scores at the ninetieth (90th) percentile or higher on the overall score except that a district shall not qualify as highest-performing if any school in the district is categorized as a focus school or priority school.

(11) "Highest-performing school" means an elementary, middle, or high school level that:

(a) Meets its current year AMO, student participation rate, and graduation rate goal;

(b) Has a graduation rate above eighty (80) percent for the prior two (2) years; and

(c) Scores at the ninetieth (90th) percentile or higher on the overall score.

(12) "Mean" means the sum of the values divided by the number of values.

(13) "Next-generation instructional programs and supports" means a component of the state-wide accountability system for Kentucky public schools and districts based on reviews of instructional programs.

(14) "Next-generation learners" means a component of the state-wide accountability system for Kentucky public schools and districts based on student data.

(15) "Next-generation professionals" means a component of the state-wide accountability system for Kentucky public schools and districts based on teacher and administrator data.

(16) "Next-generation schools and districts" means a

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component of the state-wide accountability system that reports performance data for schools and districts.

(17) "Non-duplicated student gap group score" means an aggregate, non-duplicated count of achievement scores of student groups that include African/American, Hispanic, American Indian, Limited English proficiency, students in poverty based on qualification for free and reduced price lunch, and students with disabilities who have an Individualized Education Program (IEP).

(18) "Overall score" means the score resulting from a compilation of the accountability components listed in Section 2 of this administrative regulation that determines placement of a school or district in a classification for recognition, support, or consequences.

(19) "Participation rate" means the percent of all students and the student subgroups in the school or district that participate in annual statewide assessments, with a goal of ninety-five (95) percent.

(20) "Percentile" means the value of a variable below which a certain percent of numbers fall.

(21) "Priority district" means a district that has an overall score in the bottom five (5) percent of overall scores for all districts that have failed to meet the AMO for the last three (3) consecutive years.

(22) "Priority school" means a school that has an overall score in the bottom five (5) percent of overall scores by level for all schools that have failed to meet the AMO for the last three (3) consecutive years.

(23) "Progressing" means a designation attached to a school or district's classification as proficient, distinguished, or needs improvement to indicate that the school has met its AMO, student participation rate for the all students group and each subgroup, and has met its graduation rate goal.

(24) "School level" means the standard configuration of grade levels that form elementary, middle, and high schools as established in 703 KAR 5:240, Section 5.

(25) "School of Distinction" means a highest-performing elementary, middle, or high school that:

(a) Meets its current year AMO, student participation rate, and graduation rate goal, and is not identified as a focus school;

(b) Has a graduation rate above eighty (80) percent for the prior two (2) years; and

(c) Scores at the ninety-fifth (95th) percentile or higher on the overall score.

(26) "Standard deviation" means a measure of the dispersion of a set of data from its average.

(27) "Student subgroup" means a student group that includes African-American, American Indian, Asian, White, Hispanic, English language learners, students in poverty on qualification for free or reduced price lunch, or students with disabilities who have an Individualized Education Program (IEP).

Section 2. Statewide System of Accountability, Recognition, Support, and Consequences. (1) The accountability system established by 703 KAR chapter 5 shall be called Unbridled Learning: College and Career Ready for All.

(2) An overall score shall be used to classify schools and districts for recognition, support, and consequences. The overall score shall be a compilation of the following accountability components:

(a) Next-Generation Learners, as established in 703 KAR 5:200;

(b) Next-Generation Instructional Programs and Support, as established in 703 KAR 5:230; and

(c) Next-Generation Professionals, as established in an administrative regulation that will be promulgated by the Kentucky Board of Education to establish the requirements for Next-Generation Professionals.

Section 3. Weighting of Components Comprising the Overall Score. (1) The timeline and weighting of each component as a percentage of the overall score shall occur as follows:

Year	Component	Percentage of Overall Score
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2014-2015	Next-Generation Learners	77 percent
	Next-Generation Instructional Programs and Support	23 percent
2015-2016 and subsequent years	Next-Generation Learners	70 percent
	Next-Generation Instructional Programs and Support	20 percent
	Next-Generation Professionals	10 percent

(2) If data cannot be calculated for any component, the weights shall be distributed equally to the other components that shall be reported for the school or district.

Section 4. Classifications, Annual Measurable Objectives, and Goals. (1) A school level or district shall be classified based on the overall score in accordance with the requirements established in this subsection.

(a) By level of elementary, middle, or high, a distribution of scores from the overall score shall be computed in order to determine the percentiles associated with each overall score.

(b) The overall score associated with specific percentiles shall classify a school level or district as follows:

Percentile based on Overall Score	School or District Classification
At or above ninety (90)	Distinguished
At or above seventy (70)	Proficient
Below seventy (70)	Needs Improvement

(c) The overall score associated with specific percentiles used to classify a school or district as distinguished, proficient, or needs improvement shall be recalculated as the components of the accountability system listed in Section 2 of this administrative regulation are added. When all components have been added, the overall score associated with specific percentiles used to classify a school or district as distinguished, proficient, or needs improvement shall remain constant for a period of five (5) years before calculation of the overall score associated with specific percentiles shall be re-established.

(2) Each school level or district shall receive an AMO. The method for determining the AMO shall be as follows:

(a) Using the total score of next-generation learners, a mean and standard deviation shall be computed for the elementary, middle, and high school levels; and

(b) The mean and standard deviation shall be recalculated as adjustments of next-generation learners component are made.

(3)(a) The AMO goal for a school level or district classified as needs improvement shall be to increase the total score by one-third (1/3) of a standard deviation in a five (5) year period and shall not be set lower than 1.0.

(b) The AMO goal for a school level or district classified as proficient or distinguished shall be one-half (1/2) the goal of a needs improvement school or district annually and shall not be set lower than 0.5.

(4) Each school level or district classified as distinguished, proficient, or needs improvement that meets its AMO goal, student participation rate, and graduation rate goal shall be further classified as progressing.

(5) For a school level with a changed school service area as established in 703 KAR 5:240, Section 6, the AMO shall be recalculated based on current students. A school or district may submit a plan to recalculate the AMO as established in this subsection.

(a) A school or a district may request that individual students be tracked across schools or that the district AMO be used for the school.

(b) The department shall approve the plan and shall assure accurate calculations and the inclusion of all students.

(c) Upon approval, the plan shall be implemented and remain in effect until an additional change in school service area occurs.

(d) The granting of a request for a different method to recalculate an AMO shall include a requirement that each affected school and district waive in writing its right to make the request the basis of a subsequent appeal of a school's classification.

(e) The intent to submit a plan to recalculate the AMO shall be received by the department by June 30 of the year prior to which

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the AMO recalculation shall occur.

(6) A focus school identified using the non-duplicated student gap group score method shall be determined in accordance with the requirements established in this subsection.

(a) The non-duplicated student gap group shall be ranked for all schools in the state.

(b) The schools in the lowest ten (10) percent of the non-duplicated student gap group scores by level shall be called focus schools.

(c) Additional Title I schools shall be added to the list as needed to ensure that the list includes at least ten (10) percent of the Title I schools.

(d) Non-duplicated student gap groups by school shall have at least ten (10) students in order for the subject area calculation to occur.

(7) A focus school identified using the bottom five (5) percent method shall be determined as established in this subsection.

(a) By level of elementary, middle, or high, individual student subgroups shall be ranked on the percentage of proficient and distinguished students for all schools in the state in each subject area of reading, mathematics, science, social studies, and writing.

(b) Student subgroups shall number at least twenty five (25) students in order for the calculation to occur.

(c) A school having an individual student subgroup by level and subject that falls below the bottom five (5) percent cut score shall be identified as a focus school.

Section 5. Recognition. (1) Recognition categories shall include Schools or Districts of Distinction, Highest-Performing Schools or Districts, and High-Progress Schools or Districts. Schools and districts in these categories shall receive notification from the Commissioner of Education within five (5) days of release of the annual accountability data, identifying the category of recognition and the rewards for which they are eligible.

(2)(a) Each recognized school or district shall be authorized to use a department-approved web logo and other promotional materials as may be designated by the department reflecting the category of recognition earned.

(b) Subject to availability of funds, financial rewards may be used in conjunction with other recognition activities, and may include funding for special professional growth opportunities or support to enable recognized schools or districts to partner with and mentor a lower-performing school or district.

(c) Highest-performing and high-progress schools and districts shall receive special recognition as determined by the Commissioner of Education.

(3) A school or district identified for recognition shall continue to meet eligibility criteria in order to retain its designation and receive recognition for that category.

(4) A school or district identified as a priority school or district or a focus school or district shall not be eligible for recognition as a highest-performing school or district or a school or district of distinction, but may receive recognition as a high-progress school or district, if it meets the definition established in Section 4 of this administrative regulation and the requirements of this section.

(5) In order to qualify for recognition, a school or district shall meet the AMO goal, graduation rate goal, and student participation rate, and each high school's graduation rate shall be above eighty (80) percent.

Section 6. Supports and Consequences. (1) Supports and consequences categories shall include Priority Schools and Districts and Focus Schools and Districts.

(2) A priority school or district shall undergo the education recovery processes established in KRS 160.346 and 703 KAR 5:260, in addition to the requirements and consequences established in this administrative regulation.

(3) A focus school or district shall be required to revise its CSIP or CDIP consistent with the requirements of this section and Section 9 of this administrative regulation.

(4) A school or district that is identified as a priority or focus school or district shall receive notification from the Commissioner of Education within five (5) days of release of the annual

accountability data, identifying its category and the required supports and consequences that shall apply.

(5) A school or district that is identified as a priority or focus school or district for the first time shall revise its CSIP or CDIP within ninety (90) days of receiving the notice from the Commissioner of Education.

Section 7. Continuing Consequences for Schools and Districts that Remain in Priority or Focus Status for More Than One (1) Year. (1) To exit the priority status, the school or district shall:

(a) Meet AMO goals for three (3) consecutive years;

(b) No longer be identified by the applicable percent calculation of being in the lowest five (5) percent; and

(c) Score at or above an eighty (80) percent graduation rate for three (3) consecutive years.

(2) To exit the focus status, the requirements of this subsection shall be met.

(a) A focus school in the non-duplicated student gap group category shall:

1. Be above the lowest ten (10) percent category;

2. Show improvement in the non-duplicated student gap group; and

3. Meet AMO for two (2) years in a row.

(b) A focus school in the bottom five (5) percent category shall have the individual subgroup that triggered the school's placement in the category to:

1. Rise above the bottom five (5) percent cut score;

2. Show improvement in the individual subgroup that triggered the school's placement; and

3. Meet AMO for two (2) years in a row.

(c) A focus school in the category due to graduation rate shall:

1. Have a graduation rate higher than eighty (80) percent; and

2. Meet AMO for two (2) years in a row.

(d) A focus district in the non-duplicated student gap group category shall be above the lowest ten (10) percent category.

(3)(a) A school or district that is identified as a priority school or district for two (2) or more consecutive times, or a school or district that remains in the focus school or district category for three (3) consecutive years, shall revise its CSIP or CDIP as specified in Section 9 of this administrative regulation within ninety (90) days of receiving notice from the Commissioner of Education.

(b) The superintendent and the council shall review, revise, and agree upon the CSIP.

(c) The CSIP or CDIP shall be posted to the appropriate school or district Web site.

(4)(a) In addition to the requirements of this section, a priority school or district that is identified for three (3) or more consecutive times, or a focus school or district that is identified for four (4) or more consecutive years, shall revise its CSIP or CDIP as specified in Section 9 of this administrative regulation.

(b) The superintendent and the council shall review, revise, and agree upon the CSIP, which shall then be electronically transmitted to KDE within ninety (90) days of receiving notice from the Commissioner of Education.

(c) The CSIP or CDIP shall be posted to the appropriate school or district Web site.

(d) The school or district shall engage in the following actions:

1. Participate in a set of improvement strategies outlined by an accreditation process;

2. If directed by the department, receive the assignment of a high-achieving partner school or district of similar demographics for mentor activities as directed by the department; and

3. Accept ongoing assistance and resources throughout the year as assigned or approved by the department.]

Section 2[8]. Monitoring. (1) The department shall review and approve all submissions required by this administrative regulation.

(2) The department shall monitor implementation of each CDIP or CSIP and shall provide guidance based upon information, which may include [gathered from] the following:

(a) Progress reports from the school through the district;

(b) Data reviews;

(c) On-site observation; and

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(d) Other information supplied at the option of the district or school.

(3) In addition to the activities undertaken by the department, each school district or governing board shall monitor compliance of ~~its[their]~~ respective[individual] schools[within the district].

Section 3[9]. Comprehensive School and District Improvement Plan Process. (1) Each school or district shall, by January 1 of each school year, [annually] develop, review, and revise a comprehensive school or district improvement plan.

(2) The structure of a school or district comprehensive improvement plan shall include:

(a) Completion of the Continuous Improvement Diagnostic between August 1 and October 1 of each school year[Executive summary that shall include a vision and a mission];

(b) Completion of the needs assessment between October 1 and November 1 of each school year ~~that[, which]~~ shall include[Needs assessment that shall include]:

1. A description of the data reviewed and the process used to develop the needs assessment;

2. A review of the previous plan and its implementation to inform development of the new plan; and

3. Perception data gathered from the administration of a valid and reliable measure of teaching and learning conditions;

(c) Process for development of the CSIP or CDIP, to be completed between November 1 and January 1 of each school year, which[that] shall include:

1. Analysis of data to determine causes and contributing factors;

2. Prioritization of needs; and

3. Development of goals, objectives, strategies, and activities based on the needs assessment and root cause analysis[.] that shall include targets or measures of success, timelines, persons responsible, a budget that includes resources needed and source of funding, and a process for meaningful stakeholder communications and input;

(d) A set of assurances, approved by and on file with the local board of education, with a signed declaration by the superintendent that all schools in the district are in compliance with the requirements of the statutes and administrative regulations included in those assurances; and

(e) A process for annual review and revision by the school or district.

(3) Continuous improvement and capacity building shall drive the development of the plan.

(4) Other required components in the process shall include:

(a) A standards-based process for measuring organizational effectiveness that shall include purpose and direction, governance and leadership, teaching and assessing for learning, resources and support systems, and using results for continuous improvement;

(b) A data driven self-evaluation based on the standards, including a means to gather meaningful stakeholder input;

(c) A written improvement plan based on the issues identified in the self-evaluation;

(d) A set of assurances that includes a determination of compliance with each assurance and the ability to upload any supporting documentation needed;

(e) Electronic submission of all elements of the plan;

(f) Monitoring implementation of the plan through implementation and impact checks; and

(g) Evaluation of the effectiveness based on the strategies and activities in the plan.

(5) A CSIP shall also include the elements required of schools pursuant to[by] KRS 158.649(5).

(6)[A CSIP or CDIP for a priority or focus school or district shall also address the following:

(a) ~~Curriculum alignment for schools within the district and within each individual school, ensuring the instructional program is:~~

1. Research-based;

2. Rigorous;

3. Aligned with the Kentucky Core Academic Standards as established in 704 KAR 3:303; and

4. Based on student needs;

~~(b) Provision of time for collaboration on the use of data to inform evaluation and assessment strategies to continuously monitor and modify instruction to meet student needs and support proficient student work, if a priority or focus school;~~

~~(c) Activities to target the underperforming areas of achievement, gap, growth, readiness, or graduation rate;~~

~~(d) Activities to target demonstrators of weakness in program reviews;~~

~~(e) Activities to target areas of need identified in teacher and leader effectiveness measures;~~

~~(f) School safety, discipline strategies, and other non-academic factors that impact student achievement, such as students' social, emotional, and health needs, if a priority or focus school;~~

~~(g) Design of the school day, week, or year to include additional time for student learning and teacher collaboration, if a priority or focus school;~~

~~(h) Specific strategies to address gaps in achievement and graduation rates between the highest-achieving student performance group and the lowest-achieving student performance group, if a focus school or district; and~~

~~(i) Short-term, monthly plans for the first ninety (90) days of implementation, and the establishment of teacher turnaround teams with intensive year-round training focused on teacher effectiveness and school improvement in the professional development component of its plan, if a priority school.~~

(7) A priority or focus district shall use a variety of relevant sources that shall include perception data gathered from the administration of a valid and reliable measure of teaching and learning conditions to inform the needs assessment required by the CDIP. A district containing a priority or focus school shall assist those schools in using these data to inform the needs assessment required by the CSIP.

(8) ~~The Commissioner's Raising Achievement and Closing Gaps Council and the Commissioner's Parents Advisory Council shall provide guidance to focus schools and districts as they conduct their needs assessments and revise their CSIPs and CDIPs.~~

(9) ~~A priority school shall document meaningful family and community involvement in selecting the intervention strategies that shall be included in the revised CSIP.~~

(10) ~~The CDIP for a district with a priority or focus school shall include the support to be provided to the priority or focus school by the district. The priority or focus school's CSIP shall include the support that will be provided by the district to the school.~~

(14) The CDIP for each district shall be posted to the district's Web site. The CSIP for each school shall be posted to the school's Web site.

STEPHEN L. PRUITT, Ph.D.

MARY GWEN WHEELER, Chairperson

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CONTACT PERSON: Todd Allen, Interim General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (As Amended at Education Assessment and Accountability Review Subcommittee, June 19, 2018)

703 KAR 5:280. School improvement procedures.

RELATES TO: KRS 158.6453, 158.6455, 158.782, 160.346, 20 U.S.C. 6301

STATUTORY AUTHORITY: KRS 156.029(7), 156.070(5), 158.6453, 158.6455, 160.346, 20 U.S.C. 6301

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.029(7) requires ~~[indicates the primary function of]~~ the Kentucky Board of Education (KBE) ~~[is]~~ to adopt policies and

administrative regulations that shall govern [by which] the Kentucky Department of Education (department) [shall—be governed] in planning and operating programs within its jurisdiction. KRS 156.070(5) requires the KBE, upon the recommendation of the Commissioner of Education, to establish policy or act on all programs, services, and other matters that [which] are within the administrative responsibility of the department. KRS 158.6453(3)(a) requires [vests in] the KBE [the responsibility] to create an assessment system that measures achievement of the state learning goals, ensures compliance with Title I of the federal Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. sec. 6301, et seq., as amended by the Every Student Succeeds Act (2015) or its successor, and ensures school accountability. KRS 158.6455 requires the KBE to create an accountability system to classify schools and LEAs, and to establish appropriate consequences for schools failing to meet [their] accountability measures. KRS 158.782 requires the KBE to promulgate administrative regulations establishing the process for monitoring and periodic review of schools' [a—school's] turnaround efforts for schools identified for comprehensive support and improvement pursuant to [under] KRS 160.346. KRS 160.346 [defines comprehensive and targeted support and improvement and] establishes the process for the required audit and turnaround efforts for schools identified for comprehensive support and improvement. Additionally, KRS 160.346 requires the KBE to create [the creation of] state-wide exit criteria for identified schools, additional action to support schools continuously failing to meet [not meeting] improvement goals, and additional support[supports] for LEAs with a significant number of schools identified for comprehensive and targeted support and improvement. Section 1111(c) of Title I of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, [/20 U.S.C. 6311(c) and (d),/] requires the KBE to identify the state's lowest achieving schools as schools identified for comprehensive support and improvement and for those schools to follow the requirements of 20 U.S.C. 6311(c) and (d) regarding school improvement. This administrative regulation establishes the process and procedures for school improvement efforts.

Section 1. Definitions. (1) "Adequate performance progress" means meeting the exit criteria pursuant to KRS 160.346/:

(a) Meeting the exit criteria outlined in KRS 160.346(2)(b); and

(b) Meeting the exit criteria outlined in KRS 160.346(2)(a).

(2) "Advisory leadership team" means the team established pursuant to [in] KRS 160.346(7)(g). ;

(3) "Annual improvement" means a school reaching [reaches] annual goals, established by the department, in the areas identified [that led to identification] for comprehensive support and improvement. ;

(4) "Audit" means the process established [outlined] in KRS 160.346(5) and (6). ;

(5) "Audit team" means the team selected by the LEA, pursuant to KRS 160.346(5), to complete a school or [and] district audit. ;

(6) "Charter school" means a "public charter school" as defined in KRS 160.1590(12). ;

(7) "Charter school board of directors" or "governing board" means charter school board of directors as defined [has the same meaning as] in KRS 160.1590(6). ;

(8) "Comprehensive Support and Improvement" means the process for schools identified pursuant to KRS 160.346(3). ;

(9) "District" or "school district" means the local school district governed by a local board of education. ;

(10) "District audit" means an audit that:

(a) Reviews the functioning of the district and the district's ability to manage an intervention in a school identified for comprehensive support and improvement; and

(b) Meets the requirements of KRS 160.346(6). ;

(11) "Evidence based interventions" is defined [has the same meaning as] in the Elementary and Secondary Education Act, as reauthorized by the Every Student Succeeds Act (2015), 20

U.S.C.A. § 7801. ;

(12) "Local education agency" or "LEA" means a local school district as established [provided] in KRS 160.010 and KRS 160.020 or a charter school board of directors as established [provided] in KRS 160.1590. ;

(13) "Minority" is defined [has the same meaning as] in KRS 160.345(1)(a). ;

(14) "School audit" means an audit that:

(a) Reviews the functioning of a school;

(b) Assesses principal capacity for leadership of school turnaround; and

(c) Meets the requirements of KRS 160.346(6). ;

(15) "School improvement assistance" means a program designed by the department to support improved teaching and learning. ;

(16) "School improvement plan" means the plan created by schools identified for targeted support and improvement pursuant to KRS 160.346(4) and [is] embedded in the comprehensive school improvement plan required pursuant to 703 KAR 5:225. ;

(17) "Targeted Support and Improvement" means the process for schools identified pursuant to KRS 160.346(2). ;

(18) "Turnaround plan" means the plan created pursuant to KRS 160.346(1)(e) and [is] embedded in the comprehensive school improvement plan required pursuant to [under] 703 KAR 5:225. ;

(19) "Turnaround team" means the team selected pursuant to KRS 160.346(7)(a)/(+)(f).

Section 2. Notification of Status for Comprehensive Support and Improvement. (1) Following notification of a school's identification for comprehensive support and improvement, an LEA shall, within thirty (30) days:

(a) Declare its intent to either utilize the department for the audit team or another option pursuant to [available under] KRS 160.346(5); and

(b) Declare its intent to either utilize the department for the turnaround team or another option pursuant to [available under] KRS 160.346(7).

(2) If the LEA declares its intent to use any option other than the department for the audit team, the LEA shall provide, to the Kentucky Department of Education, the following information:

(a) The name[name(s)] and address[addresses(es)] of each person [all persons] included on the audit team;

(b) The role[role(s)] and responsibilities of each person [all persons] included on the audit team;

(c) The occupation[occupations] and any vendor affiliations of each person [all persons] included on [in] the audit team; and

(d) Each person [The persons'] or entity's documented expertise in diagnosing the causes of an organization's low performance and providing advice and strategies resulting in effective turnaround leadership.

(3) If the LEA declares its intent to use any other option other than the department for the audit team, the LEA shall ensure that all audit team members report potential conflicts of interest. The LEA shall report these conflicts of interest to the department and provide information regarding the LEA's[LEA] work to remedy the conflicts of interest.

(4) Audit team members shall not be employed by or otherwise affiliated with the LEA or school under review.

(5) If the LEA declares its intent to use any option other than the department for the turnaround team, the LEA shall provide the following information:

(a) The name[name(s)] and address[address(es)] of each person [the persons] or entity fulfilling the status of turnaround team;

(b) The role[role(s)] and responsibilities of each person [the persons] or entity fulfilling the status of turnaround team; and

(c) The evidence-based interventions that shall be utilized by the person[persons] or entity fulfilling the status of turnaround team.

[6]/[5] If [Should] the LEA utilize[utilizes] a private entity as the turnaround team for a school, the LEA shall submit to the

department evidence of the private entity's documented success at turnaround diagnosis, training, and improved performance of organizations.

~~(7)(6)~~ Upon receipt of the notification and appropriate information from the LEA, ~~the department~~, within fifteen (15) days, ~~[the department]~~ shall review the proposals for non-department audit teams and turnaround teams and either accept or deny the proposal. Denied proposals shall be returned to the LEA and the department shall advise the LEA to remedy the proposal.

~~(8)(7)~~ The LEA shall provide the information required in this Section utilizing the "LEA Notification of Non-Department Audit or Turnaround Team" form incorporated by reference in this administrative regulation.

(9) Non-department audit teams shall complete a Kentucky-specific induction training prior to conducting an audit.

Section 3. Audit Team Membership. (1) ~~[For audit teams not directed by the department:~~

~~(a) Members of the audit team shall be selected by the LEA from qualified applicants;~~

~~(b) The team members shall complete department approved training in any areas needed to effectively perform their duties;~~

~~(c) Members shall hold appropriate certification or qualifications for the position being represented;~~

~~(d) The team shall not include any members currently employed by or otherwise affiliated with the LEA or school under review;~~

~~(e) The audit team shall include the following representation:~~

~~1. The chairperson, who shall be designated by the LEA, and shall be;~~

~~i. A certified administrator; or~~

~~ii. A similarly qualified professional approved by the department.~~

~~2. A teacher who is actively teaching or has taught within the last three (3) years;~~

~~3. A principal who is currently serving or has served as a principal within the last three (3) years;~~

~~4. An LEA administrator who is currently serving or has served in an LEA administrative position within the last three (3) years;~~

~~5. A parent or legal guardian who has or has had a school-aged child; and~~

~~6. A university representative who is currently serving or has served in that capacity within the last three (3) years;~~

~~(f) The chair may serve in addition to the five (5) members outlined in subsection (1)(e) of this section, or may be selected from those six (6) members who also meet the qualifications of subsection (1) of this section.]~~

(2) For audit teams directed by the department:

(a) Members shall be selected from qualified applicants by the department, and approved by the Commissioner of Education, or his designee;

(b) Members shall complete department-provided or department-approved training in any areas needed to effectively perform their duties;

(c) Members shall hold appropriate certification or qualifications for the position being represented;

(d) The team shall not include any members currently employed by or otherwise affiliated with the LEA or school under review;

(e) The team shall include the following representation:

1. The chairperson, who shall be designated by the department or its designee, and shall be:

a[i]. A certified administrator approved by the department to provide school improvement assistance;

b[ii]. A certified administrator member of the review team; or

c[iii]. A similarly qualified professional approved by the department;

2. An individual approved by the department to provide school improvement assistance;

3. A teacher who is actively teaching or has taught within the last three (3) years;

4. A principal who is currently serving or has served as a principal within the last three (3) years;

5. An [A] LEA administrator who is currently serving or has served in an [a] LEA administrative position within the last three (3) years;

6. A parent or legal guardian who has or has had a school-aged child; and

7. A university representative who is currently serving or has served in that capacity within the last three (3) years;;f.]

(f) The chair may serve in addition to the six (6) members outlined in subsection (2)(e) of this section, or may be selected from those six (6) members who also meet the qualifications of subsection (2) of this section.

Section 4. School Audit. (1) A school audit shall be scheduled within forty-five (45) days of a school's identification for comprehensive support and improvement[, a school audit shall be scheduled].

~~(2)[A school audit shall consist of and incorporate the following into the report, in addition to the requirements of KRS 160.346(6):]~~(a) Analysis of state and local education data;

(b) An analysis and recommendation regarding the principal's capacity to lead turnaround in a school identified for comprehensive support and improvement and whether [or not] the principal should be replaced;

(c) Review of comprehensive school improvement plans and other planning documents;

(d) Interviews with students, parents, all school council members, if applicable, school and LEA personnel, and community members;

(e) Direct observation;

(f) Administration of teacher and principal working conditions surveys and student satisfaction surveys;

(g) Review of school council minutes and agendas, if applicable; and

(h) Other information deemed necessary by the Commissioner of Education, or his designee.

(3) Where the audit team is directed by the department, the recommendation of the principal's ability to lead the intervention in the school shall be based upon an assessment of whether:

(a) The principal demonstrates maintenance and communication of a visionary purpose and direction committed to high expectations for learning as well as shared values and beliefs about teaching and learning;

(b) The principal leads and operates the school under a governance and leadership style that promotes and supports student performance and system effectiveness;

(c) The principal establishes a data-driven system for curriculum, instructional design, and delivery, ensuring both teacher effectiveness and student achievement;

(d) The principal ensures that systems are in place for accurate collection and use of data;

(e) The principal ensures that systems are in place to allocate human and fiscal resources to support improvement and ensure success for all students; and

(f) The principal ensures that the school implements a comprehensive assessment system that generates a range of data about student learning and system effectiveness and uses the results to guide continuous improvement.

(4) An audit team not directed by the department may utilize the criteria established in subsection (3) of this Section for the recommendation of principal capacity. An audit team not directed by the department shall include a recommendation as to the principal's capacity to serve as a leader in school intervention and turnaround at a school identified for comprehensive support and improvement. If that audit team chooses not to use the criteria established in subsection (3) of this Section, it [they] shall provide notification to the department as well as the framework to be used in the analysis of principal capacity and submit the criteria that shall be utilized to the department for approval.

(5) Upon identification as a school in need of comprehensive

support and improvement, the authority of the school council shall be suspended.

(6) Pursuant to KRS 160.346, the authority of the school council **may[shall]** be restored if the school is not classified under comprehensive support and improvement status for two (2) consecutive years.

(7) Charter schools shall be subject to a school audit **that [which]** shall include an addendum providing a determination regarding the governing board's capacity to provide support for turnaround. Each addendum shall include:

- (a) Analysis of state and local education data;
- (b) A review of the governing board's level of functioning and recommendation to the Commissioner of Education as to whether the governing board has the capacity to manage the intervention in the charter school;
- (c) Interviews with governing board members, students, parents, school personnel, authorizer, and community members.
- (d) Direct observations;
- (e) Administration of teacher and principal working conditions surveys and student satisfaction surveys;
- (f) Review of charter school governing board minutes and agendas; and
- (g) Other information deemed necessary by the Commissioner of Education, or **his** designee, to assess the functionality of the governing board to support school improvement.

(8) If the audit team chooses not to use the criteria **established** in subsection (7) of this Section, **it [they]** shall provide notification to the department as well as the framework to be used in the analysis of the governing board's capacity and submit the criteria that shall be utilized to the department for approval.

Section 5. District Audit. (1) A district shall be subject to a district audit upon identification of a school within the district for comprehensive support and improvement.

(2) Within forty-five (45) days of identification by the department of a district containing a school identified for comprehensive support and improvement, an audit shall be scheduled to review the functioning of the district's administration and its specific leadership capacity related to each school identified for comprehensive support and improvement.

(3) Each district audit shall include:

- (a) Analysis of state and local education data;
- (b) A review of the district's level of functioning and recommendation to the Commissioner of Education as to whether the district has the capacity to manage the intervention in each identified school;
- (c) Review of comprehensive district improvement plan and other planning documents;
- (d) Interviews with local board members, students, parents, school and district personnel, and community members;
- (e) Direct observation;
- (f) Administration of teacher and principal working conditions surveys and student satisfaction surveys;
- (g) Review of school board minutes and agendas; and
- (h) Other information deemed necessary by the Commissioner of Education, or **his** designee, to assess the functionality of the district to support school improvement.

(4) **If [Where]** the audit team is directed by the department, the determination of the district's level of functioning and ability to manage the intervention in the school identified for comprehensive support and improvement shall be based upon an assessment of capacity in the following areas:

- (a) The district demonstrates maintenance and communication of a visionary purpose and direction committed to high expectations for learning as well as shared values and beliefs about teaching and learning;
- (b) The district leads and operates under a governance and leadership style that promotes and supports student performance and system effectiveness;
- (c) The district establishes a data-driven system for curriculum, instructional design, and delivery, ensuring both teacher effectiveness and student achievement;
- (d) The district ensures that systems are in place for accurate

collection and use of data;

(e) The district ensures that systems are in place to allocate human and fiscal resources to support improvement and ensure success for all students; and

(f) The district ensures that a comprehensive assessment system, which generates a range of data about student learning and system effectiveness and uses the results to guide continuous improvement, is implemented.

(5) **Pursuant to KRS 160.346**, an audit team not directed by the department may utilize the criteria **established** in subsection (3) of this Section for recommendation to the Commissioner of Education of the district's level of functioning and ability to manage the intervention in the school identified for comprehensive support and improvement, ~~pursuant to KRS 160.346~~. An audit team not directed by the department shall include a recommendation as to district functioning and capacity to manage the interventions at a school identified for comprehensive support and improvement. If that audit team chooses not to use the criteria **established** in subsection (3) of this Section, **it [they]** shall provide notification to the department as well as the framework to be used in the analysis of district functioning and capacity to manage the intervention in each identified school to the department for approval.

(6) There shall be only one (1) district audit per district, per year, regardless of the number of schools identified for comprehensive support and improvement located in the district.

Section 6. Notification to Schools and LEAs of Audit Findings.

(1) Following any school audit, the audit team shall submit all findings and the principal capacity recommendation to the Commissioner of Education.

(2) Following any charter school or district audit, the district or governing board audit findings and capacity recommendations shall be submitted to **the** Commissioner of Education who shall **then** make a determination regarding the district or governing board's level of functioning and whether the district or governing board has the capacity to manage the intervention in each identified school.

(3) After completion of the initial school or district audits and within thirty (30) days of receiving the audit findings, the Commissioner of Education shall notify in writing the school, district, ~~and~~ or charter governing board, and the charter authorizer of the audit findings and recommendation regarding principal or school leader's leadership capacity and authority and a determination regarding district or governing board's leadership capacity and authority. The superintendent shall then make any necessary determination regarding the principal or other certified staff pursuant to KRS 160.346(7)(c)-(e).

Section 7. Turnaround Team and Development of Turnaround Plan for School Identified for Comprehensive Support and Improvement. (1)(a) Within thirty (30) days after the audit findings are released, the turnaround team shall develop a turnaround plan pursuant to KRS 160.346(7)(h). The turnaround team shall be selected pursuant to the requirements of KRS 160.346(7)(a):

(b) **If [Should]** the LEA **utilizes[utilize]** a private entity to serve as the turnaround team, pursuant to KRS 160.356(7)(a)(1), the LEA shall ensure compliance with Section 2 of this **administrative** regulation and provide ongoing oversight of the private entity's work, functioning, and accomplishments as the turnaround team. ~~[The LEA shall provide this information to the department quarterly.]~~

(c) **If [Should]** the LEA **utilizes[utilize]** the local staff and community partners to serve as the turnaround team, pursuant to KRS 160.346(7)(a)(2), the LEA shall ensure the following:

1. Schools having eight (8) percent or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member serving on the turnaround team; and

2. At least one (1) parent of a student in the identified school is selected as a member of the turnaround team.

(d) **If [Should]** the LEA **utilizes[utilize]** the department to serve as the turnaround team, the turnaround team shall be comprised of team members selected and approved by the

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Commissioner of Education, or his designee, to provide school improvement assistance.

(3) The turnaround plan shall include:

(a) Evidence-based interventions to be utilized to increase student performance and address the critical needs identified in the school audit;

(b) A comprehensive list of persons and entities involved in the turnaround efforts and the specific roles each shall play in the school's turnaround; and

(c) A review of resource inequities that [which] shall include an analysis of school level budgeting to ensure resources are adequately channeled towards school improvement.

(4) The turnaround team shall, no later than thirty (30) days after the turnaround team is on site, present the turnaround plan to the LEA, which shall give final approval, provide the necessary support and resources for the turnaround plan, and submit the turnaround plan to the Commissioner of Education for approval.

(5)(a) Following receipt of the turnaround plan specified in subsection (4) of this Section [this paragraph] and before the beginning of the school year following the audit, the Commissioner of Education in consultation with the advisory leadership team, superintendent, and local board of education, shall determine the sufficiency of the school's turnaround plan to meet the needs of the school's turnaround effort.

(b) If the Commissioner of Education finds that the plan is not sufficient to meet the needs of the school turnaround effort for a school identified for comprehensive support and improvement, the department shall provide feedback detailing the deficiencies and advise the LEA and school to make changes to the plan.

Section 8. Advisory Leadership Team. (1) In establishing the advisory leadership team, the principal or charter school leader shall ensure that schools having eight (8) percent or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member serving on the advisory leadership team.

(2) Meetings of the advisory leadership team shall be open to be public.[:]

(3) Duties of the advisory leadership team shall include:

(a) Providing support for systems that seek to build capacity in school leadership;

(b) Promoting positive school climate and culture; and

(c) Supporting the continual use of data-driven decision-making to support school improvement.

Section 9. Monitoring and Periodic Review of Plan Implementation. (1) Pursuant to the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act, 20 U.S.C.A. § 6301, all schools identified for comprehensive support and improvement shall be subject to monitoring and periodic review by the department.

(2) Monitoring shall include:

(a) Onsite support by department staff if/when the department is chosen by the LEA to serve as the turnaround team pursuant to KRS 160.346 or if/when more rigorous intervention by the department is warranted as established/described in Section 10 of this administrative regulation;

(b) Annual review of school and LEA state accountability data;

(c) Review of indicators of school quality; and

(d) Other measures deemed necessary by the department to ensure compliance with the Every Student Succeeds Act, or its successor.

(3) Periodic review of the turnaround plan shall include:

(a) Periodic site visits;

(b) Direct observation; and

(c) Interviews with students, parents, all school council members, if applicable, school and LEA personnel, and community members~~Periodic review of the turnaround plan shall include quarterly reporting on the implementation and results of the turnaround plan. Quarterly reporting shall be submitted to the department.~~

Section 10. More Rigorous Intervention. (1) Schools identified for comprehensive support and improvement that do not exit that status after three (3) years shall be subject to intervention by the department including but not limited to:

(a) A school audit conducted by the department;

(b) Onsite assistance by department staff; and

(c) Evaluation and modification of the school turnaround plan.

(2) Schools identified for comprehensive support and improvement that do not exit after three (3) years shall be subject to an audit by the department every two (2) years, or as deemed necessary by the Commissioner of Education.

(3) Schools identified for comprehensive support and improvement that do not make annual improvement for two (2) consecutive years shall be subject to intervention by the department, as established [described] in subsections (1) and (2) of [in] this Section, after the second year;

(4) Districts serving any number of schools identified for comprehensive support and improvement that do not exit after three (3) years, or two (2) years as established [described] in subsection (2) of this Section, shall be subject to a district audit. Additional district audits for districts serving schools identified for comprehensive support and improvement that do not exit that status shall occur every two (2) years, or as deemed necessary by the Commissioner of Education. No district, regardless of the number of schools identified for comprehensive support and improvement that fail to exit that status, shall have more than one (1) district audit every two (2) years.

Section 11. Targeted Support and Improvement. (1) Upon identification as a school for targeted support and improvement, the identified school shall comply with the requirements of KRS 160.346(4). The school improvement plan shall be embedded in the comprehensive school improvement plan required pursuant to 703 KAR 5:225.[:]

(2) LEAs with schools identified for targeted support and improvement shall monitor and provide support to the school [so as] to ensure the successful implementation of the school improvement plan.

Section 12. Significant Number of Schools. [:] (1) In addition to providing notification to LEAs as to the identification of schools for comprehensive support and improvement or targeted support and improvement, the department shall notify LEAs as to whether [or not] they shall be considered an [a] LEA supporting a significant number of schools identified for either comprehensive support and improvement or targeted support and improvement.

(2) To determine whether an [a] LEA meets this designation, the department shall calculate, based on the total number of A1 schools, as defined in 703 KAR 5:240, in the LEA, the LEA's percentage of schools identified for comprehensive support and improvement and the LEA's percentage of schools identified for targeted support and improvement. Any LEA containing two (2) or more schools identified for comprehensive support and improvement or targeted support and improvement and whose percentage of identified schools exceeds ten (10) percent for either comprehensive support and improvement or targeted support and improvement schools shall be designated an [a] LEA supporting a significant number of schools identified for either comprehensive support and improvement or targeted support and improvement.

Section 13.[:]
Section 13.[:] Technical Assistance for LEAs Supporting a Significant Number of Schools Identified for Comprehensive Support and Improvement. (1) LEAs supporting a significant number of schools identified for comprehensive support and improvement [and] shall receive the following technical assistance:

(a) A district audit, or school audit if a charter school, conducted by the department; and

(b) Onsite support from department staff.

(2) The district audit, or school audit if a charter school, completed by the department pursuant to [under] subsection (1)(a) of this Section shall take the place of any district or school audit conducted under Sections 4 and 5 of this administrative regulation.

- (3) Department staff shall:
- (a) Coordinate with the LEA to ensure direct support of schools identified for comprehensive support and improvement;
 - (b) Review, via the district or school audit, if a charter school, resources and allocations to determine if they are being used effectively for school improvement;
 - (c) Work with the LEA to address any identified resource inequities that negatively impact schools and students; and
 - (d) Work with the LEA to develop sustainable systems to support school improvement.

Section 14. Technical Assistance for LEAs Supporting a Significant Number of Schools Identified for Targeted Support and Improvement. (1) LEAs supporting a significant number of schools identified for targeted support and improvement shall receive the following technical assistance:

- (a) Periodic site visits; and
 - (b) Onsite support by department staff.
- (2) Department staff shall:
- (a) Review LEA resources and allocations to determine if they are being used effectively for school improvement;
 - (b) Provide technical assistance to the LEA regarding resource allocation to support school improvement; and
 - (c) Connect LEAs with professional development opportunities to build capacity for school improvement efforts.

Section 15. Exit Criteria. (1) A school [Schools] identified for comprehensive support and improvement shall exit that status if [when]:

- (a) It [They] no longer meets [meet] the criteria for [their] identification; and
 - (b) It demonstrates [They demonstrate] continued progress on the data that were the basis for [the] identification.
- (2) Schools identified for comprehensive support and improvement as a result of more than one (1) criteria shall exit if [when] all relevant exit criteria are met.
- (3) Schools identified for targeted support and improvement pursuant to [under] KRS 160.346(2)(a) shall exit that status if [when] the identified subgroup[subgroup(s)] is no longer below the performance of all students in the bottom five (5) percent of Title I schools or non-Title I schools within that range of Title I schools and demonstrates [demonstrate] continued progress on the data that served as the basis for identification.
- (4) Schools identified for targeted support and improvement pursuant to [under] KRS 160.346(2)(b) shall exit that status if [when] the identified subgroup[subgroup(s)] is no longer below the performance of all students in the bottom ten (10) percent of Title I schools or non-Title I schools within that range. LEAs may include additional exit criteria at their discretion.

Section 16. Incorporation by Reference. (1) "LEA Notification of Non-Department Audit or Turnaround Team Form", February 2018, is incorporated by reference.

- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, Office of Continuous Improvement and Support, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

STEPHEN L. PRUITT, Ph.D., Commissioner of Education
MARY GWEN WHEELER, Chairperson

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CONTACT PERSON: Todd Allen, Interim General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Commission on the Deaf and Hard of Hearing
(As Amended at ARRS, June 12, 2018)

735 KAR 1:010. Eligibility requirements, application and certification procedures to receive specialized telecommunications equipment for the deaf, hard of hearing, and speech impaired.

RELATES TO: KRS 12.290, Chapter 45A, 61.878, 163.525[163.500]-163.527, 334.010(9), 334.020, 29 U.S.C. 794, 42 U.S.C. 12101

STATUTORY AUTHORITY: KRS 12.290, 163.525(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 12.290 requires each administrative body of state government to promulgate administrative regulations in compliance with federal mandates to provide accessibility to services by persons who are deaf or hard-of-hearing. KRS 163.525(5) requires the Commission on the Deaf and Hard of Hearing to promulgate administrative regulations to establish procedures for application for, and distribution of, specialized telecommunications equipment. This administrative regulation establishes eligibility criteria, requirements for application, and certification procedures.

Section 1. Definitions [, as applies to 735 KAR 1:010 and 1:020].

- (1) "Applicant" means a person who applies to receive specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access Program.
- (2) "Application" means the current KCDHH Telecommunications Access Program application entitled "Telecommunications Access Program Application and Certification" available in both hardcopy and electronic format.
- (3) "Approved date" means the date that all supporting documentation for the application is received and verified by the KCDHH as complete.
- (4) "APRN" means Advanced Practice Registered Nurse licensed by the Kentucky Board of Nursing as defined by 314.011(7).
- (5) "Audiologist" is defined by[at] KRS 334A.020(5), and is limited to a person licensed by the board, as defined by[at] KRS 334A.020(1).
- (6) "Certification" means professional verification of the extent and permanence of the applicant's disability.
- (7) "Deaf" and "hard of hearing" are defined by KRS 163.500.
- (8) "Deaf-blind" means an individual whose primary disability is deafness and secondary disability is vision impairment.
- (9) "ENT" or Otolaryngologist [, for purposes of KAR 1:010 and 1:020] means a medical professional trained in the medical and surgical management of patients with diseases and disorders of the ear, nose, and throat.
- (10)[(9)] "Fiscal constraint" means when seventy-five (75) percent of annual program funds have been disbursed or encumbered.
- (11)[(40)] "Hearing instrument specialist" means "specialist in hearing instruments" as defined by[at] KRS 334.010(9).
- (12)[(44)] "KCDHH" means the Kentucky Commission on the Deaf and Hard of Hearing, as described at KRS 163.506.
- (13)[(42)] "Physician" means a person:
 - (a) With a medical degree;
 - (b) Licensed by the state in which he or she practices medicine; and
 - (c) Recognized, by the state Board of Medical Licensure in the state in which the physician practices, as a specialist in:
 1. Family practice;
 2. General practice;
 3. Otolaryngology; or
 4. Internal Medicine.
- (14) "Physician Assistant Certified" (PAC) means a person licensed under KRS 311.840 to 311.862.
- (15)[(43)] "Recipient" means a person who receives specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access Program.

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(16)[(44)] "Specialized telecommunications equipment" or "STE" is defined by KRS 163.525(1)(a) as:

- (a) Telecommunication devices for the deaf;
- (b) Amplified telephones[Amplifiers];
- (c) Voice carry over telephones;
- (d) Captioned telephones;
- (e) Visual, audible, or tactile ring signal devices; and
- (f) Appropriate wireless devices.

(17) "Speech-impaired" means a person with a communication disorder such as stuttering, impaired articulation, impaired language, or impaired voice that adversely affects the use of telecommunications access lines.

(18)[(45)] "Speech-language pathologist" is defined by KRS 334A.020(3), and is limited to[means] a person licensed by the [Kentucky] board, as defined by KRS 334A.020(1)[of Licensure for Speech-Language to engage in the treatment of speech-language pathology].

(19)[(46)] "Telecommunications Access Line" means the transmission of auditory, visual, and typed communication via electronic airwaves or hard-wired methods.

(20)[(47)] "Telecommunications Access Program" is defined by KRS 163.525(1)(b).

Section 2. General Applicant Criteria. (1) An applicant shall be:

(a) A person who has resided in Kentucky for one (1) year prior to the date of application, as demonstrated by one (1) or more of the following. The person:

1. Is in possession of a valid driver's license or photo ID issued by the state of Kentucky;
2. Is currently registered to vote in Kentucky;
3. Owns an automobile registered in Kentucky;
4. Filed a Kentucky income tax return for the calendar year preceding the date of application;
5. Is stationed in Kentucky on active military orders for at least one (1) year as a member of the Armed Forces, or is a dependent of the Armed Forces member;[or]
6. Is currently enrolled as a student at an institution of higher learning located in Kentucky and meets the residency requirements of 13 KAR 2:045; or
7. If none of the above is attainable, the person shall provide alternate verification of residency [such as a utility bill, lease agreement, bank statement, or documentation from another state or federal agency,] as approved by the KCDHH Executive Director;[;]

(b) At least five (5) years of age;[;] and if the applicant is between five (5) and eighteen (18) years of age, the applicant's parents or guardians shall:

1. Apply on behalf of the child; and
 2. Assume full responsibility for the equipment; and[;]-and
- (c) Deaf, hard of hearing, or speech impaired such that the applicant cannot use a telecommunications access line independently[the telephone] for communication without adaptive specialized telecommunications equipment.

(2) In addition to requirements listed in subsection (1) of this section, an applicant for a wireless STE shall be at least thirteen (13) years of age.

(3) An application shall be:

(a) Made on a "Telecommunications Access Program Application and Certification" form, using either hardcopy or electronic format;

(b) Signed, with an[electronic signature if[is acceptable] on the electronic form,] and submitted in person, by facsimile, electronic mail, or by mail [electronic if applicable]; and

(c) Accompanied by:

1. An electronic or hardcopy[A copy (either hardcopy or electronic)] of a telephone or internet bill showing telephone number and name and address of the person being billed for residential telephone service[customers], unless the applicant is applying under the conditions of Section 2(6) of this administrative regulation;

2. An electronic or hardcopy[A copy (either hardcopy or electronic)] of the applicant's proof of residence; and

3. Document of certification, as required by subsection (5) of

this section.

(4) An applicant shall provide additional supporting documentation to verify information provided on the application, if requested by KCDHH.

(5) An applicant shall provide professional certification of the extent and permanence of the applicant's disability.

(a) Certification shall be at the applicant's expense.

(b) Certification shall be performed and provided by [one of the following]:

1. A licensed physician, licensed PAC, or licensed APRN;
2. A licensed audiologist;
3. A licensed speech-language pathologist, which verifies that the applicant has the ability to access telecommunications independently;

4. A licensed hearing instrument specialist; or

5. With prior approval by KCDHH, a licensed or certified individual that works for a public or private agency providing direct services to deaf, hard of hearing, or speech-impaired individuals.

(6) Except for an individual receiving assistance from a program providing telephone services to persons normally unable to afford the services, or an applicant for a wireless device, an applicant shall subscribe to or have currently applied for telecommunications[telephone] service, including:

(a) Installation of a telecommunications[telephone] line in the applicant's home, at the applicant's expense; and

(b) Payment of monthly telecommunications[telephone] bills.

(7) Eligible applicants shall be awarded program participation on a first-come, first-serve basis, in accordance with the approved date, as determined by the dated signature of the Telecommunications Access Program staff. Eligible applicants shall be placed on a waiting list during times of fiscal constraint.

(8) KCDHH shall distribute the STE in compliance with:

- (a) The Model Procurement Code, KRS Chapter 45A; and
- (b) 735 KAR 1:020.

(9) Not more than two (2) STEs, one (1) of which shall be a visual, auditory, or tactile signaler package, shall be distributed to a deaf, hard of hearing, or speech-impaired individual per telecommunications access line.

Section 3. Application Process. (1) The KCDHH staff shall provide assistance in completing forms if requested by an applicant.

(2) The Telecommunications Access Program staff shall review each application in the order the KCDHH office receives them, in order to determine if:

(a) All the necessary information is completed on the application;

(b) All required documentation is included; and

(c) All eligibility requirements are met.

(3) If the criteria in subsection 2 of this section are met, the application shall be approved, dated, and signed by the Telecommunications Access Program staff. The approved date shall determine the first-come, first-served roster.

(4) The KCDHH shall, within sixty (60) days of receipt of the application, notify an applicant if the application has been approved or rejected.

(5) The KCDHH shall, within sixty (60) days of receipt of the application, provide to an ineligible applicant, written reasons for the determination of ineligibility. An applicant denied participation may reapply if, due to a change in conditions, the eligibility requirements as delineated in Section 2 of this administrative regulation are met.

(6) Training to properly [select and] use the STE shall be provided to applicants upon request.

Section 4. An application shall be denied if:

(1) The applicant does not meet the eligibility requirements as established in KRS 163.525, this administrative regulation or 735 KAR 1:020;

(2) The applicant has received STE from the Telecommunications Access Program within the preceding four (4) years;

(3) The applicant is an active consumer of the Office of

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Vocational Rehabilitation and receives STE as part of an individual plan of employment, also known as an "IPE";

(4) The applicant has negligently or willfully damaged a STE previously received from the KCDHH's Telecommunications Access Program, or has violated another provision of the law governing the Telecommunications Access Program; or

(5) The applicant has the STE stolen, without a police report, or has lost or sold the STE; ~~or~~

~~(6) If replacing the equipment after four (4) years have passed, the original STE is found to be technologically up to date and functional by the KCDHH.]~~

Section 5. Replacing the Specialized Telecommunications Equipment. During times of fiscal constraint a reapplication shall be accepted and held pending until funds become available. An applicant shall provide verification of eligibility when the reapplication is processed. (1) A recipient may apply to replace the original STE if:

- (a) The STE is damaged as a result of a natural disaster;
- (b) There is a change in status, such as deteriorating vision or hearing;
- (c) A new device has become available through the Telecommunications Access Program that is more appropriate to the recipient's disability than a device previously received through the program; or
- (d) It has been four (4) years since the applicant last received STE.

(2) As funds are available, new STE to replace existing STE shall be issued to applicants who:

- (a) Demonstrate eligibility; and
- (b) Comply with the provisions of the administrative regulations governing the Telecommunications Access Program established in this administrative regulation and 735 KAR 1:020.

(3) Priority shall be given in the distribution of STE to first-time recipients during times of fiscal constraint.

(4) ~~(a)~~ If a replacement is requested because the STE is damaged as a result of a natural disaster, the recipient shall ~~[first]~~ send the damaged equipment ~~[to the KCDHH, or]~~ directly to the vendor as directed by Telecommunications Access Program staff.

~~(b)~~ ~~(a)~~ If necessary, the KCDHH shall send the damaged STE to the vendor for verification of irreparable damage. ~~[(a)]~~ ~~(b)~~ If the vendor certifies ~~[to the KCDHH]~~ that the equipment provided to the recipient is irreparable due to natural disaster, a replacement shall be issued to the recipient, upon reapplication, subject to:

- 1. Equipment availability;
- 2. Compliance with eligibility criteria established in this administrative regulation;
- 3. The first-come, first-served provision; and
- 4. Availability of funds.

(5) If the recipient obtains certification from an approved physician, PAC, audiologist, hearing instrument specialist, APRN, or speech-language pathologist stating that the recipient will benefit from another device available through the KCDHH Telecommunications Access Program due to a change in disability status or a new device becoming available, then a replacement shall be issued to the applicant based on eligibility criteria, first-come, first-served basis and availability of funds. ~~[As an alternative, a public or private agency providing direct services to deaf, hard of hearing, or speech-impaired individuals may provide certification, subject to approval by the KCDHH.]~~

(6) If a replacement is requested because ~~four (4) years have passed, then the recipient shall either bring in person or mail their original STE to the KCDHH.~~

~~(a) The KCDHH shall determine if the original STE is technologically obsolete or nonfunctional.~~

- ~~(b) If the original STE is:~~
 - 1. Technologically obsolete or nonfunctional, then the recipient shall follow the application process to replace the equipment as delineated in this administrative regulation and 735 KAR 1:020; or
 - 2. Not determined to be technologically obsolete or nonfunctional then the application for a replacement shall be denied and the original STE shall be returned to the recipient.]

Section 6. Fraud. If a recipient obtained STE under false premises or through misrepresentation of facts on the application, or sold or gave away the STE, and the violation is documented, ~~the [KCDHH shall demand return of the equipment immediately. Upon demand, the]~~ recipient shall ~~[return the STE and shall]~~ be ineligible to participate in the KCDHH Telecommunications Access Program thereafter.

Section 7. Confidentiality. All applicant and recipient information shall be kept confidential in compliance with the Open Records Law, KRS 61.878.

Section 8. Incorporation by Reference. (1) "Telecommunications Access Program Application and Certification", July 2018 ~~[November 2014]~~, is incorporated by reference and mirrors the electronic application.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the offices of the Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, phone 800-372-2907, V/TDD or (502) 573-2604 V/TDD, or 502-416-0607 VP, Monday through Friday, 8 a.m. to 4:30 p.m.

VIRGINIA L. MOORE, KCDHH Executive Director
APPROVED BY AGENCY: April 11, 2018
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CONTACT PERSON: Virginia L. Moore, Executive Director, email virginia.moore@ky.gov, 632 Versailles Road, Frankfort, Kentucky 40601, phone (502) 573-2604 v/t, fax (502) 573-3594, or VP (502) 416-0607.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Commission on the Deaf and Hard of Hearing
(As Amended at ARRS, June 12, 2018)**

735 KAR 1:020. Processing system including vendor participation, security, and maintenance and repair for specialized telecommunications equipment.

RELATES TO: KRS 12.290, Chapter 45A, 61.878, KRS 163.525-163.527, 278.5499 ~~[163.500-163.527, 334.010(9)], 334.020, 29 U.S.C. 794, 42 U.S.C. 12101~~

STATUTORY AUTHORITY: KRS 12.290, 163.525(5)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 12.290 requires each administrative body of state government to promulgate administrative regulations in compliance with federal mandates to provide accessibility to services by persons who are deaf or hard of hearing. KRS 163.525(5) requires the Commission on the Deaf and Hard of Hearing to promulgate administrative regulations to establish procedures for application for, and distribution of, telecommunications devices. This administrative regulation establishes procedures for specialized telecommunications equipment vendors, for security, and for maintenance and repair.

Section 1. Definitions. (1) "Applicant" means a person who applies to receive specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access Program.

(2) "Application" means the current KCDHH Telecommunications Access Program application entitled "Telecommunications Access Program Application and Certification" available in both hardcopy and electronic format.

(3) "Approved date" means the date that all supporting documentation for the application is received and verified by the KCDHH as complete.

(4) "APRN" means Advanced Practice Registered Nurse licensed by the Kentucky Board of Nursing as defined by KRS 314.011(7).

(5) "Audiologist" is defined by [at] KRS 334A.020(5), and is limited to a person licensed by the board, as defined by [at] KRS 334A.020(1).

(6) "Certification" means professional verification of the extent and permanence of the applicant's disability.

(7) "Deaf" and "hard of hearing" are defined by KRS 163.500.

(8) "Deaf-blind" means an individual whose primary disability is deafness and secondary disability is vision impairment.

(9) "ENT" or Otolaryngologist ~~"]; for purposes of KAR 1:010 and 1:020;~~ means a medical professional trained in the medical and surgical management of patients with diseases and disorders of the ear, nose, and throat.

(10)(9) "Fiscal constraint" means when seventy-five (75) percent of annual program funds have been disbursed or encumbered.

(11)(10) "Hearing instrument specialist" means "specialist in hearing instruments" as defined ~~by~~ KRS 334.010(9).

(12)(11) "KCDHH" means the Kentucky Commission on the Deaf and Hard of Hearing, as described at KRS 163.506.

(13)(12) "Physician" means a person:

(a) With a medical degree;

(b) Licensed by the state in which he or she practices medicine; and

(c) Recognized, by the state Board of Medical Licensure in the state in which the physician practices, as a specialist in:

1. Family practice;
2. General practice;
3. Otolaryngology; or
4. Internal Medicine.

(14) "Physician Assistant Certified" (PAC) means a person licensed under KRS 311.840 to 311.862.

(15)(13) "Recipient" means a person who receives specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access Program.

(16)(14) "Specialized telecommunications equipment" or "STE" is defined by KRS 163.525(1)(a):

~~(a) Telecommunication devices for the deaf;~~

~~(b) Amplified telephones[Amplifiers];~~

~~(c) Voice carry-over telephones;~~

~~(d) Captioned telephones;~~

~~(e) Visual, audible, or tactile ring signal devices; and~~

~~(f) Appropriate wireless devices].~~

(17) "Speech-impaired" means a person with a communication disorder such as stuttering, impaired articulation, impaired language, or impaired voice that adversely affects the use of telecommunications access lines.

(18)(15) "Speech-language pathologist" **is defined by KRS 334A.020(3), and is limited to** means a person licensed by the ~~[Kentucky]~~ board, **as defined by KRS 334A.020(1)** ~~[of Licensure for Speech-Language to engage in the treatment of speech-language pathology].~~

(19)(16) "Telecommunications Access Line" means the transmission of auditory, visual, and typed communication via electronic ~~airwaves~~ or hard-wired methods.

(20)(17) "Telecommunications Access Program" is defined by KRS 163.525(1)(b).

Section 2. Processing System. (1) The KCDHH shall use accounting procedures consistent with Commonwealth accounting practices in compliance with applicable sections of the Model Procurement Code, KRS Chapter 45.

(2) Contracting, purchasing, bidding, invoicing, and payment practices shall be conducted in accordance with applicable provisions of the Model Procurement Code, KRS Chapter 45A, and shall be applied uniformly to [applicants and] vendors.

(3) The KCDHH Telecommunications Access Program accounts shall be audited on a regular basis by the Auditor of Public Accounts.

Section 3. Vendor and Recipient Participation. (1) The vendor shall be responsible for complying with the provisions of the Model Procurement Code, KRS Chapter 45, as established in the contract between the vendor and KCDHH. The vendor shall:

(a) Mail or otherwise deliver the STE directly to the recipient's Kentucky residence; and

(b) Send the following to the KCDHH:

1. An itemized invoice with the recipient's name and STE model and serial number; and

2. A copy of the delivery receipt for the STE sent to the recipient.

(2) The vendor, in exchange for an itemized invoice and a copy of the delivery receipt, shall be paid by the KCDHH through the state accounting system ~~[or a bank;]~~ pursuant to the Memorandum of Agreement established between the Public Service Commission and the KCDHH.

(3) The recipient shall be responsible for any costs involved in having features not specified in the vendor contract added to ~~the recipient's~~ STE. This includes the responsibility for the maintenance and repair of those features not specified in the vendor contract.

(4) Ownership rights and responsibilities for the STE shall belong to the recipient, as evidenced by the recipient's copy of the delivery receipt. Equipment obtained under this program shall not be sold, loaned, gifted or otherwise transferred out of the possession of the originally authorized recipient. Any person who attempts to sell or who knowingly purchases stolen equipment shall be disqualified from the program indefinitely ~~[prosecuted to the fullest extent of the law].~~

(a) A recipient shall not be responsible for the actual maintenance and repair of the equipment during the applicable warranty period. In order to have a malfunctioning STE repaired, the recipient shall:

1. Contact the KCDHH, or the vendor if applicable to the contract; and

2. Comply with the repair and maintenance procedures established in Section 5 of this administrative regulation.

(b) Each recipient shall:

1. Assume responsibility for monthly maintenance of the telecommunications access line as described in 735 KAR 1:010; and

2. Pay for other general costs and supplies associated with the functions and use of the STE.

(c) A recipient shall be responsible for the loss of an STE received under the auspices of the KCDHH Telecommunications Access Program.

Section 4. Security. **The recipient shall:** (1) ~~[The recipient shall]~~ Notify the KCDHH within ten (10) working days if the equipment is lost or damaged; and

(2) File a police report and send it to KCDHH, if the equipment is stolen.

Section 5. Maintenance and Repair Procedures. (1) A recipient shall report equipment in need of repair to the KCDHH or the vendor if applicable to the contract. If applicable, the Telecommunications Access Program staff shall inform the recipient of:

(a) The mailing address and telephone number of the manufacturer; and

(b) The purchase order number for the equipment.

(2) The recipient shall:

(a) Report the problem to the vendor that distributed the equipment, as instructed by Telecommunications Access Program staff; ~~[manufacturer];~~

(b) Ask that the appropriate vendor ~~[manufacturer]~~ pay for shipping the defective equipment:

1. To the vendor's ~~[manufacturer's]~~ designated place of repair; and

2. Back to the recipient, once repaired.

(3) The vendor ~~[recipient]~~ shall determine from the contracted repair agent whether the STE is repaired or is not repairable. The vendor ~~[recipient]~~ shall obtain and provide verification of the transaction to KCDHH. If the warranty period has ended, per the vendor's contract, the recipient shall assume financial responsibility for repair of the equipment.

(4) A recipient shall notify the KCDHH immediately of a change of residential address.

VIRGINIA L. MOORE, KCDHH Executive Director

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CONTACT PERSON: Virginia L. Moore, Executive Director,
email virginia.moore@ky.gov, 632 Versailles Road, Frankfort,
Kentucky 40601, phone (502) 573-2604 v/t, fax (502) 573-3594, or
VP (502) 416-0607.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Commission on the Deaf and Hard of Hearing (As Amended at ARRS, June 12, 2018)

735 KAR 2:010. Definitions for 735 KAR Chapter 2.

RELATES TO: KRS 12.290, KRS 163.510(4), KRS 309.300,
29 U.S.C. 794, 42 U.S.C. 12101

STATUTORY AUTHORITY: KRS 12.290,
163.510(4) ~~mandates that each department, program cabinet,
and administrative body of state government shall promulgate
administrative regulations to provide accessibility to all
services by persons who are deaf or hard-of-hearing in
compliance with federal mandates including 29 U.S.C. sec.
794, a part of the Rehabilitation Act of 1973, and 42 U.S.C.
secs. 12101 et seq., a part of the Americans with Disabilities
Act of 1990; 163.510(4); 309.300 provides definitions related
to the authority of the Kentucky Board of Interpreters for the
Deaf and Hard of Hearing.]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 12.290
requires each administrative body of state government to
promulgate administrative regulations in compliance with
federal mandates to provide accessibility to services by
persons who are deaf or hard of hearing. KRS 163.510(4)
requires the Commission on the Deaf and Hard of Hearing to
oversee the provision of interpreter services to the deaf and hard of
hearing. This administrative regulation establishes definitions
necessary to implement the Interpreter Referral Services Program.

Section 1. (1) "American Sign Language" (ASL) means a
nonverbal language consisting of the following elements:

- (a) Handshape;
- (b) Position;
- (c) Hand movement;
- (d) Orientation of the hands; ~~and~~
- (e) Facial expression; and
- (f) Body language.

(2) "Assigned interpreter," means the independent vendor
interpreter who commits to provide interpreting services for a
particular event.

(3) "Assignment" means an event interpreted for the
enhancement of communication between a deaf, hard of hearing,
and hearing individuals ~~individual~~.

(4) "Certified interpreter or Transliterater" means a sign
language, oral, or cued speech interpreter or transliterater who was
awarded certification by demonstrating an advanced level of
expressive and receptive skills.

(5) "Close visual range interpreting" means an interpreting
technique used with deaf people with limited vision.

(6) "Communication Access Realtime Translation" (CART)
means a service that is provided by a realtime reporter by
converting spoken English into a printed English format, primarily
used by hard of hearing people ~~(6) "Contracted interpreter," means a
freelance interpreter.]~~

(7) "Code of ethics" or Code of Professional Conduct, means
principles that guide ~~of~~ ethical behavior of sign language
interpreters, and is established by an interpreter's ~~a~~ national
certifying organization to guide an interpreter or transliterater
in their ~~the~~ dealings with a hearing, or ~~and~~ deaf, or hard of hearing
person.

(8) "Cued speech" means a method of communication for use
with and by a deaf and hard of hearing person, in which eight (8)
configurations and four (4) positions of one (1) of ~~either~~ of
hand are used to supplement the visible manifestations of natural
speech.

(9) "Deaf and hard of hearing" means a person who is unable
to hear and understand speech clearly by ear, with or without a
hearing aid. This term includes ~~shall include~~ a person who:

- (a) Is deaf or hard of hearing;
- (b) Is deaf-blind;
- (c) Is late deafened;
- (d) Is recently deafened;
- (e) Is oral deaf; or
- (f) Has a similar hearing disorder.

(10) "Deaf Interpreter" (DI) means a deaf or hard of hearing
individual, who is able to assist in providing an accurate
interpretation between standard sign language and variants of sign
language, including home signs, ~~by~~ acting as an intermediary
between a deaf or hard of hearing person and an interpreter or
transliterater.

(11) "Emergency" means a situation of an urgent nature in
which the consumer or client determine that the delay of the event
for more than twenty-four (24) hours is likely to result in injury or
loss.

(12) "Extended Assignment" means an ~~and~~ assigned event
for an interpreter or captioner that includes an overnight stay or
requires on call twenty-four (24) hour coordination.

(13) "Interaccount", for the purpose of KRS 163.510(4), means
that one (1) state agency charges another state agency through
the state's internal financial system, as outlined in KRS Chapter
45A.

(14) ~~(12)~~ "Interpretation" means the process of transmitting
spoken English into American Sign Language or gestural
communication, voice-to-sign ~~and~~; and the process of transmitting
American Sign Language or gestural communication into spoken
English, sign-to-voice ~~and~~.

(15) ~~(13)~~ "No show assignment" means an assignment that
which the deaf or hard of hearing person or the state agency
interpreter or captioner representative did not appear for the
scheduled event.

(16) ~~(14)~~ "Nontraditional interpreting services" means the
utilization of video-conferencing technology to eliminate the
necessity of the interpreter having to travel to the site of the event
or utilization of remote captioning technology to eliminate the
necessity of the captioner traveling to the site of the event.

(17) ~~(15)~~ "Oral interpreting" means facilitating a mode of
communication utilizing speech, speech-reading, and residual
hearing as a primary means of communication and using
situational and culturally appropriate gestures, without the use of
sign language.

(18) ~~(16)~~ "Preferred mode of communication" means the
method of communication that the deaf or hard of hearing
individual is most expressive and comfortable ~~in~~ using.

(19) ~~(17)~~ "Referral service" means a service that specializes in
coordinating interpreting or captioning services and acts as an
intermediary between the interpreter or captioner and the state
agency providing services to a deaf or hard of hearing
consumer ~~direct consumers of services~~.

(20) ~~(18)~~ "Replacement interpreter" means an interpreter sent
to replace the assigned interpreter for a specific event if there is a:

- (a) Schedule conflict;
- (b) Illness; or
- (c) Unforeseen event that prevents attendance of the assigned
interpreter.

(21) ~~(19)~~ "Staff interpreter" means an interpreter who works
exclusively for, and is considered an employee of, a particular
agency or organization.

(22) "State Agency" or "State Agencies", for purposes of KRS
163.510(4) and this Chapter, means an organizational unit within
the Executive Branch of state government, as define in KRS
12.010 (1) through ~~(7)~~, or an agency within the Legislative
Branch of state government.

(23) "State Employee", for the purposes of KRS 163.510(4)
and this Chapter, means a person who is permanently employed
by a state agency within the Executive or Legislative Branch of
state government.

(24) ~~(20)~~ "Tactile interpreting" means a communication
technique used by and with deaf-blind individuals and deaf

individuals[people] with limited vision involving touch of the shape, movement and location of signs.

(25)[(24)] "Team interpreting" means the utilization of two (2) or more interpreters who:

- (a) Function as a team;
- (b) Rotate responsibilities at prearranged intervals; and
- (c) Provide support and feedback to each other.

(26)[(22)] "Transliteration" means the process of transmitting:

- (a) Spoken English into one (1) of the English-related or English oriented varieties of sign language, ~~[[voice-to-sign]]~~; and
- (b) One of the English-related or English-oriented varieties of sign language into spoken English, ~~[[sign-to-voice]]~~.

(27)[(23)] "Traditional interpreting services" means the interpreter or captioner appears at the event in person and provides interpreting or captioning services on site.

VIRGINIA L. MOORE, KCDHH Executive Director

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CONTACT PERSON: Virginia L. Moore, Executive Director, email virginia.moore@ky.gov, 632 Versailles Road, Frankfort, Kentucky 40601, phone (502) 573-2604 v/tty, fax (502) 573-3594, or Videophone (502) 416-0607.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Commission on the Deaf and Hard of Hearing
(As Amended at ARRS, June 12, 2018)**

735 KAR 2:020. KCDHH Interpreter Referral Services Program parameters.

RELATES TO: KRS 12.290, 163.510(4), 29 U.S.C. 794, 42 U.S.C. 12132

STATUTORY AUTHORITY: KRS 12.290, 163.510(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 12.290 requires each department, program cabinet, and administrative body of state government to promulgate administrative regulations to provide accessibility to all services by persons who are deaf or hard-of-hearing. KRS163.510(4) requires the commission to oversee the provision of interpreter services to the deaf and hard of hearing. This administrative regulation establishes the Interpreter Referral Services Program parameters and the criteria of receiving and providing these services.

Section 1. (1) In accordance with the requirements of the Rehabilitation Act, ~~[[29 U.S.C. 794,]]~~ and the Americans with Disabilities Act, ~~[[42 U.S.C. 12132]]~~, KCDHH Interpreter Referral Services shall be provided to a state agency if:

(a) An individual who is deaf or hard of hearing requires interpreting or captioning services to access state services~~[Necessary to receive public service by an individual who is deaf or hard of hearing];~~

(b) Requested by a state agency employee who is deaf or hard of hearing;

(c) Required under a provision of the Rehabilitation Act or Americans with Disabilities Act~~[Acts]~~; or

(d)~~[(e)]~~ Necessary to provide accessibility to a public event, as defined by the Rehabilitation Act or Americans with Disabilities Act~~[Acts]~~.

(2) Participation in the KCDHH Interpreter Referral Services Program shall be voluntary.

(3) The services of a qualified interpreter or transliterator or CART services shall be provided at no cost to the deaf or hard of hearing consumer.~~[(4) The KCDHH shall comply with KRS Chapter 45A in employing staff and contract interpreters with the KCDHH Interpreter Referral Services Program.]~~

(4)~~[(5)]~~ The KCDHH Interpreter Referral Service shall honor the preferred communication mode of a deaf or hard of hearing consumer if a qualified interpreter,~~or~~ transliterator, or CART is available.

(5)~~[(6)]~~ The KCDHH may assign two (2) or more interpreters as appropriate for assignments that are longer than one (1) hour, in

accordance with the standard practices of "Team Interpreting".

(6)~~[(7)]~~ The KCDHH shall assign a deaf interpreter ~~(D)]~~~~[interpreters]~~ in accordance with standard practices in the interpreting profession.

(7)~~[(8)]~~ A nationally certified and state licensed interpreter shall be required ~~[preferred in]~~ when working for the KCDHH Interpreter Referral Services Program.

(8)~~[(9)]~~ The interpreter fee for a state agency shall be negotiated between the state agency and the interpreter on an individual basis. The KCDHH Interpreter Referral Service Program shall provide the referral and share the average rate for services within the state, but shall not dictate hourly fees nor administer billing for services.

(9)~~[(10)]~~ The KCDHH shall:

- (a) Respond to all requests for interpreting or CART services;
- (b) Not guarantee that all requests will be filled; and
- (c) Except in an emergency, provide service on a first-come, first-served basis;

(10)~~[(11)]~~ If the KCDHH Interpreter Referral Services Program is unable to fulfill a request for services by 12 p.m., two (2) working days prior to the date of the assignment, KCDHH staff shall contact the requesting agency and suggest the following:

- (a) That the search for an interpreter or CART cease;
- (b) Continuing to seek an interpreter or CART for the assignment, with the understanding that it may not be filled; or
- (c)~~[A]~~ Rescheduling of the event with KCDHH Interpreter Referral Services Program staff continuing to seek a qualified interpreter or CART for the new assignment date.

VIRGINIA L. MOORE, KCDHH Executive Director

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CONTACT PERSON: Virginia L. Moore, Executive Director, email virginia.moore@ky.gov, 632 Versailles Road, Frankfort, Kentucky 40601, phone (502) 573-2604 v/tty, fax (502) 573-3594 or Videophone (502) 416-0607.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Commission on the Deaf and Hard of Hearing
(As Amended at ARRS, June 12, 2018)**

735 KAR 2:030. Interpreter qualifications.

RELATES TO: KRS 12.290, 163.510(4), 29 U.S.C. 794, 42 U.S.C. 12132

STATUTORY AUTHORITY: KRS 12.290, 163.510(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 163.510(4) requires the commission to oversee the provision of interpreter services to the deaf and hard of hearing. This administrative regulation establishes qualifications for the interpreters utilized by the Interpreter Referral Services Program.

Section 1. (1) A staff or assigned~~[freelance]~~ American Sign Language or~~and~~ oral interpreter shall be certified by a nationally certified body, such as ~~[but not limited to,]~~ the:

- (a) National Association of the Deaf (NAD);
- (b) National Registry of Interpreters for the Deaf (RID);
- (c) National Interpreter Certification (NIC); or
- (d) Board for Evaluation of Interpreters (BEI) certification program.

(2) A cued speech transliterator shall be certified by the National Training Evaluation and Certification Unit.

VIRGINIA L. MOORE, KCDHH Executive Director

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CONTACT PERSON: Virginia L. Moore, Executive Director, email virginia.moore@ky.gov, 632 Versailles Road, Frankfort, Kentucky 40601, phone (502) 573-2604 v/tty, fax (502) 573-3594, or Videophone (502) 416-0607.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Commission on the Deaf and Hard of Hearing
(As Amended at ARRS, June 12, 2018)

735 KAR 2:040. Interpreter protocols.

RELATES TO: KRS 12.290, 163.510(4), 163.515(2)(c) ~~201 KAR 39:120~~

STATUTORY AUTHORITY: KRS 12.290, 163.510(4), 163.515(2)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 12.290 requires each department, program cabinet, and administrative body of state government to promulgate administrative regulations to provide accessibility to all services by persons who are deaf or hard-of-hearing. **KRS 163.515(2)(c) requires that the Executive Director of the Commission on the Deaf and Hard of Hearing promote the training of interpreters for the deaf and hard of hearing.** KRS 163.510(4) requires the commission to oversee the provision of interpreter services to the deaf and hard of hearing. This administrative regulation establishes interpreter protocols. **KRS 163.515 (2)(c) mandates that the Executive Director of the Commission on the Deaf and Hard of Hearing promote the training of interpreters for the deaf and hard of hearing. 201 KAR 39:120 outlines the Code of Ethical Conduct – Code of Professional Conduct a licensed interpreter must follow according to the Kentucky Board of Interpreters.**

Section 1. (1) A staff or ~~assigned~~~~[free-lance]~~ interpreter shall adhere to the Interpreter's Code of Professional Conduct and:

- (a) Keep assignment-related information strictly confidential;
- (b) Be impartial to a proceeding;
- (c) Recognize and work within his range of ability;
- (d) Not accept an assignment beyond his skill level;
- (e) Promptly notify Interpreter Referral Services Program staff if the communication mode of a deaf or hard of hearing person requires the additional skills of a ~~certified~~ deaf interpreter; and
- (f) Arrive at an assignment fifteen (15) minutes before the scheduled starting time to:

1. Arrange logistics; and
2. Confer with the consumer and another interpreter.

(2) A KCDHH Interpreter Referral Services Program assigned interpreter shall display professional demeanor and conduct by:

(a) Wearing appropriate professional clothing, as outlined in the Code of Professional Conduct for the interpreter's national certifying organization, and~~which include~~

1. A skirt or dress;
2. A business suit;
3. Slacks and a jacket; or
4. Similar attire; and

(b) Treating a deaf, ~~or~~ hard of hearing, ~~or~~~~and~~ hearing consumer involved in the assignment, pleasantly, fairly, and with respect.

(3) ~~An Interpreter Referral Services Program~~~~[a contract and] staff interpreter, or assigned interpreter,~~ shall comply with the code of ethics pursuant to~~per~~ 201 KAR 39:120 ~~and~~~~per~~ the interpreter's national~~[appropriate]~~ certifying organization~~[body]~~ of the:

~~(a) [National Association of the Deaf – Registry of Interpreters for the Deaf Code of Professional Conduct (2005);~~

~~(b) [(a)] National Registry of Interpreters for the Deaf; ~~or~~~~

~~(b) [(c)] (b) National Association of the Deaf; or~~

~~(c) [(d)] Board for Evaluation of Interpreters Certification Program.~~

(4) Assignment conflicts.

(a) If an ~~assigned~~~~[contracted]~~ interpreter is unable to fill the assignment because of illness or another unforeseen conflict, he shall contact the Interpreter Referral Services Program staff as soon as he becomes aware of the conflict.

(b) The staff of the KCDHH Interpreter Referral Services Program shall be responsible for contacting and attempting to secure a replacement interpreter for the assignment.

(5) If resources are available, the KCDHH Interpreter Referral Services Program may provide a professional development

opportunity for assigned interpreters~~[contract]~~ and staff interpreters. A development opportunity may include:

- (a) A mentoring program;
- (b) Diagnostic assessment and feedback;
- (c) Support for interpreter training or testing opportunities; and
- (d) Similar programs.

(6) The national certifying organizations listed under subsection (3) of this Section have all adopted The National Association of the Deaf - Registry of Interpreters for the Deaf Code of Professional Conduct.

Section 2. Incorporation by Reference. (1) ~~["The following material is incorporated by reference:"]~~ The National Association of the Deaf – Registry of Interpreters for the Deaf Code of Professional Conduct", (2005), is incorporated by reference.~~[(a) National "Registry of Interpreters for the Deaf Code of Ethics", (1996), National Registry of Interpreters for the Deaf; and~~

~~(b) "National Association of the Deaf Interpreter Code of Ethics", (1997), National Association of the Deaf.]~~
(2) This material may be inspected, copied, or obtained at Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

VIRGINIA L. MOORE, KCDHH Executive Director

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CONTACT PERSON: Virginia L. Moore, Executive Director, email virginia.moore@ky.gov, 632 Versailles Road, Frankfort, Kentucky 40601, phone (502) 573-2604 v/t, fax (502) 573-3594, or VP (502) 416-0607 VP.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Commission on the Deaf and Hard of Hearing
(As Amended at ARRS, June 12, 2018)

735 KAR 2:050. Processing of requests for services.

RELATES TO: KRS 12.290, 163.510(4), 29 U.S.C. 794, 42 U.S.C. 12101, 12132

STATUTORY AUTHORITY: KRS 12.290, 163.510(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 12.290 requires~~[mandates]~~ that each department, program cabinet, and administrative body of state government shall promulgate administrative regulations to provide accessibility to all services by persons who are deaf or hard-of-hearing in compliance with federal mandates including 29 U.S.C. sec. 794, a part of the Rehabilitation Act of 1973, and 42 U.S.C. secs. 12101 et seq., a part of the Americans with Disabilities Act of 1990. KRS 163.510(4) requires the commission to oversee the provision of interpreter and Communication Access Realtime Translation (CART) captioning services to the deaf and hard of hearing. This administrative regulation establishes the process for requesting services from the KCDHH Interpreter Referral Services Program.

Section 1. (1) In accordance with the requirements of the Rehabilitation Act, ~~[(29 U.S.C. 794,)]~~ and the Americans with Disabilities Act, ~~[(42 U.S.C. 12132)]~~, the KCDHH Interpreter Referral Services Program shall coordinate with~~[be provided to]~~ a state agency to provide services if:

~~(a) [Necessary to receive public service by an individual who is] A deaf or hard of hearing individual requires access to services provided by a state agency;~~

~~(b) [Requested by] A state agency authorizes services for an employee who is deaf or hard of hearing;~~

(c) Required under a provision of the Rehabilitation Act or Americans with Disabilities Act~~[Acts]~~; or

(d) Necessary for a state agency to provide accessibility to a public event, as defined by the Rehabilitation Act or Americans with Disabilities Act~~[Acts]~~.

(2) A request for services shall include the following information:

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(a) Date and time of ~~interpreted~~ event to be interpreted or captioned;

(b) Expected length of the interpreted or captioned event;

(c) Deaf or hard of hearing consumer ~~[(deaf or hard of hearing)]~~ and state agency names;

(d) Consumer communication preference, ~~[(if known)]~~;

(e) Assignment location;

(f) Type of event to be interpreted or captioned, i.e. one-to-one situation, small group meeting, or platform presentation, etc.;

(g) On-site contact person and phone number;

(h) A request for a specific interpreter or captioner; and

(i) Pertinent billing information including:

1. Purchase order or interaccount number;

2. Authorizing agency contact person; and

3. Billing address and phone number;

(j) Other information that would be beneficial to the interpreter or captioner, including:

1. Directions to the event location; ~~and~~

2. Notice of special needs, including a tactile or oral interpreting request, a deaf interpreter, ~~er~~ specialized vocabulary, or set up needs for captioning; and

3. Specific non-traditional attire requirements, if appropriate.

(3) An agency shall submit an interpreting or captioning services request by doing one (1) of the following:

(a) Telephoning or emailing ~~[By telephone to]~~ the staff of the KCDHH Interpreter Referral Services Program, ~~which may then require completion of an online electronic request form through the KCDHH Web site~~; ~~[(b) Faxed form;]~~

(b) Submitting ~~a/an~~ ~~[(e)]~~ ~~electronic~~ request through [form] ~~[submittal]~~ ~~directly, via~~ ~~email or~~ the KCDHH Web site at <http://www.kcdhh.org> ~~[KCDHH WWW home page]; or~~ ~~[(d) Letter;~~

~~(e) In person; or~~

~~(c) Videophone~~ ~~[(f) Videoconferencing]~~.

(4) A request for interpreting or captioning services shall be considered a binding agreement, in accordance with KRS Chapter 45A, between the requesting agency and the KCDHH Interpreter Referral Services Program, with the terms and conditions as outlined in this administrative regulation.

(5) Unless an emergency or other unforeseen circumstance arises preventing advance notice, an agency shall submit an interpreting or captioning request at least two (2) weeks prior to the assignment date. If an emergency or unforeseen circumstance occurs, KCDHH shall attempt to fill the request. ~~[However, it may be impossible for KCDHH to fulfill the request for services.]~~

(6) Upon receiving a request for an interpreting or captioning assignment, the Interpreter Referral Services Program ~~[KCDHH]~~ staff shall first attempt to schedule an assigned ~~[a contract]~~ interpreter or captioner for the event, if one (1) is available and qualified. If there are no assigned ~~[contract]~~ interpreters or captioners available, staff shall then attempt to schedule a staff interpreter or another captioner.

(7) If a specific interpreter or captioner is requested by an agency or consumer, the ~~[KCDHH]~~ Interpreter Referral Services Program shall attempt to provide the requested person. However, the program shall not guarantee that a specific request will be honored.

(8) The KCDHH recognizes that the demand for interpreting services exceeds the existing supply of staff and ~~certified/freelance~~ interpreters; therefore, the KCDHH shall hire and assign an interpreter or captioner based on the following criteria: ~~[- in order of importance]~~

(a) Current and valid interpreter certification awarded by a nationally recognized organization, as outlined in 735 KAR 2:030;

(b) Meeting interpreter licensure requirements as outlined in KRS 309.300 to 309.319;

(c) Years of experience and references for captioners ~~[Highly qualified, based on:~~

1. Years of interpreting experience;

2. Demonstrable interpreting skill, as evidenced by screening, or pre-certification level];

~~(d)~~ ~~[3.]~~ Consumer preference is honored whenever possible; and

~~(e)~~ ~~[4.]~~ Having no financial or personal conflict of interest, as

defined by KRS Chapter 45A.

(9) The KCDHH Interpreter Referral Services Program staff shall notify the state agency of the name of the assigned interpreter or captioner.

(10) Due to the high demand for interpreting and captioning services and for specialized skills ~~[skill]~~, the ~~[KCDHH]~~ Interpreter Referral Services Program shall reserve the right to reassign an interpreter or captioner, as appropriate, based on skill level ~~[and]~~, qualifications or regional location if fiscal constraints are evident. If an assigned interpreter or captioner ~~is~~ ~~[should be]~~ reassigned, the ~~[KCDHH]~~ Interpreter Referral Services Program staff shall notify the state agency of the name of the replacement assigned interpreter or captioner.

(11) The ~~[KCDHH]~~ Interpreter Referral Services Program staff shall notify the assigned interpreter or captioner of the details of the assignment, including any communication preferences, special terminology, the date, the time, and the location prior to the actual date of the assignment.

(12) The interpreter ~~or~~ ~~captioner shall/must~~ inform the Interpreter Referral Services Program staff of any changes to the interpreter's or captioner's ~~their~~ ability to keep the assignment.

(13) The Interpreter Referral Services Program is not responsible for fees associated with the assignment; however, interpreters or captioners are encouraged to notify the requesting agency of their fees prior to accepting the assignment.

~~(14)~~ ~~(42)~~ A client or consumer ~~may/shall have the right to~~ refuse the services of an interpreter or captioner and request a replacement. If a replacement is requested, Interpreter Referral Services Program staff ~~[the service]~~ shall try to fill the request if possible. However, the ~~[KCDHH]~~ Interpreter Referral Services Program shall not guarantee a replacement.

(15) The interpreter or captioner assigned to the event, and the requesting agency, shall notify the Interpreter Referral Services Program staff of any changes related to the assignment as soon as possible.

(16) The KCDHH Interpreter Referral Services Program does not guarantee that all interpreting or captioning requests will be filled. All requests are subject to:

~~(a) Prior approval by the KCDHH Executive Director; or~~

~~(b) The availability of the appropriate interpreter(s) or captioner.~~

VIRGINIA L. MOORE, KCDHH Executive Director

APPROVED BY AGENCY: April 11, 2018

FILED WITH LRC: April 11, 2018 at 4 p.m.

CONTACT PERSON: Virginia L. Moore, Executive Director, email virginia.moore@ky.gov, 632 Versailles Road, Frankfort, Kentucky 40601, phone (502) 573-2604 v/tty, fax (502) 573-3594 or Videophone (502) 416-0607.

EDUCATION AND WORKFORCE DEVELOPMENT
Kentucky Commission on the Deaf and Hard of Hearing
(As Amended at ARRS, June 12, 2018)

735 KAR 2:060. Grievance procedures.

RELATES TO: KRS 12.290, 163.510(4) ~~[201 KAR 39:120]~~
STATUTORY AUTHORITY: KRS 163.510(4), 163.515 ~~[1998 GA HB 321, Commonwealth Budget Final Budget Memorandum, FB 1998-2000]~~

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to implement KRS 163.510(4), which authorizes the Kentucky Commission on the Deaf and Hard of Hearing ~~[(KCDHH)]~~ to oversee the provision of interpreting and captioning services and to provide such services if necessary. ~~[House Bill 321 (1998) and the Commonwealth Budget Final Budget Memorandum specifically authorizes the KCDHH to provide interpreter referral services to state agencies.]~~ This administrative regulation establishes a process for receiving and handling complaints against interpreters, captioners, state agencies or the Interpreter Referral Services Program.

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Section 1. (1) Grievances may be filed against the:

- (a) Interpreter ~~[(freelance or assigned)];~~
- (b) Captioner;
- (c) ~~[(b)]~~ State agency; ~~or~~
- (d) ~~[(e)]~~ KCDHH Interpreter Referral Services Program staff; or
- (e) Interpreter Referral Agency.

(2) All grievances shall be submitted in writing or on video within ninety (90) days of the event in question to the Executive Director of the Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601 and ~~shall [must]~~ include:

(a) Name, address, and phone number of person filing the grievance;

(b) Name and role ~~[(i.e., interpreter, captioner, state agency, referral agency,)]~~ of person(s) against whom the grievance is being filed;

(c) Date, time, and location of the alleged violation;

(d) Description of the alleged violation and, if known, reference made to the appropriate authorizing body, **as established in [per] 201 KAR 39:120, the [NAD or RID] Code of Ethics, and the nature of the alleged violation [what was] [that were] [allegedly violated];** and

(e) Signature of the complainant.

(3) Anonymous grievances will not be recognized.

(4) The KCDHH Executive Director ~~[Interpreter Referral Services staff]~~ will investigate the alleged grievance within thirty (30) days of receiving the grievance.

(5) Copies of the grievance shall be made available to the:

(a) Complainant;

(b) Respondent **as the [] person whom the** grievance is against ~~[()];~~

(c) Witnesses; and

(d) All other pertinent parties to the grievance or the investigation.

(6) The KCDHH Executive Director ~~[Interpreter Referral Services staff]~~ shall submit a written decision within sixty (60) days of receiving the grievance, which may result in:

(a) Mediation among the involved parties; and

(b) Dismissal of the grievance; or

(c) ~~[(b)]~~ The grievance being referred to the Kentucky Board of Interpreters ~~[national certifying body]~~, if the grievance is of serious nature ~~[- or~~

(c) Dismissal of grievance; or

(d) The KCDHH Interpreter Referral Service has the right to discontinue utilizing the services of an interpreter based on the findings of a grievance.]

(7) If the decision of the KCDHH Executive Director ~~[Interpreter Referral Services Program staff]~~ is appealed, the KCDHH Commissioner Executive Board ~~[Interpreter Services Advisory Board]~~ shall review the decision and make a ruling. ~~[(8) If the decision of the KCDHH Interpreter Services Advisory Board is appealed, then the Executive Director of the KCDHH shall review the decision and make a ruling.~~

~~[(9) If the decision of the Executive Director of the KCDHH is appealed, then the Commissioners of the KCDHH shall review the decision and make a ruling.]~~

~~[(10)]~~ If the decision of the KCDHH Commissioner Executive Board ~~[Commissioners of the KCDHH]~~ is appealed, then the KCDHH shall comply with all provisions of KRS Chapter 13B.

(9) The KCDHH Interpreter Referral Service Program ~~may [has the right to]~~ discontinue utilizing the services of ~~an [a freelance or assigned]~~ interpreter, the State agency, Interpreter Referral Agency, or captioner based ~~upon [on]~~ the findings of a grievance **that by a preponderance of the evidence, with evidence sufficient to conclude that it is more likely than not, conduct such as the following occurred:**

(a) Noncompliance with licensure requirements; or

(b) Not meeting ethical standards and professional business protocols.

~~[(10)]~~ ~~[(11)]~~ All records of grievances filed and the proceedings shall be kept at the KCDHH offices in accordance with the Open Records and Open Meetings Law.

VIRGINIA L. MOORE, KCDHH Executive Director

APPROVED BY AGENCY: April 10, 2018

FILED WITH LRC: April 11, 2018 at 4 p.m.

CONTACT PERSON: Virginia L. Moore, Executive Director, email virginia.moore@ky.gov, 632 Versailles Road, Frankfort, Kentucky 40601, phone (502) 573-2604 v/t, fax (502) 573-3594, or VP (502) 416-0607.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(As Amended at ARRS, June 12, 2018)

906 KAR 1:200. Use of Civil Money Penalty Funds Collected from Certified Long-term Care Facilities.

RELATES TO: KRS 194A.050(1), ~~42 C.F.R. 488.433];~~ 209.005]

STATUTORY AUTHORITY: KRS 194A.050(1), 42 U.S.C. 1395i-3(h)(2)(B)(ii)(IV)(ff), 42 U.S.C. 1396r(h)(3)(C)(ii)(IV)(ff)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C. 1395i-3(h)(2)(B)(ii)(IV)(ff) and 42 U.S.C. 1396r(h)(3)(C)(ii)(IV)(ff) pertain to the collection and use of civil money penalties (CMP) imposed by the Centers for Medicare and Medicaid Services (CMS) on certified long-term care facilities (serving Medicare and Medicaid beneficiaries) ~~that [which]~~ do not comply with applicable federal health and safety laws and regulations. Except for temporary use in the case of sudden nursing facility relocations, natural disasters, or similar emergencies, states are required to obtain prior approval from CMS for any new project, new grantee, or new use of federally imposed CMP funds ~~[- and any state approved use of project that is currently in effect for a period that will endure more than thirty-six (36) months after December 31, 2014].~~ Upon approval by CMS, states may direct collected CMP funds to a variety of organizations if the funds are used in accordance with 42 U.S.C. 1395i-3(h)(2)(B)(ii)(IV)(ff) and 42 U.S.C. 1396r(h)(3)(C)(ii)(IV)(ff). This administrative regulation establishes a competitive grant program to provide funding to organizations which offer programs or services approved by CMS for the use of CMP funds, thereby establishing the CMP Fund Grant Program.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Health and Family Services.

(2) "CMP" means civil money penalties imposed by CMS on certified long-term care facilities (serving Medicare and Medicaid beneficiaries) ~~that [which]~~ do not comply with applicable federal health and safety laws and regulations. ~~[-]~~

(3) "CMS" means the Centers for Medicare and Medicaid Services.

(4) ~~["EAC" means the Elder Abuse Committee created by KRS 209.005.~~

(5) ~~["Funding" means a grant from collected CMP funds distributed by the cabinet upon approval by CMS.~~

Section 2. Funding Opportunities. Collected CMP funds may be used to support activities ~~that [which]~~ benefit Kentucky's residents of certified long-term care facilities, including:

(1) Assistance to support and protect residents of a certified long-term care facility that closes (voluntarily or involuntarily) or is decertified, and may include offsetting the costs of relocating residents to a home and community-based setting or another facility;

(2) Projects that support resident and family councils;

(3) Consumer involvement activities which assure quality care in long-term care facilities; or

(4) Facility improvement initiatives approved by CMS, which

may include:

- (a) Joint training of facility staff and the cabinet's long-term care facility surveyors;
- (b) Technical assistance for facilities implementing quality assurance programs; or
- (c) The appointment of temporary management firms.

Section 3. Prohibited Uses of CMP Funds. CMP funds shall not be approved:

- (1) For a project ~~in[for]~~ which a conflict of interest exists or the appearance of a conflict of interest exists;
- (2) If the applicant is currently paid by a federal or state source to perform the same function as the proposed CMP project or use;
- (3) For capital improvements to a long-term care facility, or to build a long-term care facility;
- (4) To pay for services or supplies that are the responsibility of the long-term care facility, including laundry, linen, food, heat, or staffing costs;
- (5) To pay the salaries of temporary managers who are actively managing a long-term care facility; or
- (6) To recruit or provide Long-Term Care Ombudsman certification training for staff or volunteers, or investigate and work to resolve complaints.

Section 4. Applicants. (1) An entity that applies for and receives funding shall be qualified and capable of carrying out the intended project or use described in the State Request for Approval of Use of Civil Money Penalty Funds for Certified Nursing Homes.

- (2) Entities that may qualify for funding include:
 - (a) Consumer advocacy organizations;
 - (b) Resident or family councils;
 - (c) Professional or state long-term care facility organizations;
 - (d) State Long-term Care Ombudsman programs;
 - (e) Quality improvement organizations;
 - (f) Private contractors;
 - (g) Academic or research institutions;
 - (h) Certified long-term care facilities;
 - (i) State, local, or tribal governments; or
 - (j) Profit or not-for-profit organizations.

Section 5. Application Process. To apply for funding, an applicant shall:

- (1) Download a copy of the application titled State Request for Approval of Use of Civil Money Penalty Funds for Certified Nursing Homes from the cabinet's Web site at <https://chfs.ky.gov/agencies/os/oig/dhc/Pages/cmp-funds.aspx> [~~http://chfs.ky.gov/os/oig/cmpfunds.htm~~]; and
- (2) Complete and email the application to the cabinet at the following Web address: CMPAPPLICATION_OIG@KY.GOV.

Section 6. Review of Applications. (1) Upon receipt of an application, the cabinet shall:

- (a) review the application and determine if the application meets the criteria for use of collected CMP funds pursuant to:
 - ~~(a)[1-]~~ Sections 2 through 4 of this administrative regulation; and
 - ~~(b)[2-]~~ The application's instructions.
 - ~~(2) [1-]~~ Present each application that meets the criteria for use of collected CMP funds at the next scheduled EAC meeting following receipt of the application;
 - ~~(c)~~ Advise the EAC of each application not approved for review by the EAC due to the receipt of an:
 - ~~1- Incomplete application; or~~
 - ~~2- Application that does not meet the criteria for use of collected CMP funds; and~~
 - ~~(d)~~ Notify each applicant electronically if an application is not approved for review by the EAC, including the reason the application was not approved.
- (2) The EAC shall:
- ~~(a)~~ Review each application presented by the cabinet based on the criteria for use of collected funds; and

~~(b)~~ Make a recommendation to the cabinet secretary regarding the ability of the applicant's proposal to:

- ~~1- Improve resident outcomes; and~~
- ~~2- Advance the care and services provided in certified long-term care facilities.~~

~~(3)~~ Upon ~~consideration of the recommendation made by the EAC and~~ review of the application based on the criteria for use of collected CMP funds in 42 C.F.R. 488.433, the Office of Inspector General ~~[cabinet secretary]~~ shall forward the application to CMS, including an initial determination on the ability of the project to improve resident outcomes and advance the care and services provided in certified long-term care facilities ~~[the secretary's recommended award decision]~~.

Section 7. Reporting. If an application is approved by CMS, the organization or entity from which the application originated shall:

- (1) Submit a quarterly report on the status of the project to the CMS regional office and the cabinet;
- (2) Submit a follow-up report within five (5) calendar days of conclusion of the funded project to the CMS regional office and the cabinet; and
- (3) Submit a final report monitoring the success of the project within six (6) months of conclusion of the funded project to the CMS regional office and the cabinet.

Section 8. Denials. An application that is denied shall:

- (1) Be accompanied by an explanation; and
- (2) Not be subject to an appeal.

Section 9. Incorporation by Reference. (1) The Centers for Medicare and Medicaid Services, Region IV Atlanta, "State Request for Approval of Use of Civil Money Penalty Funds for Certified Nursing Homes", May 2013, is incorporated by reference.

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

STEVEN D. DAVIS, Inspector General

SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: April 11, 2018

FILED WITH LRC: April 12, 2018 at 1 p.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(As Amended at ARRS, June 12, 2018)

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, 314.011(5), 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

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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[2:440], 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 2:440], 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 by/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 by/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, based on recommendation from a nationally recognized source.

(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 established[described] in this administrative regulation shall be maintained during all hours of operation that child care is provided.

(2) For an operating child-care center, minimum staff-to-child ratios and group size for an operating child-care center shall be maintained as established in the table established in this subsection. 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> [<u>Preschool-age 2 to 3 years</u>]	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 thirty (30) months[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:

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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 states/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 his or her[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 as established[described] in Section 2(4) of this administrative regulation.

(2) Activity areas, equipment, and materials shall be arranged so that the child's activity is adequately supervised[can be given adequate supervision] by staff.

(3) Computer equipment shall be equipped with a monitoring device that[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 his or her[their] developmental skills; and

(b) Except as established in paragraph (c) of this subsection, 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) Except as established in paragraph (d) of this subsection, 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

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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 could[~~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~~

~~(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[and 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 comply with requirements[meet the specifications] of the Energy and Environment Cabinet[for Environmental and Public Protection] Division of Water[;] established in KRS Chapter 151 and 401 KAR Chapter 8, as applicable; 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.

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(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 while/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;~~

~~(e)]~~ 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]:

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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 could[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:

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) For epinephrine, in accordance with KRS 199.8951 and 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 and 311.646, 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 while[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;

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(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

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- (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 the child is 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:
 - 1. ~~Scrubbing in warm, soapy water using a brush to reach into crevices;~~
 - 2. ~~Rinsing in clean water;~~
 - 3. ~~Submerging in a sanitizing solution for at least two (2) minutes; and~~
 - 4. ~~Air dried; or~~
 - 5. 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 while[~~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 established[~~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 comply with the requirements established in paragraphs (a) through (d) of this subsection[~~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.

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(14) A vehicle transporting a child shall have the headlamps on.

(15) If a vehicle needs to be refueled, it shall be refueled only while[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 that[which] has not been suspended or revoked during the last five (5) years; and
(d) Not caused an accident that[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 that[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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(As Amended at ARRS, June 12, 2018)

922 KAR 2:180. Requirements for registered child care providers in the Child Care Assistance Program.

RELATES TO: KRS 17.165, 17.545(2), 17.990[47.165, 47.500-47.580,] 189.125, 199.011(3)[(2)], (4), 199.462, 199.892 - 199.896[199.894(1), 199.896(16), (18)], 199.898, 199.8982, 199.8994, 214.010, 314.011(5),[KRS] 527.070(1), 620.020(8), 620.030, 45 C.F.R. 98,[601-619, 9858,] 20 U.S.C. 6081-6084, 42 U.S.C. 601-619, 9857-9858g

STATUTORY AUTHORITY: KRS 194A.050(1), 199.8994(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[under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth]. KRS 199.8994(6) requires the cabinet to promulgate administrative regulations to establish minimum health and safety standards, limitations on the maximum number of children in care, training requirements for a child care provider that receives a child care subsidy administered by the cabinet, and criteria for the denial of subsidies if criminal records indicate convictions that impact the safety and security of children in care. This administrative regulation establishes requirements for providers to participate in the Child Care Assistance Program and the application procedures.

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) "Cabinet" is defined by KRS 199.011(3) and 199.894(1)[(2)].

(2)[(3)] "Child" is defined by KRS 199.011(4).

(3)[(4)] "Closed" means the provider is no longer a registered program provider.

(4)[(5)] "Conditional approval" means time-limited approval while completing required training.

(5)[(6)] "Corporal physical discipline" is defined by KRS 199.896(18).

(6)[(7)] "Denied" means the application for program registration is not approved and the applicant will be penalized.

(7)[(8)] "Developmentally appropriate" means suitable for the specific age range and abilities of a child.

(8)[(9)] "Health professional" means a person actively licensed in Kentucky as a:

- (a) Physician;
(b) Physician[Physician's] assistant;
(c) Advanced practice registered nurse[practitioner]; or
(d) Registered nurse as defined by[in] KRS 314.011(5) under the supervision of a physician or advanced practice registered nurse.

(9)[(10)] "Related" means having one (1) of the following relationships with the registered provider:

- (a) Child;
(b) Grandchild;
(c) Niece;

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- (d) Nephew;
 - (e) Sibling;
 - (f) Step-child;
 - (g) Child in legal custody of the provider; or
 - (h) Child living with the provider acting in loco parentis.
- (14) "Parent" is defined by 45 C.F.R. 98.2.

(10)[(12)] "Pediatric abusive head trauma" is defined by [in] KRS 620.020(8).

(11) "Related" means having one (1) of the following relationships with the registered provider:

- (a) Child;
- (b) Grandchild;
- (c) Niece;
- (d) Nephew;
- (e) Sibling;
- (f) Step-child;
- (g) Child in legal custody of the provider; or
- (h) Child living with the provider acting in loco parentis.

(12)[(13)] "Revoked" means the provider is no longer a registered provider and the provider will be penalized.

(13)[(14)] "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.

(15) "Withdrawn" means the application for program registration is removed from consideration without a penalty.

Section 2. Application Rights and Requirements for Child Care Provider Registration. (1) An individual shall notify the cabinet or its designee of the individual's intent to apply for child care provider registration:

- (a) Directly by:
 - 1. Telephone; or
 - 2. Written statement; or

(b) Indirectly by being designated as the choice for providing unregulated child care by an applicant for benefits under the Child Care Assistance Program (CCAP) in accordance with 922 KAR 2:160.

(2) An individual may apply or reapply for child care provider registration on the same day that the notice of intent to apply in accordance with subsection (1) of this section is made with the cabinet or its designee.

(3) An individual who intends and requests to apply for registration as a child care provider shall not be required to appear in person to complete an application and supporting documentation in accordance with subsections (4) and (5) of this section, but may receive all necessary forms and instructions by mail.

(4) To apply for child care provider registration in CCAP, an individual shall, within thirty (30) calendar days of giving notice of intent to apply pursuant to subsection (1) of this section:

- (a) Submit:
 - 1.a. A completed DCC-95, Application for Registered Child Care Provider in Provider's Home; or
 - b. A completed DCC-96, Application for Registered Child Care Provider in Child's Home;
- 2. Written verification from a health professional that the individual is:
 - a. Free of active tuberculosis; and
 - b. In good general health and able to care for children;
- 3. A completed DCC-94A, Registered Child Care Provider Information Form;
- 4. A completed IRS W-9, Request for Taxpayer Identification Number and Certification; and
- 5. 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 that includes:

- a. A designated relocation site;
- b. Evacuation routes;
- c. Measures for notifying parents of the relocation site and ensuring a child's return to the child's parent; and
- d. Actions to address the needs of an individual child to include a child with a special need. The cabinet shall post an online template of an evacuation plan that fulfills requirements of this

administrative regulation for an individual's free and optional use;

- (b) Show proof by photo identification or birth certificate that the individual is eighteen (18) years or older;
- (c) Show verification of Social Security number; and
- (d) Submit to background checks in accordance with 922 KAR 2:280~~Meet the requirements of KRS 17.165(5), as shown by providing:~~

~~1. A criminal records check conducted by the Kentucky State Police or the Administrative Office of the Courts within the previous twelve (12) months on the individual;~~

~~2. A child abuse and neglect check using the central registry in accordance with 922 KAR 1:470 on the individual;~~

~~3. 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; and~~

~~4. An address check of the Sex Offender Registry].~~

(5)(a) An applicant may receive conditional approval in accordance with Section 4(2) of this administrative regulation.

(b) Within ninety (90) calendar days of giving notice of intent to apply for registration as a child care provider in CCAP pursuant to subsection (1) of this section, the applicant shall provide verification that the applicant has obtained six (6) hours of training approved by the cabinet or its designee, in the areas of:

- 1. Health, safety, and sanitation;
- 2. Recognition of child abuse and neglect, which may include cabinet-approved pediatric abusive head trauma training in accordance with KRS 199.896(16); and
- 3. Developmentally appropriate child care practice.

(c) An applicant who fails to complete training in accordance with paragraph (b) of this subsection shall be subject to cabinet action in accordance with Section 4(4) of this administrative regulation.

Section 3. Additional Requirements for Registered Providers in Provider's Home. (1) If a registered child care provider provides child care services in the provider's home, [-(a)] the provider shall:

~~(a)[4-] Submit written verification from a health professional that each member of the provider's household age eighteen (18) or older is free from tuberculosis; [and]~~

~~(b)[2-] Provide written verification that each member of the provider's household who is age eighteen (18) or older has submitted to background checks in accordance with 922 KAR 2:280; and~~

~~(c) Complete and sign the DCC-107A, Registered Provider Home Safety Checklist, with a cabinet representative [meets the requirements in KRS 17.165 by the member's provision of the following to the cabinet or its designee:~~

~~a. Criminal records check conducted by the Kentucky State Police or the Administrative Office of the Courts;~~

~~b. Criminal records check for any previous state of residence completed once if:~~

~~(i) The household member resided outside the state of Kentucky in the last five (5) years; and~~

~~(ii) No criminal records check has been completed for the household member's previous state of residence; and~~

~~c. Child abuse and neglect check using the central registry in accordance with 922 KAR 1:470.~~

~~(b) An address check of the Sex Offender Registry and supporting documentation shall confirm that no individual residing in the provider's household is a registered sex offender].~~

(2) A registered child care provider shall certify that the provider's home and each play area used for child care are safe and have adequate:

- (a) Heat;
- (b) Light; and
- (c) Ventilation.

(3) Each floor of a registered child care provider's home 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.
- (4) A registered child care provider's home and areas accessible to children in care shall be free of hazards, and the following items shall be inaccessible to a child in care:
 - (a) Cleaning supplies, poisons, paints, and insecticides;
 - (b) Knives, scissors, and other sharp objects;
 - (c) Power tools, lawn mowers, hand tools, nails, and other similar[like] equipment;
 - (d) Matches, cigarettes, vaping devices, lighters, combustibles, and flammable liquids;
 - (e) Alcoholic beverages; and
 - (f) Medications.
- (5) In accordance with KRS 527.070(1), firearms and ammunition shall be stored and locked in locations separate from each other and inaccessible to a child in care.
- (6) Electrical outlets not in use shall be covered.
- (7) An electric fan, floor furnace, freestanding heater, wood burning stove, 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 registered child care provider shall use protective gates to block all stairways if a child in care is under age three (3).
- (9) Stairs and steps shall:
 - (a) Be in good repair; and
 - (b) Include railing of comparable length to the stairs or steps.
- (10) A registered child care provider's home shall have:
 - (a) At least one (1) working telephone with a residential line or an active mobile service; and
 - (b) An accessible list of emergency telephone numbers, including the numbers for the:
 1. Police;
 2. Fire station;
 3. Emergency medical care;
 4. Poison control center; and
 5. Reporting of child abuse and neglect.
- (11) A registered child care provider's home shall have a:
 - (a) Refrigerator in working order that maintains a temperature of forty-five (45) degrees Fahrenheit or below; and
 - (b) Freezer that maintains a temperature of zero degrees Fahrenheit.
- (12) A registered child care provider shall maintain first aid supplies that include:
 - (a) Liquid soap;
 - (b) Band aids;
 - (c) Sterile gauze; and
 - (d) Adhesive tape.
- (13) A registered child care provider shall wash hands with liquid soap and running water:
 - (a) Before and after diapering a child;
 - (b) Before and after food preparation;
 - (c) Before feeding a child;[and]
 - (d) After smoking or vaping; and
 - (e) At other times as[when] necessary to prevent the spread of disease.
- (14) In accordance with KRS 199.896(18), a registered child care provider shall not use corporal physical discipline on a child entrusted to the provider's care.
- (15) Pets or livestock shall be vaccinated and not left alone with a child.
- (16) If transportation is provided by a registered child care provider, the provider shall:
 - (a) Have written permission from a parent or guardian to transport the child;
 - (b) Have a vehicle equipped with seat belts; and
 - (c) Comply with KRS 189.125 regarding child restraint and seating.
- (17)(a) If a registered provider provides child care in the provider's home, the cabinet or its designee shall complete an initial or an annual home inspection of the registered child care provider in accordance with 42 U.S.C. 9858c(c)(2)(K)(i)(IV) and

this administrative regulation.

(b) If the cabinet or its designee finds **that** the registered provider is noncompliant with **Sections[Section] 2(4), 5, 6, or 7(2) of this administrative regulation** or this section, the registered provider shall submit a written corrective action plan to the cabinet or its designee within ten (10) calendar days from the cabinet's statement of noncompliance.

(c) A corrective action plan shall include:

1. Specific action undertaken to correct a violation;
2. The date action was or shall be completed;
3. Action utilized to assure ongoing compliance;
4. Supplemental documentation requested as a part of the plan; and
5. Signature of the provider and the date of signature.

(d) The cabinet or its designee shall review the plan and notify a registered provider within thirty (30) calendar days from receipt of a plan, in writing, of the decision to:

1. Accept the plan;
2. Not accept the plan; or
3. Take negative action in accordance with Section 8 of this administrative regulation.

(e) A notice of unacceptability shall state the specific reasons a plan was not accepted.

(f) A registered provider notified of an unaccepted plan shall:

1. Submit an amended plan within ten (10) calendar days of notification; or
2. Be subject to negative action in accordance with Section 8 of this administrative regulation.

(g) If a registered provider fails to submit an acceptable corrective action plan or does not implement corrective measures in accordance with the corrective action plan, the cabinet shall take negative action in accordance with Section 8 of this administrative regulation.

(h) The cabinet shall not review or accept more than three (3) corrective action plans from a registered provider in response to the same written statement of deficiency.

(18) A registered provider's voluntary closure shall not preclude the cabinet's pursuit of negative action.

Section 4. Actions on Applications. (1) The cabinet or its designee shall approve, deny, or withdraw an individual's application for registration within thirty (30) calendar days from receipt of the individual's notice of intent to apply made in accordance with Section 2(1) of this administrative regulation.

(2) The cabinet or its designee may conditionally approve an individual who made a notice and application pursuant to Section 2(1) and (4) of this administrative regulation, to provide child care services to a child for ninety (90) calendar days, if the applicant **complies with[meets the requirements of]**

(a) Sections 2(4), 5, and 6 of this administrative regulation;[and]

(b) Section 3 of this administrative regulation, if child care is given in the home of the provider; and

(c) 922 KAR 2:280.

(3) The cabinet or its designee shall approve an individual who made a notice and application pursuant to Section 2(1) and (4) of this administrative regulation as a registered child care provider for one (1) year, if the applicant **complies with[meets the requirements specified in]**

(a) Sections 2(4) through (5), 5, and 6 of this administrative regulation;[and]

(b) Section 3 of this administrative regulation if child care is given in the home of the provider; and

(c) 922 KAR 2:280 for:

1. The applicant; and

2. Any member of the applicant's household who is age eighteen (18) or older if child care is given in the home of the provider.

(4) If a conditionally approved provider, as specified in subsection (2) of this section, has not completed the training requirement[within the ninety (90) day timeframe] pursuant to Section 2(5) of this administrative regulation, or if a background check has not been completed in accordance with 922 KAR 2:280,

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the cabinet or its designee shall:

(a) Not approve an applicant for payment pursuant to 922 KAR 2:160 past the ninety (90) days of conditional approval; and

(b) Deny another:

1. Period of conditional approval for the same applicant; or
2. Application from the same applicant unless:

a. Training has been completed in accordance with Section 2(5) of this administrative regulation; and

b. Background checks have been completed in accordance with 922 KAR 2:280.

(5) The cabinet may confirm training verification provided by an applicant, conditionally approved applicant, or registered child care provider through the cabinet-approved training database maintained in accordance with 922 KAR 2:240.

Section 5. General Requirements for Registered Child Care Providers. (1) A registered child care provider shall not:

(a) Live in the same residence as the child in care;

(b) Hold a license to provide child care in accordance with 922 KAR 2:090;

(c) Hold certification to provide child care in accordance with 922 KAR 2:100; or

(d) Provide care for more than three (3) children unrelated to the provider in accordance with KRS 199.8982(1)(a).

(2) A registered child care provider shall not provide other home based services, including services, such as:

(a) A personal care home in accordance with 902 KAR 20:036;

(b) A family care home in accordance with 902 KAR 20:041;

(c) An adult day care in accordance with 910 KAR 1:160; or

(d) Supports for community living in accordance with 907 KAR 1:145 or 907 KAR 12:010.

(3) A registered child care provider shall:

(a) Comply with the:

1. Provisions of KRS 199.898; and

2. Provider requirements in accordance with 922 KAR 2:160, Section 13;

(b) Allow the cabinet, the cabinet's designee, another agency with regulatory authority, and a parent of a child in care access to the premises where a child receives care during the hours that the child care services are provided; and

(c) Report within ten (10) calendar days any change to the provider's:

1. Address;

2. Name;

3. Telephone number;

4. Household members; or

5. Location where the child care is provided.

(4)(a) A registered child care provider who gives care in the provider's home shall comply with the requirements of Section 3(1) of this administrative regulation within thirty (30)~~ten (10)~~ calendar days for a:

1.~~[(a)]~~ New household member who is eighteen (18) years or older; or

2.~~[(b)]~~ Household member who turns age eighteen (18).

(b) If a background check in accordance with Section 3(1) and 922 KAR 2:280 is pending on a member of the registered provider's household who is eighteen (18) years or older, the registered child care provider who gives care in the provider's home shall prohibit unsupervised contact between the household member and a child in care.

(5)(a) A registered child care provider shall maintain an attendance sheet in which the daily arrival and departure times of each child are recorded in accordance with 922 KAR 2:160, Section 13.

(b) A registered child care provider shall retain attendance sheets completed in accordance with paragraph (a) of this subsection for five (5) years.

(6)(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.

(7) While providing child care services, a registered provider

and another person in the provider's 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 a child in care.

(8) A registered child care provider shall report to the cabinet or designee:

(a) 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 registered child care provider that:

a. Affects:

(i) A child in care;

(ii) The registered child care provider; or

(iii) An adult residing in the registered child care provider's household if child care services are provided in the provider's home; or

b. Includes the provider's discontinuation or disqualification from a governmental assistance program due to fraud,~~or~~ abuse, or criminal conviction related to~~or~~ that program;

4. An incident involving a fire or other emergency, including a vehicular accident while~~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:

(i) The registered child care provider as the alleged perpetrator; or

(ii) A member of the registered child care provider's household as alleged perpetrator if child care services are provided in the provider's home; or

6.a. The registered child care provider is disqualified in accordance with 922 KAR 2:280; or

b. If child care is given in the provider's home, a member of the registered provider's household who is eighteen (18) years or older meets a disqualifying criterion or background check result in accordance with 922 KAR 2:280;

(b) An incident of child abuse or neglect pursuant to KRS 620.030;

(c) The death of a child in care within one (1) hour; or

(d) The provider's temporary or permanent closure as soon as practicable, which shall also be given to the parent of a child in care.

Section 6. Child Ratios. During hours of operation, a registered child care provider shall not care for more than:

(1) Three (3) children receiving CCAP per day;

(2) Six (6) children receiving CCAP per day, if those children are:

(a) A part of a sibling group; and

(b) Related to the provider; or

(3) A total of eight (8) children inclusive of the provider's own children.

Section 7. Renewal of Registration. (1) The cabinet or its designee shall send a reminder notice to a registered child care provider at least forty-five (45) calendar days prior to the expiration date of the provider's registration issued in accordance with Section 4(3) of this administrative regulation.

(2) To renew child care provider registration prior to the expiration of the registration, a registered child care provider shall:

(a) Meet the requirements specified in:

1. Sections 2(4), 5, and 6 of this administrative regulation; and

2. 922 KAR 2:280;

(b) Complete, and provide verification of, three (3) hours of training in early care and education approved by the cabinet or its designee:

1. To include one and one-half (1 1/2) hours of pediatric abusive head trauma training:

a. Within first year of employment or operation as a child care

provider; and

b. Completed once during each subsequent five (5) years of employment or operation as a child care provider; and

2. In one (1) or more of the following subjects:

- a. Child growth and development;
- b. Learning environments and nutrition;
- c. Health, safety, and nutrition;
- d. Family and community partnerships;
- e. Child assessment;
- f. Professional development and professionalism; or
- g. Program management and evaluation;

(c) Submit an updated version of the evacuation plan ~~established~~described in Section 2(4)(a)5 of this administrative regulation;

(d) Retain a copy of the updated evacuation plan; and

(e) Provide a copy of the updated evacuation plan to each parent of a child in care.

(3) In addition to the requirements of subsection (2) of this section, a registered provider who gives care in the provider's home shall also comply with~~meet~~ the requirements of Section 3 of this administrative regulation.

Section 8. Negative Action for An Applicant or A Registered Child Care Provider. (1) If a registered child care provider or a member of the 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.

(2) The cabinet or its designee shall send written notice of negative action to:

(a) An applicant for registration, if the application is:

1. Withdrawn; or
2. Denied; or

(b) A registered child care provider, if the provider's registration is:

1. Closed; or
2. Revoked.

(3) The notice of negative action shall include the:

- (a) Reason for the negative action; and
- (b) Effective date.

(4) An application for registration shall be denied or a registered provider's registration shall be revoked if:

(a) Written verification from a health professional confirms a diagnosis of tuberculosis;

(b) A disqualifying criterion or background check result in accordance with 922 KAR 2:280 is met~~[A background check pursuant to KRS 17.165(5) reveals a:~~

1. ~~Substantiated incident of child abuse or neglect in accordance with 922 KAR 1:470; or~~

2. ~~Conviction of, or an Alford or guilty plea to, a:~~

- a. ~~Violent crime; or~~
- b. ~~Sex crime];~~

(c) A history of behavior exists that may impact the safety or security of a child in care including:

1. A conviction, an Alford plea, or a guilty plea related to the abuse or neglect of an adult; or

2. ~~[A conviction for, or an Alford or guilty plea to, a drug-related felony unless five (5) years have elapsed since the person was fully discharged from imprisonment, probation, or parole;~~

3. ~~A confirmation through an address check and supporting documentation that a:~~

- a. ~~Provider is a registered sex offender; or~~
- b. ~~Member of the provider's household is a registered sex offender, if the provider provides child care services in the provider's home; or~~

4. ~~Other behavior or condition indicating inability to provide reliable care to a child;~~

(d) The provider uses or allows the use of any form of corporal

physical discipline on a child entrusted to the provider's care;

(e) The cabinet has probable cause to believe there is an immediate threat to the health, safety, or welfare of a child;

(f) The applicant or provider has been discontinued or disqualified from participation in:

1. CCAP, 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~~[of]~~ that program;

(g) The applicant or provider knowingly misrepresents or submits false information on a form required by the cabinet; or

(h) During the hours that child care services are provided, the provider refuses 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 location of the child care; or

2. The cabinet, the cabinet's designee, or another agency with regulatory authority to the provider's records.

(5) If an applicant has had a previous ownership interest in a child-care provider that~~which~~ had a prior certification, license, registration, or permit to operate denied, suspended, revoked, or voluntarily relinquished as a result of an investigation or a pending adverse action in accordance with 922 KAR 2:090, 2:100,~~[2:140,]~~ 2:120, or this administrative regulation, the cabinet shall grant the applicant registration 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, registration, or permit was voluntarily relinquished as a result of an investigation or a pending adverse action;
3. Last day of legal remedies being exhausted; or
4. Date of the final order from an administrative hearing; and

(b) The applicant complies with:

1. Sections 2, 5, and 6 of this administrative regulation; ~~and~~
2. If care is given in the home of the provider, Section 3 of this administrative regulation; and
3. 922 KAR 2:280;

(c) The applicant completes, and provides verification of, an additional twelve (12) hours of training approved by the cabinet or its designee in early care and education;

(d) The applicant has not had an application, certificate, license, registration, or permit to operate as a child care provider denied, revoked, or voluntarily relinquished for:

1. A disqualifying criterion or background check result in accordance with 922 KAR 2:280~~[Conviction of, or an Alford or guilty plea to, a sex crime or violent crime in accordance with KRS 17.165]; or~~

2. ~~[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;~~

3. ~~Placement on the Sex Offender Registry;~~

4. ~~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~~

5. ~~Discontinuance or disqualification from participation in:~~

a. CCAP, including an intentional program violation in accordance with 922 KAR 2:020; or

b. Another governmental assistance program due to fraud,~~[or]~~ abuse, or criminal conviction related to~~[of]~~ that program.

(6) An application may be withdrawn:

(a) If all required documentation for the application process is not received within thirty (30) calendar days in accordance with Section 2(4) of this administrative regulation; or

(b) At the request of the applicant.

(7) A registered child care provider's status may be closed:

- (a) At the request of the provider; or
- (b) If the provider fails to comply with requirements in Section 3, 5, 6, or 7(2) of this administrative regulation.

(8) The voluntary withdrawal, closure, or relinquishment of a provider's registration shall not preclude the cabinet's pursuit of adverse action.

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Section 9. Appeal of Negative Action. If the cabinet or its designee denies or withdraws an application for registration, revokes a provider's registration, or closes a provider, the applicant or provider may request an appeal in accordance with 922 KAR 2:260[4:320].

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

- (a) "DCC-94A, Registered Child Care Provider Information Form", 2018[~~edition 7/12~~];
- (b) "DCC-95, Application for Registered Child Care Provider in Provider's Home", 2018[~~edition 7/12~~];
- (c) "DCC-96, Application for Registered Child Care Provider in Child's Home", 2018[~~edition 7/12~~]; [and]
- (d) "DCC-107A, Registered Provider Home Safety Checklist", 2018; and
- (e) "IRS W-9, Request for Taxpayer Identification Number and Certification", December 2014[~~edition 10/07~~].

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

ADRIA JOHNSON, Commissioner
SCOTT W. BRINKMAN, Acting Secretary
APPROVED BY AGENCY: February 12, 2018
FILED WITH LRC: February 14, 2018 at 10 a.m.
CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(As Amended at ARRS, June 12, 2018)

922 KAR 2:190. Civil penalties.

RELATES TO: KRS Chapter 13B, 194A.030, 199.011(3), 199.894(1), (3), 199.896, 199.990, 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 for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other states and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the secretary to promulgate administrative regulations to establish procedures for enforcement of penalties. This administrative regulation establishes the cabinet procedures for a civil penalty and appeal resulting from a child-care center's violation.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(3) and 199.894(1).

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

(3) "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.

(4) "Office of Inspector General" or "OIG" means the organizational unit of the cabinet established in accordance with

KRS 194A.030(1)(c) or its designee.

(5) "Statement of deficiency" means a finding of a regulatory noncompliance issued in accordance with 922 KAR 2:090, Section 14[9].

Section 2. Types of Violations. The cabinet shall issue a licensee a:

(1) Type A violation if:

(a) A child-care center violates a standard or a requirement specified in KRS 199.896, KRS 199.990(4), 922 KAR 2:090, [922 KAR 2:110, ~~or~~] 922 KAR 2:120, ~~or~~ 922 KAR 2:280; and

(b) The violation creates harm, an imminent threat, or an imminent danger to the health, safety, or welfare of a child in the center's care, such as the center:

1. Failing to:

a. Provide for the health, safety, or welfare of a child in care that results in injury to the child, the child's hospitalization, or death of the child;

b. Complete a ~~background~~[~~criminal records check and a child abuse and neglect~~] check required in accordance with 922 KAR 2:280[~~2:280~~];

~~(i) 922 KAR 2:090, Section 6; or~~

~~(ii) 922 KAR 2:110, Section 5;~~

c. Remove a person with a ~~disqualifying offense~~[~~substantiation of child abuse or neglect~~] from contact with a child in care in accordance with 922 KAR 2:280[~~2:280~~];

~~(i) 922 KAR 2:090, Section 6; or~~

~~(ii) 922 KAR 2:110, Section 5;~~

d. Comply with a suspension of services; or

e. Administer discipline in accordance with 922 KAR 2:120, Section 2(8), ~~[or]~~ 2(10), ~~or~~ 9(2);

2. Falsifying records;

3. Operating contrary to approved licensed services; or

4. Changing location without prior approval of the cabinet; ~~or~~.]

(2) Type B violation if:

(a) A child-care center violates a standard or requirement specified in KRS 199.896, KRS 199.990(4), 922 KAR 2:090, [922 KAR 2:110,] or 922 KAR 2:120; and

(b) The violation presents a concern or risk to the health, safety, or welfare of a child in care, but does not create harm, an imminent threat, or an imminent danger to the child, such as the center:

1. Failing to:

a. ~~Complete one (1) of a person's background checks required in accordance with:~~

~~(i) 922 KAR 2:090, Section 6; or~~

~~(ii) 922 KAR 2:110, Section 5;~~

b. Respond to a child's first aid and medical needs in accordance with 922 KAR 2:120, Section 7;

~~b. Have staff currently certified in cardiopulmonary resuscitation and first aid in accordance with 922 KAR 2:090[2:110], Sections 11(3)[5(3)] through 11(5)[5(5)];~~

~~c. Provide adequate supervision in accordance with 922 KAR 2:120, Section 2(3);~~

~~d. Make toxic supplies inaccessible to a child in accordance with 922 KAR 2:120, Section 3(7) or 3(8); or~~

~~e. Maintain sufficient records on a child in accordance with 922 KAR 2:090[2:110], Section 9[3];~~

2. Releasing a child to a person who is not designated by the child's parent to pick up the child;

3. Leaving a child alone with an underage caregiver; or

4. Exceeding the staff-to-child ratios in 922 KAR 2:120, Section 2 by fifty (50) percent or more.

Section 3. Assessment of a Civil Penalty. (1) The cabinet shall assess a civil penalty in accordance with KRS 199.896(8) and KRS 199.990(4).

(2) A statement of deficiency shall be issued prior to, or concurrent with, the notice ~~established~~[described] in Section 4 of this administrative regulation.

(3) A statement of deficiency with a Type A violation shall be:

(a) Corrected within five (5) working days in accordance with 922 KAR 2:090, Section 14(3)[9(3)] and 14(9)[9(8)]; and

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(b) Subject to a civil penalty of no more than ~~\$1,000~~~~[\$1000]~~ for each occurrence of a Type A violation.

(4) A statement of deficiency with a Type B violation shall:

(a) Have a written corrective action plan within ~~fifteen (15)~~~~[ten (10)]~~ days in accordance with 922 KAR 2:090, Section ~~14(2)~~~~[9(2)]~~ and ~~14(3)~~~~[9(3)]~~; and

(b) Be subject to a civil penalty of \$250 for each occurrence of a Type B violation.

(5) In accordance with KRS 199.896(8)(b) ~~through~~~~[-]~~ (d), a licensee shall receive a monetary credit applied towards a civil penalty in the amount of:

(a) Fifty (50) dollars if a review of the licensee's history finds no Type A or Type B violation cited during the three (3) years prior to the date of the statement of deficiency;

(b) Fifty (50) dollars if the written corrective action plan is:

1. Received by the cabinet within the timeframe specified for the violation type pursuant to subsection (3)(a) or (4)(a) of this section; and

2. Accepted by the cabinet; or

(c) Twenty-five (25) percent of the civil penalty if the licensee waives appeal rights ~~established~~~~[described]~~ in Section 5 of this administrative regulation.

(6) Treble penalties shall be assessed pursuant to KRS 199.990(4).

Section 4. Civil Penalty Requirements. Notice that a civil penalty has been levied shall:

(1) Be hand delivered by cabinet staff or delivered by certified mail, return receipt requested, to the:

(a) Licensee; or

(b) Director of the child-care center or the director's designee in accordance with 922 KAR ~~2:090~~~~[2:140]~~; and

(2) Specify:

(a) The violation for which a civil penalty has been levied;

(b) The amount of the civil penalty;

(c) That, in accordance with KRS 199.990(4), the civil penalty shall:

1. Not exceed \$1,000 for each occurrence;

2. Be made payable to the Kentucky State Treasurer; and

3. Be mailed to the Office of Inspector General;

(d) That an appeal of a civil penalty shall not act to stay correction of a violation, pursuant to KRS 199.896(7);

(e) That payment of a civil penalty shall be stayed if an appeal is requested; and

(f) That the cabinet may:

1. Deny, suspend, or revoke a license for the same offense for which a civil penalty is imposed; and

2. Take other action in accordance with KRS 199.896(9).

Section 5. Appeal Rights. (1) A licensee shall have appeal rights in accordance with KRS 199.990(4) and 922 KAR 2:090, Section ~~18~~~~[13]~~.

(2) An appeal shall not limit the authority of the cabinet to:

(a) Issue an emergency order pursuant to KRS 13B.125(2); or

(b) Take action pursuant to KRS 199.896(9).

Section 6. Payment of Civil Penalty. (1) The cabinet shall deny an application for child-care center licensure or revoke a child-care center's license if:

(a) Sixty (60) days have lapsed since the latter of either:

1. The notice in accordance with Section 4 of this administrative regulation; or

2. Completion of the administrative appeal process upholding the civil penalty; and

(b) A licensee fails to:

1. Pay the civil penalty levied against the child-care center;

2. Enter into an arrangement to pay a civil penalty that is approved by the cabinet; or

3. Comply with the payment arrangement for the civil penalty.

(2) The cabinet may approve an amendment to a payment arrangement if:

(a) A request for an amendment is received from the licensee; and

(b) The cabinet makes a determination that the payment arrangement creates a hardship for the licensee or the child-care center's operation with consideration given to:

1. The individual circumstances of the licensee or child-care center; and

2. Factors specified in KRS 199.896(8).

(3) The cabinet may terminate collection of a civil penalty if the:

(a) Licensee dies;

(b) Cabinet is unable to locate the licensee; or

(c) Cabinet's continued pursuit of the civil penalty would exceed the:

1. Amount of civil penalty; or

2. Public benefit.

ADRIA JOHNSON, Commissioner

SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: February 12, 2018

FILED WITH LRC: February 14, 2018 at 10 a.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Child Care

(As Amended at ARRS, June 12, 2018)

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

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

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

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

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

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

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

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

(a) Physical environment;

(b) Basic care;

(c) Curriculum;

(d) Interaction;

- (e) Schedule and program structure; and
- (f) Parent and staff education.
- (5) "Family child-care home" is defined by KRS 199.894(5).
- (6) "Infant" means an age group of children who are less than twelve (12) months of age.
- (7) "Issue date" means the date the quality-rating certificate is issued by the cabinet or its designee.
- (8) "Kentucky All STARS Program" or "STARS" means the quality-based graduated early childhood rating system in accordance with KRS 199.8943.
- (9) "Preschool" means an age group of children who are older than a toddler and younger than school-age.
- (10) "Provider" means the entity providing child care services, including:
 - (a) A Type I child-care center;
 - (b) A Type II child-care center; or
 - (c) A certified family child-care home.
- (11) "Public funds" means local, state, or federal funding.
- (12) "Rating visit" means a visit conducted by the cabinet or its designee using the environment assessment tool to inform a child care provider's quality-rating level.
- (13) "Renewal month" means the month that a child care provider's license or certification is to be renewed with the Office of Inspector General, Division of Regulated Child Care.
- (14) "School-age" means an age group of children who meet the age requirements of KRS 158.030 or who attend kindergarten, elementary, or secondary education.
- (15) "Toddler" means an age group of children who are between the age of twelve (12) months and thirty-six (36) months.
- (16) "Type I child-care center" means a child-care center licensed to regularly provide child care services for:
 - (a) Four (4) or more children in a nonresidential setting; or
 - (b) Thirteen (13) or more children in a residential setting with designated space separate from the primary residence of a licensee.
- (17) "Type II child-care center" means the primary residence of the licensee in which child care is regularly provided for at least seven (7), but not more than twelve (12), children including children related to the licensee.

Section 2. Provider Participation. (1) A provider receiving public funds shall participate in STARS upon preliminary licensure or certification.

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

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

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

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

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

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

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

(2) The cabinet or its designee shall:

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

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

- a. Infant;

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

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

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

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

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

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

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

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

3. A non-transferable quality-rating certificate.

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) A provider in STARS holding a Level 2 quality-rating certificate shall **comply with the requirements established in paragraphs (a) through (d) of this subsection. [meet the following requirements:]**

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

1. At initial application; or
2. During the preceding certification period if the provider is renewing the provider's STARS certificate. **;**

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

(c) The provider or director for the provider **shall complete[has]**:

1. **[Received]** Ten (10) hours of professional learning in curriculum, instructional practices, teaching, or learning:

- a. At initial application; or
- b. During the preceding certification period if the provider is renewing the provider's STARS certificate; or

2. An early childhood credential or degree. **;** **and]**

(d) Fifty (50) percent of teaching staff **shall complete[has]**:

1. **[Received]** Ten (10) hours of professional learning in curriculum, instructional practices, teaching, or learning:

- a. At initial application; or
- b. During the preceding certification period if the provider is renewing the provider's STARS certificate; or

2. An early childhood credential or degree.

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

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

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

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

- a. Family and community engagement;
- b. Staff qualifications and professional development; and
- c. Administrative and leadership practices;

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

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

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

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

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

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

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

- a. Family and community engagement;
- b. Staff qualifications and professional development; and
- c. Administrative and leadership practices;

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

3. A minimum of seventeen (17) points of the provider's choice from any two (2) or more of the domains to the extent the points have not otherwise been taken into consideration in determining if the provider meets the requirements necessary to attain a STARS Level 4 quality-rating certificate; and

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

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

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

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

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

- a. Family and community engagement;
 - b. Staff qualifications and professional development; and
 - c. Administrative and leadership practices;
2. A minimum of eight (8) points in classroom and instructional quality; and

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

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

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

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

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

1. Child-care center has waived the right to appeal a civil penalty; or
2. Civil penalty has been upheld on appeal.

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

- (a) An initial achievement award;
- (b) An annual quality award; or
- (c) A subsidy enrollment award.

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

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

- (a) Name;
- (b) Location;
- (c) License or certification number;
- (d) STARS level;
- (e) STARS certificate's expiration date;
- (f) Award calculation; and
- (g) Award issuance date.

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

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

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

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

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

Type I Child-Care Centers Annual Quality Award	
KY All STARS Level	Amount
2	\$300

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3	\$900
4	\$1,800
5	\$3,000

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

home annually.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Ownership of a participating provider changes.

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

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

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

(5) The cabinet shall:

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

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

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

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

(b) Subject to denial of:

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

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

(c) Pending suspension or revocation action.

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

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

(a) Accept a lower rating level; or

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

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

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

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

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

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

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

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

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

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

ADRIA JOHNSON, Commissioner

SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: April 5, 2018

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

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

ENERGY AND ENVIRONMENT CABINET
Public Service Commission
(Amended After Comments)

807 KAR 5:022. Gas[safety and] service.

RELATES TO: KRS 278.485[; 278.502]
STATUTORY AUTHORITY: KRS 278.040(3), 278.280(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the Public Service Commission[commission] to[may] adopt reasonable administrative regulations to implement the provisions of KRS Chapter 278 and to investigate methods and practices of utilities subject to commission jurisdiction. KRS 278.280(2) requires the commission to[provides that the commission shall] prescribe rules for the performance of any service or the furnishing of any commodity by any utility. This administrative regulation establishes general rules which apply to gas utilities.

Section 1.[General. (1)] Definitions.[As used in this administrative regulation:]

(1)[(a)] "British thermal unit (BTU)" means quantity of heat that is required to[must] be added to one (1) pound of pure water to raise its temperature from fifty-eight and one-half (58.5) degrees Fahrenheit to fifty-nine and one-half (59.5) degrees Fahrenheit at the absolute pressure of a column of pure mercury thirty (30) inches high at thirty-two (32) degrees Fahrenheit under standard gravity (32.174 ft. per sec-sec).

(2)[(b)] "Commission" means the Public Service Commission.

(3)[(c)] "Cubic foot of gas" means the following:

(a)[1.] If gas is supplied and metered to customers at standard distribution pressure, a cubic foot of gas means[shall be defined as] that volume of gas which, at the temperature and pressure existing in the meter, occupies one (1) cubic foot.

(b)[2.] If gas is supplied to customers through turbine, orifice, or positive displacement meters at other than standard distribution pressure, a cubic foot of gas means[shall be defined as] that volume of gas which, at sixty (60) degrees Fahrenheit and at absolute pressure of 14.73 pounds per square inch, (thirty (30) inches of mercury), occupies one (1) cubic foot; except if[that in cases where] different bases that are considered by the commission to be fair and reasonable are provided for in gas sales contracts or in rules or practices of a utility, these[such] different bases shall be effective.

(c)[3.] The standard cubic foot of gas for testing the gas itself for heating value means the[shall be that] volume of gas that occupies one (1) cubic foot if:

1. Saturated[which, when saturated] with water vapor and at temperature of sixty (60) degrees Fahrenheit; and

2. Under[, and under] pressure equivalent to that of thirty (30) inches of mercury (mercury at thirty-two (32) degrees Fahrenheit and under standard gravity) occupies one (1) cubic foot.[(d)] "Customer piping" means all approved equipment and material required for natural gas service downstream from the property line except for the service tap including saddle (tapping tee) and first service valve and meter (service regulator where required).

(e) "Distribution line" means a pipeline other than a gathering or transmission line.

(f) "Gathering line" means a pipeline that transports gas from a current production facility to a transmission line or main.

(g) "High pressure distribution system" means a distribution system in which gas pressure in the main is higher than pressure provided to the customer.

(h) "Listed specification" means a specification listed in Section 4 of Appendix B of this administrative regulation.

(i) "Low pressure distribution system" means a distribution system in which gas pressure in the main is substantially the same as pressure provided to the customer.

(j) "Main" means a distribution line that serves as a common source of supply for more than one (1) service line.

(k) "Maximum actual operating pressure" means the maximum pressure that occurs during normal operations over a period of one (1) year.

(l) "Maximum allowable operating pressure (MAOP)" means the maximum pressure at which a pipeline or segment of a pipeline may be operated under this administrative regulation.]

(4)[(m)] "Meter" means any device used to measure the quantity of gas delivered by utility to a customer.[(n)] "Operator" means a utility as defined in KRS 278.040.

(e) "Pipe" means any pipe or tubing used in transportation of gas, including pipe-type holders.

(p) "Pipeline" means all parts of those physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenances attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.

(q) "Pipeline facility" means new and existing pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation.

(r) "Pressure, absolute" means total gas pressure, which is the sum of barometric pressure plus line gas pressure (gauge), abbreviated as psia.

(s) "Pressure, gauge" means pounds per square inch above atmospheric pressure, abbreviated as psig.

(t) "Secretary" means the Secretary of the U.S. Department of Transportation or any person to whom he has delegated authority.]

(5)[(u)] "Service line" means a distribution line that:

(a) Transports gas from a common source of supply to:

1. An individual customer;

2. Two (2) adjacent or adjoining residential or small commercial customers; or

3. Multiple residential or small commercial customers served through a meter header or manifold; and

(b) Ends at the:

1. Outlet of the customer meter or connection to a customer's piping, whichever is farther downstream; or

2. Connection to a customer's piping if there is no customer meter.[transports gas from a common source of supply to: customer meter or connection to a customer's piping, whichever is farther downstream; or connection to a customer's piping if there is no customer meter.

(v) "SMYS" means specified minimum yield strength and is defined as:

1. For steel pipe manufactured in accordance with a listed specification, the yield strength specified as a minimum in that specification; or

2. For steel pipe manufactured in accordance with an unknown or unlisted specification, the yield strength determined in accordance with Section 3(4)(b) of this administrative regulation.]

(6)[(w)] "State" means Commonwealth of Kentucky.

(7)[(x)] "Therm" means the unit of heating value equivalent to 100,000 British thermal units.

(y) "Transmission line" means a pipeline, other than a gathering line that:

(a)[1.] Transports gas from a gathering line or storage facility to a distribution center,[or] storage facility or large volume customer that is not down-stream from a distribution center;

(b)[2.] Operates at a hoop stress of twenty (20) percent or more of SMYS; or

(c)[3.] Transports gas within a storage field.

Section 2. [(2) Scope. This administrative regulation prescribes] Minimum[safety and] Service Standards for Natural Gas Utilities Operating under the Jurisdiction of the Commission. (1)[(a)] Utilities serving customers under KRS 278.485 or other retail customers, under the jurisdiction of the commission, directly from transmission or gathering lines shall be[are] exempt from the following sections of this administrative regulation insofar as they apply to these customers:

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~~(a)[1-] Section 4[9, subsections (2)(b) through (f), (16) and (17);~~

~~2. Section 13, subsections (14), (15), and (16);~~

~~3. Section 14, subsection (22);~~

~~(b)[4-] Section 5[15]; and~~

~~(c)[5-] Section 6[16].~~

~~(2) Outage.~~

~~(a)[(b)] Each utility shall make all reasonable efforts to prevent interruptions of service and if interruptions occur, shall endeavor to reestablish service with the shortest possible delay consistent with the safety of its consumers and the general public. Planned interruptions shall always be preceded by adequate notice to all affected customers.~~

~~(b) At the earliest practicable moment following discovery, each utility shall give notice to the commission of an outage that results in the loss of service to forty (40) or more customers for four (4) or more hours. Each notice shall be made by electronic mail to Pipeline.Safety@ky.gov and shall include:~~

~~1. Name of utility, person making the report, and contact telephone number;~~

~~2. Location of outage;~~

~~3. Time of outage; and~~

~~4. All other significant facts known by the utility that are relevant to the cause of the outage or extent of damage.~~

~~(c) Each notice made in accordance with this subsection shall be supplemented by a written report within thirty (30) days giving full details such as cause of the outage; number of customers affected by the outage; time when all service was restored; and steps, if any, taken to prevent reoccurrence.~~

~~(3) Class locations.~~
~~(a) Class location is determined by applying criteria set forth in this section: class location unit is an area that extends 220 yards on either side of the centerline of any continuous one (1) mile length of pipeline. Except as provided in paragraphs (d) and (f) of this section, class location is determined by buildings in the class location unit. For the purpose of this section, each separate dwelling unit in a multiple dwelling unit building is counted as a separate building intended for human occupancy.~~

~~(b) A Class 1 location is any class location unit that has ten (10) or less buildings intended for human occupancy.~~

~~(c) A Class 2 location is any class location unit that has more than ten (10) but less than forty-six (46) buildings intended for human occupancy.~~

~~(d) A Class 3 location is any class location unit that has forty-six (46) or more buildings intended for human occupancy; or an area where the pipeline lies within 100 yards of either a building or a small, well-defined outside area (such as playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by twenty (20) or more persons on at least five (5) days a week for ten (10) weeks in any twelve (12) month period. (The days and weeks need not be consecutive.)~~

~~(e) A Class 4 location is any class location unit where buildings with four (4) or more stories above ground are prevalent.~~

~~(f) Boundaries of class locations determined in accordance with paragraphs (a) through (e) of this section may be adjusted as follows:~~

~~1. Class 4 location ends 220 yards from the nearest building with four (4) or more stories above ground.~~

~~2. When a cluster of buildings intended for human occupancy requires a Class 3 location, Class 3 location ends 220 yards from the nearest building in the cluster.~~

~~3. When a cluster of buildings intended for human occupancy requires a Class 2 location, Class 2 location ends 220 yards from the nearest building in the cluster.~~

~~(4) Incorporation by reference.~~

~~(a) Any documents or parts thereof incorporated by reference in this section are a part of this administrative regulation as though set out in full.~~

~~(b) All incorporated documents are available for inspection in the offices of the Public Service Commission, Frankfort, Kentucky. These materials have been approved for incorporation by reference by the Legislative Research Commission. These documents are also available at the addresses provided in Appendix A to this administrative regulation.~~

~~(c) Full titles for publications incorporated by reference in this section are provided in Appendix A to this administrative regulation. Numbers in parenthesis indicate applicable editions.~~

~~(5) Gathering lines. Each gathering line must comply with requirements of this administrative regulation applicable to transmission lines except as exempted in Section 1(1)(a) of this administrative regulation.~~

~~(6) Petroleum gas systems.~~

~~(a) No utility shall transport petroleum gas in a system that serves ten (10) or more customers, or in a system, any portion of which is located in a public place (such as a highway), unless that system meets the requirements of this administrative regulation and of NFPA Standards No. 58 and 59. In the event of a conflict, the requirements of this administrative regulation prevail.~~

~~(b) Each petroleum gas system covered by paragraph (a) of this subsection shall comply with the following:~~

~~1. Aboveground structures shall have open vents near floor level.~~

~~2. Below-ground structures shall have forced ventilation that will prevent any accumulation of gas.~~

~~3. Relief valve discharge vents shall be located to prevent any accumulation of gas at or below ground level.~~

~~4. Special precautions shall be taken to provide adequate ventilation when excavations are made to repair an underground system.~~

~~(c) For the purpose of this subsection, petroleum gas means propane, butane, or mixtures of these gases, other than a gas mixture used to supplement supplies in a natural gas distribution system.~~

~~(7) General.~~

~~(a) No person may operate a pipeline segment readied for service after March 12, 1971, unless:~~

~~1. The pipeline has been designed, installed, constructed, initially inspected, and initially tested in accordance with this administrative regulation; and~~

~~2. The pipeline qualifies for use under this administrative regulation in accordance with Section 1(8) of this administrative regulation.~~

~~(b) No person may operate a pipeline segment replaced, relocated, or otherwise changed after November 12, 1970, unless that replacement, relocation, or change has been made in accordance with this administrative regulation.~~

~~(c) Each utility shall establish and then maintain plans, procedures and programs as required under this administrative regulation.~~

~~(8) Conversion to service subject to this administrative regulation. Steel pipeline previously used in service not subject to this administrative regulation qualifies for use under this administrative regulation if the utility prepares and follows a written procedure to carry out the following requirements:~~

~~1. The design, construction, operation, and maintenance history of the pipeline shall be reviewed and, where sufficient historical records are not available, appropriate tests shall be performed to determine if the pipeline is in a satisfactory condition for safe operation.~~

~~2. The pipeline right-of-way, all aboveground segments of pipeline, and appropriately selected underground segments must be visually inspected for physical defects and operating conditions which reasonably could be expected to impair the strength or tightness of the pipeline.~~

~~3. All known unsafe defects and conditions shall be corrected in accordance with this administrative regulation.~~

~~4. The pipeline must be tested in accordance with Section 11 of this administrative regulation to substantiate maximum allowable operating pressure permitted by Section 13 of this administrative regulation.~~

~~5. Each utility must keep for the life of the pipeline a record of investigations, tests, repairs, replacements, and alterations made under the requirements of paragraph (a) of this subsection.~~

~~Section 2. Materials. (1) Scope. This section prescribes minimum requirements for selection and qualification of pipe and components for use in pipelines.~~

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(2) General. Materials for pipe and components shall be:

(a) Able to maintain the structural integrity of the pipeline under temperature and other anticipated environmental conditions;

(b) Chemically compatible with any gas that they transport and with any other material in the pipeline with which they are in contact; and

(c) Qualified in accordance with applicable requirements of this section.

(3) Steel pipe.

(a) New steel pipe is qualified for use under this administrative regulation if:

1. It was manufactured in accordance with a listed specification;

2. It meets the requirements of:

a. Section II of Appendix B to this administrative regulation; or

b. If it was manufactured before November 12, 1970, either Section II or III of Appendix B to this administrative regulation; or

3. It is used in accordance with paragraph (c) or (d) of this subsection.

(b) Used steel pipe is qualified for use under this administrative regulation if:

1. It was manufactured in accordance with a listed specification and it meets the requirements of Section II-C of Appendix B to this administrative regulation;

2. It meets the requirements of:

a. Section II of Appendix B to this administrative regulation;

b. If it was manufactured before November 12, 1970, either Section II or III of Appendix B to this administrative regulation;

3. It has been used in an existing line of same or higher pressure and meets the requirements of Section II-C of Appendix B to this administrative regulation; or

4. It is used in accordance with paragraph (c) of this subsection.

(c) New or used pipe may be used at a pressure resulting in a hoop stress of less than 6,000 psi where no close coiling or close bending is to be done, if visual examination indicates that the pipe is in good condition and is free of split seams and other defects that would cause leakage. If it is to be welded, steel pipe not manufactured to a listed specification shall also pass the weldability tests prescribed in Section II-B of Appendix B to this administrative regulation.

(d) Unused steel pipe manufactured before November 12, 1970, may be used as replacement pipe if it meets the same specifications as the pipe used in constructing that segment of pipeline.

(e) New steel pipe that has been cold expanded shall comply with the mandatory provisions of API Standard 5L.

(f) New or used pipe of unknown specifications and all used pipe, the strength of which is impaired by corrosion or other deterioration, shall be retested hydrostatically either length by length in a mill type test or in the field after installation before placed in service, and the test pressure used shall establish maximum allowable operating pressure.

(4) Plastic pipe.

(a) New plastic pipe is qualified for use under this administrative regulation if:

1. It is manufactured in accordance with a listed specification; and

2. It is resistant to chemicals with which contact may be anticipated.

(b) Used plastic pipe is qualified for use under this administrative regulation if:

1. It is manufactured in accordance with a listed specification;

2. It is resistant to chemicals with which contact may be anticipated;

3. It has been used only in natural gas service;

4. Its dimensions are still within the tolerance of the specification to which it was manufactured; and

5. It is free of visible defects.

(c) For the purpose of paragraphs (a)1 and (b)1 of this subsection, where pipe of a diameter included in a listed specification is impractical to use, pipe of a diameter between the sizes included in a listed specification may be used if it:

1. Meets strength and design criteria required of pipe included in that listed specification; and

2. Is manufactured from plastic compounds which meet criteria for material required of pipe included in that listed specification.

(5) Marking of materials.

(a) Except as provided in paragraph (d) of this subsection, each valve, fitting, length of pipe, and other components shall be marked as prescribed in:

1. The specification or standard to which it was manufactured;

or

2. To indicate size, material, manufacturer, pressure rating, temperature rating and, as appropriate, type, grade and model.

(b) Surfaces of pipe and components that are subject to stress from internal pressure shall not be field die stamped.

(c) If any item is marked by die stamping, the die shall have blunt or rounded edges that will minimize stress concentrations.

(d) Paragraph (a) of this subsection does not apply to items manufactured before November 12, 1970, that meet all of the following:

1. Item is identifiable as to type, manufacturer, and model.

2. Specifications or standards giving pressure, temperature, and other appropriate criteria for use of items are readily available.

(6) Transportation of pipe. In a pipeline to be operated at a hoop stress of twenty (20) percent or more of SMYS, operator shall not use pipe having outer diameter to wall thickness ratio of seventy to one (70 to 1), or more, which is transported by railroad unless:

(a) Transportation is performed in accordance with the most recent edition of API RP5L1, except that before February 25, 1975, transportation may have been performed in accordance with the 1967 edition of API RP5L1.

(b) In the case of pipe transported before November 12, 1970, the pipe is tested in accordance with Section 11 of this administrative regulation to at least one and one-fourth (1.25) times maximum allowable operating pressure if it is to be installed in a Class 1 location, and to at least one and one-half (1.5) times maximum allowable operating pressure if it is to be installed in a Class 2, 3, or 4 location. Notwithstanding any shorter time period permitted under Section 11 of this administrative regulation, test pressure must be maintained for at least eight (8) hours.

Section 3. Pipe Design. (1) Scope. This section prescribes minimum requirements for design of pipe.

(2) General. Pipe shall be designed with sufficient wall thickness, or shall be installed with adequate protection, to withstand anticipated external pressures and loads that will be imposed on pipe after installation.

(3) Design formula for steel pipe.

(a) Design pressure for steel pipe is determined in accordance with the following formula:

$$P = (2St/D) \times F \times E \times T$$

P = Design pressure in pounds per square inch gauge.

S = Yield strength in pounds per square inch determined in accordance with subsection (4) of this section.

D = Nominal outside diameter of pipe in inches.

t = Nominal wall thickness of pipe in inches. If this is unknown, it is determined in accordance with subsection (5) of this section. Additional wall thickness required for concurrent external loads in accordance with subsection (2) of this section shall not be included in computing design pressure.

F = Design factor determined in accordance with subsection (6) of this section.

E = Longitudinal joint factor determined in accordance with subsection (7) of this section.

T = Temperature derating factor determined in accordance with subsection (8) of this section.

(b) If steel pipe that has been subjected to cold expansion to meet the SMYS is subsequently heated, other than by welding or stress relieving as part of welding design pressure is limited to seventy-five (75) percent of the pressure determined under paragraph (a) of this subsection if temperature of pipe exceeds 900°F (482°C) at any time or is held above 600°F (316°C) for more than one (1) hour.

(4) Yield strength (s) for steel pipe.

(a) For pipe manufactured in accordance with a specification listed in Section I of Appendix B of this administrative regulation, yield strength to be used in the design formula in subsection (3) of this section is the SMYS stated in the listed specification, if that value is known.

(b) For pipe manufactured in accordance with a specification not listed in Section I of Appendix B to this administrative regulation or whose specification or tensile properties are unknown, yield strength to be used in the design formula in subsection (3) of this section is one of the following:

1. If pipe is tensile tested in accordance with Section II D of Appendix B to this administrative regulation, the lower of the following:

- a. Eighty (80) percent of average yield strength determined by tensile tests; or
- b. The lowest yield strength determined by tensile tests, but no more than 52,000 psig.

2. If pipe is not tensile tested as provided in paragraph (b)1 of this subsection, 24,000 psig.

(5) Nominal wall thickness (t) for steel pipe.

(a) If nominal wall thickness for steel pipe is not known, it is determined by measuring the thickness of each piece of pipe at quarter points on one (1) end.

(b) However, if pipe is of uniform grade, size and thickness and there are more than ten (10) lengths, only ten (10) percent of the individual lengths, but not less than ten (10) lengths, need be measured. Thickness of lengths not measured shall be verified by applying a gauge set to the minimum thickness found by measurement. Nominal wall thickness to be used in the design formula in subsection (3) of this section is the next wall thickness found in commercial specifications that is below the average of all measurements taken. However, nominal wall thickness used shall not be more than 1.14 times the smallest measurement taken on pipe less than twenty (20) inches in outside diameter, nor more than 1.11 times the smallest measurement taken on pipe twenty (20) inches or more in outside diameter.

(6) Design factor (F) for steel pipe.

(a) Except as otherwise provided in paragraphs (b), (c), and (d) of this subsection, the design factor to be used in the design formula in subsection (3) of this section is determined in accordance with the following table:

Class Location	Design Factor (F)
1	0.72
2	0.60
3	0.50
4	0.40

(b) A design factor of six-tenths (0.60) or less shall be used in the design formula in subsection (3) of this section, for steel pipe in Class 4 locations that:

- 1. Cross the right-of-way of an unimproved public road, without a casing;
- 2. Cross without a casing, or makes a parallel encroachment on, the right-of-way of either a hard surfaced road, highway, public street, or railroad;
- 3. Are supported by a vehicular, pedestrian, railroad, or pipeline bridge; or
- 4. Are used in a fabricated assembly (including separators, mainline valve assemblies, cross-connections, and river crossing headers) or are used within five (5) pipe diameters in any direction from the last fitting of a fabricated assembly, other than a transition piece of an elbow used in place of a pipe bend not associated with a fabricated assembly.

(c) For Class 2 locations, a design factor of five-tenths (0.50) or less shall be used in the design formula in subsection (3) of this section for uncased steel pipe that crosses the right-of-way of a hard surfaced road, highway, public street, or railroad.

(d) For Class 1 and Class 2 locations, a design factor of five-tenths (0.50) or less shall be used in the design formula in subsection (3) of this section for:

- 1. Steel pipe in a compressor station, regulating station, or measuring station; and
- 2. Steel pipe, including a pipe riser, on a platform located

offshore or in inland navigable waters.

(7) Longitudinal joint factor (E) for steel pipe. Longitudinal joint factor to be used in the design formula in subsection (3) of this section is determined in accordance with the following table:

Specification	Pipe Class	Longitudinal Joint Factor (E)
ASTM A 53	Seamless	1.00
	Electric resistance welded	1.00
	Furnace butt welded	.60
ASTM A 106	Seamless	1.00
ASTM A 333	Seamless	1.00
	Electric resistance welded	1.00
ASTM A 384	Double submerged arc welded	1.00
ASTM A 671	Electric fusion welded	1.00
ASTM A 672	Electric fusion welded	1.00
ASTM A 691	Electric fusion welded	1.00
API 5L	Seamless	1.00
	Electric resistance welded	1.00
	Electric flash welded	1.00
	Submerged arc welded	1.00
Other	Pipe over 4 inches	.80
Other	Pipe 4 inches or less	.60

If the type of longitudinal joint cannot be determined, the joint factor to be used shall not exceed that designated for "Other."

(8) Temperature derating factor (T) for steel pipe. Temperature derating factor to be used in the design formula in subsection (3) of this section is determined as follows:

Gas temperature in degrees Fahrenheit	Temperature derating factor (T)
250 or less	1.000
300	0.967
350	0.933
400	0.900
450	0.867

For intermediate gas temperatures, derating factor is determined by interpolation.

(9) Design of plastic pipe. Design pressure for plastic pipe is determined in accordance with the following formula, subject to the limitations of subsection (10) of this section:

$$P = 2S \frac{t}{(D - t)} \times 0.32$$

P = Design pressure, gauge, kPa (psi).

S = For thermoplastic pipe the long-term hydrostatic strength determined in accordance with the listed specification at a temperature equal to twenty-three (23) degrees Centigrade (seventy-three (73) degrees Fahrenheit), thirty-eight (38) degrees Centigrade (100 degrees Fahrenheit), forty-nine (49) degrees Centigrade (120 degrees Fahrenheit), or sixty (60) degrees Centigrade (140 degrees Fahrenheit); for reinforced thermosetting plastic pipe, 75,800 kPa (11,000 psig).

t = Specified wall thickness, mm (in.).

D = Specified outside diameter, mm (in.).

(10) Design limitations for plastic pipe.

(a) Design pressure shall not exceed gauge pressure of 689 kPa (100 psig) for plastic pipe used in:

- 1. Distribution systems; or
- 2. Classes 3 and 4 locations.

(b) Plastic pipe shall not be used where operating temperature of pipe will be:

- 1. Below minus twenty-nine (29) degrees Centigrade (minus twenty (20) degrees Fahrenheit); or
- 2. In the case of thermoplastic pipe, above the temperature at which the long-term hydrostatic strength used in the design formula under subsection (9) of this section is determined, except that pipe manufactured before May 18, 1978, may be used at temperatures up to thirty-eight (38) degrees Centigrade (100°F); or in the case of reinforced thermosetting plastic pipe, above sixty-six (66) degrees Centigrade (150°F).

(c) Wall thickness for thermoplastic pipe shall not be less than 1.57 millimeters (0.062 in.).

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(d) Wall thickness for reinforced thermosetting plastic pipe shall not be less than that listed in the following table:

Nominal size in inches:	Minimum wall thickness millimeters (inches)
2	1.52 (0.060)
3	1.52 (0.060)
4	1.78 (0.070)
5	2.54 (0.100)

(11) Design of copper pipe.

(a) Copper pipe used in mains shall have a minimum wall thickness of 0.065 inches and shall be hard drawn.

(b) Copper pipe used in service lines shall have a wall thickness not less than that indicated in the following table:

Standard size (inch)	Nominal O.D. (inch)	Wall thickness (inch)	
		Nominal	Tolerance
1/2	.625	.040	.0035
5/8	.750	.042	.0035
3/4	.875	.045	.004
1	1.125	.050	.004
1 1/4	1.375	.055	.0045
1 1/2	1.625	.060	.0045

(c) Copper pipe used in mains and service lines shall not be used at pressures in excess of 100 psig.

(d) Copper pipe that does not have an internal corrosion resistant lining shall not be used to carry gas that has an average hydrogen sulfide content of more than three-tenths (0.3) grains per 100 standard cubic feet of gas.

Section 4. Design of Pipeline Components. (1) Scope. This section prescribes minimum requirements for design and installation of pipeline components and facilities, and it prescribes requirements relating to protection against accidental overpressuring.

(2) General requirements. Each component of a pipeline shall withstand operating pressures and other anticipated loadings without impairment of serviceability with unit stresses equivalent to those allowed for comparable material in pipe in the same location and kind of service. However, if design based upon unit stress is impractical for a particular component, design may be based upon a pressure rating established by the manufacturer by pressure testing that component or a prototype of the component.

(3) Qualifying metallic components. Notwithstanding any requirement of this section which incorporates by reference an edition of a document listed in Appendix A of this administrative regulation, a metallic component manufactured in accordance with any other edition of that document is qualified for use under this administrative regulation if:

(a) It can be shown through visual inspection of the cleaned component that no defect exists which might impair the strength or tightness of the component; and

(b) The edition of the document under which the component was manufactured has equal or more stringent requirements for the following as an edition of that document currently or previously listed in Appendix A:

1. Pressure testing;
 2. Materials; and
 3. Pressure and temperature ratings.
- (4) Valves.

(a) Except for cast iron and plastic valves, each valve shall meet the minimum requirements, or equivalent, of API 6D. A valve shall not be used under operating conditions that exceed the applicable pressure-temperature ratings contained in those requirements.

(b) Each cast iron and plastic valve shall comply with the following:

1. The valve shall have a maximum service pressure rating for temperatures that equal or exceed maximum service temperature.
2. The valve shall be tested as part of the manufacturing, as follows:

a. With the valve fully open, the shell shall be tested with no leakage to a pressure at least one and one-half (1.5) times the maximum service rating.

b. After the shell test, the seat shall be tested to a pressure not less than one and one-half (1.5) times the maximum service pressure rating. Except for swing check valves, test pressure during the seat test shall be applied successively on each side of the closed valve with the opposite side open. No visible leakage is permitted.

c. After the last pressure test is completed, the valve shall be operated through its full travel to demonstrate freedom from interference.

(c) Each valve shall be able to meet anticipated operating conditions.

(d) No valve having shell components made of ductile iron may be used at pressures exceeding eighty (80) percent of pressure ratings for comparable steel valves at their listed temperatures. However, a valve having shell components made of ductile iron may be used at pressures up to eighty (80) percent of pressure ratings for comparable steel valves at their listed temperatures, if:

1. Temperature-adjusted service pressure does not exceed 1,000 psig; and
2. Welding is not used on any ductile iron component in the fabrication of the valve shells or their assembly.

(e) No valve having pressure-containing parts made of ductile iron may be used in gas pipe components of compressor stations.

(5) Flanges and flange accessories.

(a) Each flange or flange accessory (other than cast iron) shall meet the minimum requirements of ANSI B16.5, MSS-SP-44, or equivalent.

(b) Each flange assembly shall withstand the maximum pressure at which the pipeline is to be operated and maintain its physical and chemical properties at any anticipated temperature.

(c) Each flange on a flanged joint in cast iron pipe must conform in dimensions, drilling, face and gasket design to ANSI B16.1 and be cast integrally with the pipe, valve or fitting.

(6) Standard fittings.

(a) Minimum metal thickness of threaded fittings shall not be less than specified for pressures and temperatures in applicable standards referenced in this administrative regulation, or their equivalent.

(b) Each steel butt-welding fitting shall have pressure and temperature ratings based on stresses for pipe of same or equivalent material. Actual bursting strength of the fitting must at least equal the computed bursting strength of pipe of the designated material and wall thickness, as determined by a prototype tested to at least the pressure required for the pipeline to which it is being added.

(7) Tapping.

(a) Each mechanical fitting used to make a hot tap shall be designed for at least operating pressure of the pipeline.

(b) Where ductile iron pipe is tapped, the extent of full-threaded engagement and need for use of outside-sealing service connections, tapping saddles, or other fixtures shall be determined by service conditions.

(c) Where a threaded tap is made in cast iron or ductile iron pipe, diameter of the tapped hole shall not be more than twenty-five (25) percent of the nominal diameter of the pipe unless the pipe is reinforced, except that:

1. Existing taps may be used for replacement service, if they are free of cracks and have good threads; and
2. A one and one-fourth (1 1/4) inch tap may be made in a four (4) inch cast iron or ductile iron pipe, without reinforcement.

However, in areas where climate, soil, and service conditions may create unusual external stresses on cast iron pipe, unreinforced taps may be used only on six (6) inch or larger pipes.

(8) Components fabricated by welding.

(a) Except for branch connections and assemblies of standard pipe and fittings joined by circumferential welds, design pressure of each component fabricated by welding, whose strength cannot be determined, shall be established in accordance with paragraph UG-101 of Section VIII of the ASME Boiler and Pressure Vessel Code.

(b) Each prefabricated unit that uses plate and longitudinal seams shall be designed, constructed, and tested in accordance with ASME Boiler and Pressure Vessel Code, except for the

following:

1. Regularly manufactured butt-welding fittings.
2. Pipe produced and tested under a specification listed in Appendix B to this administrative regulation.
3. Partial assemblies such as split rings or collars.
4. Prefabricated units that the manufacturer certifies have been tested to at least twice the anticipated maximum pressure under operating conditions.

(c) Orange peel bull plugs and orange peel swages shall not be used on pipelines that are to operate at hoop stress of twenty (20) percent or more of SMYS of the pipe.

(d) Except for flat closures designed in accordance with section VIII of the ASME Boiler and Pressure Vessel Code, flat closures and fish tails shall not be used on pipe that either operates at 100 psig, or more, or is more than three (3)-inches nominal diameter.

(9) Welded branch connections. Each welded branch connection made to pipe in the form of a single connection, or in a header or manifold as a series of connections, shall be designed to ensure that strength of the pipeline system is not reduced, taking into account stresses in the remaining pipe wall due to the opening in the pipe or header, shear stresses produced by pressure acting on the area of the branch opening, and any external loadings due to thermal movement, weight, and vibration.

(10) Extruded outlets. Each extruded outlet shall be suitable for anticipated service conditions and shall be at least equal to design strength of the pipe and other fittings in the pipeline to which it is attached.

(11) Flexibility. Each pipeline shall be designed with enough flexibility to prevent thermal expansion or contraction from causing excessive stresses in pipe or components, excessive bending or unusual loads at joints, or undesirable forces or moments at points of connection to equipment, or at anchorage or guide points.

(12) Supports and anchors.

(a) Each pipeline and its associated equipment shall have enough anchors or supports to:

1. Prevent undue strain on connected equipment;
2. Resist longitudinal forces caused by a bend or offset in the pipe; and
3. Prevent or damp out excessive vibration.

(b) Each exposed pipeline shall have enough supports or anchors to protect the exposed pipe joints from maximum end force caused by internal pressure and any additional forces caused by temperature expansion or contraction or by weight of the pipe and its contents.

(c) Each support or anchor on an exposed pipeline shall be made of durable, noncombustible material and shall be designed and installed as follows:

1. Free expansion and contraction of the pipeline between supports or anchors shall not be restricted.
2. Provision shall be made for service conditions involved.
3. Movement of the pipeline shall not cause disengagement of support equipment.

(d) Each support on an exposed pipeline operated at a stress level of fifty (50) percent or more of SMYS shall comply with the following:

1. A structural support shall not be welded directly to the pipe.
2. The support shall be provided by a member that completely encircles the pipe.
3. If an encircling member is welded to a pipe, the weld shall be continuous and cover the entire circumference.

(e) Each underground pipeline connected to a relatively unyielding line or other fixed object shall have enough flexibility to provide for possible movement, or it shall have an anchor that will limit movement of the pipeline.

(f) Except for offshore pipelines each underground pipeline being connected to new branches shall have firm foundation for both the header and branch to prevent detrimental lateral and vertical movement.

(13) Compressor stations: design and construction.

(a) Location of compressor building. Except for a compressor building on a platform in inland navigable waters, each main compressor building of a compressor station shall be located on property under the operator's control. It shall be far enough away

from adjacent property, not under control of the operator, to minimize the possibility of fire being transferred to the compressor building from structures on adjacent property. There shall be enough open space around the main compressor building to allow free movement of firefighting equipment.

(b) Building construction. Each building on a compressor station site shall be made of noncombustible materials if it contains either:

1. Pipe that is more than two (2) inches in diameter and carrying gas under pressure; and
2. Gas handling equipment other than gas utilization equipment used for domestic purposes.

(c) Exits. Each operating floor of a main compressor building shall have at least two (2) separated and unobstructed exits located to provide a convenient possibility of escape and unobstructed passage to safety. Each exit door latch shall be of a type which can be readily opened from inside without a key. Each swinging door located in an exterior wall shall be mounted to swing outward.

(d) Fenced areas. Each fence around a compressor station shall have at least two (2) gates located to provide convenient opportunity for escape to safety, or have other facilities affording a similarly convenient exit from the area. Each gate located within 200 feet of any compressor plant building shall open outward and, when occupied, shall be of a type that can be readily opened from inside without a key.

(e) Electrical areas. Electrical equipment and wiring installed in compressor stations shall conform to the National Electrical Code, NFPA 70(ANSI), so far as that code is applicable.

(f) Air piping system.

1. All air piping within gas compressing stations shall be constructed in accordance with Section 2 of the USAS B31.1 Code for Pressure Piping.

2. Starting air pressure, storage volume and size of connection piping shall be adequate to rotate the engine at cranking speed and for the number of revolutions necessary to purge fuel gas from the power cylinder and muffler. Recommendations of the engine manufacturer may be used as a guide in determining these factors. Consideration should be given to the number of engines installed and to the possibility of starting several of these engines within a short period of time.

3. A check valve shall be installed in the starting air line near each engine to prevent backflow from the engine into the piping system. A check valve shall also be placed in the main air line on the immediate outlet side of the air tank or tanks. It is recommended that equipment for cooling air and removing moisture and entrained oil be installed between the starting air compressor and air storage tanks.

4. Suitable provision shall be made to prevent starting air from entering power cylinders of an engine and activating moving parts while work is in progress on the engine or on equipment driven by the engines. Acceptable means of accomplishing this are installation of a blind flange, removal of a portion of the air supply piping or locking closed a stop valve and locking open a vent downstream from it.

(g) Air receivers. Air receivers or air storage bottles, for use in compressor stations, shall be constructed and equipped in accordance with Section VII, Unfired Pressure Vessels, of the ASME Boiler and Pressure Vessel Code.

(h) Lubricating oil piping. All lubricating oil piping with gas compressing stations shall be constructed in accordance with USA Standard Code for Pressure Piping, Petroleum Refinery Piping, USAS B 31.3.

(i) Water and steam piping. All water and steam piping within gas compressing stations shall be constructed in accordance with USA Standard Code for Pressure Piping, Power Piping, USAS B31.0.0.

(j) Hydraulic piping. All hydraulic power piping within gas compressing stations shall be constructed in accordance with USA Standard Code for Pressure Piping, Petroleum Refinery Piping, USAS B31.3.

(14) Compressor stations; liquid removal.

(a) Where entrained vapors in gas may liquefy under

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anticipated pressure and temperature conditions, the compressor shall be protected against introduction of these liquids in damaging quantities.

(b) Each liquid separator used to remove entrained liquids at a compressor station shall:

1. Have a manually operable means of removing these liquids.
2. Where slugs of liquid could be carried into the compressors, have either automatic liquid removal facilities, automatic compressor shutdown device, or high liquid level alarm; and
3. Be manufactured in accordance with Section VIII of the ASME Boiler and Pressure Vessel Code, except that liquid separators constructed of pipe and fittings without internal welding shall be fabricated with a design factor of four-tenths (0.4) or less.

(15) Compressor stations: emergency shutdowns.

(a) Except for unattended field compressor stations of 1,000 horsepower or less, each compressor station shall have an emergency shutdown system that can do the following:

1. Block gas out of the station and blow down the station piping.
2. Discharge gas from the blowdown piping at a location where gas will not create a hazard.
3. Provide means for shutdown of gas compressing equipment, gas fires, and electrical facilities in the vicinity of gas headers and in the compressor building, except, that:
 - a. Electric circuits that supply emergency lighting required to assist station personnel in evacuating the compressor building and the area in the vicinity of the gas headers shall remain energized; and
 - b. Electrical circuits needed to protect equipment from damage may remain energized.
4. It shall be operable from at least two (2) locations, each of which is:
 - a. Outside the gas area of the station;
 - b. Near the exit gates, if station is fenced; or near emergency exits, if not fenced; and
 - c. Not more than 500 feet from the limits of the stations.

(b) If a compressor station supplies gas directly to a distribution system with no other adequate source of gas available, the emergency shutdown system shall be designed to prevent function at the wrong time and unintended outage on the distribution system.

(c) On a platform located in inland navigable waters, the emergency shutdown system shall be designed and installed to actuate automatically by each of the following events:

1. In the case of an unattended compressor station:
 - a. When gas pressure equals maximum allowable operating pressure plus fifteen (15) percent; or
 - b. When uncontrolled fire occurs on the platform; and
2. In the case of a compressor station in a building:
 - a. When uncontrolled fire occurs in the building; or
 - b. When the concentration of gas in air reaches fifty (50) percent or more of the lower explosive limit in a building which has a source of ignition.

For the purpose of paragraph (c)2 of this subsection, an electrical facility which conforms to Class 1, Group D of the National Electrical Code is not a source of ignition.

3. All emergency valves and controls shall be identified by signs. All important gas pressure piping shall be identified by signs or color codes as to their function.

(16) Compressor stations: pressure limiting devices.

(a) Each compressor station shall have pressure relief or other suitable protective devices of sufficient capacity and sensitivity to ensure that maximum allowable operating pressure of station piping and equipment is not exceeded by more than ten (10) percent.

(b) Each vent line that exhausts gas from the pressure relief valve of a compressor station shall extend to a location where gas may be discharged without hazard.

(17) Compressor stations: additional safety equipment.

(a) Each compressor station shall have adequate fire protection facilities. If fire pumps are a part of these facilities, their operation shall not be affected by the emergency shutdown system.

(b) Each compressor station prime mover, other than an electrical induction or synchronous motor, shall have an automatic device to shut down the unit before the speed of either the prime mover or driven unit exceeds maximum safe speed.

(c) Each compressor unit in a compressor station shall have a shutdown or alarm device that operates in the event of inadequate cooling or lubrication of the unit.

(d) Each compressor station gas engine that operates with pressure gas injection shall be equipped so that stoppage of the engine automatically shuts off fuel and vents the engine distribution manifold.

(e) Each muffler for a gas engine in a compressor station shall have vent slots or holes in the baffles of each compartment to prevent gas from being trapped in the muffler.

(f) Fuel gas lines within a compressor station, serving various buildings and residential areas, shall be provided with master shutoff valves located outside of any building or residential area.

(18) Compressor stations: ventilation. Each compressor station building shall be ventilated to ensure that employees are not endangered by accumulation of gas in rooms, sumps, attics, pits, or other enclosed places.

(19) Pipe type and bottle type holders.

(a) Each pipe type and bottle type holder shall be designed to prevent accumulation of liquids in the holder, connecting pipe, or auxiliary equipment, that might cause corrosion or interfere with safe operation of the holder.

(b) Each pipe type or bottle type holder shall have minimum clearance from other holders in accordance with the following formula:

$$C = (D \times P \times F) / 1,000$$

in which:

C = Minimum clearance between pipe containers or bottles in inches.

D = Outside diameter of pipe containers or bottles in inches.

P = Maximum allowable operating pressure, psig.

F = Design factor as set forth in Section 3(6) of this administrative regulation.

(20) Additional provisions for bottle type holders.

(a) Each bottle type holder shall be:

1. Located on a site entirely surrounded by fencing that prevents access by unauthorized persons and with minimum clearance from fences as follows:

Maximum allowable operating pressure	Minimum clearance (feet)
Less than 1,000 psig	25
1,000 psig or more	100

2. Designed using the design factors set forth in Section 3(6) of this administrative regulation; and

3. Buried with minimum cover in accordance with Section 7(13) of this administrative regulation.

(b) Each bottle type holder manufactured from steel not weldable under field conditions shall comply with the following:

1. A bottle type holder made from alloy steel shall meet the chemical and tensile requirements for various grades of steel in ASTM A 372.

2. Actual yield tensile ratio of steel shall not exceed 0.85.

3. Welding shall not be performed on the holder after it has been heat treated or stress relieved, except that copper wires may be attached to the small diameter portion of the bottle end closure for cathodic protection if a localized thermal welding process is used.

4. The holder shall be given a mill hydrostatic test at pressure that produces hoop stress at least equal to eighty-five (85) percent of SMYS.

5. The holder, connection pipe, and components shall be leak tested after installation as required by Section 11 of this administrative regulation.

(21) Transmission line valves.

(a) Each transmission line shall have sectionalizing block valves spaced as follows:

1. Each point on the pipeline in a Class 4 location shall be within two and one-half (2 1/2) miles of a valve.

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2. Each point on the pipeline in a Class 3 location shall be within four (4) miles of a valve.

3. Each point on the pipeline in a Class 2 location shall be within seven and one-half (7 1/2) miles of a valve.

4. Each point on the pipeline in Class 1 location shall be within ten (10) miles of a valve.

(b) Each sectionalizing block valve on a transmission line shall comply with the following:

1. The valve and operating device to open or close the valve shall be readily accessible and protected from tampering and damage.

2. The valve shall be supported to prevent settling of valve or movement of the pipe to which it is attached.

(c) Each section of transmission line between main line valves shall have a blowdown valve with enough capacity to allow the transmission line to be blown down as rapidly as practicable. Each blowdown discharge must be located so gas can be blown to the atmosphere without hazard and, if the transmission line is adjacent to an overhead electric line, so that gas is directed away from the electrical conductors.

(22) Distribution line valves.

(a) Each high-pressure distribution system shall have valves spaced to reduce the time to shut down a section of main in an emergency. Valve spacing is determined by operating pressure, size of mains, and local physical conditions.

(b) Each valve on a main installed for operating or emergency purposes shall be placed in a readily accessible location to facilitate its operation in an emergency, and its operating stem or mechanism shall be readily accessible. If the valve is installed in a buried box or enclosure, the box or enclosure shall be installed to avoid transmitting external loads to the main.

(23) Valves at regulator stations.

(a) Each regulator station controlling flow or pressure of gas in a distribution system shall have a valve installed on the inlet piping at a distance from the regulator station sufficient to permit operation of the valve during an emergency that might preclude access to the station.

(b) Exterior shutoff valves shall be installed on all lines entering and leaving regulator stations for use in an emergency to stop gas flow. Such valves shall be installed at an accessible location where they can be operated in an emergency.

1. Exterior shutoff valves shall be located a minimum of forty (40) feet from the regulator station if inlet pressure to the station is 100 psig or less. Valves shall be located a minimum of 100 feet from the regulator station if inlet pressure is more than 100 psig.

2. A check valve may be used in lieu of an exterior shutoff valve on downstream piping if located a minimum of forty (40) feet from the regulator station.

3. The exterior shutoff valve may be a sectionalizing valve.

4. All exterior shutoff valves shall be inspected and partially operated at least once each calendar year at intervals not to exceed fifteen (15) months.

(24) Vaults: structural design requirements.

(a) Each underground vault or pit for valves, pressure relieving, pressure limiting, or pressure regulating stations shall meet the loads which may be imposed upon it, and to protect installed equipment.

(b) There shall be enough working space so that all equipment required in the vault or pit can be properly installed, operated, and maintained.

(c) Each pipe entering, or within, a regulator vault or pit shall be steel for sizes ten (10) inches, and less, except that control and gauge piping may be copper. Where pipe extends through the vault or pit structure, provision shall be made to prevent passage of gases or liquids through the opening and to avert strains in the pipe.

(d) Vault or pit openings shall be located to minimize hazards of tools or other objects falling upon the regulator, piping or other equipment. The control piping and operating parts of equipment installed shall not be located under a vault or pit opening where workmen can step on them when entering or leaving the vault or pit, unless such parts are suitably protected.

(e) Whenever a vault or pit opening is to be located above

equipment which could be damaged by a falling cover, a circular cover shall be installed or other suitable precautions taken.

(25) Vaults: accessibility. Each vault shall be located in an accessible location, so far as practical, away from:

(a) Street intersections or points where traffic is heavy or dense;

(b) Points of minimum elevation, catch basins, or places where the access cover will be in the course of surface waters; and

(c) Water, electric, steam, or other facilities.

(26) Vaults: sealing, venting, and ventilation. Each underground vault or closed top pit containing either a pressure regulating or reducing station, or a pressure limiting or relieving station, shall be sealed, vented or ventilated, as follows:

(a) When internal volume exceeds 200 cubic feet:

1. The vault or pit shall be ventilated with two (2) ducts, each having at least the ventilating effect of a pipe four (4) inches in diameter;

2. Ventilation shall be enough to minimize formation of combustible atmosphere in the vault or pit; and

3. Ducts shall be high enough above grade to disperse any gas-air mixtures that might be discharged.

(b) When internal volume is more than seventy-five (75) cubic feet but less than 200 cubic feet:

1. If the vault or pit is sealed, each opening shall have a tight fitting cover without open holes through which an explosive mixture might be ignited, and there shall be a means for testing internal atmosphere before removing the cover.

2. If the vault or pit is vented, there shall be a means of preventing external sources of ignition from reaching the vault atmosphere; or

3. If the vault or pit is ventilated, paragraph (a) or (c) of this subsection applies.

(c) If a vault or pit covered by paragraph (b) of this subsection is ventilated by openings in covers or gratings, and the ratio of internal volume, in cubic feet, to effective ventilating area of the cover or grating, in square feet, is less than twenty (20) to one (1), no additional ventilation is required.

(27) Vaults: drainage and waterproofing.

(a) Each vault shall be designed to minimize entrance of water.

(b) A vault containing gas piping shall not be connected by means of a drain connection to any other underground structure.

(c) All electrical equipment in vaults shall conform to applicable requirements of Class 1, Group D, of the National Electrical Code, ANSI Standard C-1.

(28) Design pressure of plastic fittings.

(a) Thermosetting fittings for plastic pipe shall conform to ASTM D 2517.

(b) Thermoplastic fittings for plastic pipe shall conform to ASTM D 2513.

(29) Valve installation in plastic pipe. Each valve installation in plastic pipe shall be designed to protect plastic material against excessive torsional or shearing loads when the valve or shutoff is operated, and from any other secondary stresses that might be exerted through the valve or its enclosures.

(30) Protection against accidental overpressuring:

(a) General requirements. Except as provided in subsection (31) of this section, each pipeline connected to a gas source so that maximum allowable operating pressure could be exceeded as the result of pressure control failure or of some other type of failure, shall have pressure relieving or pressure limiting devices that meet the requirements of subsections (32) and (33) of this section.

(b) Additional requirements for distribution systems. Each distribution system supplied from a source of gas at higher pressure than maximum allowable operating pressure for the system shall:

1. Have pressure regulation devices capable of meeting pressure, load, and other service conditions that will be experienced in normal operations of the system, and that could be activated in the event of failure of some portion of the system; and

2. Be designed to prevent accidental overpressuring.

(31) Control of pressure of gas delivered from high-pressure distribution systems.

(a) If maximum actual operating pressure of the distribution system is under 60 psig and a service regulator having all of the following characteristics is used, no other pressure limiting device is required:

1. A regulator capable of reducing distribution line pressure to pressures recommended for household appliances.
2. A single port valve with proper orifice for maximum gas pressure at the regulator inlet.
3. A valve seat made of resilient material designed to withstand abrasion of gas, impurities in gas, cutting by the valve, and permanent deformation when it is pressed against the valve port.
4. Pipe connections to the regulator not exceeding two (2) inches in diameter.
5. A regulator that, under normal operating conditions, is able to regulate downstream pressure within necessary limits of accuracy and to limit buildup of pressure under no-flow conditions to prevent a pressure that would cause unsafe operation of any connected and properly adjusted gas utilization equipment.
6. A self-contained service regulator with no external static or control lines.

(b) If maximum actual operating pressure of the distribution system is sixty (60) psig, or less, and a service regulator that does not have all of the characteristics listed in paragraph (a) of this subsection is used, or if the gas contains materials that seriously interfere with the operation of service regulators, there shall be suitable protective devices to prevent unsafe overpressuring of the customer's appliances if the service regulator fails.

(c) If maximum actual operating pressure of the distribution system exceeds sixty (60) psig, one (1) of the following methods shall be used to regulate and limit, to maximum safe value, the pressure of gas delivered to the customer:

1. A service regulator having the characteristics listed in paragraph (a) of this subsection, and another regulator located upstream from the service regulator. The upstream regulator shall not be set to maintain a pressure higher than sixty (60) psig. A device shall be installed between the upstream regulator and the service regulator to limit pressure on the inlet of the service regulator to sixty (60) psig or less in case the upstream regulator fails to function properly. This device may be either a relief valve or an automatic shutoff that shuts, if pressure on the inlet of the service regulator exceeds the set pressure (sixty (60) psig or less), and remains closed until manually reset.

2. A service regulator and a monitoring regulator set to limit, to a maximum safe value, pressure of gas delivered to the customer.

3. A service regulator with a relief valve vented to the outside atmosphere, with the relief valve set to open so that the pressure of gas going to the customer does not exceed a maximum safe value. The relief valve may either be built into the service regulator or it may either be built into the service regulator or it may be a separate unit installed downstream from the service regulator. This combination may be used alone only in those cases where inlet pressure on the service regulator does not exceed the manufacturer's safe working pressure rating of the service regulator, and shall not be used where inlet pressure on the service regulator exceeds 125 psig. For higher inlet pressure, the methods in paragraph (c)1 or 2 of this subsection shall be used.

4. A service regulator and an automatic shutoff device that closes upon a rise in pressure downstream from the regulator and remains closed until manually reset.

(32) Requirements for design of pressure relief and limiting devices. Except for rupture discs, each pressure relief or pressure limiting device shall:

- (a) Be constructed of materials to prevent operation impairment by corrosion;
- (b) Have valves and valve seats designed not to stick in a position that will make the device inoperative;
- (c) Be designed and installed so that it can be readily operated to determine if the valve is free, can be tested to determine operational pressure and can be tested for leakage when closed;
- (d) Have support made of noncombustible material;
- (e) Have discharge stacks, vents, or outlet ports designed to prevent accumulation of water, ice, or snow, located where gas can be discharged into the atmosphere without undue hazard;

(f) Be designed and installed so that the size of openings, pipe, and fittings located between the system to be protected and the pressure relieving device, and the size of the vent line, are adequate to prevent hammering of the valve and to prevent impairment of relief capacity;

(g) Where installed at a district regulator station to protect a pipeline system from overpressuring, be designed and installed to prevent any single incident such as an explosion in a vault or damage by a vehicle from affecting operation of both the overpressure protective device and district regulator; and

(h) Except for a valve that will isolate the system under protection from its source of pressure, be designed to prevent unauthorized operation of any stop valve that will make the pressure relief valve or pressure limiting device inoperative.

(33) Required capacity of pressure relieving and limiting stations:

(a) Each pressure relief station or pressure limiting station or group of those stations installed to protect pipeline shall have enough capacity, and shall be set to operate, to insure the following:

1. In a low pressure distribution system, pressure shall not cause unsafe operation of any connected and properly adjusted gas utilization equipment.

2. In pipelines other than a low pressure distribution system:

a. If maximum allowable operating pressure is sixty (60) psig or more, pressure shall not exceed maximum allowable operating pressure plus ten (10) percent, or the pressure that produces hoop stress of seventy-five (75) percent of SMYS, whichever is lower.

b. If maximum allowable operating pressure is twelve (12) psig or more, but less than sixty (60) psig, pressure shall not exceed maximum allowable operating pressure plus six (6) psig; or

c. If maximum allowable pressure is less than twelve (12) psig, pressure shall not exceed maximum allowable operating pressure plus fifty (50) percent.

(b) When more than one (1) pressure regulating or compressor station feeds into a pipeline, relief valves or other protective devices shall be installed at each station to ensure that complete failure of the largest capacity regulator or compressor, or any single run of lesser capacity regulators or compressors in that station, will not impose pressure on any part of the pipeline or distribution system in excess of those for which it was designed, or against which it was protected, whichever is lower.

(c) Relief valves or other pressure limiting devices shall be installed at or near each regulator station in a low pressure distribution system, with a capacity to limit maximum pressure in the main to a pressure that will not exceed safe operating pressure for any connected and properly adjusted gas utilization equipment.

(34) Instrument, control and sampling pipe and components.

(a) Applicability. This subsection applies to design of instrument, control, sampling pipe and components. It does not apply to permanently closed systems, such as fluid-filled temperature-responsive devices.

(b) Materials and design. All material employed for pipe and components shall be designed to meet particular conditions of service and the following:

1. Each takeoff connection and attaching boss, fitting, or adapter shall be made of suitable material, be able to withstand maximum service pressure and temperature of pipe or equipment to which it is attached, and be designed to satisfactorily withstand all stresses without failure by fatigue.

2. A shutoff valve shall be installed in each takeoff line as near as practicable to point of takeoff. Blowdown valves shall be installed where necessary.

3. Brass or copper material shall not be used for metal temperatures greater than 400 degrees Fahrenheit.

4. Pipe or components that may contain liquids shall be protected by heating or other means from damage due to freezing.

5. Pipe or components in which liquids may accumulate shall have drains or drips.

6. Pipe or components subject to clogging from solids or deposits shall have suitable connections for cleaning.

7. Arrangement of pipe, components, and supports shall provide safety under anticipated operating stresses.

8. Each joint between sections of pipe, and between pipe and valves or fittings, shall be made in a manner suitable for anticipated pressure and temperature condition. Slip type expansion joints shall not be used. Expansion shall be allowed by providing flexibility within the system itself.

9. Each control line shall be protected from anticipated causes of damage and shall be designed and installed to prevent damage to any one (1) control line from making both the regulator and overpressure protective device inoperative.

Section 5. Welding of Steel in Pipelines. (1) Scope.

(a) This subsection prescribes minimum requirements for welding steel materials in pipelines.

(b) This subsection does not apply to welding that occurs during the manufacture of steel pipe or steel pipeline components.

(2) Qualification of welding procedures.

(a) Welding shall be performed by a qualified welder in accordance with established, written, and tested welding procedures; and quality of test welds determined by destructive testing to meet acceptability standards of this section.

(b) Each welding procedure shall be recorded in detail, including results of qualifying tests. This record shall be retained and followed whenever the procedure is used.

(3) Qualification of welders.

(a) Except as provided in paragraph (b) of this subsection, each welder shall be qualified in accordance with Section 3 of the API Standard 1104 or Section IX of the ASME Boiler and Pressure Vessel Code. However, a welder qualified under an earlier edition than listed in Section II of Appendix A may weld but shall not requalify under that earlier edition.

(b) A welder may qualify to perform welding on pipe to be operated at pressure that produces hoop stress of less than twenty (20) percent of SMYS by performing an acceptable test weld for the process to be used, under the test set forth in Section 1 of Appendix C to this administrative regulation. A welder who makes welded service line connections to mains shall also perform an acceptable test weld under Section II of Appendix C to this administrative regulation as a part of his qualifying test. After initial qualification, a welder shall not perform welding unless:

1. Within the preceding fifteen (15) calendar months, the welder has requalified, except that the welder shall requalify at least once each calendar year; or

2. Within the preceding seven and one-half (7 1/2) calendar months, but at least twice each calendar year, the welder has had:

a. A production weld cut out, tested and found acceptable in accordance with the qualifying test; or

b. For welders who work only on service lines two (2) inches or smaller in diameter, two (2) sample welds tested and found acceptable in accordance with the test in Section III of Appendix C to this administrative regulation.

(4) Limitations on welders.

(a) No welder whose qualification is based on nondestructive testing shall weld compressor station pipe and components.

(b) No welder shall weld with a particular welding process unless, within the preceding six (6) calendar months, he has engaged in welding with that process.

(c) A welder qualified under subsection (3)(a) of this section shall not weld unless, within the preceding six (6) calendar months, the welder has had one (1) weld tested and found acceptable under Section 3 or 6 of API Standard 1104, except that a welder qualified under an earlier edition previously listed in Appendix A may weld but shall not requalify under that earlier edition.

(5) Protection from weather. The welding operation shall be protected from weather conditions that would impair the quality of the completed weld.

(6) Miter joints.

(a) A miter joint on steel pipe to be operated at pressure that produces hoop stress of thirty (30) percent or more of SMYS shall not deflect the pipe more than three (3) degrees.

(b) A miter joint on steel pipe to be operated at pressure that produces hoop stress of less than thirty (30) percent but more than ten (10) percent of SMYS shall not deflect the pipe more than twelve and one-half (12 1/2) degrees and shall be a distance to

one (1) pipe diameter or more away from any other miter joint, as measured from the crotch of each joint.

(c) A miter joint on steel pipe to be operated at pressure that produces hoop stress of ten (10) percent or less of SMYS shall not deflect the pipe more than ninety (90) degrees.

(7) Preparation for welding. Before beginning any welding, welding surfaces shall be clean and free of any material that may be detrimental to the weld, and the pipe or component shall be aligned to provide the most favorable condition for depositing the root bead. This alignment shall be preserved while the root bead is being deposited.

(8) Inspection and test of welds.

(a) Visual inspection of welding shall be conducted to insure that:

1. Welding is performed in accordance with welding procedure; and

2. Weld is acceptable under paragraph (c) of this subsection.

(b) Welds on a pipeline to be operated at pressure that produces hoop stress of twenty (20) percent or more of SMYS shall be nondestructively tested in accordance with subsection (9) of this section, except that welds that are visually inspected and approved by a qualified welding inspector need not be nondestructively tested if:

1. The pipe has a nominal diameter of less than six (6) inches; or

2. The pipeline is to be operated at pressure that produces hoop stress of less than forty (40) percent of SMYS, and welds are so limited in number that nondestructive testing is impractical.

(c) Acceptability of a weld that is nondestructively tested or visually inspected is determined according to the standards in Section 6 of API Standard 1104.

(9) Nondestructive testing.

(a) Nondestructive testing of welds shall be performed by any process, other than trepanning, that will clearly indicate defects that may affect the integrity of the weld.

(b) Nondestructive testing of welds shall be performed:

1. In accordance with written procedures; and

2. By persons trained and qualified in established procedures and with equipment employed in testing.

(c) Procedures shall be established for proper interpretation of each nondestructive test of a weld to ensure acceptability of the weld under subsection (8)(c) of this section.

(d) When nondestructive testing is required under subsection (8)(b) of this section, the following percentages of each day's field butt welds, selected at random by the operator, shall be nondestructively tested over their entire circumference:

1. In Class 1 locations, at least ten (10) percent.

2. In Class 2 locations, at least fifteen (15) percent.

3. In Class 3 and Class 4 locations, at crossings of major or navigable rivers, and offshore, and within railroad or public highway rights-of-way, including tunnels, bridges, and overhead road crossings, 100 percent unless impracticable, then at least ninety (90) percent. Nondestructive testing shall be impracticable for each girth weld not tested.

4. At pipeline tie-ins 100 percent.

(e) Except for a welder whose work is isolated from the principal welding activity, a sample of each welder's work for each day shall be nondestructively tested, when nondestructive testing is required under subsection (8)(b) of this section.

(f) When nondestructive testing is required under subsection (8)(b) of this section, each operator shall retain, for the life of the pipeline, a record showing by milepost, engineering station, or by geographic feature, the number of girth welds made, number nondestructively tested, number rejected, and disposition of rejects.

(10) Repair or removal of defects.

(a) Each weld that is unacceptable under subsection (8)(c) of this section shall be removed or repaired. A weld shall be removed if it has a crack that is more than eight (8) percent of the weld length.

(b) Each weld that is repaired shall have the defect removed down to sound metal, and the segment to be repaired shall be preheated if conditions exist which would adversely affect quality of

the weld repair. After repair, the segment of the weld that was repaired shall be inspected to ensure its acceptability.

(c) Repair of a crack or any defect in a previously repaired area shall be in accordance with written weld repair procedures qualified under subsection (2) of this section. Repair procedures shall provide that the minimum mechanical properties specified for the welding procedure used to make the original weld are met upon completion of the final weld repair.

~~Section 6. Joining of Materials other than by Welding. (1) Scope.~~

~~(a) This section prescribes minimum requirements for joining materials in pipelines, other than by welding.~~

~~(b) This section does not apply to joining during the manufacture of pipe or pipeline components.~~

~~(2) General.~~

~~(a) The pipeline shall be designed and installed so that each joint will sustain longitudinal pullout or thrust forces caused by contraction or expansion of piping or by anticipated external or internal loading.~~

~~(b) Each joint shall be made in accordance with written procedures proven by test or experience to produce strong gastight joints.~~

~~(c) Each joint shall be inspected to insure compliance with this subsection.~~

~~(3) Cast iron pipe.~~

~~(a) Each caulked bell and spigot joint in cast iron pipe shall be sealed with mechanical leak clamps.~~

~~(b) Each mechanical joint in cast iron pipe shall have a gasket made of resilient material as the sealing medium. Each gasket shall be suitably confined and retained under compression by a separate gland or follower ring.~~

~~(c) Cast iron pipe shall not be joined by threaded joints or by brazing.~~

~~(4) Ductile iron pipe. Ductile iron pipe shall not be joined by threaded joints or by brazing.~~

~~(5) Copper pipe. Copper pipe shall not be threaded, except that copper pipe used for joining screw fittings or valves may be threaded if wall thickness is equivalent to the comparable size of Schedule 40 or heavier wall pipe listed in Table C1 of ANSI B16.5.~~

~~(6) Plastic pipe.~~

~~(a) General. A plastic pipe joint joined by solvent cement, adhesive, or heat fusion shall not be disturbed until it has properly set. Plastic pipe shall not be joined by a threaded joint or miter joint.~~

~~(b) Solvent cement joints. Each solvent cement joint on plastic pipe shall comply with the following:~~

~~1. Mating surfaces of the joint shall be clean, dry, and free of material which might be detrimental to the joint.~~

~~2. Solvent cement shall conform with ASTM Specification D 2513.~~

~~3. Joint shall not be heated to accelerate setting of the cement.~~

~~(c) Heat fusion joints. Each heat fusion joint on plastic pipe shall comply with the following:~~

~~1. A butt heat fusion joint shall be joined by a device that holds the heater element square to the ends of the piping, compresses the heated ends together, and holds the pipe in proper alignment while the plastic hardens.~~

~~2. A socket heat fusion joint shall be joined by a device that heats mating surfaces of the joint uniformly and simultaneously to essentially the same temperature.~~

~~3. Heat shall not be applied with a torch or other open flame.~~

~~(d) Adhesive joints. Each adhesive joint on plastic pipe shall comply with the following:~~

~~1. Adhesive shall conform to ASTM Specification D 2517.~~

~~2. Materials and adhesive shall be compatible with each other.~~

~~(e) Mechanical joints. Each compression type mechanical joint on plastic pipe shall comply with the following:~~

~~1. Gasket material in the coupling shall be compatible with the plastic.~~

~~2. A rigid internal tubular stiffener, other than a split tubular stiffener, shall be used in conjunction with the coupling.~~

~~(7) Plastic pipe; qualifying joining procedures.~~

~~(a) Heat fusion, solvent cement, and adhesive joints. Before any written procedure established under subsection (2)(b) of this section is used for making plastic pipe joints by a heat fusion, solvent cement, or adhesive method, that procedure shall be qualified by subjecting specimen joints made according to the procedure to the following tests:~~

~~1. Burst test requirements of:~~

~~a. If thermoplastic pipe, Paragraph 8.6 (Sustained Pressure Test) or Paragraph 8.7 (Minimum Hydrostatic Burst Pressure) of ASTM D 2513; or~~

~~b. If thermosetting plastic pipe, Paragraph 8.5 (Minimum Hydrostatic Burst Pressure) or Paragraph 8.9 (Sustained Static Pressure Test) of ASTM D 2517;~~

~~2. For procedures intended for lateral pipe connections, subject a specimen joint made from pipe sections joined at right angles according to the procedure to a force on the lateral pipe until failure occurs in the specimen. If failure initiates outside the joint area, the procedure qualifies for use; and~~

~~3. For procedures intended for nonlateral pipe connections, follow the tensile test requirements of ASTM D 638, except that the test may be conducted at ambient temperature and humidity. If the specimen elongates no less than twenty-five (25) percent, or failure initiates outside the joint area, the procedure qualifies for use.~~

~~(b) Mechanical joints. Before any written procedure established under subsection (2)(b) of this section is used for making mechanical plastic pipe joints designed to withstand tensile forces, the procedure shall be qualified by subjecting five (5) specimen joints made according to the procedure to the following tensile test:~~

~~1. Use an apparatus for the test as specified in ASTM D 638-77a (except for conditioning).~~

~~2. Specimen shall be of such length that distance between the grips of the apparatus and the end of the stiffener does not affect joint strength.~~

~~3. Speed of testing is five (5) millimeters (two-tenths (.20) inches) per minute, plus or minus twenty-five (25) percent.~~

~~4. Pipe specimens less than 102 millimeters (four (4) inches) in diameter are qualified if pipe yields to an elongation of no less than twenty-five (25) percent or failure initiates outside the joint area.~~

~~5. Pipe specimens 102 millimeters (four (4) inches) and larger in diameter shall be pulled until the pipe is subjected to tensile stress equal to or greater than maximum thermal stress that would be produced by a temperature change of fifty-five (55) degrees Centigrade (100°F) or until the pipe is pulled from the fitting. If the pipe pulls from the fitting, the lowest value of the five (5) test results or the manufacturer's rating, whichever is lower, shall be used in design calculations for stress.~~

~~6. Each specimen that fails at the grips shall be retested using new pipe.~~

~~7. Results obtained pertain only to the specific outside diameter, and material of pipe tested, except that testing of heavier wall pipe may be used to qualify pipe of the same material but with lesser wall thickness.~~

~~(c) A copy of each written procedure being used for joining plastic pipe shall be available to persons making and inspecting joints.~~

~~(d) Pipe or fittings manufactured before July 1, 1980, may be used in accordance with procedures that the manufacturer certifies will produce a joint as strong as the pipe.~~

~~(8) Plastic pipe; qualifying persons to make joints.~~

~~(a) No person shall make a plastic pipe joint unless that person has been qualified under the applicable joining procedure by:~~

~~1. Appropriate training or experience in use of the procedure; and~~

~~2. Making a specimen joint from pipe sections joined according to the procedure that passes the inspection and testing set forth in paragraph (b) of this subsection.~~

~~(b) Specimen joint shall be:~~

~~1. Visually examined during and after assembly or joining and found to have the same appearance as a joint or photograph of a joint that is acceptable under the procedure; and~~

~~2. If a heat fusion, solvent cement, or adhesive joint:~~

~~a. Tested under any one (1) of the test methods listed in subsection (7)(a) of this section applicable to the type of joint and~~

material being tested;

b. Examined by ultrasonic inspection and found not to contain flaws that would cause failure; or

c. Cut into at least three (3) longitudinal straps, each of which is:

(i) Visually examined and found not to contain voids or discontinuities on cut surface of the joint area; and

(ii) Deformed by bending, torque, or impact, and if failure occurs, it shall not initiate in the joint area.

(iii) A person shall be requalified under an applicable procedure, if during any twelve (12) month period that person:

A. Does not make any joints under that procedure; or

B. Has made three (3) joints or three (3) percent of the joints, whichever is greater, under that procedure, that are found unacceptable by testing under Section 11(7) of this administrative regulation.

(d) Each operator shall establish a method to determine that each person making joints in plastic pipelines in his system is qualified in accordance with this section.

(9) Plastic pipe; inspection of joints. No person shall carry out the inspection of joints in plastic pipes required by subsections (2)(c) and (8)(b) of this section unless that person has been qualified by appropriate training or experience in evaluating the acceptability of plastic pipe joints made under the applicable joining procedure.

Section 7. General Construction Requirements for Transmission Lines and Mains. (1) Scope. This section prescribes minimum requirements for constructing transmission lines and mains.

(2) Compliance with specifications or standards. Each transmission line or main shall be constructed in accordance with comprehensive written specifications or standards consistent with this section.

(3) Reports and records of proposed construction:

(a) At least thirty (30) days prior to construction or major reconstruction of any gas pipeline intended to be subjected to pressure in excess of 100 psig, or twenty (20) percent of minimum yield strength, whichever is lower, and after receipt from the commission of a certificate of public convenience and necessity for such construction if required, the utility shall file a report with the commission setting forth the specifications for such pipeline and the maximum allowable operating pressure.

(b) Before any gas pipeline or main is placed in operation intended to be subjected to pressures in excess of 100 psig, or twenty (20) percent of specified minimum yield strength, whichever is lower, a report shall be filed with the commission certifying the maximum pressure to which the line is intended to be subject and also certifying that the pipeline has been constructed and tested in accordance with the requirements of this administrative regulation. A further report shall be filed within sixty (60) days thereafter including the results of all tests made pursuant to this section. No gas pipeline or main shall be operated at pressures in excess of the pressure for which it was certified to the commission.

(d) Responsibility for maintenance of necessary records to establish that compliance with rules and administrative regulations has been accomplished rests with the utility. Such records shall be available for inspection at all times by commission staff.

(4) Inspection: general. Each transmission line or main shall be inspected to ensure that it is constructed in accordance with this section. The inspector shall have authority to order removal and replacement of any section of pipe and fittings that fail to meet the standards of this administrative regulation.

(5) Inspection of materials. Each length of pipe and each other component shall be visually inspected at site of installation to ensure that it has not sustained any visually determinable damage that could impair its serviceability. Plastic pipe and tubing shall be adequately supported during storage. Thermoplastic pipe, tubing and fittings shall be protected from exposure to direct sun rays if the pipe is to remain exposed for twelve (12) months or longer unless written warranty of the manufacturer states that such protection is not necessary. However, if the manufacturer specifies that the pipe has been manufactured with a minimum of two (2)

percent or more carbon black content to prevent ultraviolet degradation, the pipe may be exposed to sun rays for up to thirty-six (36) months.

(6) Repair of steel pipe.

(a) Each imperfection or damage that impairs the serviceability of a length of steel pipe shall be repaired or removed. If repair is made by grinding, remaining wall thickness shall at least be equal to either:

1. Minimum thickness required by the tolerance in the specification to which the pipe was manufactured; or

2. Nominal wall thickness required for the design pressure of the pipeline.

(b) Each of the following dents shall be removed from steel pipe to be operated at pressure that produces hoop stress of twenty (20) percent, or more, of SMYS:

1. A dent that contains a stress concentrator such as a scratch, gouge, groove, or arc burn.

2. A dent that affects the longitudinal weld or a circumferential weld.

3. In pipe to be operated at pressure that produces hoop stress of forty (40) percent or more of SYMS, a dent that has a depth of:

a. More than one-quarter (1/4) inch in pipe twelve and three-fourths (12 3/4) inches or less in outer diameter; or

b. More than two (2) percent of the nominal pipe diameter in pipe over twelve and three-fourths (12 3/4) inches in outer diameter.

For purposes of this subsection a "dent" is a depression that produces gross disturbance in curvature of the pipe wall without reducing pipe wall thickness. Depth of a dent is measured as the gap between the lowest point of the dent and a promulgation of the pipe's original contour.

(c) Each arc burn on steel pipe to be operated at pressure that produces hoop stress of forty (40) percent, or more, of SMYS shall be repaired or removed. If repair is made by grinding, the arc burn shall be completely removed, and remaining wall thickness shall be at least equal to either:

1. Minimum wall thickness required by the tolerances in the specification to which the pipe was manufactured; or

2. Nominal wall thickness required for the design pressure of the pipeline.

(d) A gouge, groove, arc burn, or dent shall not be repaired by insert patching or by pounding out.

(e) Each gouge, groove, arc burn, or dent removed from a length of pipe shall be removed by cutting out the damaged portion as a cylinder.

(7) Repair of plastic pipe. Each imperfection or damage that would impair serviceability of plastic pipe shall be repaired by a patching saddle or removed.

(8) Bends and elbows.

(a) Each field bend in steel pipe, other than a wrinkle bend made in accordance with subsection (9) of this section shall comply with the following:

1. A bend shall not impair serviceability of the pipe.

2. Each bend shall have a smooth contour and be free from buckling, cracks, or any other mechanical damage.

3. On pipe containing a longitudinal weld, the longitudinal weld shall be as near as practicable to the neutral axis of the bend unless:

a. The bend is made with an internal bending mandrel; or

b. The pipe is twelve (12) inches or less in outside diameter or has a diameter to wall thickness ratio less than seventy (70).

(b) Each circumferential weld of steel pipe located where stress during bending caused permanent deformation in the pipe shall be nondestructively tested either before or after the bending process.

(c) Wrought-steel welding elbows and transverse segments of these elbows shall not be used for changes in direction on steel pipe two (2) inches or more in diameter unless the arc length, as measured along the crotch, is at least one (1) inch.

(9) Wrinkle bends in steel pipe.

(a) A wrinkle bend shall not be made on steel pipe to be operated at pressure that produces hoop stress of thirty (30) percent, or more, of SYMS.

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(b) Each wrinkle bend on steel pipe shall comply with the following:

1. The bend shall not have any sharp kinks.
2. When measured along the crotch of the bend, wrinkles shall be a distance of at least one (1) pipe diameter.
3. On pipe sixteen (16) inches or larger in diameter, the bend shall not have a deflection of more than one and one-half (1 1/2) degrees for each wrinkle.
4. On pipe containing a longitudinal weld, the longitudinal seam shall be as near as practicable to the neutral axis of the bend.

(10) Protection from hazards.

(a) Each transmission line or main shall be protected from washouts, floods, unstable soil, landslides, or other hazards that may cause the pipeline to move or to sustain abnormal loads.

(b) Each aboveground transmission line or main, not in inland navigable water areas, shall be protected from accidental damage by vehicular traffic or other similar causes, either by being placed at a safe distance from traffic or by installing barricades.

(c) Pipelines, including pipe risers, on each platform located in inland navigable waters shall be protected from accidental damage by vessels.

(11) Installation of pipe in a ditch.

(a) When installed in a ditch, each transmission line to be operated at pressure producing hoop stress of twenty (20) percent or more of SMYS shall be installed so that the pipe adequately fits the ditch to minimize stresses and protect pipe coating from damage.

(b) When a ditch for a transmission line or main is backfilled, it shall be backfilled in a manner that:

1. Provides firm support under the pipe; and
2. Prevents damage to pipe and pipe coating from equipment or backfill material.

(12) Installation of plastic main.

(a) Plastic pipe shall be installed below ground level and shall conform to applicable provisions of subsection (15) of this section except that plastic mains shall be installed with minimum cover of twenty-four (24) inches at all stress levels unless encased or otherwise protected.

(b) Plastic pipe installed in a vault or any other below grade enclosure shall be completely encased in gastight metal pipe and fittings adequately protected from corrosion.

(c) Plastic pipe shall be installed to minimize shear or tensile stresses.

(d) Thermoplastic pipe not encased shall have minimum wall thickness of 0.090 inches, except that pipe with an outside diameter of 0.875 inches or less may have minimum wall thickness of 0.062 inches.

(e) Plastic pipe not encased shall have an electrically conductive wire or other means of located the pipe while it is underground.

(f) Plastic pipe being encased shall be inserted into casing pipe in a manner that will protect the plastic. The leading end of the plastic shall be closed before insertion.

(13) Casing. Each casing used on a transmission line or main under a railroad or highway shall comply with the following:

(a) Casing shall be designed to withstand superimposed loads.

(b) If there is a possibility of water entering the casing, ends shall be sealed.

(c) If ends of an unvented casing are sealed, and the sealing is strong enough to retain maximum allowable operating pressure of the pipe, the casing shall be designed to hold this pressure at a stress level of not more than seventy-two (72) percent of SMYS.

(d) If vents are installed on a casing, vents shall be protected from weather to prevent water from entering the casing.

(14) Underground clearance.

(a) Each transmission line shall be installed with at least twelve (12) inches of clearance from any other underground structure not associated with the transmission line. If this clearance cannot be attained, The transmission line shall be protected from damage that might result from proximity to other structures.

(b) Each main shall be installed with enough clearance from any other underground structure to allow proper maintenance and to protect against damage that might result from proximity to other

structures.

(c) In addition to meeting the requirements of paragraph (a) or (b) of this subsection, each plastic transmission line or main shall be installed with sufficient clearance, or shall be insulated, from any source of heat to prevent heat from impairing serviceability of the pipe.

(d) Each pipe type or bottle type holder shall be installed with minimum clearance from any other holder as prescribed in Section 4(19)(b) of this administrative regulation.

(15) Cover.

(a) Except as provided in paragraphs (c) and (d) of this subsection, each buried transmission line shall be installed with minimum cover as follows:

Location	Normal Soil (inches)	Consolidated Rock (inches)
Class 1 locations	30	18
Class 2, 3 and 4 locations	36	24
Drainage ditches of public roads and railroad crossings	36	24

(b) Except as provided in paragraphs (c) and (d) of this subsection, each buried main shall be installed with at least twenty-four (24) inches of cover.

(c) Where an underground structure prevents installation of a transmission line or main with minimum cover, the transmission line or main may be installed with less cover if it is provided with additional protection to withstand anticipated external loads.

(d) All pipe installed in a navigable river or stream shall have minimum cover of forty-eight (48) inches in soil or twenty-four (24) inches in consolidated rock. However, less than minimum cover is permitted in accordance with paragraph (c) of this subsection.]

Section 3[8].[Gas Measurement. (1) Scope. This section prescribes] Minimum requirements for measurement of gas, accuracy of measuring meters[instruments (meters)], meter testing facilities and periodic testing of meters. (1)(2) Method of measuring service.

(a) All gas sold by a utility and all gas consumed by a utility in the State of Kentucky shall be metered through[approved type] meters that comply with this section except in cases of emergency or when otherwise authorized by the commission in accordance with Section 8 of this administrative regulation. Each meter shall bear an identifying number. ~~If~~[When] gas is sold at high pressures or large volumes, the contract or rate schedule shall specify standards used to calculate gas volume. Prepayment meters shall not be used unless there is no other satisfactory method of collecting payment for services rendered.

(b) All gas delivered as compensation for leases, rights-of-way, or for other reasons, not charged at the utility's regular schedule of charges, shall be metered and a record shall be kept of each transaction. All meters and regulators installed to measure gas and to regulate pressure of gas shall be under the control of the utility and subject to the rules of the utility and 807 KAR Chapter 5[of the commission].

(c) The utility shall make no charge for furnishing and installing any meter or appurtenance necessary to measure gas furnished, except [by mutual agreement] as approved by the commission in accordance with Section 8 of this administrative regulation or ~~if~~[in special cases or except where] duplicate or check meters are requested by the customer.

(d) Each gas utility shall adopt a standard method of meter and service line installation, if[insofar as] practicable. These methods shall be set out with a written description and with drawings as necessary for clear understanding of the requirements, all of which shall be filed with the commission. Copies of these standard methods shall be made available to prospective customers, contractors, or others engaged in installing pipe for gas utilization. All meters shall be set in place by the utility.

(e) Each customer shall be metered separately except in cases of multioccupants under the same roof sharing a common entrance or an enclosure where it is unreasonable or uneconomical to measure each unit separately.

(f) The utility may render temporary service to a customer and may require the customer to bear all costs of installing and

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removing service in excess of any salvage realized. In this respect, temporary service shall be considered to be service that is not required or used for more than one (1) year.

~~(2)~~~~(3)~~ Accuracy requirements for meters. All tests to determine accuracy of registration of any gas meters shall be made by a ~~qualified~~ meter tester certified in accordance with 807 KAR 5:006, Section 17, and with ~~suitable~~ facilities that meet the requirements of subsection (3) of this section.

(a) Diaphragm displacement meters:

1. Before being installed for use by any customer, every diaphragm displacement gas meter, whether new, repaired, or removed from service for any cause shall be in good working condition and shall be adjusted to be correct to within one-half (1/2) of one (1) percent, plus or minus when passing gas at approximately twenty (20) percent and 100 percent of the rated capacity of the meter as specified by the manufacturer based on five-tenths (0.5) inch water column differential. A pilot test or quartering test to determine that the meter will register at one-half (1/2) of one (1) percent of the rated capacity shall be made before placing meters in service.

2. Meters removed from service for periodic testing shall be tested for accuracy as soon as practical after removal. An "as found" test shall be made at a flow-rate of approximately twenty (20) percent and 100 percent of the rated capacity of the meter based on five-tenths (0.5) inch water column differential and results of these tests algebraically averaged to determine accuracy. If error is less than two (2) percent, this shall be reported as the "as found" test. If error is more than two (2) percent, two (2) additional tests shall be made at twenty (20) percent and 100 percent, and the average of these three (3) tests shall be reported as the "as found" test. The three (3) test procedures shall apply to any customer request test, complaint test, or bill adjustment made on the basis of the meter.

3. Meters of good working condition that are removed from service for reasons other than periodic, customer, or commission request tests shall be tested as soon as practicable after removal if elapsed time since the last test exceeds fifty (50) percent of the periodic test period for those meters.

(b) Other than diaphragm displacement meters.

1. All meters other than diaphragm displacement meters shall be tested at ~~approved~~ the intervals required by subsection (4) of this section by the utility meter tester using flow provers or ~~other approved~~ methods approved in accordance with the requirements of this section either in the shop or at the location of use at the utility's option and with facilities that meet the requirements of subsection (3) of this section ~~[with the commission's approval of facilities and methods used]~~. Accuracy of these meters shall be maintained as near 100 percent as possible. Test ranges and procedures shall be as prescribed in subsection (3) of this section ~~[adopted standards or approved by the commission]~~.

2. All meter installations shall be inspected for proper design and construction and all instruments, regulators, and valves used in conjunction with installation shall be tested for desired operation and accuracy before being placed in service. This inspection shall be made by a qualified person. Test data as to conditions found, corrected if in error, and conditions as left shall be made available for inspection by commission staff. Subsequent test results shall be a portion of regular meter test reports submitted to the commission by the utility.

~~(3)~~~~(4)~~ Meter testing facilities and equipment.

(a) Meter shop.

1. Each utility, ~~unless specifically excepted by the commission,~~ shall maintain a meter shop to inspect, test, and repair meters. The shop shall be open for inspection by commission staff at all reasonable times. ~~[Facilities and equipment, as well as methods of measurement and testing employed, shall be subject to approval of the commission.]~~

2. The meter shop shall consist of a repair room or shop proper and a proving room. The proving room shall be designed so that meters and meter testing apparatus are protected from excessive changes in temperature and other disturbing factors, such as humidity and dust. The proving room or the entire meter shop shall be air conditioned, if necessary, to achieve ~~[satisfactory]~~

temperature control required by subparagraph (3) of this paragraph.

3. The proving room shall be well lighted and preferably not on an outside wall of the building. Temperatures within the proving room shall not vary more than two (2) degrees Fahrenheit per hour nor more than five (5) degrees Fahrenheit over a twenty-four (24) hour period.

(b) Working standards.

1. Each utility, ~~unless specifically excepted by the commission,~~ shall own and make proper provision to operate at least one (1) approved belltype meter prover, preferably of ten (10) cubic feet capacity, but ~~not in no case of~~ less than five (5) cubic feet capacity. The prover shall be equipped with suitable thermometers and other necessary accessories. This equipment shall be maintained in proper condition and adjustment so that it shall be capable of determining the accuracy of any service meter, practical to test by it, to within one-half (1/2) of one (1) percent plus or minus.

2. The prover shall be accurate to within three-tenths (0.3) of one (1) percent at each point used in testing meters.

3. The prover shall not be located near any radiator, heater, steam pipe, or hot or cold air duct. Direct sunlight shall not be allowed to fall on the prover or the meters under test.

4. During conditions of satisfactory operation air temperature in the prover shall be within one (1) degree Fahrenheit of the ambient temperature, and oil temperature in the prover shall not differ from the temperature of ambient air by more than one (1) degree Fahrenheit.

5. Meters to be tested shall be stored in a ~~such~~ manner that temperature of the meters is substantially the same as temperature of the prover. To achieve this, meters shall be placed in the environment of the prover for a minimum of five (5) hours.

(c) All testing instruments and other equipment certified by the commission shall be accompanied at all times by a certificate showing the date when it was last tested and adjusted. The certificate shall ~~must~~ be signed by a proper authority of the party providing the certification ~~[designated by the commission]~~. A tag referring to the ~~such~~ certificate may be attached to the instruments if ~~when~~ practicable. These certificates, when superseded, shall be kept on file by the utility.

(d) Sixty (60) days after the effective date of a commission order granting convenience and necessity for a new utility, that utility shall advise the commission in writing as to kind and amount of testing equipment available.

~~(4)~~~~(5)~~ Periodic tests.

(a) Periodic tests of all meters shall be made according to the following schedule based on rated capacities. Rated meter capacity shall be ~~[is]~~ defined as the capacity of the meter at five-tenths (0.5) of one (1) inch water column differential for diaphragm meters and as specified by the manufacturer for all other meters.

1. Positive-displacement meters, with rated capacity up to and including 500 cubic feet per hour, shall be tested at least once every ten (10) years.

2. Positive-displacement meters, with rated capacity above 500 cubic feet per hour, up to and including 1,500 cubic feet per hour, shall be tested at least once every five (5) years.

3. Positive-displacement meters above 1,500 cubic feet per hour shall be tested at least once every year.

4. Orifice meters shall have their recording gauges tested at least once every six (6) months. Orifice size and condition shall be checked at the required meter test interval.

5. Auxiliary measurement devices such as pressure, temperature, volume, load demand, and remote reading devices shall be tested at the required meter test interval as specified by the manufacturer.

(b) ~~[If/Whenever]~~ the number of meters of any type which register in error beyond the limits specified in these rules is deemed excessive, this type shall be tested with an ~~such~~ additional frequency as the commission may direct.

(c) A utility desiring to adopt a scientific sample meter test plan for positive displacement meters ~~[in accordance with parameters established by the commission]~~ shall make its request in accordance with Section (8) of this administrative regulation ~~[submit~~

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its application to the commission for approval]. Upon approval, the sample testing plan may be followed ~~instead~~[in lieu] of tests prescribed in subsections ~~(2) and (4)~~[(3) and (5)] of this section and 807 KAR 5:006, Section 17(1).

~~(5)~~[(6)] Measuring production and shipment into and out of the state.

(a) The utility shall measure and record the quantity of all gas produced and purchased by it in Kentucky.

(b) The utility shall measure and record the quantity of all gas piped out of or brought into the state of Kentucky.

Section ~~4~~[9]. Customer[~~Meters, Service Regulators, and Service Line Extensions and Connections~~[Lines]]. (1)[Scope. This section prescribes minimum requirements for installing customer meters, service regulators, service lines, service line valves, and service line connections to mains.

~~(2) Customer meters and regulators: location.~~

~~(a) Each meter and service regulator, whether inside or outside of a building, shall be installed in a readily accessible location and protected from corrosion and other damage.~~

~~(b) Meters shall be easily accessible for reading, testing and making necessary adjustments and repairs, and where indoor type meters are necessary they shall be installed in a clean, dry, safe, convenient place. Unless absolutely unavoidable, meters shall not be installed in any location where visits of the meter reader or tester will cause annoyance to the customer or severe inconvenience to the utility. Existing meters located in places not permitted by rule shall be relocated by the customer or owner to an approved position.~~

~~(c) Proper provision shall be made by the customer for installation of the utility's meter. At least six (6) inches clear space shall be available, if possible, on all sides of the meter and not less than thirty (30) inches in front of it. When installed within a building, a meter shall be located in a ventilated place and not less than three (3) feet from any source of ignition or any source of heat which might damage the meter.~~

~~(d) When a number of meters are placed in the same location, each meter shall be tagged or marked to indicate the customer served by it and such identification shall be preserved and maintained by the owner of the premises served.~~

~~(e) When the distance between the utility's main and nearest point of consumption is more than 150 feet, the meter shall be located as near to the utility's main as may be practicable. This provision shall apply when any part of the service line has been constructed by either the customer or utility.~~

~~(f) When a customer is served from a pipeline operating in excess of sixty (60) psig the meters, regulators and safety devices shall be located as near to the utility's pipeline as practicable.~~

~~(g) Each service regulator installed within a building shall be located as near as practical to point of service line entrance.~~

~~(h) Where feasible, the upstream regulator in a series shall be located outside the building unless it is located in a separate metering or regulating building.~~

~~(3) Customer meters and regulators: protection from damage.~~

~~(a) Protection from vacuum or back pressure. If the customer's equipment might create either a vacuum or a back pressure, a device shall be installed to protect the system.~~

~~(b) Service regulator vents and relief vents. Service regulator vents and relief vents shall terminate outdoors, and the outdoor terminal shall be:~~

~~1. Rain and insect resistant;~~

~~2. Located at a place where gas from the vent can escape freely into the atmosphere and away from any opening into the building; and~~

~~3. Protected from damage caused by submergence in areas where flooding may occur.~~

~~(c) Pits and vaults. Each pit or vault that houses a customer meter or regulator at a place where vehicular traffic is anticipated shall be able to support that traffic.~~

~~(4) Customer meter and regulators: installation.~~

~~(a) Each meter and each regulator shall be installed to minimize anticipated stresses upon the connecting piping and the meter.~~

~~(b) Use of all thread (close) nipples is prohibited.~~

~~(c) Connections made of lead or other easily damaged material shall not be used in installation of meters or regulators.~~

~~(d) Each regulator that might release gas in its operation shall be vented to the outside atmosphere and shall have a vent pipe sized no smaller than the manufacturer's vent connection built into the regulator.~~

~~(5) Customer meter installation: operation pressure.~~

~~(a) A meter shall not be used at pressure more than sixty-seven (67) percent of the manufacturer's shell test pressure.~~

~~(b) Each newly installed meter manufactured after November 12, 1970, shall have been tested to a minimum of ten (10) psig.~~

~~(c) A rebuilt or repaired tinned steel case meter shall not be used at pressure more than fifty (50) percent of the pressure used to test the meter after rebuilding or repairing.~~

~~(6) Service lines: installation.~~

~~(a) Depth. Each buried service line shall be installed with at least twelve (12) inches of cover in private property and at least eighteen (18) inches of cover in streets and roads. However, where an underground structure prevents installation at those depths, the service line shall be able to withstand any anticipated external load.~~

~~(b) Support and backfill. Each service line shall be properly supported on undisturbed or well-compacted soil, and material used for backfill shall be free of materials that could damage the pipe or its coating.~~

~~(c) Grading for drainage. Where condensation in the gas might cause interruption in gas supply to the customer, the service line shall be graded to drain into the main or into drips at low points in the service line.~~

~~(d) Protection against piping strain and external loading. Each service line shall be installed to minimize anticipated piping strain and external loading.~~

~~(e) Installation of service lines into buildings. Each underground service line installed below grade through the outer foundation wall of a building shall:~~

~~1. If a metal service line, be protected against corrosion;~~

~~2. If a plastic service line, be protected from shearing action and backfill settlement; and~~

~~3. Be sealed at the foundation wall to prevent leakage into the building.~~

~~(f) Installation of service lines under buildings. Where an underground service line is installed under a building:~~

~~1. It shall be encased in a gastight conduit;~~

~~2. The conduit and the service line shall, if the service line supplies the building it underlies, extend into a normally usable and accessible part of the building; and~~

~~3. The space between the conduit and service line shall be sealed to prevent gas leakage into the building. If the conduit is sealed at both ends, a vent line from the annular space shall extend to a point where gas would not be a hazard and extend above grade, terminating in a rain and insect resistant fitting.~~

~~(g) Joining of service lines. All underground steel service lines shall be joined by threaded and coupled joints, compression type fittings, or by qualified welding procedures and operators.~~

~~(h) When coated steel pipe is to be installed as a service line in a bore, care shall be exercised to prevent damage to the coating during installation. For all installations to be made by boring, driving or similar methods or in a rocky type soil, the following practices or their equivalents are recommended:~~

~~1. Coated pipe should not be used as the bore pipe or drive pipe and left in the ground as part of the service line. It is preferable to make such installations by first making an average bore, removing the pipe used for boring and then inserting the coated pipe.~~

~~2. Coated steel pipe preferably should not be inserted through a bore in exceptionally rocky soil when there is a likelihood of damage to the coating resulting from insertion.~~

~~3. Recommendations in subparagraphs 1 and 2 of this subsection do not apply where coated pipe is installed under conditions where the coating is not likely to be damaged, such as in sandy soil.~~

~~(7) Service line: valve requirements.~~

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~~(a) Each service line shall have a service line valve that meets applicable requirements of Sections 2 and 4 of this administrative regulation. A valve incorporated in a meter bar, that allows the meter to be bypassed, shall not be used as a service line valve.~~

~~(b) A soft seal service line valve shall not be used if its ability to control flow of gas could be adversely affected by exposure to anticipated heat.~~

~~(c) Each service line valve on a high-pressure service line, installed above ground or in an area where blowing gas would be hazardous, shall be designed and constructed to minimize the possibility of removal of the valve core with other than specialized tools.~~

~~(8) Service lines: location of valves.~~

~~(a) Relation to regulator or meter. Each service line valve shall be installed upstream of the regulator or, if there is not regulator, upstream of the meter.~~

~~(b) Outside valves. Each service line shall have a shutoff valve in a readily accessible location that, if feasible, is outside of the building.~~

~~(c) Underground valves. Each underground service line valve shall be located in a covered, durable curb box or standpipe that allows ready operation of the valve. The curb box shall be supported independently of the service lines.~~

~~(9) Service lines general requirements for connections to main piping.~~

~~(a) Location. Each service line connection to a main shall be located at the top of the main, or, if not practical, at the side of the main, unless a suitable protective device is installed to minimize possibility of dust and moisture being carried from the main into the service line.~~

~~(b) Compression type connection to main. Each compression-type service line to main connection shall:~~

~~1. Be designed and installed to effectively sustain longitudinal pullout or thrust forces caused by contraction or expansion of piping, or by anticipated external or internal loading; and~~

~~2. If gaskets are used in connecting the service line to the main connection fitting, gaskets shall be compatible with the kind of gas in the system.~~

~~(10) Service lines: connection to cast iron or ductile iron mains.~~

~~(a) Each service line connected to a cast iron or ductile iron main shall be connected by a mechanical clamp, by drilling and tapping the main, or by another method meeting requirements of Section 6(2) of this administrative regulation.~~

~~(b) If a threaded tap is being inserted, the requirements of Section 4(6)(b) and (c) of this administrative regulation shall also be met.~~

~~(11) Service lines: steel. Each steel service line to be operated at less than 100 psig shall be constructed of pipe designed for a minimum of 100 psig.~~

~~(12) Service lines: cast iron and ductile iron. Cast or ductile iron pipe shall not be installed for service lines.~~

~~(13) Service lines: plastic.~~

~~(a) Each plastic service line outside a building shall be installed below ground level, except that it may terminate above ground and outside the building, if:~~

~~1. The above ground part of the plastic service line is protected against deterioration and external damage; and~~

~~2. The plastic service line is not used to support external loads.~~

~~(b) Each plastic service line inside a building shall be protected against external damage.~~

~~(14) Service lines: copper. Each copper service line installed within a building shall be protected against external damage.~~

~~(15) New service lines not in use. Each service line not placed in service upon completion of installation shall comply with one (1) of the following until the customer is supplied with gas:~~

~~(a) The valve that is closed to prevent flow of gas to the customer shall be provided with a locking device or other means designed to prevent opening of the valve by persons other than those authorized by the operator.~~

~~(b) A mechanical device or fitting that will prevent flow of gas shall be installed in the service line or in the meter assembly.~~

~~(c) The customer's piping shall be physically disconnected from the gas supply, and the open pipe ends sealed.~~

~~(16)] Extension of services.~~

~~(a) Normal extension. An extension of 100 feet or less shall be made by a utility to an existing distribution main without charge for a prospective customer who shall apply for and contract to use service for one (1) year or more and provides guarantee for the[such] service.~~

~~(b) Other extensions.~~

~~1. If[When] an extension of the utility's main to serve an applicant or group of applicants amounts to more than 100 feet per customer, the utility shall, if not inconsistent with its filed tariff, require the total cost of the excessive footage over 100 feet per customer to be deposited with the utility by the applicant[applicant(s)], based on average estimated cost per foot of the total extension.~~

~~2. Each customer receiving service under this extension shall[such extension will] be reimbursed under the following plan: each year for a refund period of not less than ten (10) years, the utility shall refund to the customer[customer(s)] who paid for the excessive footage, the cost of 100 feet of extension in place for each additional customer connected during the year whose service line is directly connected to the extension installed, and not to extensions or laterals therefrom. Total amount refunded shall not exceed the amount paid to the utility. After the end of the refund period, no refund shall be required.~~

~~(c) An applicant desiring an extension to a proposed real estate subdivision may be required to pay all costs of the extension. Each year for a refund period of not less than ten (10) years, the utility shall refund to the applicant who paid for the extension a sum equivalent to the cost of 100 feet of extension installed for each additional customer connected during the year. Total amount refunded shall not exceed the amount paid to the utility. After the end of the refund period from the completion of the extension, a[an] refund shall not be required.~~

~~(d) Nothing contained in this administrative regulation[herein] shall be construed to prohibit the utility from making extensions under different arrangements if these[provided such] arrangements have been included in the utility's tariff and approved by the commission.~~

~~(e) Nothing contained in this administrative regulation[herein] shall be construed to prohibit a utility from making, at its expense, greater extensions than[herein] prescribed, if[provided] the same free extensions are made to other customers under similar conditions.~~

~~(f) Upon complaint to and investigation by the commission, a utility may be required to construct extensions greater than 100 feet upon a finding by the commission that this[such] extension is reasonable.~~

~~(2)](17)] Service connections.~~

~~(a) Ownership of service lines.~~

~~1. Utility's responsibility. When a utility establishes new service to a customer or an existing service line is repaired or replaced, [In urban areas with well-defined streets], the utility shall furnish and install at its own expense, for the purpose of connecting its distribution system to customer premises, the[that portion of] service line[pipe] from its main to the meter, [property line or to and] including the curb stop and curb box if used. [The curb stop may be installed at a convenient place between property line and curb.] If meters are located outdoors, the curb box and curb stop may be omitted if meter installation is provided with a stopcock and connection to the distribution main is made with a service tee that incorporates a positive shutoff device that can be operated with ordinary, readily available tools and the service tee is not located under pavement.~~

~~2. Customer's responsibility. The customer[, or the company at its option and with commission approval,] shall furnish and install[lay] necessary pipe to make the connection from the meter[curb stop] to place of consumption and shall keep the[service] line in good repair and in accordance with reasonable requirements of the utility's rules and 807 KAR Chapter 5, [the commission's administrative regulations.~~

~~3. Inspection. In the installation of a service line, [the customer shall not install any tees or branch connections and shall leave the trench open and pipe uncovered until it is examined by an~~

inspector of the utility and shown to be free from any irregularity or defect. The utility shall test all piping downstream from the meter for gas leaks, each time gas is turned on by the utility, by observing that no gas passes through the meter when all appliances are turned off. The utility shall refuse to serve until all gas leaks so disclosed have been properly repaired.

4. Location of service. The customer's service line shall extend to that point on the curb line easiest of access to the utility from its distribution system. When a reasonable doubt exists as to the proper location of the service line, the utility shall be consulted and its approval of the location secured.]

(b) All services shall be equipped with a stopcock near the meter. If the service is not equipped with an outside shutoff, the inside shutoff shall be of a type which can be sealed in the off position. [Section 10. Requirements for Corrosion Control. (1) Scope. This subsection prescribes minimum requirements for protection of metallic pipelines from external, internal, and atmospheric corrosion.

(2) Applicability to converted pipelines. Notwithstanding the date the pipeline was installed or any earlier deadlines for compliance, each pipeline which qualifies for use under this administrative regulation in accordance with Section 1(7) of this administrative regulation shall meet the requirements of this subsection specifically applicable to pipelines installed before August 1, 1971, and all other applicable requirements within one (1) year after the pipeline is readied for service. However, the requirements of this section specifically applicable to pipelines installed after July 31, 1971, apply if the pipeline substantially meets those requirements before it is readied for service or it is a segment which is replaced, relocated, or substantially altered.

(3) General. Each operator shall establish procedures to implement the requirements of this section. These procedures, including those for design, installation, operation and maintenance of cathodic protection systems, shall be carried out by, or under the direction of a person qualified by experience and training in pipeline corrosion control methods.

(4) External corrosion control: buried or submerged pipelines installed after July 31, 1971.

(a) Except as provided in paragraphs (b), (c), and (f) of this subsection, each buried or submerged pipeline installed after July 31, 1971, shall be protected against external corrosion, including the following:

1. It shall have an external protective coating meeting the requirements of subsection (7) of this section.

2. It shall have a cathodic protection system designed to protect the pipeline in its entirety in accordance with this subsection, installed and placed in operation within one (1) year after completion of construction.

(b) An operator need not comply with paragraph (a) of this subsection if the operator can demonstrate by tests, investigation, or experience in the area of application, including, as a minimum, soil resistivity measurements and tests for corrosion accelerating bacteria, that a corrosive environment does not exist. However, within six (6) months after an installation made pursuant to the preceding sentence, the operator shall conduct tests, including pipe-to-soil potential measurements with respect to either a continuous reference electrode or an electrode using close spacing, not to exceed twenty (20) feet, and soil resistivity measurements at potential profile peak locations, to adequately evaluate the potential profile along the entire pipeline. If the tests indicate that a corrosive condition exists, the pipeline shall be cathodically protected in accordance with paragraph (a)2 of this subsection.

(c) An operator need not comply with paragraph (a) of this subsection, if the operator can demonstrate by tests, investigation, or experience that:

1. For a copper pipeline, a corrosive environment does not exist; or

2. For a temporary pipeline with an operating period of service not to exceed five (5) years beyond installation, corrosion during the five (5) year period of service of the pipeline will not be detrimental to public safety.

(d) Notwithstanding the provisions of paragraphs (b) or (c) of

this subsection, if a pipeline is externally coated, it shall be cathodically protected in accordance with paragraph (a)2 of this subsection.

(e) Aluminum shall not be installed in buried or submerged pipeline if that aluminum is exposed to an environment with a natural pH in excess of eight (8), unless tests or experience indicate its suitability in the particular environment involved.

(f) This subsection does not apply to electrically isolated, metal alloy fittings in plastic pipelines if:

1. For the size fitting used, an operator can show by tests, investigation, or experience in the area of application that adequate corrosion control is provided by alloyage; and

2. The fitting is designed to prevent leakage caused by localized corrosion pitting.

(5) External corrosion control: buried or submerged pipelines installed before August 1, 1971.

(a) Except for buried piping at compressor, regulator, and measuring stations, each buried or submerged transmission line installed before August 1, 1971, that has an effective external coating shall be cathodically protected along the entire area that is effectively coated, in accordance with this section. For the purposes of this section, pipeline does not have effective external coating if its cathodic protection current requirements are substantially the same as if it were bare. The operator shall make tests to determine cathodic protection current requirements.

(b) Except for cast iron or ductile iron, each of the following buried or submerged pipelines installed before August 1, 1971, shall be cathodically protected in accordance with this section in areas in which active corrosion is found:

1. Bare or ineffectively coated transmission lines.

2. Bare or coated pipes at compressor, regulator, and measuring stations.

3. Bare or coated distribution lines. The operator shall determine areas of active corrosion by electrical survey, or where electrical survey is impractical, by study of corrosion and leak history records, leak detection survey, or other means.

(c) For the purpose of this section, active corrosion means continuing corrosion which, unless controlled, could result in a condition that is detrimental to public safety.

(6) External corrosion control: examination of buried pipeline when exposed. Whenever an operator has knowledge that any portion of a buried pipeline is exposed, the exposed portion shall be examined for evidence of external corrosion if the pipe is bare, or if the coating is deteriorated. If external corrosion is found, remedial action shall be taken to the extent required by subsection (18) of this section and applicable paragraphs of subsections (19), (20) or (21) of this section.

(7) External corrosion control: protective coating.

(a) Each external protective coating, whether conductive or insulating, applied for external corrosion control shall:

1. Be applied on a properly prepared surface;

2. Have sufficient adhesion to the metal surface to effectively resist underfilm migration of moisture;

3. Be sufficiently ductile to resist cracking;

4. Have sufficient strength to resist damage due to handling and soil stress; and

5. Have properties compatible with any supplemental cathodic protection.

(b) Each external protective coating which is an electrically insulating type shall also have low moisture absorption and high electrical resistance.

(c) Each external protective coating shall be inspected just prior to lowering the pipe into the ditch and backfilling, and any damage to effective corrosion control shall be repaired.

(d) Each external protective coating shall be protected from damage resulting from adverse ditch conditions or supporting blocks.

(e) If coated pipe is installed by boring, driving, or other similar method, precautions shall be taken to minimize damage to the coating during installation.

(8) External corrosion control: cathodic protection.

(a) Each cathodic protection system required by this subsection shall provide a level of cathodic protection that

complies with one (1) or more of the applicable criteria contained in Appendix D of this administrative regulation. If none of these criteria is applicable, the cathodic protection system shall provide a level of cathodic protection at least equal to that provided by compliance with one (1) or more of these criteria.

(b) If amphoteric metals are included in a buried or submerged pipeline containing a metal of different anodic potential:

1. Amphoteric metals shall be electrically isolated from the remaining pipeline and cathodically protected; or

2. The entire buried or submerged pipeline shall be cathodically protected at a cathodic potential that meets the requirements of Appendix D of this administrative regulation for amphoteric metals.

(c) The amount of cathodic protection shall be controlled to prevent damage to protective coating or pipe.

(9) External corrosion control: monitoring.

(a) Each pipeline that is under cathodic protection shall be tested at least once each calendar year but with intervals not exceeding fifteen (15) months to determine whether the cathodic protection meets the requirements of subsection (8) of this section. However, if tests at those intervals are impractical for separately protected short sections of mains or transmission lines, not in excess of 100 feet, or separately protected service lines, these pipelines may be surveyed on a sampling basis. At least ten (10) percent of these protected structures, distributed over the entire system shall be surveyed each calendar year, with a different ten (10) percent checked each subsequent year, so that the entire system is tested in each ten (10) year period.

(b) Each cathodic protection rectifier or other impressed current power source shall be inspected six (6) times each calendar year, but with intervals not exceeding two and one-half (2 1/2) months, to insure that it is operating.

(c) Each reverse current switch, diode, and interference bond whose failure would jeopardize structure protection shall be electrically checked for proper performance six (6) times each calendar year, but with intervals not exceeding two and one-half (2 1/2) months. Each other interference bond shall be checked at least once each calendar year, but with intervals not exceeding fifteen (15) months.

(d) Each operator shall take prompt remedial action to correct any deficiencies indicated by the monitoring.

(e) After the initial evaluation required by subsection (4)(b) and (c) and subsection (5)(b) of this section, each operator shall, at intervals not exceeding three (3) years, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subsection in areas in which active corrosion is found. The operator shall determine areas of active corrosion by electrical survey, or where electrical survey is impractical, by study of corrosion and leak history records, leak detection survey, or other means.

(10) External corrosion control: electrical isolation.

(a) Each buried or submerged pipeline shall be electrically isolated from other underground metallic structures, unless the pipeline and other structures are electrically interconnected and cathodically protected as a single unit.

(b) One (1) or more insulating devices shall be installed where electrical isolation of a portion of a pipeline is necessary to facilitate application of corrosion control.

(c) Except for unprotected copper inserted in ferrous pipe, each pipeline shall be electrically isolated from metallic casings that are part of the underground system. However, if isolation is not achieved because it is impractical, other measures shall be taken to minimize corrosion of the pipeline inside the casing.

(d) Inspection and electrical tests shall be made to assure that electrical isolation is adequate.

(e) An insulating device shall not be installed in an area where a combustible atmosphere is anticipated unless precautions are taken to prevent arcing.

(f) Where a pipeline is located close to electrical transmission tower footings, ground cables or counterpoise, or in other areas where fault currents or unusual risk of lightning may be anticipated, it shall be protected against damage due to fault currents or lightning, and protective measures shall be taken at insulating

devices. A study shall be made in collaboration with the electric company on common problems of corrosion and electrolysis and taking the following factors into consideration:

1. Possibility of the pipeline carrying either unbalanced line currents or fault currents.

2. Possibility of lightning or fault currents inducing voltages sufficient to puncture pipe coatings or pipe.

3. Cathodic protection of the pipeline, including location of ground beds, especially if the electric line is carried on steel towers.

4. Bonding connections between the pipeline and either the steel tower footings or buried ground facilities or groundwire of the overhead electric system.

(11) External corrosion control: test stations. Each pipeline under cathodic protection required by this subsection shall have sufficient test stations or other contact points for electrical measurement to determine the adequacy of cathodic protection.

(12) External corrosion control: test leads.

(a) Each test lead wire shall be connected to the pipeline to remain mechanically secure and electrically conductive.

(b) Each test lead wire shall be attached to the pipeline to minimize stress concentration on the pipe.

(c) Each bared test lead wire and bared metallic area at point of connection to the pipeline shall be coated with electrical insulating material compatible with the pipe coating and insulation on the wire.

(13) External corrosion control: interference currents.

(a) Each operator whose pipeline system is subjected to stray currents shall have in effect a continuing program to minimize detrimental effects of such currents.

(b) Each impressed current type cathodic protection system or galvanic anode system shall be designed and installed to minimize any adverse effects on existing adjacent underground metallic structures.

(14) Internal corrosion control: general.

(a) Corrosive gas shall not be transported by pipeline, unless the corrosive effect of the gas on the pipeline has been investigated and steps have been taken to minimize internal corrosion.

(b) Whenever any pipe is removed from a pipeline for any reason, the internal surface shall be inspected for evidence of corrosion. If internal corrosion is found:

1. Adjacent pipe shall be investigated to determine the extent of internal corrosion;

2. Replacement shall be made to the extent required by applicable paragraphs of subsections (19), (20) and (21) of this section; and

3. Steps shall be taken to minimize the internal corrosion.

(c) Gas containing more than one-tenth (0.1) grain of hydrogen sulfide per 100 standard cubic feet shall not be stored in pipe-type or bottle-type holders.

(15) Internal corrosion control: monitoring. If corrosive gas is being transported, coupons or other suitable means shall be used to determine effectiveness of steps taken to minimize internal corrosion. Each coupon or other means of monitoring internal corrosion shall be checked two (2) times each calendar year, but with intervals not exceeding seven and one-half (7 1/2) months.

(16) Atmospheric corrosion control: general.

(a) Pipelines installed after July 31, 1971. Each aboveground pipeline or portion of pipeline installed after July 31, 1971, exposed to the atmosphere shall be cleaned and either coated or jacketed with material suitable for prevention of atmospheric corrosion. An operator need not comply with this paragraph, if the operator can demonstrate by test, investigation, or experience in the area of application, that a corrosive atmosphere does not exist.

(b) Pipelines installed before August 1, 1971. Each operator having an aboveground pipeline or portion of pipeline installed before August 1, 1971, exposed to the atmosphere, shall:

1. Determine areas of atmospheric corrosion on the pipeline;

2. If atmospheric corrosion is found, take remedial measures to the extent required by applicable paragraphs of subsections (19), (20), or (21) of this section; and

3. Clean and either coat or jacket areas of atmospheric

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corrosion on the pipeline with material suitable for prevention of atmospheric corrosion.

(17) Atmospheric corrosion control: monitoring. After meeting the requirements of subsection (16)(a) and (b) of this section, each operator shall, at intervals not exceeding three (3) years, reevaluate each pipeline exposed to the atmosphere and take protective action whenever necessary against atmospheric corrosion.

(18) Remedial measures: general.

(a) Each segment of metallic pipe that replaces pipe removed from a buried or submerged pipeline because of external corrosion shall have a properly prepared surface and shall be provided with an external protective coating that meets the requirements of subsection (7) of this section.

(b) Each segment of metallic pipe that replaces pipe removed from a buried or submerged pipeline because of external corrosion shall be cathodically protected in accordance with this section.

(c) Except for cast iron or ductile iron pipe, each segment of buried or submerged pipe required to be repaired because of external corrosion shall be cathodically protected in accordance with this section.

(19) Remedial measures: transmission lines.

(a) General corrosion. Each segment of transmission line with general corrosion and with a remaining wall thickness less than that required for maximum allowable operating pressure of the pipeline shall be replaced or operating pressure reduced commensurate with the strength of the pipe based on actual remaining wall thickness. However, if the area of general corrosion is small, the corroded pipe may be repaired. Corrosion pitting so closely grouped as to affect overall strength of the pipe is considered general corrosion for the purpose of this paragraph.

(b) Localized corrosion pitting. Each segment of transmission line pipe with localized corrosion pitting to a degree where leakage might result shall be replaced or repaired, or operating pressure shall be reduced commensurate with the strength of the pipe, based on actual remaining wall thickness in the pits.

(20) Remedial measures: distribution lines other than cast iron or ductile iron lines.

(a) General corrosion. Except for cast iron or ductile iron pipe, each segment of generally corroded distribution line pipe with remaining wall thickness less than that required for maximum allowable operating pressure of the pipeline, or remaining wall thickness less than thirty (30) percent of the nominal wall thickness, shall be replaced. However, if the area of general corrosion is small, the corroded pipe may be repaired. Corrosion pitting so closely grouped so as to affect overall strength of the pipe is considered general corrosion for the purpose of this paragraph.

(b) Localized corrosion pitting. Except for cast iron or ductile iron pipe, each segment of distribution line pipe with localized corrosion pitting to a degree where leakage might result shall be replaced or repaired.

(21) Remedial measures: cast iron and ductile iron pipelines.

(a) General graphitization. Each segment of cast iron or ductile iron pipe on which general graphitization is found to a degree where fracture or leakage might result shall be replaced.

(b) Localized graphitization. Each segment of cast iron or ductile iron pipe on which localized graphitization is found to a degree where leakage might result, shall be replaced or repaired, or sealed by internal sealing methods adequate to prevent or arrest leakage.

(22) Corrosion control records.

(a) Each operator shall maintain records or maps to show the location of cathodically protected piping, cathodic protection facilities, other than unrecorded galvanic anodes installed before August 1, 1971, and neighboring structures bonded to the cathodic protection system.

(b) Each of the following records shall be retained for as long as the pipeline remains in service:

1. Each record or map required by paragraph (a) of this subsection.
2. Records of each test, survey, or inspection required by this subsection, in sufficient detail to demonstrate the adequacy of

corrosion control measures or that a corrosive condition does not exist.

Section 11. Test Requirements. (1) Scope. This section prescribes minimum leak test and strength test requirements for pipelines.

(2) General requirements.

(a) No person shall operate a new segment of pipeline, or return to service a segment of pipeline that has been relocated or replaced, until:

1. It has been tested in accordance with this section and Section 13(11) of this administrative regulation to substantiate maximum allowable operating pressure; and

2. Each potentially hazardous leak has been located and eliminated.

(b) The test medium shall be liquid, air, natural gas or inert gas that is:

1. Compatible with the material of which the pipeline is constructed;

2. Relatively free of sedimentary materials; and

3. Except for natural gas, nonflammable.

(c) Except as provided in subsection (3)(a) of this section, if air, natural gas or inert gas is used as the test medium, the following maximum hoop stress limitations apply:

Maximum Hoop Stress Permissible During Test				
	% of Specified Minimum Yield			
Class Location	1	2	3	4
Test Medium Air or Inert Gas	80	75	50	40
Natural Gas	80	30	30	30

(d) Each joint used to tie in a test segment of pipeline is excepted from specific test requirements of this section, but it must be leak tested at not less than its operating pressure.

(3) Strength test requirements for steel pipeline to operate at hoop stress of thirty (30) percent or more of SMYS:

(a) Except for service lines, each segment of steel pipeline that is to operate at hoop stress of thirty (30) percent or more of SMYS shall be strength tested in accordance with this section to substantiate the proposed maximum allowable operating pressure. In addition, in a Class 1 or Class 2 location, if there is a building intended for human occupancy within 300 feet of a pipeline, a hydrostatic test shall be conducted to a test pressure of at least 125 percent of maximum operating pressure on that segment of pipeline within 300 feet of that building, but in no event may the test section be less than 600 feet unless the length of the newly installed or relocated pipe is less than 600 feet. However, if the buildings are evacuated while hoop stress exceeds fifty (50) percent of SMYS, air or inert gas may be used as the test medium.

(b) In a Class 1 or Class 2 location, each compressor station, regulator station and measuring station shall be tested to Class 3 location test requirements.

(c) Except as provided in paragraph (e) of this subsection, strength test shall be conducted by maintaining pressure at or above the test pressure for at least eight (8) hours.

(d) If a component other than pipe is the only item being replaced or added to pipeline, a strength test after installation is not required, if the manufacturer of the component certifies that:

1. The component was tested to at least the pressure required for the pipeline to which it is being added; or

2. The component was manufactured under a quality control system that ensures that each item manufactured is at least equal in strength to a prototype and that the prototype was tested to at least the pressure required for the pipeline to which it is being added.

(e) For fabricated units and short sections of pipe, for which a postinstallation test is impractical, a preinstallation strength test shall be conducted by maintaining pressure at or above test pressure for at least four (4) hours.

(4) Test requirements for pipelines to operate at hoop stress less than thirty (30) percent of SMYS and at or above 100 psig. Except for service lines and plastic pipelines, each segment of pipeline to be operated at hoop stress less than thirty (30) percent of SMYS and at or above 100 psig shall be tested in accordance

with the following:

(a) The pipeline operator shall use a test procedure that will insure discovery of all potentially hazardous leaks in the segment being tested.

(b) If, during the test, the segment is to be stressed to twenty (20) percent or more of SMYS, and natural gas, air or inert gas is the test medium:

1. A leak test shall be made at pressure between 100 psig and the pressure required to produce hoop stress of twenty (20) percent of SMYS; or

2. The line shall be walked to check for leaks while hoop stress is held at approximately twenty (20) percent of SMYS.

(c) Pressure shall be maintained at or above test pressure for at least one (1) hour.

(5) Test requirements for pipelines to operate below 100 psig. Except for service lines and plastic pipelines, each segment of pipeline to be operated below 100 psig shall be leak tested in accordance with the following:

(a) The test procedure used shall ensure discovery of all potentially hazardous leaks in the segment being tested.

(b) Each main to be operated at less than one (1) psig shall be tested to at least ten (10) psig and each main to be operated at or above one (1) psig shall be tested to at least ninety (90) psig.

(6) Test requirements for service lines.

(a) Each segment of service line (other than plastic) shall be leak tested in accordance with this section before being placed in service. If feasible, the service line connection to the main shall be included in the test; if not feasible, it shall be given a leakage test at the operating pressure when placed in service.

(b) Each segment of service line (other than plastic) intended to be operated at a pressure of at least one (1) psig but not more than forty (40) psig shall be given a leak test at pressure of not less than fifty (50) psig.

(c) Each segment of service line (other than plastic) to be operated at pressures of more than forty (40) psig shall be tested to the maximum operating pressure or ninety (90) psig, whichever is greater, except that each segment of steel service line stressed to twenty (20) percent or more of SMYS shall be tested in accordance with subsection (4) of this section.

(7) Test requirements for plastic pipelines.

(a) Each segment of plastic pipeline shall be tested in accordance with this subsection.

(b) The test procedure shall insure discovery of all potentially hazardous leaks in the segment being tested.

(c) The test pressure shall be at least 150 percent of maximum operating pressure or fifty (50) psig, whichever is greater. However, maximum test pressure shall not be more than three (3) times the design pressure of the pipe.

(d) Temperature of thermoplastic material shall be no more than 100 degrees Fahrenheit during the test.

(8) Environmental protection and safety requirements.

(a) In conducting tests under this subsection, each operator shall insure that every reasonable precaution is taken to protect its employees and the general public during testing. Whenever hoop stress of the segment of pipeline being tested will exceed fifty (50) percent of SMYS, the operator shall take all practicable steps to keep persons not working on the testing operation outside the testing area until pressure is reduced to or below the proposed maximum allowable operating pressure.

(b) The operator shall insure that the test medium is disposed of in a manner that will minimize damage to the environment.

(9) Records. Each operator shall make, and retain for the useful life of the pipeline, a record of each test performed under subsections (3) and (4) of this section. The record shall contain at least the following information:

(a) Operator's name, name of operator's employee responsible for making the test, and name of any test company used.

(b) Test medium used.

(c) Test pressure.

(d) Test duration.

(e) Pressure recording charts, or other record of pressure readings.

(f) Elevation variations, whenever significant for the particular

test.

(g) Leaks and failures noted and their disposition.

Section 12. Uprating. (1) Scope. This subsection prescribes minimum requirements for increasing maximum allowable operation pressures (uprating) for pipelines.

(2) General requirements.

(a) Pressure increases. Whenever provisions of this subsection require that an increase in operating pressure be made in increments, pressure shall be increased gradually, at a rate that can be controlled, and in accordance with the following:

1. At the end of each incremental increase, pressure shall be held constant while the entire segment of pipeline affected is checked for leaks.

2. Each leak detected shall be repaired before a further pressure increase is made, except that a leak deemed nonhazardous need not be repaired, if it is monitored during pressure increase and it does not become hazardous.

(b) Records. Each operator who uprates a segment of pipeline shall retain for the life of the segment a record of each investigation required by this subsection, all work performed, and each pressure test conducted, in connection with the uprating.

(c) Written plan. Each operator who uprates a segment of pipeline shall establish a written procedure that will ensure compliance with each applicable requirement of this subsection.

(d) Limitation on increase in maximum allowable operating pressure. Except as provided in subsection (3) of this section, a new maximum allowable operating pressure established under this subsection shall not exceed the maximum that would be allowed under this part for a new segment of pipeline constructed of the same materials in the same location.

(3) Uprating to a pressure that will produce hoop stress of thirty (30) percent or more of SMYS in steel pipeline.

(a) Unless the requirements of this section have been met, no person shall subject any segment of steel pipeline to operating pressure that will produce hoop stress of thirty (30) percent or more of SMYS and that is above the established maximum allowable operating pressure.

(b) Before increasing operating pressure above previously established maximum allowable operating pressure the operator shall:

1. Review the design, operation, and maintenance history, and previous testing of the segment of pipeline to determine if the proposed increase is safe and consistent with the requirements of this part; and

2. Make any repairs, replacements, or alterations in the segment of pipeline that are necessary for safe operation at the increased pressure.

(c) After complying with paragraph (b) of this subsection, an operator may increase maximum allowable operating pressure of a segment of pipeline constructed before September 12, 1970, to the highest pressure that is permitted under Section 13(11) of this administrative regulation, using as test pressure the highest pressure subjected (either in a strength test or in actual operation).

(d) After complying with paragraph (b) of this subsection, an operator that does not qualify under paragraph (c) of this subsection may increase the previously established maximum allowable operating pressure if at least one (1) of the following requirements is met:

1. The segment of pipeline is successfully tested in accordance with the requirements of this part for a new line of the same material in the same location.

2. An increased maximum allowable operating pressure may be established for a segment of pipeline in a Class 1 location if the line has not previously been tested; and if:

a. It is impractical to test it in accordance with the requirements of this part;

b. The new maximum operating pressure does not exceed eighty (80) percent of that allowed for a new line of the same design in the same location; and

c. The operator determines that the new maximum allowable operating pressure is consistent with the condition of the segment of pipeline and the design requirements of this administrative

regulation.

(e) Where a segment of pipeline is uprated in accordance with paragraph (c) or (d) of this subsection, the increase in pressure shall be made in increments that are equal to:

1. Ten (10) percent of the pressure before the uprating; or
2. Twenty-five (25) percent of total pressure increase, whichever produces the fewer number of increments.

(4) Uprating: Steel pipelines to a pressure that will produce hoop stress less than thirty (30) percent of SMYS; plastic, cast iron, and ductile iron pipelines.

(a) Unless requirements of this subsection have been met, no person shall subject:

1. A segment of steel pipeline to operating pressure that will produce hoop stress less than thirty (30) percent of SMYS and is above the previously established maximum allowable operating pressure; or
2. A plastic, cast iron, or ductile iron pipeline segment to an operating pressure above the previously established maximum allowable operating pressure.

(b) Before increasing operation pressure above the previously established maximum allowable operating pressure, the operator shall:

1. Review the design, operation, and maintenance history of the segment of pipeline;
2. Make a leakage survey (if it has been more than one (1) year since the last survey) and repair any leaks that are found, except that a leak deemed nonhazardous need not be repaired, if it is monitored during the pressure increase and it does not become hazardous;
3. Make any repairs, replacements, or alterations in the segment of pipeline that are necessary for safe operation at the increased pressure;
4. Reinforce or anchor offsets, bends and dead ends in pipe joined by compression couplings or bell and spigot joints to prevent failure of the pipe joint, if the offset, bend or dead end is exposed in an excavation;
5. Isolate the segment of pipeline in which pressure is to be increased from any adjacent segment that will continue to be operated at lower pressure; and
6. If the pressure in mains or service lines, or both, is to be higher than the pressure delivered to the customer, install a service regulator on each service line and test each regulator to determine that it is functioning. Pressure may be increased as necessary to test each regulator, after a regulator has been installed on each pipeline subject to the increased pressure.

(c) After complying with paragraph (b) of this subsection, the increase in maximum allowable operating pressure shall be made in increments equal to ten (10) psig or twenty-five (25) percent of total pressure increase, whichever produces the fewer number of increments. Whenever the requirements of paragraph (b) of this subsection apply, there shall be at least two (2) approximately equal incremental increases.

(d) If records for cast iron or ductile iron pipeline facilities are not complete enough to determine stresses produced by internal pressure, trench loading, rolling loads, beam stresses, and other bending loads, in evaluating the level of safety of the pipeline when operating at the proposed increased pressure, the following procedures shall be followed:

1. In estimating the stresses, if original laying conditions cannot be ascertained, the operator shall assume that cast iron pipe was supported on blocks with tamped backfill and that ductile iron pipe was laid without blocks with tamped backfill.
2. Unless actual maximum cover depth is known, the operator shall measure the actual cover in at least three (3) places where the cover is most likely to be greatest and shall use the greatest cover measured.
3. Unless actual nominal wall thickness is known, the operator shall determine the wall thickness by cutting and measuring coupons from at least three (3) separate pipe lengths. The coupons shall be cut from pipe lengths in areas where the cover depth is most likely to be greatest. The average of all measurements taken must be increased by the allowance indicated in the following table:

Pipe size (inches)	Allowance (inches)		
	Cast iron pipe		
	Pit cast pipe	Centrifugally cast pipe	Ductile iron pipe
3-8	0.075	0.065	0.065
10-12	0.08	0.07	0.07
14-24	0.08	0.08	0.075
30-42	0.09	0.09	0.075
48	0.09	0.09	0.08
54-60	0.09		

4. For cast iron pipe, unless the pipe manufacturing process is known, the operator shall assume that the pipe is pit cast pipe with bursting tensile strength of 11,000 psig and modulus of rupture of 31,000 psig.

Section 13. Operations. (1) Scope. This section prescribes minimum requirements for operation of pipeline facilities.

(2) General provisions.

(a) No person shall operate a segment of pipeline unless it is operated in accordance with this section.

(b) Each operator shall establish a written operating and maintenance plan meeting the requirements of this administrative regulation and keep records necessary to administer the plan.

(3) Essentials of operating and maintenance plan. Each operator shall include the following in its operating and maintenance plan:

(a) Instructions for employees covering operating and maintenance procedures during normal operations and repairs.

(b) Items required to be included by the provisions of Section 14 of this administrative regulation.

(c) Specific programs relating to facilities presenting the greatest hazard to public safety either in an emergency or because of extraordinary construction or maintenance requirements.

(d) A program for conversion procedures, if conversion of a low-pressure distribution system to higher pressure is contemplated.

(e) Provision for periodic inspections to ensure that operating pressures are appropriate for class location.

(f) Instructions enabling personnel who perform operation and maintenance activities to recognize conditions that are potentially safety-related conditions subject to reporting requirements of 807 KAR 5:027, Section 12.

(4) Initial determination of class location and confirmation or establishment of maximum allowable operating pressure.

(a) Before April 15, 1971, each operator shall complete a study to determine for each segment of pipeline with maximum allowable operating pressure that will produce hoop stress that is more than forty (40) percent of SMYS:

1. The present class location of all such pipelines in its system; and

2. Whether hoop stress corresponding to maximum allowable operating pressure for each segment of pipeline is commensurate with the present class location.

(b) Each segment of pipeline that has been determined under paragraph (a) of this subsection to have an established maximum allowable operating pressure producing hoop stress not commensurate with the class location of the segment of pipeline and that is found in satisfactory condition, shall have the maximum allowable operating pressure confirmed or revised in accordance with subsection (6) of this section. Confirmation or revision shall be completed not later than December 31, 1974.

(c) Each operator required to confirm or revise an established maximum allowable operating pressure under paragraph (b) of this subsection shall, not later than December 31, 1971, prepare a comprehensive plan, including a schedule, for carrying out the confirmations or revisions. The comprehensive plan must also provide for confirmations or revisions determined to be necessary under subsection (5) of this section, to the extent that they are caused by changes in class locations taking place before July 1, 1973.

(5) Change in class location: required study. Whenever increase in population density indicates a change in class location

for a segment of existing steel pipeline operating at hoop stress that is more than forty (40) percent of SMYS, or indicates that hoop stress corresponding to the established maximum allowable operating pressure for a segment of existing pipeline is not commensurate with the present class location, the operator shall immediately make a study to determine:

- (a) Present class location for the segment involved;
- (b) Design, construction, and testing procedures followed in original construction, and a comparison of these procedures with those required for the present class location by applicable provisions of this part;
- (c) Physical condition of the segment to the extent it can be ascertained from available records;
- (d) Operating and maintenance history of the segment;
- (e) Maximum actual operating pressure and the corresponding operating hoop stress, taking pressure gradient into account, for the segment of pipeline involved; and
- (f) Actual area affected by the population density increase, and physical barriers or other factors which may limit further expansion of the more densely populated area.

(6) Change in class location: confirmation or revision of maximum allowable operating pressure. If hoop stress corresponding to the established maximum allowable operating pressure of a segment of pipeline is not commensurate with present class location, and the segment is in satisfactory physical condition, the maximum allowable operating pressure of that segment of pipeline shall be confirmed or revised according to one (1) of the following requirements:

- (a) If the segment involved has been previously tested in place for a period of not less than eight (8) hours, the maximum allowable operating pressure is eight-tenths (0.8) times the test pressure in Class 2 locations, 0.667 times the test pressure in Class 3 locations, or 0.555 times the test pressure in Class 4 locations. The corresponding hoop stress will not exceed seventy-two (72) percent of SMYS of the pipe in Class 2 locations, sixty (60) percent of SMYS in Class 3 locations, or fifty (50) percent of SMYS in Class 4 locations.
- (b) The maximum allowable operating pressure shall be reduced so that corresponding hoop stress is not more than that allowed by this part for new segments of pipelines in the existing class location.
- (c) The segment involved shall be tested in accordance with applicable requirements of Section 11 of this administrative regulation, and its maximum allowable operating pressure shall then be established according to the following criteria:

1. Maximum allowable operating pressure after the requalification test is eight-tenths (0.8) times the test pressure for Class 2 locations, 0.667 times the test pressure for Class 3 locations, and 0.555 times the test pressure for Class 4 locations.
2. Maximum allowable operating pressure confirmed or revised in accordance with this subsection, shall not exceed maximum allowable operating pressure established before confirmation or revision.
3. Corresponding hoop stress shall not exceed seventy-two (72) percent of SMYS of the pipe in Class 2 locations, sixty (60) percent of SMYS in Class 3 locations, or fifty (50) percent of the SMYS in Class 4 locations.

(d) Confirmation or revision of the maximum allowable operating pressure of a segment of pipeline in accordance with this section does not preclude the application of Section 12(2) and (3) of this administrative regulation.

(e) Confirmation or revision of maximum allowable operating pressure that is required as a result of subsection (5) of this section shall be completed within eighteen (18) months of the change in class location. Pressure reduction under paragraphs (a) and (b) of this subsection within the eighteen (18) month period does not preclude establishing a maximum allowable operating pressure under paragraph (c) of this subsection at a later date.

- (7) Continuing surveillance.
- (a) Each operator shall have a procedure to monitor its facilities to determine and take appropriate action concerning changes in class location, failures, leakage history, corrosion, substantial changes in cathodic protection requirements, and other

unusual operating and maintenance conditions.

(b) If a segment of pipeline is determined to be in unsatisfactory condition but no immediate hazard exists, the operator shall initiate a program to recondition or phase out the segment involved, or, if the segment cannot be reconditioned or phased out, reduce the maximum allowable operating pressure in accordance with subsection (11)(a) and (b) of this section.

(8) Damage prevention program.

(a) Except for pipelines listed in paragraph (c) of this subsection, each operator of a buried pipeline shall carry out in accordance with this subsection a written program to prevent damage to that pipeline by excavation activities. For the purpose of this subsection, "excavating activities" include excavation, blasting, boring, tunneling, backfilling, removal of aboveground structures by either explosive or mechanical means, and other earth moving operations. An operator may perform any duties required by paragraph (b) of this subsection through participation in a public service program, such as a "one-call" system, but such participation does not relieve the operator of responsibility for compliance with this subsection.

(b) The damage prevention program required by paragraph (a) of this subsection shall, at a minimum:

1. Include the identity, on a current basis, of persons who normally engage in excavation activities in the vicinity of the pipeline.

2. Provide for notification to the public in the vicinity of the pipeline and actual notification to persons identified in paragraph (b)1 of this subsection as often as needed to make them aware of the existence and purpose of the damage prevention program and how to learn the location of underground pipelines prior to excavation activities.

3. Provide a means of receiving and recording notification of planned excavation activities.

4. If the operator has buried pipelines in the area of excavation activity, provide for actual notification to persons who give notice of their intent to excavate of temporary marking to be provided and how to identify the markings.

5. Provide for temporary marking of buried pipelines near excavation activity before, as far as practical, activity begins.

6. Provide for frequent inspection of pipeline an operator has reason to believe could be damaged by excavation activities to verify the integrity of the pipeline; and in the case of blasting, any inspection shall include leakage surveys.

(c) A damage prevention program under this subsection is not required for the following pipelines:

1. Pipelines in a Class 1 or 2 location.
2. Pipelines in a Class 3 location defined by Section 1(3)(d)2 of this administrative regulation that are marked in accordance with Section 14(5) of this administrative regulation.
3. Pipelines to which access is physically controlled by the operator.
4. Pipelines that are part of a petroleum gas system subject to Section 1(6) of this administrative regulation or part of a distribution system operated by a person in connection with that person's leasing of real property or by a condominium or cooperative association.

(9) Emergency plans.

(a) Each operator shall establish written procedures to minimize hazard resulting from a gas pipeline emergency. At a minimum, procedures shall provide for the following:

1. Receiving, identifying, and classifying notices of events which require immediate response by the operator.

2. Establishing and maintaining adequate means of communication with appropriate fire, police, and other public officials.

3. Prompt and effective response to a notice of each type of emergency, including gas, fire, explosion or natural disaster near or involving a building with gas pipeline or pipeline facility.

4. Availability of personnel, equipment, tools, and materials, as needed at the scene of emergency.

5. Actions directed toward protecting people first and then property.

6. Emergency shutdown and pressure reduction in any section

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of the operator's pipeline system necessary to minimize hazards to life or property.

7. Making safe any actual or potential hazard to life or property.

8. Notifying appropriate fire, police and other public officials of gas pipeline emergencies and coordinating with them, both planned responses and actual responses during an emergency.

9. Safely restoring any service outage.

10. Beginning action under subsection (10) of this section, if applicable, as soon after the end of the emergency as possible.

(b) Each operator shall:

1. Furnish its supervisors who are responsible for emergency action a copy of that portion of the latest edition of emergency procedures established under paragraph (a) of this subsection as necessary for compliance with those procedures.

2. Train appropriate operating personnel in emergency procedures and verify that training is effective.

3. Review employee activities to determine whether procedures were effectively followed in each emergency.

(c) Each operator shall establish and maintain liaison with appropriate fire, police, and other public officials to:

1. Learn the responsibility and resources of each government organization that may respond to a gas pipeline emergency;

2. Acquaint officials with the operator's ability to respond to a gas pipeline emergency;

3. Identify types of gas pipeline emergencies of which the operator notifies officials; and

4. Plan how the operator and officials can engage in mutual assistance to minimize hazards to life or property.

(d) Each operator shall establish a continuing educational program to enable customers, the public, appropriate governmental organizations, and person engaged in excavation-related activities to recognize a gas pipeline emergency for the purpose of reporting it to the operator or appropriate public officials. The program and media used shall be as comprehensive as necessary to reach all areas in which the operator transports gas. The program shall be conducted in English and in other languages commonly understood by a significant number and concentration of the non-English speaking population in the operator's area.

(10) Investigation of failures. Each operator shall establish procedures for analyzing accidents and failure, including selection of samples of the failed facility or equipment for laboratory examination, where appropriate, to determine the causes of the failure and to minimize the possibility of recurrence.

(11) Maximum allowable operating pressure: steel or plastic pipelines:

(a) Except as provided in paragraph (c) of this subsection, no person shall operate a segment of steel or plastic pipeline at a pressure that exceeds the lowest of the following:

1. Design pressure of the weakest element in the segment, determined in accordance with Sections 3 and 4 of this administrative regulation.

2. Pressure obtained by dividing the pressure to which the segment was tested after construction as follows:

a. For plastic pipe in all locations, test pressure is divided by a factor of one and five-tenths (1.5).

b. For steel pipe operated at 100 psig or more, test pressure is divided by a factor determined in accordance with the following table:

Class Location	Segment Installed Before 11/12/70	Segment Installed After 11/11/70	Converted under Section 4(8)
1	1.10	1.10	1.25
2	1.25	1.25	1.25
3	1.40	1.50	1.50
4	1.40	1.50	1.50

3. Highest actual operating pressure to which the segment was subjected during the five (5) years preceding July 1, 1970, unless the segment was tested in accordance with paragraph (a)2 of this subsection after July 1, 1965, or the segment was updated in accordance with Section 12 of this administrative regulation.

4. For furnace butt welded steel pipe, pressure equal to sixty

(60) percent of the mill test pressure to which the pipe was subjected.

5. For steel pipe other than furnace butt welded pipe, pressure equal to eighty-five (85) percent of the highest test pressure to which the pipe has been subjected, whether by mill test or by post installation test.

6. Pressure determined by the operator to be the maximum safe pressure after considering the history of the segment, particularly known corrosion and actual operating pressure.

(b) No person shall operate a segment to which paragraph (a)6 of this subsection is applicable, unless overpressure protective devices are installed on the segment to prevent maximum allowable operating pressure from being exceeded, in accordance with Section 4(30) of this administrative regulation.

(c) Notwithstanding other requirements of this subsection, an operator may operate a segment of pipeline found to be in satisfactory condition, considering its operating and maintenance history, at the highest actual operating pressure to which the segment was subjected during the five (5) years preceding July 1, 1970.

(12) Maximum allowable operating pressure: high-pressure distribution systems:

(a) No person shall operate a segment of high-pressure distribution system at a pressure that exceeds the lowest of the following pressures, as applicable:

1. Design pressure of the weakest element in the segment, determined in accordance with Sections 3 and 4 of this administrative regulation.

2. Sixty (60) psig, for a segment of a distribution system otherwise designed to operate at over sixty (60) psig, unless service lines in the segment are equipped with service regulators or other pressure limited devices in series that meet the requirements of Section 4(31)(c) of this administrative regulation.

3. Twenty-five (25) psig, in segments of cast iron pipe in which there are unreinforced bell and spigot joints.

4. Pressure limits to which a joint could be subjected without parting.

5. Pressure determined by the operator to be maximum safe pressure after considering the history of the segment, particularly known corrosion and actual operating pressures.

(b) No person shall operate a segment of pipeline to which paragraph (a)5 of this subsection applies, unless overpressure protective devices are installed on the segment to prevent the maximum allowable operating pressure from being exceeded, in accordance with Section 4(30) of this administrative regulation.

(13) Maximum and minimum allowable operating pressure: low-pressure distribution systems:

(a) No person shall operate a low-pressure distribution system at a pressure high enough to make unsafe the operation of any connected and properly adjusted low-pressure gas burning equipment.

(b) No person shall operate a low-pressure distribution system at a pressure lower than the minimum pressure at which the safe and continuing operation of any connected and properly adjusted low-pressure gas burning equipment can be assured.

(14) Standard pressure:

(a) All utilities supplying gas for light, heat, power or other purposes shall, subject to approval of the commission, adopt and maintain a standard pressure as measured at the customer's meter outlet. In adopting such standard pressure the utility may divide its distribution system into districts and establish a separate standard pressure for each district, or the utility may establish a single standard pressure for its distribution system as a whole.

(b) The standard pressure to be adopted as provided in this section shall be a part of the utility's schedule of rates and general rules and administrative regulations.

(c) No change shall be made by a utility in standard pressure or pressure adopted except in case of emergency.

(15) Allowable variations of standard service pressure:

(a) Variations of standard pressure as established under the preceding rule shall not exceed the adopted pressure by more than fifty (50) percent plus or minus.

(b) A utility supplying gas shall not be deemed to have violated

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paragraph (a) of this subsection, if it can be shown that variations from said pressure are due to:

1. Use of gas by the customer in violation of contract under the rules of the utility.
2. Infrequent fluctuations of short duration due to unavoidable conditions of operation.

(c) Allowable variations in standard pressure other than those covered by paragraph (a) of this subsection shall be established by the commission when application is made and good cause shown for allowance.

(d) The gas pressures required above shall be maintained at the outlet of the meter to provide safe and efficient utilization of gas in properly adjusted appliances supplied through adequately sized customer's facilities.

(16) Continuity of service.

(a) The utility shall keep a complete record of all interruptions on its entire system or on major divisions of its system. The record shall show the cause of interruption, date, time, duration, remedy and steps taken to prevent recurrence. The commission shall be notified of major interruptions as soon as they come to the attention of the utility and a complete report made after restoration of service.

(b) Interruption of service, as used here, shall also mean the interval of time during which pressure drops below fifty (50) percent of such adopted standard pressure on the entire system, or on one (1) or more entire major division or divisions for which an average standard pressure has been adopted.

(17) Odorization of gas.

(a) Combustible gas in a distribution line shall contain a natural odorant or be odorized so that at a concentration in air of one-fifth (1/5) of the lower explosive limit (approximately one (1) percent by volume), gas is readily detectable by a person with a normal sense of smell.

(b) Combustible gas in a transmission line in a Class 3 or Class 4 location shall comply with the requirements of paragraph (a) of this subsection unless:

1. At least fifty (50) percent of the length of the line downstream from that location is in a Class 1 or Class 2 location;
2. The line transports gas to any of the following facilities which received gas without an odorant from that line before May 5, 1975:
 - a. Underground storage field;
 - b. Gas processing plant;
 - c. Gas dehydration plant; or
 - d. Industrial plant using gas in a process where presence of an odorant makes the end product unfit for the purpose for which it is intended; reduces the activity of a catalyst; or reduces the percentage completion of a chemical reaction.

3. When lateral line transports gas to a distribution center, at least fifty (50) percent of the length of that line is in a Class 1 or Class 2 location.

(c) Odorant shall not be harmful to persons, materials, or pipe.

(d) Products of combustion from the odorant shall not be toxic when breathed nor shall they be corrosive or harmful to those materials to which the products of combustion will be exposed.

(e) Odorant shall not be soluble in water to an extent greater than two and one-half (2.5) parts to 100 parts by weight.

(f) Equipment for odorization shall introduce odorant without wide variations in the level of odorant.

(g) Each utility shall conduct sampling of combustible gases to assure proper concentration of odorant in accordance with this section unless otherwise approved by the commission.

1. The utility shall sample gases in each separately odorized system at approximate furthest point from injection of odorant.

2. Sampling shall be conducted with equipment designed to detect and verify proper level of odorant.

3. Separately odorized systems with ten (10) or fewer customers shall be sampled for proper odorant level at least once each ninety-five (95) days.

4. Separately odorized systems with more than ten (10) customers shall be sampled for proper odorant level at least once each week.

(18) Tapping pipelines under pressure. Each tap made on a pipeline under pressure shall be performed by a crew qualified to

make hot taps.

(19) Purging of pipelines.

(a) When pipeline is being purged of air by use of gas, the gas shall be released into one (1) end of the line in a moderately rapid and continuous flow. If gas cannot be supplied in sufficient quantity to prevent the formation of a hazardous mixture of gas and air, a slug of inert gas shall be released into the line before the gas.

(b) When pipeline is being purged of gas by use of air, the air shall be released into one (1) end of the line in a moderately rapid and continuous flow. If air cannot be supplied in sufficient quantity to prevent the formation of a hazardous mixture of gas and air, a slug of inert gas shall be released into the line before the air.

Section 14. Maintenance. (1) Scope. This section prescribes minimum requirements for maintenance of pipeline facilities.

(2) General.

(a) No person shall operate a segment of pipeline, unless it is maintained in accordance with this section.

(b) Each segment of pipeline that becomes unsafe shall be replaced, repaired, or removed from service.

(c) Hazardous leaks must be repaired promptly.

(3) Transmission lines: patrolling.

(a) Each operator shall have a patrol program to observe surface conditions on and adjacent to the transmission line right-of-way for indications of leaks, construction activity, and other factors affecting safety and operation.

(b) Frequency of patrols is determined by size of line, operating pressures, class location, terrain, weather, and other relevant factors, but intervals between patrols shall not be longer than prescribed in the following table:

Class Location of Line	Maximum Interval Between Periods	
	At Highway and Railroad Crossings	At All Other Places
1 & 2	7 1/2 months; but at least twice each calendar year	15 months; but at least once each calendar year
3	4 1/2 months; but at least four times each calendar year	7 1/2 months; but at least twice each calendar year
4	4 1/2 months; but at least four times each calendar year	4 1/2 months; but at least four times each calendar year

(4) Transmission lines: leakage surveys.

(a) Each operator of a transmission line shall provide for periodic leakage surveys of line in its operating and maintenance plan.

(b) Leakage surveys of a transmission line shall be conducted at intervals not exceeding fifteen (15) months; but at least once each calendar year. However, if a transmission line transports gas in conformity with Section 13(17) of this administrative regulation without an odor or odorant, leakage surveys using leak detector equipment shall be conducted;

1. In Class 3 locations, at intervals not exceeding seven and one-half (7 1/2) months; but at least twice each calendar year; and

2. In Class 4 locations, at intervals not exceeding four and one-half (4 1/2) months; but at least four (4) times each calendar year.

(5) Line markers for mains and transmission lines.

(a) Buried pipelines. Except as provided in paragraph (b) of this subsection, a line marker shall be placed and maintained as close as practical over each buried main and transmission line:

1. At each crossing of a public road or railroad; and

2. Wherever necessary to identify the location of the transmission line or main to reduce the possibility of damage or interference.

(b) Exceptions for buried pipelines. Line markers are not required for buried mains and transmission lines:

1. Located under inland navigable waters;

2. In Class 3 or Class 4 locations:

a. Where placement of a marker is impractical; or

b. Where a damage prevention program is in effect under Section 13(8) of this administrative regulation; or

3. In the case of navigable waterway crossings, within 100 feet of a line marker placed and maintained at that waterway in accordance with this section.

(c) Pipelines above ground. Line markers shall be placed and maintained along each section of a main and transmission line located above ground in an area accessible to the public.

(d) Markers other than at navigable waterways. The following shall be written legibly on a background of sharply contrasting color on each line marker not placed at a navigable waterway:

1. The word "Warning," "Caution," or "Danger," followed by the words "Gas (or name of gas transported) Pipeline," all of which, except for markers in heavily developed urban areas, shall be in letters at least one (1) inch high with one-quarter (1/4) inch stroke.

2. The name of the operator and telephone number (including area code) where the operator can be reached at all times.

(e) Markers at navigable waterways. Each line marker at a navigable waterway shall have the following characteristics:

1. A rectangular sign with a narrow strip along each edge, colored international orange, and the area between lettering on the sign and boundary strips colored white.

2. Written on the sign in block style, black letters:

a. The word "Warning," "Caution," or "Danger," followed by the words, "Do Not Anchor or Dredge" and the words, "Gas (or name of gas transported Pipeline Crossing);" and

b. The name of the operator and telephone number (including area code) where the operator can be reached at all times.

3. In overcast daylight, the sign is visible and the writing required by paragraph (e)2a of this subsection is legible, from approaching or passing vessels that may damage or interfere with the pipeline.

(6) Transmission lines: recordkeeping. Each utility shall keep records covering each leak discovered, repair made, transmission line break, leakage survey, line patrol, and inspection, for as long as the segment of transmission line involved remains in service.

(7) Transmission lines: general requirements for repair procedures.

(a) Each utility shall take immediate temporary measures to protect the public whenever:

1. A leak, imperfection, or damage that impairs its serviceability is found in a segment of steel transmission line operating at or above forty (40) percent of SMYS; and

2. It is not feasible to make a permanent repair at the time of discovery. As soon as feasible, the utility shall make permanent repairs. Except as provided in subsection (10)(a)3 of this section, no utility shall use a welded patch as a means of repair.

(8) Transmission lines: permanent field repair of imperfections and damages.

(a) Except as provided in paragraph (b) of this subsection, each imperfection or damage that impairs serviceability of a segment of steel transmission line operating at or above forty (40) percent of SMYS must be repaired as follows:

1. If it is feasible to take the segment out of service, the imperfection or damage must be removed by cutting out a cylindrical piece of pipe and replacing it with pipe of similar or greater design strength.

2. If it is not feasible to take the segment out of service, a full encirclement welded split sleeve of appropriate design shall be applied over the imperfection or damage.

3. If the segment is not taken out of service, operating pressure shall be reduced to a safe level during repairs.

(b) Submerged pipelines in inland navigable waters may be repaired by mechanically applying a full encirclement split sleeve of appropriate design over the imperfection or damage.

(9) Transmission lines: permanent field repair of welds. Each weld that is unacceptable under Section 5(11)(c) of this administrative regulation shall be repaired as follows:

(a) If it is feasible to take the segment of transmission line out of service, the weld shall be repaired in accordance with applicable requirements of Section 5(13) of this administrative regulation.

(b) A weld may be repaired in accordance with Section 5(13) of this administrative regulation while the segment of transmission line is in service if:

1. The weld is not leaking;

2. Pressure in the segment is reduced so that it does not produce a stress more than twenty (20) percent of SMYS of the pipe; and

3. Grinding of the defective area can be limited so that at least one-eighth (1/8) inch thickness in the pipe weld remains.

(c) A defective weld which cannot be repaired in accordance with paragraph (a) or (b) of this subsection shall be repaired by installing a full encirclement welded split sleeve of appropriate design.

(10) Transmission lines: permanent field repair of leaks.

(a) Except as provided in paragraph (b) of this subsection, each permanent field repair of a leak on a transmission line shall be made as follows:

1. If feasible, the segment of transmission line shall be taken out of service and repaired by cutting out a cylindrical piece of pipe and replacing it with pipe of similar or greater design strength.

2. If it is not feasible to take the segment of transmission line out of service, repairs shall be made by installing a full encirclement welded split sleeve of appropriate design, unless the transmission line:

a. Is joined by mechanical couplings; and

b. Operates at less than forty (40) percent of SMYS.

3. If the leak is due to a corrosion pit, repair may be made by installing properly designed bolt-on leak clamp. If the leak is due to a corrosion pit and on pipe of not more than 40,000 psi SMYS, repair may be made by fillet welding over the pitted area a steel plate patch with rounded corners, of the same or greater thickness than the pipe, and not more than one-half (1/2) of the diameter of the pipe in size.

(b) Submerged pipelines in inland navigable waters may be repaired by mechanically applying a full encirclement split sleeve of appropriate design over the leak.

(11) Transmission lines: testing of repairs.

(a) Testing of replacement pipe. If a segment of transmission line is repaired by cutting out the damaged portion of pipe as a cylinder, replacement pipe shall be tested to the pressure required for a new line installed in the same location. This test may be made on pipe before it is installed.

(b) Testing of repairs made by welding. Each repair made by welding in accordance with subsections (8), (9) and (10) of this section shall be examined in accordance with Section 5(11) of this administrative regulation.

(12) Distribution systems: patrolling.

(a) The frequency of patrolling mains shall be determined by the severity of conditions which could cause failure or leakage, and the consequent hazards to public safety.

(b) Mains in places or on structures where anticipated physical movement or external loading could cause failure or leakage shall be patrolled at intervals not exceeding four and one-half (4 1/2) months, but at least four (4) times each calendar year.

(13) Distribution systems: leakage surveys and procedures.

(a) Each utility shall provide for periodic leakage surveys in its operating and maintenance plan.

(b) The type and scope of the leakage control program shall be determined by the nature of the operations and local conditions; but it shall meet the following minimum requirements:

1. At least once each calendar year, but at intervals not exceeding fifteen (15) months, a gas detector survey shall be conducted in business districts, involving tests of the atmosphere in gas, electric, telephone, sewer and water system manholes, and where access is not denied at inside basement walls of public and commercial buildings located adjacent to gas mains and service lines, at cracks in pavement and sidewalks and at other locations providing an opportunity for finding gas leaks.

2. Leakage surveys of the distribution system outside of principal business areas shall be made as frequently as necessary, but at intervals not exceeding five (5) years.

(c) Each gas utility shall maintain a record for five (5) years of gas leaks reported by the public, utility employees, or detected by leak surveys.

(d) Each leak detected shall be graded according to the following standard:

1. Grade 1 – hazardous leaks. A leak that represents an

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existing or probable hazard to persons or property and requires immediate repair or continuous action until conditions are no longer hazardous.

2. Grade 2 – nonhazardous leaks. A leak that is recognized as being nonhazardous at time of detection but justifies scheduled repair based on probable future hazard.

3. Grade 3 – nuisance leaks. A leak that is nonhazardous at time of detection and can be reasonably expected to remain nonhazardous. Grade 3 leaks shall be monitored and reevaluated until the leak is regraded or no longer results in a reading.

(14) Test requirements for reinstating service lines.

(a) Except as provided in paragraph (b) of this subsection, each disconnected service line shall be tested in the same manner as a new service line, before being reinstated.

(b) Each service line temporarily disconnected from the main shall be tested from point of disconnection to the service line valve in the same manner as a new service line, before reconnecting. However, if provisions are made to maintain continuous service, such as by installation of a bypass, any part of the original service line used to maintain continuous service need not be tested.

(15) Abandonment or inactivation of facilities.

(a) Each utility shall provide in its operating and maintenance plan for abandonment or deactivation of pipelines, including provisions for meeting each requirement of this subsection.

(b) Each pipeline abandoned in place shall be disconnected from all sources and supplies of gas, purged of gas, and sealed at the ends. However, the pipeline need not be purged when the volume of gas is so small that there is not potential hazard.

(c) Except for service lines, each inactive pipeline not being maintained under this section shall be disconnected from all sources and supplies of gas, purged of gas, and sealed at the ends. However, the pipeline need not be purged when the volume of gas is so small that there is not potential hazard.

(d) Whenever service to a customer is discontinued, one (1) of the following steps shall be taken:

1. The valve that is closed to prevent flow of gas to the customer shall be provided with a locking device or other means designed to prevent opening of the valve by persons other than those authorized by the utility.

2. A mechanical device or fitting that will prevent flow of gas shall be installed in the service line or in the meter assembly.

3. The customer's piping shall be physically disconnected from the gas supply and the open pipe ends sealed.

(e) If air is used for purging, the utility shall insure that a combustible mixture is not present after purging.

(f) Each abandoned vault shall be filled with suitable compacted material.

(16) Compressor stations: procedures for gas compressor units. Each utility shall establish starting, operating, and shutdown procedures for gas compressor units.

(17) Compressor stations: inspection and testing of relief devices.

(a) Except for rupture discs, each pressure relieving device in a compressor station shall be inspected and tested in accordance with subsections (21) and (23) of this section, and shall be operated periodically to determine that it opens at the correct set pressure.

(b) Any defective or inadequate equipment found shall be promptly repaired or replaced.

(c) Each remote control shutdown device shall be inspected and tested at intervals not to exceed fifteen (15) months, but at least once each calendar year to determine that it functions properly.

(18) Compressor stations: isolation of equipment for maintenance or alterations. Each utility shall establish procedures for maintaining compressor stations, including provisions for isolating units or sections of pipe and for purging before returning to service.

(19) Compressor stations: storage of combustible materials.

(a) Flammable or combustible materials in quantities beyond those required for everyday use, or other than those normally used in compressor buildings, shall be stored a safe distance from the compressor building.

(b) Above ground oil or gasoline storage tanks shall be protected in accordance with National Fire Protection Association Standard No. 30.

(20) Pipe-type and bottle-type holders: plan for inspection and testing. Each utility having a pipe-type or bottle-type holder shall establish a plan for systematic, routine inspection and testing of these facilities, including the following:

(a) Provision shall be made for detecting external corrosion before strength of the container has been impaired.

(b) Periodic sampling and testing of gas in storage shall be made to determine the dew point of vapors contained in stored gas, that if condensed, might cause internal corrosion or interfere with safe operation of the storage plant.

(c) Pressure control and pressure limiting equipment shall be inspected and tested periodically to determine that it is in a safe operating condition and has adequate capacity.

(21) Pressure limiting and regulating stations: inspection and testing. Each pressure limiting station, relief device (except rupture discs), and pressure regulating station and its equipment shall be subjected, at intervals not exceeding fifteen (15) months, but at least once each calendar year, to inspections and tests to determine that it is:

(a) In good mechanical condition;

(b) Adequate from the standpoint of capacity and reliability of operation for the service in which it is employed;

(c) Set to function at the correct pressure; and

(d) Properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation.

(22) Pressure limiting and regulating stations: telemetering or recording gauges.

(a) Each utility shall keep in continual use one (1) or more accurate recording pressure gauges on its distribution systems. These gauges shall be located at such points and in such manner sufficient to reflect a continuous record of gas pressure and character of service being furnished throughout the entire system.

(b) In addition to the recording pressure gauges required in paragraph (a) of this subsection, all utilities distributing gas shall maintain one (1) or more portable recording pressure gauges with which pressure surveys shall be made in sufficient number to indicate the service furnished and to satisfy the commission of the utility's compliance with pressure requirements.

(c) All recording pressure charts or records shall be preserved and filed in a systematic manner and each chart shall show date and location when the record was made. All charts or records shall be kept on file by the utility for at least two (2) years.

(d) If there are indications of abnormally high or low pressure, the regulator and auxiliary equipment shall be inspected and necessary measures employed to correct any satisfactory operating conditions.

(23) Pressure limiting and regulating stations: testing of relief devices.

(a) If feasible, pressure relief devices (except rupture discs) shall be tested in place, at intervals not exceeding fifteen (15) months, but at least once each calendar year, to determine that they have enough capacity to limit the pressure on the facilities to which they are connected to desired maximum pressure.

(b) If a test is not feasible, review and calculation of the required capacity of the relieving device at each station shall be made, at intervals not exceeding fifteen (15) months, but at least once each calendar year. These required capacities shall be compared with the rated or experimentally determined relieving capacity of the device for operating conditions under which it works. After initial calculations, subsequent calculations are not required if review documents show that parameters have not changed to cause capacity to be less than required.

(c) If the relieving device is of insufficient capacity, a new or additional device shall be installed to provide the additional capacity required.

(24) Valve maintenance: transmission lines. Each transmission line valve that might be required during any emergency shall be inspected and partially operated, at intervals not exceeding fifteen (15) months, but at least once each calendar year.

(25) Valve maintenance: distribution systems. Each valve, the

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use of which may be necessary for safe operation of a distribution system, shall be checked and serviced, at intervals not exceeding fifteen (15) months, but at least once each calendar year.

(26) Vault maintenance.

(a) Each vault housing pressure regulating and pressure limiting equipment, and having volumetric internal content of 200 cubic feet or more, shall be inspected at intervals not exceeding fifteen (15) months, but at least once each calendar year to determine that it is in good physical condition and adequately ventilated.

(b) Inspection of each vault, its cover, and equipment shall include checks for proper ventilation, function, and safety. Any leaks shall be corrected immediately.

(27) Prevention of accidental ignition. Each utility shall take steps to minimize the danger of accidental gas ignition in any structure or area where presence of gas constitutes a hazard of fire or explosion, including the following:

(a) When a hazardous amount of gas is being vented into open air, each potential source of ignition shall be removed from the area and a fire extinguisher shall be provided.

(b) Gas or electric welding or cutting shall not be performed on pipe or on pipe components that contain a combustible mixture of gas and air in the area of work.

(c) Post warning signs, where appropriate.

(d) No welding or acetylene cutting shall be done on a pipeline, main or auxiliary apparatus that contains air if it is connected to a source of gas, unless a suitable means has been provided to prevent leakage of gas into the pipeline or main.

(e) In situations where welding or cutting must be done on facilities which are filled with air and connected to a source of gas and precautions recommended above cannot be taken, one (1) or more of the following precautions, depending upon circumstances at the job, are required:

1. Purging pipe or equipment upon which welding or cutting is to be done, with combustible gas or inert gas.

2. Testing of the atmosphere in the vicinity of the zone to be heated before work is started and at intervals as the work progresses, with a combustible gas indicator or by other suitable means.

3. Careful verification before work starts that valves that isolate the work from a source of gas do not leak.

(f) When the main is to be separated a bonding conductor shall be installed across the point of separation and maintained while the pipeline is separated. If overhead electric transmission lines parallel the pipeline right-of-way, the current carrying capacity of the bonding conductor should be at least one-half (1/2) of the capacity of the overhead line conductors.

(g) For additional purging procedures see A.G.A. publication "Purging Principles and Practices" (1975 Edition.)

(28) Caulked bell and spigot joints.

(a) Each cast iron caulked bell and spigot joint subject to pressures of twenty-five (25) psig or more shall be sealed with:

1. A mechanical leak clamp; or

2. A material or device which:

a. Does not reduce flexibility of the joint;

b. Permanently bonds, either chemically or mechanically, or both, with the bell and spigot metal surfaces or adjacent pipe metal surfaces; and

c. Seals and bonds in a manner that meets the strength, environmental, and chemical compatibility requirements of Section 2(2)(a) and (b) and Section 4(2) of this administrative regulation.

(b) Each cast iron caulked bell and spigot joint subject to pressures of less than twenty-five (25) psig and exposed for any reason, shall be sealed by means other than caulking.

(29) Protecting cast iron pipelines. When a utility has knowledge that the support for a segment of a buried cast iron pipeline is disturbed:

(a) That segment of pipeline shall be protected against damage during the disturbance by:

1. Vibrations from heavy construction equipment, trains, trucks, buses, or blasting;

2. Impact forces by vehicles;

3. Earth movement;

4. Apparent future excavations near the pipeline; or

5. Other foreseeable outside forces which may subject that segment of pipeline to bending stress.

(b) As soon as feasible, permanent protection shall be provided for the disturbed segment from damage that might result from external loads, including compliance with applicable requirements of subsections (10)(a) and (11) of Section 7 and subsection (6)(b) through (d) of Section 9 of this administrative regulation.]

Section 5[4][15]. Purity of Gas. (1) All gas supplied to customers shall not contain more than: a trace of hydrogen sulfide, thirty (30) grains of total sulphur per 100 cubic feet; or five (5) grains of ammonia per 100 cubic feet. Gas shall not contain impurities that[No gas shall contain impurities which] may cause excessive corrosion of mains or piping or form corrosive or harmful fumes if[when] burned in a properly designed and adjusted burner.

(2) If[When] necessary, tests for the presence of hydrogen sulfide shall be made at least once each day, except Sundays and holidays, with equipment capable of measuring hydrogen sulfide levels as low as one (1) grain per 100 cubic feet[the standard lead acetate paper method]. Results of these tests[test papers] shall be retained and provided to the commission upon request[properly recorded and filed, as specified by the commission].

(3) Manufactured and mixed gas shall be tested at least once each month for the presence of total sulphur and ammonia, except that any gas containing no coal gas shall not require testing[need not be tested] for ammonia. Testing shall be in accordance with excepted American Society for Testing and Materials methodologies[Approved methods of testing shall be used]. Records of all tests shall be retained and provided to the Commission upon request[preserved as specified by the commission].

Section 6[46]. Heating Value of Gas. (1) Definitions of heating value. The heating value of gas shall be[is] the number of British Thermal Units (BTUs) produced by the combustion at constant pressure, of that amount of gas that[which] would occupy a volume of one (1) cubic foot at a temperature of sixty (60) degrees Fahrenheit:

(a) If saturated with water vapor;

(b) Under pressure equivalent to thirty (30) inches of mercury at a temperature of thirty-two (32) degrees Fahrenheit;

(c) Under gravity;

(d) With air of the same temperature and pressure as the gas;

(e) When the products of combustion are cooled to the initial temperature of the gas and air; and

(f) When the water formed by combustion is condensed to liquid stage[-if saturated with water vapor and under pressure equivalent to thirty (30) inches of mercury at a temperature of thirty-two (32) degrees Fahrenheit and under gravity, with air of the same temperature and pressure as the gas, when the products of combustion are cooled to the initial temperature of the gas and air, and when the water formed by combustion is condensed to liquid stage].

(2) Each utility shall establish and maintain a standard heating value for its gas. The heating value standard adopted shall comply with the following:

(a) It shall be consistent with good service as specified in the utility's tariff approved by the Commission.

(b) It shall be that value that[which] the utility determines is most practical and economical to supply to its customers.

(3) Each utility shall file with the commission its standard heating value as part of its schedule of Rates, Rules and Regulations.

(4) The utility shall maintain the heating value of the gas with as little variation as practicable, but this variation shall not be more than five (5) percent above or below the established standard heating value.

(5) The heating value standard shall be the monthly average heating value of gas delivered to customers at any point within one (1) mile of the center of distribution, and shall be obtained in the following manner: results of all tests for heating value made on any

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day during the calendar month shall be averaged, and the average of all such daily averages shall be used in computing the monthly average.

(6) Each utility, selling more than 300,000,000 cubic feet of gas annually, shall maintain a calorimeter, gas chromatograph, or other equipment for testing the heating value of gas or shall retain the services of a competent testing laboratory [approved by the commission]. All testing equipment shall be accompanied at all times by a certificate showing the date it was last tested and adjusted [This testing equipment owned by the utility shall be subject to approval of the commission and be made available for testing certification]. Utilities served directly from a transmission line shall be exempt from this rule if there is approved equipment for measuring the heating value of gas maintained by the transmission company and if this [such] equipment is available for testing and certification by the commission.

(7) Each utility shall conduct tests [test] and maintain necessary records to document that the requirements of this section are being met. Those utilities that [which] bill on the basis of heating value shall, as part of its schedule of Rates, Rules and Regulations, file with the commission the schedule of tests and test procedures [procedure(s)] it will conduct to determine the heating value of its gas.

(8) Any change in heating value greater than that allowed in subsection (4) of this section shall not be made without a change to the utility's tariff approved by [approval of] the commission and without adequate notice to affected customers. In this [such] event, the utility shall make any adjustments to the customer's appliances without charge and shall conduct the adjustment program with a minimum of inconvenience to the customer.

Section 7[17]. Waste. All practices in the production, distribution, consumption, or use of natural gas that [which] are wasteful shall be [are hereby] expressly prohibited.

Section 8[18]. Deviations from Rules. In special cases for good cause shown the commission may permit deviations from these rules.

APPENDIX A INCORPORATED BY REFERENCE
I. List of Organizations and Addresses.
A. American National Standards Institute (ANSI), 1430 Broadway, New York, N.Y. 10018.
B. American Petroleum Institute (API), 1801 K Street N.W., Washington, D.C. 20006 or 300 Corrigan Tower Building, Dallas, Texas 75201.
C. American Society of Mechanical Engineers (ASME), United Engineering Center, 345 East 47th Street, New York, N.Y. 10017.
D. American Society for Testing and Material (ASTM), 1916 Race Street, Philadelphia, Pa. 19103.
E. Manufacturers Standardization Society of the Valve and Fittings Industry (MSS), 5203 Leesburg Pike, Suite 502, Falls Church, Va. 22041.
F. National Fire Protection Association (NFPA), Batterymarch Park, Quincy, Massachusetts 02269.
II. Documents incorporated by reference. Numbers in parenthesis indicate applicable editions.
A. American Petroleum Institute:
(1) API Specification 6D "API Specification for Pipeline Valves" (1977).
(2) API Specification 5L "API Specification for Line Pipe" (1980).
(3) API Recommended Practice 5L1 "API Recommended Practice for Railroad Transportation of Line Pipe" (1972).
(4) API Standard 1104 "Standard for Welding Pipelines and Related Facilities" (17th Edition, 1988).
B. American Society for Testing and Materials:
(1) ASTM Specification A53 "Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated Welded and Seamless" (A53-79).
(2) ASTM Specification A106 "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service" (A106-79b).

(3) ASTM Specification A671 "Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures" (A671-77).
(4) ASTM Specification A672 "Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures" (A672-79).
(5) ASTM Specification A691 "Carbon and Alloy Steel Pipe, Electric-Fusion-Welded for High-Pressure Service at High Temperatures" (A169-79).
(6) ASTM Specification A333 "Standard Specification for Seamless and Welded Steel Pipe for Low Temperature Service" (A333-79).
(7) ASTM Specification A372 "Standard Specification for Carbon and Alloy Steel Forgings for Thin-Walled Pressure Vessels" (A372-78).
(8) ASTM Specification A381 "Standard Specification for Metal-Arc-Welded Steel Pipe for Use with High-Pressure Transmission Systems" (A381-79).
(9) ASTM Specification D638 "Standard Test Method for Tensile Properties of Plastic" (D368-77a).
(10) ASTM Specification D900 "Standard Method Test for Caloric Value of Gaseous Fuels by the Water Flow Calorimeter" (D900-55-1974 Edition).
(11) ASTM Specification D2513 "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings" (D2513-87).
(12) ASTM Specification D2517 "Standard Specification for Reinforced Epoxy Resin Gas Pressure Pipe and Fittings" (D2517-73) (Reapproved 1979).
C. American National Standards Institute, Inc.:
(1) ANSI B16.1 "Cast Iron Pipe Flanges and Flanged Fittings" (1975).
(2) ANSI B16.5 "Steel Pipe Flanges and Flanged Fittings" (1977).
D. American Society of Mechanical Engineers:
(1) ASME Boiler and Pressure Code, Section VIII "Pressure Vessels Division I" (1977).
(2) ASME Boiler and Pressure Vessel Code, Section IX "Welding Qualifications" (1977).
E. Manufacturer's Standardization Society of the Valve and Fittings Industry:
(1) MSS SP-44 "Steel Pipe Line Flanges" (1975).
F. National Fire Protection Association:
(1) NFPA Standard 30 "Flammable and Combustible Liquids Code" (1977).
(2) NFPA Standard 54 "National Fuel Gas Code" (1980).
(3) NFPA Standard 58 "Standard for the Storage and Handling of Liquefied Petroleum Gases" (1979).
(4) NFPA Standard 59 "Standards for the Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants" (1979).
(5) NFPA Standard 59A "Storage and Handling Liquefied Natural Gas" (1979).
(6) "National Electrical Code" NFPA-70 (ANSI) (1978).
G. National Bureau of Standards:
(1) Circular No. 48 "Standard Methods of Gas Testing" (1916).
(2) Research Paper No. 1741 "Testing Large Capacity Rotary Gas Meters," National Bureau of Standards Journal of Research, September, 1946.

APPENDIX B QUALIFICATION OF PIPE
I. Listed Pipe Specifications. Numbers in parentheses indicate applicable editions.
API 5L - Steel Pipe (1980).
ASTM A53 - Steel Pipe (1979).
ASTM A106 - Steel Pipe (1979).
ASTM A333 - Steel Pipe (1979).
ASTM A381 - Steel Pipe (1979).
ASTM Specification A671 - Steel Pipe (1977).
ASTM Specification A672 - Steel Pipe (1979).
ASTM D2513 - Thermoplastic Pipe and Tubing (1987).
ASTM D2517 - Thermoplastic Plastic Pipe and Tubing (1973).
II. Steel pipe of unknown or unlisted specification.

<p>A. Bending Properties. For pipe two (2) inches or less in diameter, a length of pipe shall be cold bent through at least ninety (90) degrees around a cylindrical mandrel that has a diameter twelve (12) times the diameter of the pipe, without developing cracks at any portion and without opening the longitudinal weld. Pipe more than two (2) inches in diameter shall meet the requirements of the flattening test set forth in ASTM A53, except that the number of tests shall be at least equal to the minimum required in paragraph 11-D of this appendix to determine yield strength.</p>	
<p>B. Weldability. A girth weld shall be made in pipe by a welder who is qualified under Subpart E of this part. The weld shall be made under the most severe conditions under which welding will be allowed in the field and by the same procedure that will be used in the field. On pipe more than four (4) inches in diameter, at least one (1) test weld shall be made for each 100 lengths of pipe. On pipe four (4) inches or less in diameter, at least one (1) test weld shall be made for each 400 lengths of pipe. The weld shall be tested in accordance with API Standard 1104. If requirements of API Standard 1104 cannot be met, weldability may be established by making chemical test for carbon and manganese, and proceeding in accordance with Section IX of the ASME Boiler and Pressure Vessel Code. The same number of chemical tests shall be made as are required for testing a girth weld.</p>	
<p>C. Inspection. Pipe shall be clean enough to permit adequate inspection. It shall be visually inspected to ensure that it is reasonably round and straight and there are no defects which might impair strength or tightness of the pipe.</p>	
<p>D. Tensile Properties. If the pipe's tensile properties are not known, minimum yield strength may be taken as 24,000 psig or less, or tensile properties may be established by performing tensile tests as set forth in API Standard 5LX. All test specimens shall be selected at random and the following number of tests must be performed:</p>	
<p>NUMBER OF TENSILE TEST – ALL SIZES</p>	
10 lengths or less ____	1 set of tests for each length.
11 lengths to 100 lengths ____	1 set of tests for each 5 lengths, but not less than 10 tests.
Over 100 lengths ____	1 set of tests for each 10 lengths, but not less than 10 tests.
<p>If the yield-tensile ratio, based on properties determined by those tests, exceeds 0.85, pipe may be used only as provided in 192.55(c).</p>	
<p>III. Steel pipe manufactured before November 12, 1970, to earlier editions of listed specifications. Steel pipe manufactured before November 12, 1970, in accordance with a specification of which a later edition is listed in Section 1 of this appendix, is qualified for use under this part if the following requirements are met:</p>	
<p>A. Inspection. Pipe shall be clean enough for inspection to ensure that it is reasonably round and straight and that there are no defects which might impair strength or tightness of the pipe.</p>	
<p>B. Similarity of specification requirements. The edition of the listed specification under which pipe was manufactured shall have substantially the same requirements with respect to the following properties as a later edition of that specification listed in Section I of this appendix:</p>	
<p>(1) Physical (mechanical) properties of pipe, including yield and tensile strength, elongation, and yield to tensile ratio, and testing requirements to verify those properties.</p>	
<p>(2) Chemical properties of pipe and testing requirements to verify those properties.</p>	
<p>C. Inspection or test of welded pipe. On pipe with welded seams, one (1) of the following requirements shall be met:</p>	
<p>(1) The edition of the listed specification to which the pipe was manufactured shall have substantially the same requirements with respect to nondestructive inspection of welded seams and the standards for acceptance or rejection and repair as a later edition of the specification listed in Section I of this appendix.</p>	

(2) Pipe shall be tested in accordance with Subpart J of this part to at least 1.25 times maximum allowable operating pressure if it is to be installed in a Class 1 location and to at least 1.5 times maximum allowable operating pressure if it is to be installed in a Class 2, 3, or 4 location. Notwithstanding any shorter time period permitted under Subpart J of this part, test pressure shall be maintained for at least eight (8) hours.

**APPENDIX C
QUALIFICATION OF WELDERS FOR LOW STRESS LEVEL PIPE**

I. Basic test. Test shall be made on pipe twelve (12) inches or less in diameter. The test weld shall be made with pipe in horizontal fixed position so that test weld includes at least one (1) section of overhead position welding. Beveling, root opening, and other details shall conform to the specification of the procedure under which the welder is being qualified. Upon completion, test weld shall be cut into four (4) coupons and subjected to a root bend test. If two (2) or more of the four (4) coupons then develop a crack more than 1/8 inch long in any direction in the weld material, or between weld material and base metal, the weld shall be unacceptable. Cracks that occur on the specimen corner during testing are not considered.

II. Additional tests for welders of service line connections to mains. A service line connection fitting shall be welded to a pipe section with the same diameter as a typical main. The weld shall be made in the same position as it is made in the field. The weld shall be unacceptable if it shows a serious undercutting or if it has rolled edges. The weld shall be tested by attempting to break the fitting off the run pipe. The weld shall be unacceptable if it breaks and shows incomplete fusion, overlap, or poor penetration at junction of the fitting and run pipe.

III. Periodic tests for welders of small service lines. Two (2) samples of the welder's work, each about eight (8) inches long with the weld approximately centered, shall be cut from steel service line and tested as follows:

(1) One (1) sample shall be centered in a guiled bend testing machine and bent to the die contour for two (2) inches on each side of the weld. If the sample shows any break or cracks after removal from the bending machine, it shall be unacceptable.

(2) The ends of the second sample shall be flattened and the entire joint subjected to a tensile strength test. If failure occurs adjacent to or in the weld metal, the weld shall be unacceptable. If a tensile strength testing machine is not available, this sample shall also pass the bending test prescribed in subparagraph (1) of this paragraph.

**APPENDIX D
CRITERIA FOR CATHODIC PROTECTION
AND DETERMINATION OF MEASUREMENTS**

I. Criteria for cathodic protection:

A. Steel, cast iron, and ductile iron structures.

(1) Negative (cathodic) voltage of at least 0.85 volt, with reference to a saturated copper-copper sulfate half cell. Determination of this voltage shall be made with the protective current applied, and in accordance with Sections II and IV of this appendix.

(2) Negative (cathodic) voltage shift of at least 300 millivolts. Determination of this voltage shift shall be made with the protective current applied, and in accordance with Sections II and IV of this appendix. This criterion of voltage shift applies to structures not in contact with metal of different anodic potentials.

(3) Minimum negative (cathodic) polarization voltage shift of 100 millivolts. This polarization voltage shift shall be determined in accordance with Sections III and IV of this appendix.

(4) Net protective current from the electrolyte into the structure surface as measured by an earth current technique applied at predetermined current discharge (anodic) points of the structure.

B. Aluminum structures:

(1) Except as provided in paragraphs (3) and (4) of this paragraph, a minimum negative (cathodic) voltage shift of 150 millivolts, produced by the application of protective current. The

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voltage shift shall be determined in accordance with Sections II and IV of this appendix.
(2) Except as provided in paragraphs (3) and (4) of this paragraph, a minimum negative (cathodic) polarization voltage shift of 100 millivolts. This polarization voltage shift shall be determined in accordance with Sections III and IV of this appendix.
(3) Notwithstanding the alternative minimum criteria in paragraphs (1) and (2) of this paragraph, aluminum, if cathodically protected at voltages in excess of 1.20 volts as measured with reference to a copper-copper sulfate half cell, in accordance with Section IV of this appendix, and compensated for the voltage (IR) drops other than those across the structure-electrolyte boundary may suffer corrosion resulting from the buildup of alkali on the metal surface. A voltage in excess of 1.20 volts shall not be used unless previous test results indicate no appreciable corrosion will occur in the particular environment.
(4) Since aluminum may suffer from corrosion under high pH conditions, and since application of cathodic protection tends to increase the pH at the metal surface, careful investigation or testing shall be made before applying cathodic protection to stop pitting attack on aluminum structures in environments with a natural pH in excess of eight (8).
C. Copper structures. Minimum negative (cathodic) polarization voltage shift of 100 millivolts. This polarization voltage shift shall be determined in accordance with Sections III and IV of this appendix.
D. Metal of different anodic potentials. Negative (cathodic) voltage, measured in accordance with Section IV of this appendix, equal to that required for the most anodic metal in the system shall be maintained. If amphoteric structures are involved that could be damaged by high alkalinity covered by paragraphs (3) and (4) of paragraph B of this section, they shall be electrically isolated with insulating flanges or their equivalent.
II. Interpretation of voltage measurement. Voltage (IR) drops other than those across the structure-electrolyte boundary shall be considered for valid interpretation of the voltage measurement in paragraphs A(1) and (2) and paragraph B(1) of Section I of this appendix.
III. Determination of polarization voltage shift. Polarization voltage shift shall be determined by interrupting the protective current and measuring polarization decay. When the current is initially interrupted, an immediate voltage shift occurs. The voltage reading after the immediate shift shall be used as the base reading from which to measure polarization decay in paragraphs A(3), B(2), and C of Section I of this appendix.
IV. Reference half cells.
A. Except as provided in paragraphs B and C of this section, negative (cathodic) voltage shall be measured between the structure surface and a saturated copper-copper sulfate half cell contacting the electrolyte.
B. Other standard reference half cells may be substituted for the saturated copper-copper sulfate half cell. Two (2) commonly used reference half cells are listed below along with their voltage equivalent to -0.85 volt as referred to a saturated copper-copper sulfate half cell:
(1) Saturated KCl calomel half cell: -0.78 volt.
(2) Silver-silver chloride half cell used in sea water: -0.80 volt.
C. In addition to the standard reference half cell, an alternate metallic material or structure may be used in place of the saturated copper-copper sulfate half cell if its potential stability is assured and if its voltage equivalent referred to a saturated copper-copper sulfate half cell is established.

This is to certify that the Public Service Chairman has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 278.040(3).

GWEN R. PINSON, Executive Director
 MICHAEL J. SCHMITT, Chairman

APPROVED BY AGENCY: April 9, 2018
 FILED WITH LRC: April 10, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 29, 2018 at 2:00 p.m. Eastern Standard Time at the Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jason Whisman, Policy Analyst, Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3940, fax (502) 564-7279, email Jason.Whisman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jason Whisman

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: Sets rates and services standards for natural gas utilities and gathering systems.
 - (b) The necessity of this administrative regulation: Ensures reliable natural gas service at reasonable rates for consumers.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: 807 KAR 5:022 conforms to KRS 278.040 ensuring that utilities provide adequate service to their customers.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Eliminates redundancy and clarifies service requirements for natural gas utilities.
 - (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: Eliminates redundancy and clarifies service requirements for natural gas utilities
 - (b) The necessity of the amendment to this administrative regulation: It will clarify the service requirements for regulated natural gas utilities.
 - (c) How the amendment conforms to the content of the authorizing statutes: It ensures that utilities provide adequate service to the rate payer.
 - (d) How the amendment will assist in the effective administration of the statutes: Eliminates redundancy and clarifies service requirements for natural gas utilities.
 - (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 180 regulated natural gas utility operators within Kentucky.
 - (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
 - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None beyond what is already required.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Zero Dollars; no fiscal impact.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): One set of regulations identifying the non-federal requirements involving reliable service.
 - (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
 - (a) Initially: Zero Dollars; no fiscal impact.

- (b) On a continuing basis: Zero Dollars; no fiscal impact.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Annual Assessments paid by regulated utilities, pursuant to KRS 278.130, which are deposited into a special accounting structure of the General Fund per KRS 278.150(3) for the purpose of maintaining the commission.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fiscal impact.
- (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees were established and existing fees will not be affected.
- (9) TIERING: Is tiering applied? Tiering is not applied as all utilities must conform with uniform standards of fair, safe, reasonable, and reliable utility services.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

- (1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No impact other than reducing the managerial audit findings of regulated gas utility companies by the Kentucky Public Service Commission.
 - (2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.040
 - (3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Zero Dollars; no fiscal impact.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Zero Dollars; no fiscal impact.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Zero Dollars; no fiscal impact.
 - (c) How much will it cost to administer this program for the first year? Zero Dollars; no fiscal impact.
 - (d) How much will it cost to administer this program for subsequent years? Zero Dollars; no fiscal impact.
- Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
- Revenues (+/-):
 Expenditures (+/-):
 Other Explanation:

**ENERGY AND ENVIRONMENT CABINET
 Public Service Commission
 (Amended After Comments)**

807 KAR 5:026. Gas service; gathering systems.

RELATES TO: KRS Chapter 278, 49 C.F.R. 192
 STATUTORY AUTHORITY: KRS 278.040(3), 278.485
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) ~~authorizes the Public Service Commission to~~ provides that the commission may adopt, in keeping with KRS Chapter 13A, reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.485(1) ~~requires~~ provides that gas service ~~to~~ shall be furnished at rates and charges determined by the commission. KRS 278.485(3) ~~authorizes the commission to prescribe~~ provides that safety standards for installation of service lines ~~may be prescribed by the commission~~. This administrative regulation applies to service from natural gas gathering pipeline systems.

Section 1. Definitions. For purposes of this administrative regulation:

- (1) "Average volumetric rate" means the rate of a local gas distribution utility subject to rate regulation by the commission, which is an average of the utility's volumetric retail gas sales rates for residential customers ~~as authorized by the commission~~.
- (2) ~~"Customer meter" means the device that measures the transfer of gas from the pipeline company to the consumer.~~
- (3) "Customer line" means all equipment and material required to transfer natural gas from the tap on the gathering line to the customer's premises and includes the saddle or tapping tee, the first service shutoff valve, the meter, and the service regulator, if one is required.
- (3) "Customer meter" means the device that measures the transfer of gas from the pipeline company to the consumer.
- (4) "Gas company" means the owner of any producing gas well or gathering line.
- (5) "Gathering line" means a pipeline that transports gas from as current production facility to a transmission line or main ~~any pipe which carries uncompressed gas and which is used to gather gas from a producing gas well~~.
- (6) "Interior line" means pipe used to transfer natural gas from the point of entry into a building to the point or points of use.
- (7) "Price index" means the average of the producer price index-utility natural gas (PPI 05-5) for the most recent twelve (12) month period as published monthly by the United States Department of Labor, Bureau of Labor Statistics.

Section 2. Construction Standards. Construction not specifically addressed by this administrative regulation shall meet applicable requirements of the "American National Standard Code for Pressure Piping, Gas Transmission and Distribution Piping Systems (ASME B31.8)" 2016[4992] edition, as published by the American Society of Mechanical Engineers, Two Park Avenue ~~United Engineering Center, 345 East 47th Street~~, New York, N. Y. 10016-5901[40017], ~~which is incorporated by this reference. Copies are available for public inspection and copying, subject to copyright law, Monday through Friday, holidays excepted, from 8 a.m. to 4:30 p.m., at the commission office, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602.~~

Section 3. Requirements for Service. (1) Persons desiring gas service under KRS 278.485 shall apply at the local gas company office. Applications shall contain:

- (a) The name and address of the applicant.
- (b) The purpose for which gas is requested.
- (c) The name and address of the contractor who will install the customer line.
- (d) The name and address of the gas company from which service is requested.
- (2) The gas company shall furnish the applicant with construction drawings specifying the installation methods and the materials ~~approved by the commission~~ for service installation.
- (3) Prior to providing service, the gas company shall furnish a copy of the application to the commission.
- (4) Upon receipt of a copy of the application, the commission shall cause the customer line to be inspected for compliance with this administrative regulation prior to commencement of service ~~commission specifications. Service shall not commence until commission specifications have been met~~.
- (5) The commission shall notify the applicant by mail if the customer line does not comply with commission specifications. If subsequent inspection reveals that defects have not been corrected, the commission shall notify the gas company, and the gas company shall take no further action on the application until the defects have been corrected.
- (6) The gas company shall furnish, install, and maintain the meter and the service tap, including saddle and first service shutoff valve, which shall remain its property. The gas company shall ensure that its name appears on each of its meters.
- (7) All other approved equipment and material required for the service shall be furnished, installed, and maintained by the customer at his expense and shall remain his property.

(8) If leaks or other hazardous conditions are detected in the customer line, the gas company shall discontinue service until the hazardous conditions have been remedied.

Section 4. Connections to High Pressure Gathering Lines. (1) Connections shall be smaller than the diameter of the gathering line.

(2) Connections shall be on the upper one-half (1/2) of the gathering line surface, and at a forty-five (45) degree angle, ~~if [where] practicable.~~

(3) Connections shall be at right angles to the center line of the gathering line.

(4) A service shutoff valve shall immediately follow the connection to the gathering line.

(5) A drip tank shall be installed preceding the regulating equipment, ~~unless the gas company has dehydrated the natural gas supply prior to providing to the customer [but may be omitted upon prior approval of the commission].~~

Section 5. Control and Limitation of Gas Pressure. (1) If maximum gas pressure on the gathering line is capable of exceeding ~~may exceed~~ sixty (60) psig, a service regulator shall be installed between the service shutoff valve and the customer meter, and a secondary regulator shall be installed between the service regulator and the customer meter. Regulators shall be spring type, and the ~~service~~ secondary regulator shall not be set to maintain pressure higher than sixty (60) psig. A spring type relief valve shall be installed to limit pressure on the inlet of the service regulator to sixty (60) psig or less.

(2) Every customer line shall be equipped with a properly-sized ~~[an adequate]~~ spring type relief valve to avoid over pressuring the customer line. The valve may be part of the final stage regulator.

(3) Regulators shall not be bypassed.

(4) Each relief valve shall be vented into outside air, and all vents shall be covered to prevent water and insects from entering.

(5) All metering and regulating equipment shall be as near to the gathering line as practicable, in accordance with safe and accepted operating practices.

(6) Regulating equipment shall be properly protected by the customer.

Section 6. Customer Lines and Metering Facilities. (1) The customer shall furnish and install the customer line from the tap to the point of use. The customer shall secure all rights-of-way and railroad, highway, and other crossing permits. The customer line shall be laid on undisturbed or well compacted soil in a separate trench, avoiding all structures and hazardous locations. A structure shall not ~~[No structure shall]~~ be erected over the line.

(2) A branch tee or other connection shall not ~~[No branch tee or other connection shall]~~ be installed on the line to serve any user other than the customer without prior written consent of the gas company and the customer. If consent is given, service to each user shall have an automatic shutoff valve with manual reset located on the riser in a horizontal position. The shutoff valve shall have maximum operating pressure of eight (8) ounces PSIG with a shutoff pressure setting of not less than two (2) ounces.

(3) Customer lines shall not be constructed nearer than thirty-six (36) inches to any subsurface structure.

(4) Customer lines, including the connection to the main, ~~if [where] feasible,~~ shall be checked for leaks by the gas company prior to first use. If it is not feasible to test the connection to the main before first use, it shall be tested for leaks at the operating pressure when placed into service. Customer lines shall be tested by the gas company with air, natural gas, or inert gas at fifty (50) psig for at least thirty (30) continuous minutes.

(5) Customer lines shall be purged after testing to remove any accumulated air.

(6) Metering pressure shall not exceed eight (8) ounces or .5 psig, ~~unless otherwise approved in advance by the commission.~~

(7) Steel customer lines shall be constructed of black finish steel pipe, shall have a diameter determined by the maximum hourly load for the gas service, and shall conform ~~[at least one and~~

~~one quarter (1 1/4) inches in diameter or larger, that conforms]~~ to standards in the Standard Specification for Pipe, Steel, Black, and Hot-dipped, Zinc Coated, Welded and Seamless (A53/A53M-12) 2012 edition ~~[A53-95a-1995],~~ as published by the American Society for Testing and Materials, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, Pennsylvania 19428-2959 ~~[which is incorporated by reference. Copies are available for public inspection and copying, subject to copyright law, Monday through Friday, holidays excepted, from 8:30 a.m. to 4:30 p.m., at the commission's offices, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602].~~ All joints and fittings shall be coated or taped, in accordance with manufacturer's recommendations, from the gas meter to the outlet side of the stopcock located on the riser entering the building. Steel customer lines shall be installed with at least twelve (12) inches of cover on private property and at least eighteen (18) inches of cover on streets and roads. If the steel customer line passes through tillable land, the trench shall be of sufficient depth to permit twenty-four (24) inches of backfill above the service line.

(8) Each steel customer line shall have two (2) insulating joints, one (1) between the secondary regulator and the customer meter, and one (1) at the point of entry into the building.

(9) Plastic customer lines shall have a diameter determined by the maximum hourly load for the gas service and shall meet ~~[be constructed of one and one-quarter (1 1/4) pipe that meets]~~ the Standard Specification for Polyethylene (PE) ~~[Thermoplastic]~~ Gas Pressure Pipe, Tubing and Fittings (D2513-16a), 2016 ~~[D 2513-94a, 1994],~~ as published by the American Society for Testing and Materials, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, Pennsylvania 19428-2959 ~~[1916 Race Street, Philadelphia, Pennsylvania, 19103, which is incorporated by this reference. Copies are available for public inspection and copying, subject to copyright law, Monday through Friday, holidays excepted, from 8:30 a.m. to 4:30 p.m., at the commission's offices, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602.]~~ Plastic customer lines shall be installed with at least twelve (12) inches of cover on private property and at least eighteen (18) inches of cover on streets and roads. ~~if [When]~~ passing through tillable land, the plastic customer line shall be installed with at least twenty-four (24) inches of cover. Plastic customer lines shall be buried with an electrically conductive wire to enable inspectors to locate the plastic line. All joints in plastic lines shall be made by persons operator-qualified in accordance with 49 C.F.R. Part 192 ~~[under 807 KAR 5:022, Section 6(8),]~~ to make ~~[join]~~ plastic pipe joints. A plastic line shall not ~~[No plastic line shall]~~ be installed above ground.

(10) Customer lines shall enter the building above ground level, and a stopcock valve shall be located on the riser.

(11) Each customer's service shall have an automatic shutoff valve with manual reset to stop gas flow if gas pressure fails. The valve may be part of the final stage regulator and shall have operating pressure of eight (8) ounces with shutoff pressure setting of not less than two (2) ounces.

(12) A combustible gas in a distribution line must contain a natural odorant or be odorized so that at a concentration in air of one-fifth of the lower explosive limit, the gas is readily detectable by a person with a normal sense of smell.

Section 7. Failure to Pay Bills or Other Default. (1) Customers shall be required to pay the installation charge and to pay for all gas delivered at rates approved by the commission in accordance with KRS Chapter 278 and 807 KAR Chapter 5. The gas company shall render statements to the customer at regular monthly or bimonthly intervals. Statements shall be rendered within ten (10) days following each billing period. Service shall not be discontinued to any customer for nonpayment of charges unless the gas company has first made a reasonable effort to obtain payment from the customer. The customer shall be given at least forty-eight (48) hours' written notice of termination, but termination of service shall not ~~[no termination of service shall]~~ be made until at least fifteen (15) days after the original bill has been mailed. Service shall not be reestablished until the customer has paid the gas company all amounts due for gas delivered plus a turn-on

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charge of twenty-five (25) dollars, ~~and has complied fully with applicable service administrative regulations~~. If the customer has not paid amounts owed, or if the customer has not complied with commission administrative regulations within thirty (30) days from the date the gas is turned off, the gas company may disconnect the customer line from its gathering line. Service shall not be reestablished until the customer has complied with provisions of this administrative regulation pertaining to initial service.

(2) The gas company may require a cash deposit or other guaranty from the customer to secure payment of bills.

Section 8. General Provisions. The gas company shall have reasonable access to the customer's premises, and may shut off gas and remove its property from the premises upon reasonable notice for any of the following reasons:

- (1) Need for repairs;
- (2) Nonpayment;
- (3) Failure to make a cash deposit, if required;
- (4) Any violation of this administrative regulation;
- (5) Customer's removal from premises;
- (6) Tampering with the meter, regulators, or connections;
- (7) Shortage of gas or reasons of safety;
- (8) Theft of gas;
- (9) Any action by a customer to secure gas through his meter for purposes other than those for which it was requested, or for any other party without written consent of the gas company; or
- (10) False representation with respect to ownership of property to which service is furnished.

Section 9. Rates and Charges. (1) Rates. Each gas company shall charge rates filed with and approved by ~~the~~ the commission in accordance with KRS Chapter 278 and 807 KAR Chapter 5. A gas company may request an adjustment in its rates to reflect changes in its costs to provide service pursuant to KRS 278.485.

(a) A gas company which provides service pursuant to KRS 278.485 may request an adjustment in rates through a proposed tariff submitted at least sixty (60) days prior to its proposed effective date if:

1. The percentage change in rates does not exceed the percentage change in the price index during the most recent twelve (12) month period immediately preceding the date the proposed tariff is filed; and

2. The proposed rate does not exceed the highest average volumetric rate of a local gas distribution utility approved by the commission in accordance with KRS 278 and 807 KAR Chapter 5 and in effect on the date the proposed tariff is filed. The commission shall provide the current percentage change in the price index and the highest prevailing rate upon written request.

(b) If the proposed percentage increase in rates exceeds the percentage change in the price index but the proposed rate remains below the highest prevailing gas rate approved by the commission, the gas company shall submit, with its proposed tariff, cost data which support the proposed increase. The data shall include the gas company's costs to provide the service during each of the previous two (2) years and shall be current within ninety (90) days of the date the proposed tariff is filed.

(c) A proposed tariff increasing rates shall not be filed with a proposed effective date less than one (1) year later than the last commission approved increase. Once the commission has determined that sufficient information has been filed with the proposed tariff, the commission shall either approve or deny the proposed adjustment within sixty (60) days. The commission may suspend the proposed tariff beyond the sixty (60) day review period.

(d) A gas company which files a proposed tariff to increase rates shall mail notice to its customers no later than twenty (20) days prior to the filing date of the proposed tariff. The notice shall be dated, shall state the proposed rate and the estimated amount of monthly increase per customer, and shall state that any customer may file comments or a request to intervene by mail to the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602.

(e) Instead ~~in lieu~~ of a rate adjustment through a proposed

tariff, a gas company may file an application with the commission for authority to adjust rates pursuant to 807 KAR 5:001, Section 10. If eligible, the gas company may file under the alternative rate adjustment procedure, 807 KAR 5:076.

(2) Charges.

(a) Any nonrecurring, customer-specific charge, such as those listed in 807 KAR 5:006, Section 8, that is assessed by the gas company shall be listed in its tariff. These charges may be adjusted by filing a proposed tariff with the commission at least thirty (30) days prior to the effective date of the adjustment.

(b) Each gas company may charge \$150 for each service tap, including saddle and first shutoff valve which, under this administrative regulation, it ~~shall~~ ~~must~~ furnish and install.

(3) Provisions contained in this administrative regulation shall apply only to connections made and services provided pursuant to KRS 278.485 after the effective date of this administrative regulation.

(4) In providing notice as required by Section 9(1)(d) of this administrative regulation, the gas company shall use the following form:

NOTICE OF PROPOSED RATE CHANGE

(Name of gas company) has filed a request with the Public Service Commission to increase its rates. The rates contained in this notice are the rates proposed by (name of gas company). However, the Public Service Commission may order rates to be charged that differ from the rates in this notice. Any corporation, association, body politic, or person may file written comments or a written request for intervention within thirty (30) days of the date of this notice with the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602. Copies of the request for an increase in rates may be obtained by contacting the gas company at (address of gas company). A copy of the request for an increase in rates is available for public inspection at this address.

Present Rate	Proposed Rate	Estimated Monthly Increase Per Customer
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Section 10. Exceptions. (1) A utility may submit a written request to the commission to obtain an exception based on good cause for a requirement listed in this administrative regulation. The utility shall attach supporting evidence of good cause to the written request.

(2) Once the request is received, the commission shall determine whether good cause exists to grant an exception to a requirement of this administrative regulation. The commission shall notify the utility, in writing, of:

(a) The decision as to whether good cause exists; and

(b) If good cause exists:

1. The scope and duration of any exception granted; and

2. Any conditions that the utility is required to meet to maintain the exception.

(3) In determining whether good cause exists, the commission shall consider whether the evidence shows that complying with the relevant requirement would be impracticable or contrary to the public interest[Deviation from Rules. In special cases for good cause shown the commission may permit deviations from these rules].

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

(a) "American National Standard Code for Pressure Piping, Gas Transmission and Distribution Piping Systems (ASME B31.8)", 2016 edition, as published by the American Society of Mechanical Engineers, Two Park Avenue, New York, N. Y. 10017-5990;

(b) "Standard Specification for Pipe, Steel, Black, and Hot-dipped, Zinc Coated, Welded and Seamless (A53-/53M)", 2012 edition, as published by the American Society for Testing and Materials, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, Pennsylvania 19428; and

(c) "Standard Specification for Polyethylene (PE) Gas Pressure Pipe, Tubing and Fittings (D 2513-16a)", 2016 edition, as published by the American Society for Testing and Materials, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, Pennsylvania

19428.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Public Service Commission, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky 40602-0615, Monday through Friday, 8:00 a.m. through 4:30 p.m.

This is to certify that the Public Service Commission Chairman has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 278.040(3).

JOHN LYONS, Deputy Executive Director
For GWEN R. PINSON, Executive Director
MICHAEL J. SCHMITT, Chairman
APPROVED BY AGENCY: June 13, 2018
FILED WITH LRC: June 13, 2018 at 10 a.m.
CONTACT PERSON: Jason Whisman, Policy Analyst,
Kentucky Public Service Commission, 211 Sower Boulevard,
Frankfort, Kentucky 40601, phone (502) 564-3940, fax (502) 564-7279, email Jason.Whisman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jason Whisman

(1) Provide a brief summary of:

(a) What this administrative regulation does: Sets service and safety standards for natural gas gathering systems.

(b) The necessity of this administrative regulation: To ensure safe, reliable natural gas services are delivered from gathering systems to consumers and/or transmission points.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 807 KAR 5:026 conforms to KRS 278.040 which requires the Public Service Commission to set regulations for safe and reliable gathering and transmission of natural gas.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Sets service and safety standards for natural gas gathering systems.

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

(a) How the amendment will change this existing administrative regulation: Changes the engineering specifications of piping to conform with current industry standards.

(b) The necessity of the amendment to this administrative regulation: Changes the engineering specifications of piping to conform with current industry standards.

(c) How the amendment conforms to the content of the authorizing statutes: It sets practical and updated safety standards in the construction of gas lines.

(d) How the amendment will assist in the effective administration of the statutes: Changes the engineering specifications of piping to conform with current industry standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 15-20 regulated natural gas gathering operators within Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None. Already in practice within the industry.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Zero Dollars; no fiscal impact.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It modifies state regulation to eliminate outdated standards; therefore, providing clarity for the regulated entities.

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

(a) Initially: Zero Dollars; no fiscal impact.

(b) On a continuing basis: Zero Dollars; no fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Annual assessments paid by regulated utilities, pursuant to KRS 278.130, which are deposited into a special fund within the General Fund per KRS 278.150(3) for the purposes of maintaining the commission.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees are established and existing fees will not be affected.

(9) TIERING: Is tiering applied? Tiering is not applied as all utilities must conform with uniform standards of fair, safe, reasonable, and reliable utility services.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No impact other than reducing the managerial audit findings of regulated gas utility companies by the Kentucky Public Service Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.040

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Zero Dollars; no fiscal impact.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Zero Dollars; no fiscal impact.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Zero Dollars; no fiscal impact.

(c) How much will it cost to administer this program for the first year? Zero Dollars; no fiscal impact.

(d) How much will it cost to administer this program for subsequent years? Zero Dollars; no fiscal impact.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 49 C.F.R. Part 192

(2) State compliance standards. Reduce state standards to mirror federal standards.

(3) Minimum or uniform standards contained in the federal mandate. Uniform Standards

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? It will reduce stricter standards and become aligned with the federal requirements.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Code Enforcement
(Amended After Comments)

815 KAR 7:120. Kentucky Building Code.

RELATES TO: KRS 132.010, 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.260, 198B.990, 227.300, 227.550(7)
 STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) and 198B.050 require the department to ~~adopt and~~ promulgate a mandatory uniform state~~[statewide]~~ building code~~[-based on a model code]~~ that establishes standards for the construction of all buildings in the state. This administrative regulation establishes the Kentucky Building Code's general provisions.

Section 1. Definitions. (1) "Building" is defined by KRS 198B.010(4).

(2) "Department" is defined by KRS 198B.010(11).

(3) "Industrialized building system" or "building system" is defined by KRS 198B.010(16).

(4) "Manufactured home" is defined by KRS 227.550(7).

(5) "Single-family dwelling" or "one (1) family dwelling" means a single unit that:

(a) Provides complete independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation; and

(b) Is not connected to another unit or building.

(6) "Townhouse" means a single-family dwelling unit constructed in a group of three (3) or more attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two (2) sides.

(7) "Two (2) family dwelling" means a building containing not more than two (2) dwelling units that are connected.

Section 2.~~Adoption of the~~ Building Code. (1) The 2015 International Building Code~~[2012 International Building Code]~~ shall be the mandatory state building code for all buildings constructed in Kentucky, except that:

(a) The Kentucky amendments in the 2018 Kentucky Building Code~~[2013 Kentucky Building Code]~~ shall supersede any conflicting provision in the 2015 International Building Code~~[2012 International Building Code]~~;

(b) One (1) family dwellings, two (2) family dwellings, and townhouses shall be governed by 815 KAR 7:125; and

(c) Manufactured homes shall be governed by KRS 227.550 through 227.665. Section 3. State Plan Review and Inspection Fees. The fees required by this section shall apply for plan review and inspection by the department. (1) Fast track elective.

(a) A request for expedited site and foundation approval of one (1) week or less, prior to full review of the complete set of construction documents, shall be accompanied by the fee required by Table 121.3.1 in subsection (3) of this section, plus an additional fifty (50) percent of the basic plan review or inspection fee.

(b) The additional fifty (50) percent fee shall not be less than \$400 and not more than \$3,000.

(c) The entire fee shall be paid with the initial plan submission.

(2) New buildings.

(a) The department's inspection fees shall be calculated by multiplying:

1. The cost per square foot of each occupancy type as listed in Table 121.3.1 in subsection (3) of this section; and

2. The square footage of the outside dimensions of the building.

(b) The fee for a building with multiple or mixed occupancies shall be calculated using the cost per square foot multiplier of the predominant use.

(c) The minimum fee for review of plans pursuant to this subsection shall be \$285. (3) Table 121.3.1, Basic Department Fee Schedule. The basic plan review or inspection fee shall be as

established in ~~the~~ Table 121.3.1 in this subsection.

OCCUPANCY TYPE	COST PER SQUARE FOOT
Assembly	Sixteen (16) cents
Business	Fifteen (15) cents
Day care centers	Fifteen (15) cents
Educational	Fifteen (15) cents
High hazard	Sixteen (16) cents
Industrial factories	Fifteen (15) cents
Institutional	Sixteen (16) cents
Mercantile	Fifteen (15) cents
Residential	Fifteen (15) cents
Storage	Fifteen (15) cents
Utility and Miscellaneous	Thirteen (13) cents
Production greenhouse	Ten (10) cents

(4) Additions to existing buildings.

(a) Plan review fees for additions to existing buildings shall be calculated by multiplying the cost per square foot of the occupancy type listed in Table 121.3.1 in subsection (3) of this section by the measurement of the square footage of the addition, as determined by the outside dimensions of the addition and any other changes made to the existing building.

(b) The minimum fee for review of plans pursuant to this subsection shall be \$285.

(5) Change in use.

(a) Plan review fees for existing buildings in which the use group or occupancy type is changed shall be calculated in accordance with the schedule listed in Table 121.3.1 in subsection (3) of this section by using the total square footage of the entire building or structure pursuant to the new occupancy type as determined by the outside dimensions.

(b) The minimum fee for review of plans pursuant to this subsection shall be \$285.

(6) Alterations and repairs.

(a) Plan review fees for alterations and repairs not otherwise covered by this fee schedule shall be calculated by using the lower result of multiplying the:

1. ~~[Multiplying the]~~ Cost for the alterations or repairs by 0.0030;

or

2. ~~[Multiplying the]~~ Total area being altered or repaired by the cost per square foot of each occupancy type listed in the schedule in subsection (3) of this section.

(b) The total square footage shall be determined by the outside dimensions of the area being altered or repaired.

(c) The minimum fee for review of plans pursuant to this subsection shall be \$285.

(7) Specialized fees. In addition to the fees established by subsections (1) through (6) of this section, the following fees shall be applied for the specialized plan reviews listed in this subsection:

(a) Table 121.3.9, Automatic Sprinkler Review Fee Schedule. The inspection fee for automatic sprinklers shall be as established in ~~the~~ Table 121.3.9 in this paragraph:

NUMBER OF SPRINKLERS	FEE
Four (4) – twenty-five (25)	\$150
Twenty-six (26) – 100	\$200
101 – 200	\$250
201 – 300	\$275
301 – 400	\$325
401 – 750	\$375
OVER 750	\$375 plus thirty (30) cents per sprinkler over 750

(b) Fire detection system review fee~~;~~:

1. Zero through 20,000 square feet shall be \$275; and

2. Over 20,000 square feet shall be \$275 plus thirty (30) dollars for each additional 10,000 square feet in excess of 20,000 square feet;

(c) The standpipe plan review fee shall be \$275. The combination stand pipe and riser plans shall be reviewed pursuant to the automatic sprinkler review fee schedule;

(d) Carbon dioxide suppression system review fee~~;~~:

1. One (1) through 200 pounds of agent shall be \$275; and

2. Over 200 pounds of agent shall be \$275 plus five (5) cents

per pound in excess of 200 pounds;

(e) Clean agent suppression system review fee.[:]

1. a. Up to thirty-five (35) pounds of agent shall be \$275; and

b. Over thirty-five (35) pounds shall be \$275 plus ten (10) cents per pound in excess of thirty-five (35) pounds; and

2. The fee for gaseous systems shall be ten (10) cents per cubic foot and not less than \$150;

(f) Foam suppression system review fee.[:]

1. The fee for review of a foam suppression system shall be fifty (50) cents per gallon of foam concentrate if the system is not part of an automatic sprinkler system.

2. Foam suppression system plans that are submitted as part of an automatic sprinkler system shall be reviewed pursuant to the automatic sprinkler review fee schedule.

3. The fee for review of plans pursuant to subclause[subparagraph] 1. of this paragraph shall not be less than \$275 or more than \$1,500;

(g) The commercial range hood review fee shall be \$225 per hood;

(h) Dry chemical systems review fee (except range hoods). The fee for review of:

1. One (1) through thirty (30) pounds of agent shall be \$275; and

2. Over thirty (30) pounds of agent shall be \$275 plus twenty-five (25) cents per pound in excess of thirty (30) pounds; and

(i) The flammable, combustible liquids or gases, and hazardous materials plan review fee shall be \$100 for the first tank, plus fifty (50) dollars for each additional tank and \$100 per piping system including valves, fill pipes, vents, leak detection, spill and overflow detection, cathodic protection, or associated components.

Section 4. General. All plans shall be designed and submitted to conform to this administrative regulation.

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

(a) "2015 International Building Code"[~~2012 International Building Code, First Edition~~], International Code Council, Inc.; and

(b) "2018 Kentucky Building Code, First Edition, June[April] 2018[~~2013 Kentucky Building Code, Fifth Edition, April 2017~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: June 14, 2018

FILED WITH LRC: June 14, 2018 at 11 a.m.

CONTACT PERSON: David Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the uniform Kentucky Building Code as required pursuant to KRS 198B.050.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to adopt the most up to date version of the Kentucky Building Code as required pursuant to KRS 198B.050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation utilizes the International Building Code as the basis for construction standards and allows the Department of Housing, Buildings and Construction to make amendments unique to Kentucky after due consideration of equivalent safety measures as required by KRS 198B.050.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: The regulation sets forth standards authorized by the statute for the enforcement of the uniform state building code, incorporating all applicable laws into its processes.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the edition date from April to June. This amendment also changes the effective date in Section 120.1 of the 2018 Kentucky Building Code to enable designers and contractors to submit designs for buildings using the 2013 Kentucky Building Code or the 2018 Kentucky Building Code, until January 1, 2019 when all buildings shall be designed to the 2018 Kentucky Building Code. This amendment adds a Kentucky amendment for vestibules in Chapter 13, Section 1301. This section describes how a vestibule needs to be designed and constructions, and provides six (6) exceptions when vestibules are not required. This amendment also deletes a diagram in Chapter 13 of the Kentucky Building Code.

(b) The necessity of the amendment to this administrative regulation: To implement code changes proposed by the Department of Housing, Buildings and Construction, which have been reviewed and commented on by the Department of Housing, Buildings and Construction Advisory Board during its August 22, 2017 meeting, and comments received during the public comment period.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.050 mandates the Department of Housing, Buildings and Construction to establish a uniform Kentucky Building Code. These amendments adopt a more recent model building code – going from the 2012 IRC to the 2015 IRC.

(d) How the amendment will assist in the effective administration of the statutes: These amendments to the Kentucky Building Code will enhance public safety and allow the construction industry to utilize current technologies, methods, and materials. The grace period gives designers and contractors the option to apply the 2013 Kentucky Building Code for buildings already in the design phase.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All construction projects subject to the Kentucky Building Code will be affected by the amendments to this regulation. Architects, engineers, contractors, project managers, businesses, local governments, and Department personnel will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The identified entities must comply with the new amendments to the building code.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Affected entities will incur a slight increase in expenses for obtaining new codebooks.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits include enhanced safety features, flexibility in building design, and increased clarity of construction standards.

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

(a) Initially: There are no anticipated additional costs to administer this amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the agency. Any agency costs resulting from these administrative amendments will be met with existing agency funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment does not change previous established fees.

(9) TIERING: Is tiering applied? Tiering is not applied as all builders, contractors, local governments, and owners will be subject to the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction and local jurisdiction inspection and plan review programs will be affected.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 198B.040(7) and 198B.050.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is not anticipated to generate additional revenue for the state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment is not anticipated to generate additional revenue for the state or local government.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this regulatory amendment.

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Code Enforcement
(Amended After Comments)

815 KAR 7:125. Kentucky Residential Code.

RELATES TO: KRS[432.010(9), (10),] 198B.010, 198B.040, 198B.050, 198B.060, 198B.080,[498B.140,] 198B.260, 198B.990[, 227.550(7)]

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) and 198B.050 require the department[requires the Kentucky Board of Housing, Buildings and Construction] to[adopt and] promulgate a mandatory uniform state building code that[, based on a model code, which] establishes standards for the construction of all buildings in the state. This administrative regulation establishes the basic mandatory uniform statewide code provisions relating to construction of one (1) and two (2) family dwellings and townhouses.

Section 1. Definitions. (1)[“Board of Housing” or “board” means

the Kentucky Board of Housing, Buildings and Construction.

(2) “Building” is defined by KRS 198B.010(4).

(3) “Commissioner” means the commissioner of the Department of Housing, Buildings, and Construction.

(4) “Department” means the Department of Housing, Building, and Construction.

(5) “Farm” means property having a bona fide agricultural or horticultural use as defined by KRS 132.010(9) and (10) that is qualified by and registered with the property valuation administrator in the county in which the property is located.

(6) “KBC” means the Kentucky Building Code as established in 815 KAR 7:120.

(7) “Manufactured home” is defined by KRS 198B.010(23) and 227.550(7).

(8) “Modular home” means an industrialized building system, which is designed to be used as a residence and that is not a manufactured or mobile home.

(9) “Ordinary repair” is defined by KRS 198B.010(19).

(10) “Single-family dwelling” or “one (1)-family dwelling” means a single unit that:

(a) Provides[providing] complete independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation[;] and

(b)[which] is not connected to any other unit or building.

(2) “Townhouse” means a single-family dwelling unit constructed in a group of three (3) or more attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two (2) sides.

(3)[(14)] “Two (2) family dwelling” means a building containing not more than two (2) dwelling units that are connected.

Section 2. Residential Code[Mandatory Building Code Requirements for Dwellings]. (1) Except as provided in subsection (2) of this section, the 2015 International Residential Code for One (1) and Two (2) Family Dwellings shall be the mandatory state residential building code for all[a] single-family dwellings[dwelling], two (2) family dwellings[dwelling], and townhouses[or townhouse shall not be] constructed in Kentucky, except that the Kentucky amendments in the 2018 Kentucky Residential Code shall supersede any conflicting provision in the 2015 International Residential Code for One (1) and Two (2) Family Dwellings[unless it is in compliance with the 2012 International Residential Code for One (1) and Two (2) Family Dwellings, as amended by this administrative regulation and the 2013 Kentucky Residential Code].

(2) Exceptions.

(a) Permits, inspections, and certificates of occupancy shall not be required for a single-family dwelling unless required by a local ordinance.

(b) All residential occupancies that are not single-family, two (2) family, or townhouses shall comply with the 2015 International Building Code for One (1) and Two (2) Family Dwellings[2012 International Building Code for One (1) and Two (2) Family Dwellings] and the 2018 Kentucky Building Code[2013 Kentucky Building Code].

(3)[The 2012 International Residential Code for One (1) and Two (2) Family Dwellings shall be amended as established in the 2013 Kentucky Residential Code.

(4) Plans for single-family[or one (1) family] dwellings, two (2) family dwellings, and townhouses shall be designed and submitted to conform to this administrative regulation.

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

(a) “2015 International Residential Code for One (1) and Two (2) Family Dwellings[2012 International Residential Code for One (1) and Two (2) Family Dwellings],” International Code Council, Inc.; and

(b) “2018 Kentucky Residential Code,” First Edition, June[April] 2018[2013 Kentucky Residential Code], Third Edition, December 2015].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing,

VOLUME 45, NUMBER 1 – JULY 1, 2018

Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN A. MILBY, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: June 14, 2018

FILED WITH LRC: June 14, 2018 at 11 a.m.

CONTACT PERSON: David Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the uniform Kentucky Residential Code as required pursuant to KRS 198B.050.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to adopt the Kentucky Residential Code as required pursuant to KRS 198B.050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation utilizes the International Residential Code as the basis for construction standards and allows the Department of Housing, Buildings and Construction to make amendments unique to Kentucky after due consideration of equivalent safety measures as required by KRS 198B.050.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth standards authorized by the statute for the enforcement of the residential code, incorporating all applicable laws into its processes.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the edition date from April to June. This amendment also changes the effective date in Section R116.1 of the 2018 Kentucky Residential Code to enable designers and contractors to submit designs for buildings using the 2013 Kentucky Residential Code or the 2018 Kentucky Residential Code, until January 1, 2019 when all buildings shall be designed to the 2018 Kentucky Residential Code.

(b) The necessity of the amendment to this administrative regulation: To implement code changes proposed by the Department of Housing, Buildings and Construction, which have been reviewed and commented on by the Department of Housing, Buildings and Construction Advisory Board during its August 22, 2017 meeting, and comments received during the public comment period.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.050 mandates the Department of Housing, Buildings and Construction to establish a uniform Kentucky Building Code. These amendments adopt a more recent model building code – going from the 2012 IRC to the 2015 IRC.

(d) How the amendment will assist in the effective administration of the statutes: These amendments to the Kentucky Residential Code will enhance public safety and allow the construction industry to utilize current technologies, methods, and materials.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All construction projects subject to the Kentucky Residential Code will be affected by the amendments to this regulation. Architects, engineers, contractors, project managers, businesses, local governments, and Department personnel will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified

in question (3) will have to comply with this administrative regulation or amendment: The identified entities must comply with the new amendments to the residential code.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Affected entities will incur a slight increase in expenses for obtaining new codebooks.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits include enhanced safety features, flexibility in building design, and increased clarity of construction standards.

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

(a) Initially: There are no anticipated additional costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the agency. Any agency costs resulting from these administrative amendments will be met with existing agency funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment does not change previous established fees.

(9) TIERING: Is tiering applied? Tiering is not applied as all builders, contractors, local governments, and owners will be subject to the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction and local jurisdiction inspection and plan review programs.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 198B.040(7) and 198B.050.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is not anticipated to generate additional revenue for the agency.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment is not anticipated to generate additional revenue for the agency.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this regulatory amendment.

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amended After Comments)

902 KAR 10:040. Kentucky youth camps.

RELATES TO: KRS 194A.005(1), 194A.381-383, 217.005-217.215[214.180]

STATUTORY AUTHORITY: KRS 194A.050(1)[Chapter 13B, 194.050], 211.090(3), 211.180(1)(c)[EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of ~~[214.180 authorizes]~~ the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.180(1)(c) requires the cabinet to enforce administrative regulations promulgated for the regulation and control of [regulate certain public health matters including] the sanitation of public and semipublic recreational areas; the detection, prevention and control of communicable disease and health hazards; and to provide for the protection and improvement of the health of school age children. This administrative regulation establishes uniform standards for youth camps necessary to insure a safe and sanitary environment to protect the health and safety of children attending camps in this state. ~~[Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services.]~~

Section 1. Definitions. ~~[As used in this administrative regulation the following definitions shall apply:]~~ (1) ~~["Approved" means that which is acceptable to the cabinet.~~

~~(2) "Cabinet" is defined by KRS 194A.005(1)[means the Cabinet for Health Services and its designated agents].~~

~~(2)[(3)] "Camp" or "youth camp":~~

~~(a) Means an[any] area, parcel, or tract of land, under the control of a [any] person on which facilities are established, maintained, or operated for recreational, educational, or vacation purposes for five (5) or more children to attend no longer than two (2) weeks, either free of charge[, or for payment of a fee.].~~

~~(b)[(a) This definition] Includes a[the following types of camps]:~~

~~1. Day camp["Day camp" means a camp operated for all or part of the day, but does not include overnight lodging of campers];~~

~~2. Primitive or outpost camp["Primitive or outpost camp" means a portion of the residential camp premises or other site under control of the camp operator which is intended only for occasional use as an overnight tent camping site, and has no permanent structures or facilities]; or[and]~~

~~3. Residential camp; and~~

~~(c) Does["Residential camp" means a camp operated on a permanent campsite with overnight lodging facilities.~~

~~(b) This definition shall not include a[the following]:~~

~~1. Camp, campsite, or camping session[Developed or primitive camps or campsites open to the general public on public lands, except that use of these sites or areas for operation of a youth camp shall be included in this definition];~~

~~2. Camps, campsites, or camping sessions] operated solely for family or adult camping;~~

~~2.[3.] Privately owned camp[camps] or campsite[campsites] intended for the sole use of the owner, their family, or[and] invited guests;~~

~~3.[4.] Day care or similar facilities which are operated with the intent to provide child care on a routine basis for infant, toddler, preschool, or school age groups individually or collectively during parents' working hours, before or after school or during school vacation periods;~~

~~5.] Weekend or similar overnight troop or trip camping activities conducted by an organized youth troop[troops] or association[associations] of less than seventy-two (72) hours duration, and not a part of an established youth camp operating session;~~

~~4. Facility that is operated as an instructional studio or center~~

~~that provides lessons or other activities for school age children individually or collectively during parents' working hours, before or after school, or during school vacation periods;~~

~~5. A vacation bible school, bible day school, or similar activity held in a church for school age children individually or collectively during parents' working hours, before or after school, or during school vacation periods; or~~

~~6. A wilderness camp licensed as a private child caring facility pursuant to 922 KAR 1:460.~~

~~(3)[(4)] "Camper" means any child under eighteen (18) years of age living apart from, or with the intention of living apart from, his relatives, parents, or legal guardians, while attending a youth camp.~~

~~(5) "Camp director" means the individual agent of the camp operator on the premises of any youth camp who has the primary responsibility for the administration, operation, and supervision of the camp and its staff.~~

~~(4)[(6)] "Camp operator" means the person that owns[, a] youth camp, whether the camp is operated for profit or not for profit.~~

~~(5) "Camper" means a child under eighteen (18) years of age living apart from relatives, parents, or legal guardians, while attending a youth camp.~~

~~(6) "Day camp":~~

~~(a) Means a camp operated for all or part of the day; and~~

~~(b) Does not include:~~

~~1. Overnight lodging of campers; or~~

~~2. A camp operating at a facility under a different cabinet license or permit or that is already subject to routine sanitation and safety inspection by the cabinet.~~

~~(7) "Disqualifying offense" means, pursuant to KRS 194A.380, a conviction of or a plea of guilty to a:~~

~~(a) Criminal offense against a minor;~~

~~(b) Sex crime; or~~

~~(c) Violent offense.~~

~~(8) "Permanent structure" means a[any] building and appurtenances owned or operated by the camp management for living, dining, kitchen, sleeping, toilet, bathing, shelter, tool shed, storage, assembly, infirmary, or stabling purposes, constructed to be immobile and permanent.~~

~~(9)[(8)] "Permit" means a written document issued by the cabinet giving a designated person permission to operate a specific camp.~~

~~(9) "Person" means an[any] individual, firm, partnership, company, corporation, organization, trustee, association, or other[any] public or private entity.~~

~~(10)[(9)] "Primitive or outpost camp" means a portion of the residential camp premises or other site under control of the camp operator that is intended only for occasional use as an overnight tent camping site and has no permanent structure or facility.~~

~~(11)[(10)] "Residential camp" means a camp operated on a permanent campsite with overnight lodging facilities.~~

~~(12)[(11)][(10)] "Semipermanent structure" means a[any] building, tent, structure, or trailer and appurtenances owned or operated by the camp management for sleeping, living, dining, toilet, bathing, kitchen, tool shed, storage, assembly, infirmary, or animal sheltering purposes, that is constructed to be movable, may be easily disassembled, and not permanent in nature.~~

Section 2. Permits. (1) A permit to operate a youth camp issued pursuant to this administrative regulation shall not exempt a child-care facility or program from the licensure required by 922 KAR Chapter 2.

(2) A[No] person shall not operate a youth camp within the Commonwealth of Kentucky without possession of a valid permit issued by the cabinet.

(3) Only a person who complies with the requirements of this administrative regulation shall be entitled to receive and retain a permit.

(4) A permit[Permits] shall not be transferable from one (1) person to another person or place.

(5) The permit shall be posted or readily available at every camp.

(6) Each permit shall expire on the December 31[next]

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following its date of issuance.

Section 3. Application for a Permit. (1) ~~A~~[Any] person desiring to operate a camp shall complete and submit form DFS-200, Application for a Permit, ~~incorporated by reference in 902 KAR 45:005~~[make written application on 233–Application to Operate, provided by the cabinet. The application shall include:

(a) ~~Applicant's full name and address and indicate whether the applicant is an individual, firm or corporation;~~

(b) ~~If a partnership, the names of the partners, and their addresses;~~

(c) ~~The location of the camp;~~

(d) ~~The type of camp; and~~

(e) ~~The signature of the applicant or applicants].~~

(2) A person desiring to operate a day camp shall complete and submit form DFS-200, Application for a Permit, and form DFS-340, Application and Permit to Operate Day Camp Facilities.

(3)[(2)] Upon receipt of an application, the cabinet shall make an inspection of the camp to determine compliance with the provisions of this administrative regulation. If inspection discloses that the applicable requirements of this administrative regulation have been met, a permit shall be issued to the applicant by the cabinet.

Section 4. Camp Site. The camp site shall be located on land that provides[good] natural drainage. The area on which[the] tents, buildings, or structures are erected, and[together with] other areas frequently used for camp activities, shall be[well] drained and not located in a swamp or similar place in which mosquitoes may breed.

Section 5. Camp Facilities. (1) All camp structures used for human occupancy or assembly, and all electrical, heating, ventilating, air conditioning, plumbing, and lighting systems in those structures shall be designed and constructed pursuant to 815 KAR 7:120, Kentucky[the State] Building Code, except for tents, which shall meet federal flammability standards.

(2) All camp food preparation and service facilities shall comply with the provisions of KRS 217.005 – 217.215[219.011 to 219.084 and 219.994] and 902 KAR 45:005[the State Food Service Code]. If food for campers and staff is not prepared by the camp, food shall be obtained from a commercial food service establishment holding a valid permit from the cabinet.

(3) Floors, walls, ceilings, and attached or freestanding appurtenances, fixtures, and equipment in all permanent and semipermanent structures shall be kept clean and in good repair.

(4) All gas or oil burning heating and cooking facilities used in any camp shall meet applicable state fire codes for installation, operation, and maintenance.

(5) All structures used as sleeping quarters shall have all outer openings screened or protected to prevent the entry of insects and other vermin.

Section 6. Sleeping Facilities. (1) A minimum of thirty (30) square feet of floor space shall be provided for each camper in all structures used for sleeping purposes.

(2)(a) All structures used as sleeping quarters shall be designed to provide a minimum of two (2) feet separation between beds, cots, or sleeping bags on all sides.

(b) Beds, cots, or sleeping bags shall be placed so that the heads of campers are at least six (6) feet apart.

(c)[, and] If double-decked beds are used, there shall be not less than twenty-seven (27) inches of separation between the lower mattress and the bottom of the upper bed.

(3)(a) Mattresses shall be covered in materials that[which] are water repellent, easily cleanable, and meet federal flammability standards, or shall be encased in a separate mattress cover that[which] meets these requirements.

(b) Each occupied bed or cot shall be provided with one (1) sheet, one (1) pillow, one (1) pillowcase, and one (1) blanket either by the camp[,:] or by the individual camper[,:] except that this requirement shall not apply if a camper provides his or her own sleeping bag.

(4)(a) All articles of bedding provided by the camp shall be kept clean and in good repair.

(b) Linen shall be changed at least once weekly and more often if necessary, or if there is a new camper occupying the bed or cot.

Section 7. Personal Hygiene Facilities. (1) Each residential or day camp shall provide personal hygiene facilities consisting of water closets and[,] hand-washing and shower facilities for each sex accommodated, pursuant to the design, construction, and sanitary fixture requirements of the State Plumbing Code.

(2) Personal hygiene facilities shall have natural and artificial lighting of at least twenty (20) foot-candles.

(3) Personal hygiene facilities shall be located no more than 500 feet from any permanent[~~or semipermanent~~] structure[~~or tent~~] used for human occupancy or assembly.

(4) Hot and cold or tempered water service shall be provided to all lavatories and showers, and approved temperature limited devices meeting State Plumbing Code requirements shall be used to prevent delivery of water at a temperature above 120 degrees Fahrenheit[, that could scald a camper, except that existing camps will not be required to furnish hot or tempered water at existing lavatories or showers].

(5) Lavatories or hand-washing facilities shall be conveniently located to all toilet facilities. Water, hand-cleansing soap, and approved sanitary towels or other approved hand-drying device shall be provided at all lavatories and hand-washing facilities.

(6) All personal hygiene facilities shall be maintained in good repair and shall be kept clean at all times.

(7) Adequate toilet tissue shall be provided at each toilet facility.

(8) Flame retardant, easily cleanable refuse containers shall be provided in all toilet facilities. Covered waste receptacles shall be accessible in each toilet stall designed [and shall be covered in toilets] for females.

(9) All windows used for room ventilation shall be screened and outer openings protected in toilet and personal hygiene facilities [to prevent the entry of insects and other vermin].

Section 8. Sewage and Waste Water Disposal. (1) All sewage and waste water shall be disposed of into a public sewer system[,:] if available.

(2) In the event a public sewer system is not available, disposal shall be made into a private sewage disposal system designed, constructed, and operated pursuant to the requirements of the cabinet and[or] the Energy and Environment[Natural Resources and Environmental Protection] Cabinet;

(3) If a public sewer system subsequently becomes available, connections shall be made to it and the camp sewer system shall be discontinued upon failure of the private system.

Section 9. Water Supply System. (1) The water supply shall be potable, adequate, and from an approved public supply of a municipality or water district[,:] if available.

(2) If a public water supply of a municipality or water district is not available, the supply for the camp shall be developed and approved pursuant to applicable requirements of the Energy and Environment[Natural Resources and Environmental Protection] Cabinet;

(3) If a public water supply of a municipality or water district subsequently becomes available, connections shall be made to it and the camp supply shall be discontinued.

(4)[(2)] Adequate drinking fountains meeting State Plumbing Code requirements or portable drinking water containers of an approved type shall be used within the camp. Common drinking cups, glasses, and[or] vessels are prohibited.

(5)[(3)] If portable drinking water containers are used, they shall be of easily cleanable construction[,:] kept securely closed and designed so that water may be withdrawn from the container only by water tap or faucet and shall be maintained in a sanitary condition.

(6)[(4)] All ice used shall be from an approved source and shall be handled and stored in a manner to prevent contamination. If ice

is made on the premises of any camp, the ice-making machine shall be of approved construction and the water shall be of the same bacteriological quality as approved drinking water.

Section 10. Refuse Handling. (1) The storage, collection, and disposal of refuse shall be conducted to not create a health hazard, rodent harborage, insect breeding area, accident or fire hazard, or air pollution violation and shall conform to all other requirements of the Energy and Environment ~~(Natural Resources and Environmental Protection)~~ Cabinet.

(2) All refuse shall be stored in flytight, watertight, rodent proof containers and containers shall be emptied and cleaned at a frequency necessary to prevent a nuisance.

(3) Approved container storage shall be provided and shall be designed and maintained to not create a nuisance.

(4) All refuse containing garbage shall be collected at least once per week or more often if deemed necessary.

Section 11. Maintenance of Animal Facilities. (1) Barns, stables, corrals or other structures used to house ~~(horses and other)~~ animals shall be located at least 500 feet from any sleeping, eating, or food preparation area. Tie-rails, or hitching posts shall not be located within 200 feet of ~~any~~ dining hall, kitchen, or other place where food is prepared, cooked, or served.

(2) Barns, stables, and corrals shall be located on a well- ~~drained~~ sloping area and situated to prevent contamination of any water supply.

(3) ~~(a)~~ Manure shall be removed from barns, stalls, and corrals as often as necessary to prevent a fly problem. Fly repellents or other precautions shall be used to prevent these shelters from becoming an attractant for or breeding place for flies.

~~(b)~~ Manure disposal shall be handled in a manner ~~that~~ ~~(which)~~ does not create a nuisance or contaminate surface or groundwater.

Section 12. Swimming Facilities and Recreational Water Activities. (1) ~~A public swimming and bathing facility~~ ~~(All swimming pools, beaches, and natural bathing places)~~ shall comply with 902 KAR 10:120 ~~(the Kentucky public swimming and bathing facility administrative regulation)~~.

(2) All small craft and boating activities shall be conducted in compliance with applicable rules and administrative regulations of the Energy and Environment ~~(Natural Resources and Environmental Protection)~~ Cabinet ~~(Division of Water Patrol)~~.

(3) All swimming and small craft and boating activities shall be under the supervision of a person holding a current American Red Cross ~~(Senior Life Saving Certificate)~~ Lifeguard Certification or its equivalent at all times.

Section 13. Insect, Rodent and Pest Control. (1) Grounds, buildings, and structures shall be maintained free of insect and rodent harborage and infestations. Extermination methods and other measures to control insects and rodents shall be pursuant to applicable state laws and administrative regulations.

(2) Camps shall be maintained free of accumulations of debris ~~that~~ ~~(which)~~ may provide rodent harborage or breeding places for ~~(flies, mosquitoes or)~~ other pests.

(3) Storage areas shall be maintained to prevent rodent harborage. Lumber, pipe, and other building materials shall be stored at least one (1) foot above the ground.

Section 14. Camp Director, Records and Reports, Medical Supervision, and First Aid. (1) The camp operator shall assure that a camp director or an authorized agent is available within the camp boundaries at all times while the camp is in operation.

~~(2)(a) Pursuant to KRS 194A.382, the camp operator shall require a prospective employee~~ ~~(an applicant), contractor, or volunteer to complete the form DPP-156 pursuant to 922 KAR 1:470, Section 3.~~

~~(b) The applicant, contractor, or volunteer shall submit to the camp operator a letter from the cabinet stating that the individual has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the cabinet prior to the individual's presence at the~~

~~camp or involvement in any program of the camp.~~ ~~(c) The letter from the cabinet shall be kept on camp premises and made available for examination upon request of the cabinet.~~

~~(3) The requirements of subsection (2) of this section shall be deemed to have been met if the prospective employee, contractor, or volunteer provides to the camp operator documentation of a:~~

~~(a) Background check performed pursuant to 922 KAR 2:280 finding no disqualifying offense; or~~

~~(b) A state and national criminal background check finding no disqualifying offense.~~

~~(4) The documentation required by subsection (2) or (3) of this section shall be kept on camp premises and made available for examination upon request of the cabinet.~~

~~(5) Records or personal data, including a medical history, shall be kept on each person attending a camp. Minimum records shall include:~~

~~(a) The name, date of birth, and address of each person in the camp;~~

~~(b) The name, address, and telephone number of parents or guardians; and~~

~~(c) The medical history, and dates of hospital admission and discharge (if applicable) of each camper.~~

~~(6)(4)(3) Residential camps shall have facilities for isolation of persons suspected of having a communicable disease. Other camps shall provide for the immediate isolation of campers suspected of having a communicable disease.~~

~~(7)(5)(4) Adequate first aid supplies and equipment as designated by the available or on call physician, required by subsection (9) of this section, (on-call) shall be located within the camp. An American Red Cross certificate required by paragraph (a) or (b) of this subsection shall be kept on camp premises and made available for examination upon request of the cabinet.~~

~~(a) Residential camps shall have a person holding an American Red Cross Standard First Aid and Personal Safety Certificate or its equivalent on site twenty-four (24) hours a day while the camp is in session.~~

~~(b) All other camps shall have a person holding, as a minimum, a first aid course certificate from the American Red Cross or its equivalent on site while camp is in session. (The certificates shall be made available for examination upon request of an authorized agent of the cabinet.)~~

~~(8)(6)(6) All prescription drugs shall be kept in a locked cabinet or container with the exception of medications for which a patient has documentation from a licensed health care provider that states:~~

~~(a) The purpose of the medication;~~

~~(b) How the medication is to be administered; and~~

~~(c) That the medication may be retained by the patient for immediate use.~~

~~(9)(7)(6) A nearby physician or emergency room shall be available or on call for medical emergencies and the camp shall have access to a telephone, with emergency telephone numbers posted. Transportation shall be available at all times in the event of an emergency.~~

~~(10)(8)(7) All serious illnesses and accidents resulting in death or injury, other than minor injuries that (which) require only first aid treatment and that (which) do not involve medical treatment, shall be reported to the cabinet by the next business day (at the end of the camping season, but not later than December 31 of each year,) on form DFS-309, Kentucky Youth Camp Accident/Illness Report (provided by the cabinet).~~

Section 15. Safety and Accident Prevention. (1) All camps shall comply with applicable rules and administrative regulations of the State Fire Marshal and applicable local fire codes pertaining to fire safety, fuel supply, and fuel connections.

(a) Potential ~~(Natural)~~ hazards occurring naturally in the environment within the boundaries of the camp shall be plainly marked and measures and procedures ~~(approved by the cabinet)~~ shall be followed to insure the safety of the campers.

(b) Poison plants such as poison sumac and poison ivy shall be subject to control and elimination from areas where their

presence is hazardous to campers.

(4) Elimination of artificial hazards.

(a) All buildings, grounds, and equipment shall be maintained in a manner to eliminate or minimize the danger from holes, glass, splinters, sharp projections, and other hazardous conditions to protect the safety of all persons residing in or using the facilities at the camp site.

(b) All insecticides, pesticides, and chemical poisons shall be plainly labeled and stored in a locked and secured safe place.

(c) Gasoline and other highly flammable fluids shall be plainly marked and stored in a locked container or building not occupied by residents of the camp and at a safe distance from sleeping quarters or buildings where people congregate.

Section 16. Plan Review for Future Construction. (1) Any person contemplating construction, alteration, addition to, or change in the construction of any permanent camp shall, prior to the initiation of any such construction, submit plans in triplicate, through the local health department concerned, of any proposed camp, additions, alterations, or change in construction.

(2) The plans shall show:

(a) The name and address of the owner or operator of the camp;

(b) The area and dimension of the site;

(c) The property lines;

(d) A separate floor plan of all buildings and other improvements constructed or to be constructed including location and number of personal hygiene facilities, including water closets, urinals, showers, and hand-washing facilities and including a plumbing riser diagram;

(e) Detailed drawings of sewage disposal facilities, including written specifications;

(f) Detailed drawings of water supply if source is other than public; and

(g) The location and size of water and sewer lines within the camp.

(3) If central food preparation and food service buildings are to be provided, plans and specifications shall be submitted showing the kitchen floor plan, layout and type of equipment, storage area, restrooms, and dining area pursuant to 902 KAR 45:005, the state food service code.

(4) If artificially constructed swimming pools or beaches are contemplated, plans and specifications shall be submitted to the cabinet for review and approval prior to construction pursuant to 902 KAR 10:120.

Section 17. Inspection of Camp. (1) Each camping season, an inspection shall be made by the cabinet on each camp at least once prior to the opening of the camp and at least once while the camp is in actual operation. The cabinet shall make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(2) If an agent of the cabinet makes an inspection of a camp, findings shall be recorded on an official cabinet inspection report form, DFS-308, Youth Camp Inspection Report, and a copy provided to the permit holder or operator with a copy. The inspection report shall:

(a) Set forth any violation found;

(b) Establish a specific and reasonable period of time for the correction of any violation found; and

(c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in suspension or revocation of the permit.

Section 18. Suspension of Permit. (1) If the cabinet has reason to believe that an imminent public health hazard exists, or if the permit holder has interfered with the authorized agents of the cabinet in the performance of their duties, the permit may be suspended immediately upon notice to the permit holder without a hearing on form DFS-212, Request for Hearing. The permit holder may request a hearing, which shall be granted as soon as practicable.

(2) Failure to comply with the criminal background check and

employment requirements established in KRS 194A.382 shall result in penalties pursuant to KRS 194A.383.

(3) In all other instances of violation of the provisions of this administrative regulation, the cabinet shall serve upon the holder of the permit a written notice specifying the violation in question and afford the holder a reasonable opportunity to correct it.

(b) If a permit holder or operator has failed to comply with any written notice issued under the provisions of this administrative regulation, the permit holder or operator shall be notified in writing that the permit shall be suspended at the end of five (5) business days following service of the notice, unless a written request for a conference is submitted to the cabinet by the permit holder within the five (5) business day period.

(4) All administrative conferences shall be conducted in accordance with 902 KAR 1:400.

Section 19. Reinstatement of Suspended Permits. (1) Any person whose permit has been suspended may, at any time, make application for a reinspection on form DFS-215, Application for Reinstatement of Suspended Permits for the purpose of reinstatement of the permit.

(2) Within five (5) business days following receipt of written request, including a statement signed by the applicant that in his or her opinion the conditions causing the suspension of the permit have been corrected, the cabinet shall make a reinspection.

(3) If the applicant is found to be in compliance with the requirements of this administrative regulation, the permit shall be reinstated.

Section 20. Revocation of Permits. (1) For repeated violations of any of the requirements of this administrative regulation, the permit may be permanently revoked after an opportunity for a conference has been provided in accordance with 902 KAR 1:400.

(2) Prior to such action, the cabinet shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of ten (10) business days following service of the notice, unless a request for a conference is filed with the cabinet, in accordance with 902 KAR 1:400, by the permit holder, within the ten (10) business day period.

Section 21. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DFS-200, Application for a Permit", 6/2018;

(b) "DFS-308, Youth Camp Inspection Report", 6/2018/3/2018;

(c) "DFS-309, Kentucky Youth Camp Accident/Illness Report", 3/2018; and

(d) "DFS-340, Application and Permit to Operate Day Camp Facilities", 3/2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. Existing facilities and equipment, notwithstanding the other provisions of this administrative regulation, facilities and equipment being used by existing youth camps holding valid permits on the effective date of this administrative regulation, which do not fully meet the design and construction requirements of the administrative regulation, may be continued in use, if in good repair, capable of being maintained in a sanitary condition, and create no health or safety hazard.]

JEFFREY D. HOWARD, JR., M.D., Acting Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 12, 2018

FILED WITH LRC: June 14, 2018 at noon

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: Julie Brooks, email JulieD.Brooks@ky.gov, phone 502-564-3970, ext. 4069; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: The purpose of this regulation is to set forth uniform sanitation and safety standards for youth camps, in order to ensure a safe and sanitary environment for the individuals who work at and attend these camps.

(b) The necessity of this administrative regulation: KRS 211.180(1)(c) requires the cabinet to enforce administrative regulations promulgated for the regulation and control of the sanitation of public and semi-public recreational areas. This regulation provides for the permitting and inspection of youth camps throughout the state in order to protect the children who attend these camps.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation focuses on the health, safety, and sanitation of public and semi-public youth camps, which is required by KRS 211.180.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation currently assists with permitting, inspecting, and the enforcement of health and sanitation issues in youth camps. New sections of KRS 194A were created in Regular Session 2017 that required background checks be performed for prospective employees, contractors, or volunteers working in youth camps. This amendment is necessary for the administration of these statutes.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is being further amended in response to comments received in order to include the acceptance of background checks that may have been completed pursuant to other federal or state requirements, relax pre-existing requirements that are unnecessarily burdensome, and to clarify points of confusion. The DFS-200 form was previously incorporated in 902 KAR 45:005, but is more appropriately incorporated in this regulation and has been included in this Amended After Comments version.

(b) The necessity of the amendment to this administrative regulation: RS 2017 Senate Bill 236, codified as KRS 194A.380-383, required background checks for prospective employees, contractors, and volunteers at Kentucky youth camps. Further amendments. The necessity of further amendments was realized through public comments.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment requires background checks be performed for any prospective employee, contractor, or volunteer attempting to be present at a Kentucky youth camp or involved in any program of the camp.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary to meet the requirements of KRS 194.380-383.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This will affect all local health departments within the state. This will also affect the permitted youth camps within the state, which currently number approximately 520.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, 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: A camp operator shall require a prospective employee, contractor, or volunteer to complete a central registry check and submit back to the camp operator a letter from the cabinet stating that the individual has no findings of

substantiated child abuse or neglect found through records maintained by the cabinet or submit documentation of another type of federal or state background check showing no disqualifying offenses. This documentation shall be kept on camp premises and made available for examination upon request of the cabinet or its designee. Local health department inspectors will be checking this paperwork upon inspection, which is twice per operating season.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There is no additional cost to the youth camp. Local health departments will not incur additional costs, only extra time upon inspection to review the required paperwork. The applicant, contractor, or volunteer will have to pay the cost of a background check, pursuant to the authorizing statutes.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Children should be safer with the new requirement that youth camp employees, contractors, and volunteers have undergone background checks. The Amended After Comments version of the regulation also includes some relaxation of burdensome requirements, per public comments received during the comment period.

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

(a) Initially: \$0

(b) On a continuing basis: \$0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding will be used for implementation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This did not establish any additional fees or fee increases.

(9) TIERING: Is tiering applied? Tiering is not applied as all youth camps are applicable to the requirements of this 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? Local health departments and the Kentucky Department for Public Health.

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), 194A.381-383, 211.090(3), 211.180(1)(c).

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

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

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

(c) How much will it cost to administer this program for the first year? No additional administrative costs will be incurred.

(d) How much will it cost to administer this program for subsequent years? No additional administrative 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:

PROPOSED AMENDMENTS

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 5:145. CAP grant award determination procedure.

RELATES TO: KRS 164.744(2), 164.753(4), 164.7535, 164.7889(3)

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4), 164.7889(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.7889(3) requires the authority to promulgate an administrative regulation that increases both the maximum amount available under the grant programs, and increases the average income level for qualification for the grant programs if sufficient funds are available. This administrative regulation prescribes the award determination procedures for the CAP Grant Program.

Section 1. Each application submitted pursuant to 11 KAR 4:080 and 11 KAR 5:130 shall be reviewed for determination that all eligibility requirements established in 11 KAR 5:034 are met. To qualify for a CAP award based on financial need, the applicant's expected family contribution shall be ~~\$5,486~~[\$5,234] or less.

Section 2. CAP Grant Award. (1) Except as provided in subsection (2) of this section, the maximum CAP grant in any semester for an applicant accepted for enrollment on a full-time basis as determined by the educational institution in an eligible program shall be the lesser of:

(a) \$950; or

(b) The amount of eligibility the student has remaining within the aggregate KHEAA grant limit.

(2) The maximum CAP grant in any semester for an applicant accepted for enrollment on less than a full-time basis as determined by the educational institution in an eligible program shall be:

(a) The amount specified in subsection (1)(a) of this section:

1. Divided by twelve (12); and

2. Multiplied by the number of credit hours in which the applicant is accepted for enrollment; and

(b) Not in excess of the maximum specified in subsection (1)(b) of this section.

(3) For any academic year, a student shall not receive more than \$1,900 for an aggregate CAP grant award.

Section 3. (1) A KHEAA grant awarded to an incarcerated individual shall be considered an overaward to the extent that the KHEAA grant, in combination with financial assistance received from other sources, exceeds the student's actual cost for tuition, fees, and books.

(2) A KHEAA grant award shall not be made for a summer academic term.

Section 4. (1) A KHEAA grant award shall not exceed the applicant's cost of education less expected family contribution and other anticipated student financial assistance.

(2) The authority shall reduce or revoke a KHEAA grant upon receipt of documentation that financial assistance from other sources in combination with the KHEAA grant exceeds the determination of financial need for that student.

(3) The KHEAA Grant Program Officer (KGPO) and the grant recipient shall make every reasonable effort to provide the authority the information needed to prevent an overaward.

(4) If the applicant's expected family contribution, disbursed KHEAA grant amount, plus other student financial assistance exceeds his or her need, the excess shall be considered to be an

overaward. If an overaward occurs, this amount shall be returned to the authority immediately.

Section 5. (1) If the authority receives revised data that, upon recomputation, results in the student becoming ineligible for a KHEAA grant that has already been offered, but not disbursed, the grant shall be revoked.

(2) If the student is determined to be ineligible after the KHEAA grant has been disbursed, the student shall repay to the authority the entire amount of the KHEAA grant.

Section 6. If the educational institution receives revised data that, upon recomputation, necessitates reduction of the KHEAA grant, and:

(1) If the grant has not yet been disbursed for the fall academic term, the reduction shall be made to both the fall and spring disbursements, and the educational institution shall notify the student of the reduction;

(2) If the grant for the fall academic term has already been disbursed and the student enrolls for the spring academic term, the reduction shall be made to the spring disbursement, and the educational institution shall notify the student of the reduction;

(3) If the grant for the fall academic term has already been disbursed and the student does not enroll for the spring academic term, the educational institution shall notify the student of the fall overaward and the student shall repay the overaward to the authority; or

(4) If both the fall and spring disbursements have been made, the educational institution shall notify the student of the overaward and the student shall repay the overaward to the authority.

Section 7. (1) Students requested by the institution to provide verification of data for any financial assistance program shall provide the verification before receiving disbursement of a KHEAA grant.

(2) Any student who is awarded a KHEAA grant who fails to provide verification requested by the participating institution shall be deemed ineligible, and the grant shall be revoked.

CHARLES VINSON, Chair

APPROVED BY AGENCY: May 30, 2018

FILED WITH LRC: June 14, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 24, 2018, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293, email dbarber@kheaa.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Rebecca Gilpatrick, phone 502-696-7394, email rgilpatr@kheaa.com.; and Diana L. Barber

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the award determination

procedures for the CAP Grant Program.

(b) The necessity of this administrative regulation: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation prescribes the award determination procedures for the CAP Grant Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that students applying for a CAP grant meet the required financial need criteria and those students receive the maximum CAP grant allowed for any academic period.

(2) If 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 merely increases the maximum expected family contribution level necessary to demonstrate financial need for eligibility for the CAP grant program.

(b) The necessity of the amendment to this administrative regulation: The amendment conforms to the content of the authorizing statutes by establishing the maximum expected family contribution limit for participation in the CAP grant program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing the maximum expected family contribution limit under the CAP grant program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment merely establishes the maximum expected family contribution level for eligibility for participation in the CAP grant program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Students at a total of fifty-eight (58) Kentucky postsecondary institutions currently participate in the CAP grant program. In the academic year ending June 30, 2017, there were 244,600 applicants for CAP grant awards. A total of 45,480 students received KHEAA grant awards during that period.

(4) Provide an analysis of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Those individuals who seek to participate in the CAP grant program will benefit by the increase in the expected family contribution (EFC) limit. Specifically, students with a higher EFC will be eligible to participate in the program up to the maximum limit established in the amendment.

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

(a) Initially: The amendment to this administrative regulation increases the maximum expected family contribution level necessary to demonstrate financial need, making grants potentially available to more students. However, the amount of the grant, the funds available for grants, and, in general, the overall cost of administering the program will neither increase nor decrease.

(b) On a continuing basis: See 5(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Grants for students under the College Access Program are funded from net lottery revenues transferred to the authority for grant and scholarship programs, while administrative costs are borne by the authority through agency receipts.

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

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

This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.748(4), 164.753(4), 164.7889(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. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY Division of Student and Administrative Services (Amendment)

11 KAR 15:010. Definitions for 11 KAR Chapter 15.

RELATES TO: KRS 164.7871-164.7885, 20 U.S.C. 1087II
STATUTORY AUTHORITY: KRS 164.748(4), 164.7885(7)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.7885(7) requires the authority to promulgate administrative regulations for the administration of the Kentucky Educational Excellence Scholarship Program. This administrative regulation establishes the definitions for 11 KAR Chapter 15.

Section 1. Definitions. (1) "Academic term" is defined in KRS 164.7874(1) and 13 KAR 2:045, Section 1(1).

(2) "Academic year" is defined in KRS 164.7884(1).

(3) [(2)] "ACT score" is defined in KRS 164.7874(3).

(4) "Apprentice" is defined in KRS 164.7884(1).

(5) [(3)] "Authority" is defined in KRS 164.7874(4).

(6) [(4)] "Award period" is defined in KRS 164.7874(5).

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~~(7)~~~~(5)~~ "Correspondence course" means a home study course that:

(a) Is provided by an educational institution under which the institution provides instructional materials, including examinations on the materials, to students who are not physically attending classes at the institution;

(b) Meets the following requirements:

1. When a student completes a portion of the instructional materials, the student takes the examinations that relate to that portion of the materials, and return the examinations to the institution for grading;

2. The institution provides instruction through the use of video cassettes or video discs in an academic year unless the institution also delivers the instruction on the cassette or disc to students physically attending classes at an institution during the same academic year; and

3. If a course is part correspondence and part residential training, the course shall be considered to be a correspondence course; and

(c) Does not include courses from the Kentucky Commonwealth Virtual University (KCVU).

~~(8)~~~~(6)~~ "Council" is defined in KRS 164.7874(6).

~~(9)~~~~(7)~~ "Cumulative grade point average" means the total grade point average for a postsecondary education student as reported by the postsecondary education institution where the student is currently enrolled.

~~(10)~~~~(8)~~ "Eligible high school student" is defined in KRS 164.7874(7).

~~(11)~~~~(9)~~ "Eligible postsecondary student" is defined in KRS 164.7874(8).

~~(12)~~~~(10)~~ "Eligible program of study" means, for purposes of enrollment in a participating institution, a postsecondary, undergraduate program that:

(a)1. Leads to a certificate, diploma, or associate or baccalaureate degree;

2. Is designated as an equivalent undergraduate program of study by the council in an administrative regulation; or

3. Is a degree program in a field of study that is not available at any participating institution in the Commonwealth but is offered at an out-of-state institution designated by the council as an approved participating institution; and

(b) May include study abroad or away from the main campus if the student pays tuition to, and is given academic credit by, the participating institution for the study, except that a correspondence course shall not be included.

~~(13)~~ "Eligible student" is defined in KRS 164.7884(1).

~~(14)~~~~(11)~~ "Full-time student" is defined in KRS 164.7874(9).

~~(15)~~~~(12)~~ "Grade point average" is defined in KRS 164.7874(10).

~~(16)~~~~(13)~~ "High school" is defined in KRS 164.7874(11).

~~(17)~~~~(14)~~ "KEES" or "Kentucky Educational Excellence Scholarship" is defined in KRS 164.7874(12).

~~(18)~~~~(15)~~ "KEES Program officer" means the official designated on the administrative agreement, pursuant to KRS 164.748(6) and 164.7874(20), to serve as the participating institution's on-campus agent to certify all institutional transactions and activities with respect to the Kentucky Educational Excellence Scholarship Program.

~~(19)~~~~(16)~~ "Maximum award amount" means the KEES award maximum defined by KRS 164.7874(14).

~~(20)~~~~(17)~~ "Participating institution" is defined in KRS 164.7874(20).

~~(21)~~~~(18)~~ "Part-time student" is defined in KRS 164.7874(21).

~~(22)~~ "Registered apprenticeship program" is defined in KRS 164.7884(1).

~~(23)~~ "Related instruction" is defined in KRS 164.7884(1).

~~(24)~~ "Sponsor" is defined in KRS 164.7881.

~~(25)~~~~(19)~~ "Supplemental award" means the KEES supplemental amount defined by KRS 164.7874(17).

CHARLES VINSON, Chair

APPROVED BY AGENCY: May 30, 2018

FILED WITH LRC: June 14, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 24, 2018, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293, email dbarber@kheaa.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Rebecca Gilpatrick, phone 502-696-7394, email rgilpatr@kheaa.com; and Diana L. Barber

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines terms commonly used in administration of the Kentucky Educational Excellence Scholarship Program (KEES) under Chapter 15 of Title 11 of the Kentucky Administrative Regulations.

(b) The necessity of this administrative regulation: KRS 164.7885(7) requires the authority to promulgate administrative regulations for the administration of the KEES Program. This administrative regulation is necessary to establish the definitions for 11 KAR Chapter 15.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing definitions applicable to the KEES program as authorized by KRS 164.7885(7).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation defines terms used in Chapter 15 of Title 11 of the Kentucky Administrative Regulations pertinent to the KEES program to ensure that the scholarship is awarded to eligible students.

(2) If 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 add definitions applicable to KEES scholarships for students participating in registered apprenticeship programs pursuant to KRS 164.7884.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to comply with the requirements of KRS 164.7884.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute requires KHEAA to promulgate administrative regulations for scholarships for registered apprenticeship programs. This amendment conforms to the authorizing statute by incorporating defined terms pertaining to scholarships for registered apprenticeship programs into this regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the administrative regulation will assist in the effective administration of the statutes by adding defined terms for the new statutory provision for scholarships for registered apprenticeship programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment to this regulation would affect those students participating in registered

apprenticeship programs who have earned KEES awards by allowing KEES funds to be used for reimbursement of expenses incurred during the apprenticeship program.

(4) Provide an analysis of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: See (3) above.

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

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

(b) On a continuing basis: See 5(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KEES program is funded through net lottery revenues transferred in accordance with KRS 154A.130.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.7874, 164.7877(3), 164.7879(1), (2), (3), 164.7881(4)(a), (c), (6), 164.7884.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation.

(d) How much will it cost to administer this program for subsequent years. No costs are associated with this regulation.

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

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

AGRICULTURAL EXPERIMENT STATION
(Amendment)

12 KAR 3:007. Definitions for 12 KAR Chapter 3[and terms].

RELATES TO: KRS 250.491-250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571 authorizes the Director of the Agricultural Experiment Station to define terms that[which] serve as reference points in the application of labeling requirements to pet foods and specialty pet foods. This administrative regulation establishes definitions for 12 KAR Chapter 3.

Section 1. Definitions. (1) "All life stages" means gestation/lactation, growth, and adult maintenance life stages.

(2) "Family" means a group of products that are nutritionally adequate for any or all life stages based on their nutritional similarity to a lead product that has been successfully test-fed according to an AAFCO feeding protocol.

(3) "Principal display panel" means the part of a label that is most likely to be displayed, presented, shown or examined under normal and customary conditions of display for retail sale.

Section 2. "Ingredient statements" means a collective and contiguous listing on the label of the ingredients of which the pet food is composed.

Section 3. "Immediate container" means the unit, can, box, tin, bag, or other receptacle or covering in which a pet food or specialty pet food is displayed for sale to retail purchasers but does not include containers used as shipping containers.

(4) "Ingredient statements" means a collective and contiguous listing on the label of the ingredients of which the pet food or specialty pet food is composed.

(5) "Principal display panel" means the part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

DR. RICK BENNETT, Director

APPROVED BY AGENCY: May 31, 2018

FILED WITH LRC: June 7, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2018 at 1:30 p.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Darrell Johnson, Executive Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2435, fax (859) 323-9931, darrell.johnson@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Darrell Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines terms which serve as reference points in the application of labeling requirements to pet foods and specialty pet foods.

(b) The necessity of this administrative regulation: Helps lay out procedure for proper labeling of products.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Helps allow for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Helps define proper labeling.

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

(a) How the amendment will change this existing administrative regulation: Updates terminology used in labeling of pet food and treat products.

(b) The necessity of the amendment to this administrative regulation: Modernize terms and definitions used in pet product labeling from previous 1999 version.

(c) How the amendment conforms to the content of the authorizing statutes: Updates the existing regulation.

(d) How the amendment will assist in the effective administration of the statutes: Modernizes terms and definitions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Firms which register commercial feeds in Kentucky 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: Use the revised terms and definitions which is already being done by the industry. This amendment is more to update our standards to what is currently being done.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No increased costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): We will now be regulating them on what are already industry standards.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Annual budget of the Division of Regulatory 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: No increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increased fees or funding.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.571(1)

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

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

None

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

(c) How much will it cost to administer this program for the first year? No increase in cost

(d) How much will it cost to administer this program for subsequent years? 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 (+/-): \$0.00

Expenditures (+/-): \$0.00

Other Explanation:

AGRICULTURAL EXPERIMENT STATION
(Amendment)

12 KAR 3:012. Label format and [Uniform] labeling [format].

RELATES TO: KRS 250.501, 250.521, 15 U.S.C. 1451-1461
STATUTORY AUTHORITY: KRS 250.521(2)(e), (f), 250.571
NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631. KRS 250.521 requires that pet foods be labeled and establishes the information that shall be stated on the label. This administrative regulation establishes a uniform format for labeling information for pet foods and specialty pet foods and delineates criteria for product claims.

Section 1. Pet food and specialty pet food shall be labeled with the following information prescribed in this administrative regulation:

(1) Product name and brand name, if any, on the principal display panel as stipulated in 12 KAR 3:017;

(2) A statement specifying the species name of pet or specialty pet for which the food is intended, conspicuously designated on the principal display panel;

(3) Quantity statement, as defined in KRS 250.501(22) and 12 KAR 2:011, Section 1(9), by weight (pounds and ounces, and metric), liquid measure (quarts, pints and fluid ounces, and metric) or by count, on the principal display panel;

(4) Guaranteed analysis as stipulated in 12 KAR 3:022;

(5) Ingredient statement as stipulated in 12 KAR 3:027;

(6) A statement of nutritional adequacy or purpose if required under 12 KAR 3:039;

(7) A statement of calorie content if required under 12 KAR 3:042;

(8) Feeding directions if required under 12 KAR 3:032; and

(9) Name and address of the manufacturer or distributor as stipulated in Sections 10 and 11 of this administrative regulation.

Section 2. If a pet food or specialty pet food enclosed in an outer container or wrapper is intended for retail sale, all required label information shall appear on the outer container or wrapper.

Section 3. A vignette, graphic, or pictorial representation on a pet food or specialty pet food label shall not misrepresent the contents of the package.

Section 4. The word "proven," in connection with a label claim for a pet food or specialty pet food, shall not be used unless the claim is substantiated by scientific or other empirical evidence.

Section 5. A statement shall not appear upon the label or labeling of a pet food or specialty pet food that makes false or misleading comparisons between that product and any other product.

Section 6. A personal or commercial endorsement may be

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used on a pet food or specialty pet food label if the endorsement is not false or misleading.

Section 7. A statement on a pet food or specialty pet food label stating "Improved," "New," or similar designation shall be substantiated and limited to six (6) months of production.

Section 8. A statement on a pet food or specialty pet food label stating preference or comparative attribute claims shall be substantiated and limited to one (1) year production, after which the claim shall be removed or re-substantiated.

Section 9. (1) Raw milk distributed as pet food or specialty pet food shall bear the following statement "WARNING: NOT FOR HUMAN CONSUMPTION – THIS PRODUCT HAS NOT BEEN PASTEURIZED AND MAY CONTAIN HARMFUL BACTERIA."

(2) This statement shall be displayed in a conspicuous manner and shall not be smaller than the height of the minimum font required by the Federal Fair Packaging and Labeling Act for the quantity statement as shown in the following table:

Panel Size	Minimum Warning Statement Type Size
≤5 in. ²	1/16 in.
>5-≤25 in. ²	1/8 in.
>25-≤100in. ²	3/16 in.
>100-≤400in. ²	1/4 in.
>400 in. ²	1/2 in.

Section 10. The label of a pet food or specialty pet food shall specify the name and address of the manufacturer or distributor. The statement of the place of business shall include the street address, city, state, and zip code; however, the street address may be omitted if the street address is shown in a current city directory or telephone directory for the city listed on the label.

Section 11. If a person manufactures or distributes a pet food or specialty pet food in a place other than the principal place of business, the label may state the principal place of business in lieu of the actual place where each package of the pet food or specialty pet food was manufactured or packaged or from where each package is to be distributed. [The quantity statement and product name shall appear on the principal display panel of a pet food label. All other required information shall be:

- (1) Placed on the label; and
- (2) Easily read by a purchaser.

Section 2. The quantity statement shall conform with the United States Fair Packaging and Labeling Act of 15 U.S.C. 1451 through 1461.

Section 3. (1) The information required in the guaranteed analysis shall be listed in the following order:

- (a) Crude protein (minimum percentage);
- (b) Crude fat (minimum percentage);
- (c) Crude fiber (maximum percentage); and
- (d) Moisture (maximum percentage).

(2) Additional guarantees shall follow moisture.

Section 4. The label of a pet food shall specify the name and address of the manufacturer, packer, or distributor. The statement shall include the street address unless the street address is shown in a current city directory or telephone directory of the city named on the label as the manufacturer's or distributor's address.

Section 5. If a person manufactures, packages, or distributes a pet food in a place other than his principal place of business, the label may state either address if it is not misleading.

Section 6. A vignette, graphic, or pictorial representation of a product on a pet food label shall not misrepresent the contents of the package.

Section 7. The word "proven" shall not be used in connection with a label claim for a pet food unless scientific or other empirical evidence substantiating the claim is available.

Section 8. A statement shall not appear upon the label of a pet food that makes a false or misleading comparison between that pet food and another pet food.

Section 9. A personal or commercial endorsement may be included on a pet food label if the endorsement is:

- (1) Factual; and
- (2) Not misleading.

Section 10. If a pet food intended for retail sale is enclosed in an outer container or wrapper, all required label information shall appear on the outside wrapper or container.

Section 11. The words "dog food," "cat food" or a similar designation shall appear conspicuously upon the principal display panel of the pet food label.

Section 12. The label of a pet food shall not contain an unqualified claim that the pet food, or recommended feeding of the pet food, is a complete, perfect, scientific or balanced ration for dogs or cats unless the product or feeding:

(1)(a) Meets the nutrient requirements for all life stages established by the Association of American Feed Control Officials (AAFCO) Dog or Cat Food Nutrient Profiles, as contained in the Official Publication; or

(b) Has had adequate testing to demonstrate the stated capabilities if:

1. A product ingredient provides a nutrient in an amount that substantially deviates from the established nutrient requirements; or

2. The stated capability has not been established by AAFCO; and

(2) Contains a combination of ingredients which when fed to a normal animal as the only source of nourishment in accordance with the testing procedures established by AAFCO, meets the criteria of the testing procedures for the appropriate life stage.

Section 13. A label for a product formulated for or suitable for a limited purpose, such as feeding of puppies, shall state that the product, or its recommended feeding, meets the requirements of a complete, perfect, scientific or balanced ration for dogs or cats if:

(1) Accompanied by a statement of the limited purpose for which the product is intended or suitable positioned on the same panel and in the same size, style and color print; and

(2) An affidavit is provided upon request of the director substantiating that the pet food:

(a) Meets the nutrient requirements established by the AAFCO Dog or Cat Food Nutrient Profiles; or

(b) Has had its capabilities for the limited or qualified purpose demonstrated by adequate testing.

Section 14. Except as specified by 12 KAR 3:017, Section 1, the name of an ingredient on the label, other than in the product name shall:

(1) Not be given undue emphasis so as to create the impression that it is present in a larger amount than is the fact;

(2) Constitute at least three (3) percent of the total ingredients, excluding water sufficient for processing, if preceded by the designation "with" or a similar term;

(3) Be in the same size, style and color print; and

(4) Appear in the order of the ingredient's predominance by weight in the product if the names of more than one (1) ingredient are shown.

Section 15. The label of a dog or cat food, other than one (1) prominently identified as a snack or treat, shall bear on the principal display panel or the information panel as defined in 21 C.F.R. 501.1 and 501.2 in type of a size reasonably related to the largest type on the panel, a statement of the nutritional adequacy

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or purpose of the product. The statement shall:

(1) Consist of one (1) of the following:

(a) A claim that the pet food meets the nutritional requirements of one (1) or more of the recognized life-stage categories, which shall include gestation, lactation, growth, maintenance, or complete for all life stages. The claim shall be stated as one (1) of the following:

1. (Insert name of product) is formulated to meet the nutritional levels established by the AAFCO (dog or cat) Food Nutrient Profiles for (insert life-stage category); or

2. Animal feeding tests using AAFCO procedures substantiate that (insert name of product) provides complete and balanced nutrition for (insert life-stage category);

(b) A nutrition or dietary claim for purposes other than those listed in Sections 12 and 13 of this administrative regulation, if the claim is scientifically substantiated; or

(c) The statement, "this product is intended for intermittent or supplemental feeding only", if the product does not meet either the requirements of Section 12 or 13 of this administrative regulation or other special nutritional or dietary need; and

(2) If the product is intended for use by or under the supervision of direction of a veterinarian, the statement "use only as directed by your veterinarian".

Section 16. A claim on a pet food label that states:

(1) "Improved" or "new" shall be:

(a) Substantiated by the manufacturer; and

(b) Limited to six (6) months of production; or

(2) A preference or comparative attribute shall be:

(a) Substantiated by the manufacturer; and

(b) Limited to one (1) year of production, after which the claim shall be removed or resubstantiated.

Section 17. Dog and cat food labeled as complete and balanced for a life stage, except a pet food labeled in accordance with Section 15(2) of this administrative regulation, shall list feeding directions on the label. These directions shall be expressed in common terms and appear prominently on the label. Feeding directions shall, at a minimum, state, "feed (weight or unit of product) per (weight unit) of dog (or cat)".]

Section 12[14]. Incorporation by Reference. (1) "Official Publication", (2018[4998] Edition), Association of American Feed Control Officials, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, 103 Regulatory Services Building, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. RICK BENNETT, Director

APPROVED BY AGENCY: May 31, 2018

FILED WITH LRC: June 7, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2018 at 1:30 p.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Darrell Johnson, Executive Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone

(859) 218-2435, fax (859) 323-9931, darrell.johnson@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Darrell Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a uniform format for labeling information for pet foods and specialty pet foods and delineates criteria for product claims.

(b) The necessity of this administrative regulation: Establishes uniform labeling of pet foods to better allow consumers to evaluate products.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Helps allow for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Establishes uniformity in labeling of pet foods and specialty pet foods.

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

(a) How the amendment will change this existing administrative regulation: This regulation was last updated in 1999. These changes bring it up to accepted standards in labeling that are currently used and conform to those prescribed by the American Association of Feed Control Officials (AAFCO). This is a standard used by the industry.

(b) The necessity of the amendment to this administrative regulation: Make the regulation current with current industry standards.

(c) How the amendment conforms to the content of the authorizing statutes: Updates the existing regulation.

(d) How the amendment will assist in the effective administration of the statutes: Modernizes labeling standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Firms which register commercial feeds in Kentucky 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: Use the revised label format and labeling which is already being done by the industry. This amendment is more to update our standards to what is currently being done.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No increased cost

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): We will now be regulating them on what are already industry standards.

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

(a) Initially: No increased costs.

(b) On a continuing basis: No increased costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Annual budget of the Division of Regulatory 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: No increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees or increased fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.571(1)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No increase

(b) How 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 increase

(c) How much will it cost to administer this program for the first year? No increased costs

(d) How much will it cost to administer this program for subsequent years? No increased costs

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

Revenues (+/-): \$0.00
Expenditures (+/-): \$0.00
Other Explanation:

**AGRICULTURAL EXPERIMENT STATION
(Amendment)**

12 KAR 3:017. Brand and product names.

RELATES TO: KRS 250.501, 250.521, 250.531

STATUTORY AUTHORITY: KRS 250.571(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for efficient enforcement of KRS 250.491 to 250.631. This administrative regulation establishes the conditions for use of a brand or product name.

Section 1. The words "100%", "All", or words of similar designation shall not be used in the brand or product name of a pet food or specialty pet food if the product contains more than one (1) ingredient, not including water sufficient for processing, decharacterizing agents, or trace amounts of preservatives and condiments.

Section 2. An ingredient or combination of ingredients may form part of a product name of a pet food or specialty pet food:

(1) When the ingredients constitute at least ninety-five (95) percent of the total weight of the product. Water sufficient for processing may be excluded when calculating the percentage; however, the ingredients shall constitute at least seventy (70) percent of the total product weight.

(2) When any ingredient constitutes at least twenty-five (25) percent of the weight of the product, provided that:

(a) Water sufficient for processing may be excluded when calculating the percentage, however, the ingredients shall constitute at least ten (10) percent of the total product weight; and

(b) A descriptor is used with the ingredient names. This descriptor shall imply other ingredients are included in the product formula. Examples of descriptors include "dinner", "platter", "entrée", "formula", and "recipe"; and

(c) The descriptor shall be in the same size, style, and color print as the ingredient names.

(3) When a combination of ingredients, which are included in

the product name in accordance with Section 2 of this administrative regulation, meets all of the following:

(a) Each ingredient constitutes at least three (3) percent of the product weight, excluding water sufficient for processing; and

(b) The names of the ingredients appear in the order of their respective predominance by weight in the product; and

(c) All the ingredient names appear on the label in the same size, style, and color print.

Section 3. (1) If the name of any ingredient appears in the product name of a pet food, specialty pet food or elsewhere on the product label and includes a descriptor such as "with" or similar designation, the named ingredients shall each constitute at least three (3) percent of the product weight exclusive of water for processing.

(2) If the names of more than one (1) ingredient are shown, they shall appear in their respective order of predominance by weight in the product.

(3) The three (3) percent minimum level shall not apply to claims for nutrients, such as, but not limited to, vitamins, minerals, and fatty acids, as well as condiments.

(4) The word "with" or similar designation, and named ingredients shall be in the same size, style, color and case print and be of no greater size than:

Panel Size	Max "With Claim" Type Size
≤5 in. ²	1/8 in.
>5-≤25 in. ²	1/4 in.
>25-≤100 in. ²	3/8 in.
>100-≤400 in. ²	1/2 in.
>400 in. ²	1 in.

Section 4. A flavor designation may be included as part of the product name or elsewhere on the label of a pet food or specialty pet food if the flavor designation meets all of the following:

(1) The flavor designation:

(a) Conforms to the name of the ingredient as listed in the ingredient statement; or

(b) Is identified by the source of the flavor in the ingredient statement;

(2) The word "flavor" is printed in the same size type and with an equal degree of conspicuousness as the name of the flavor designation; and

(3) Substantiation of the flavor designation, the flavor claim, or the ingredient source is provided upon request.

Section 5. The product name of the pet food or specialty pet food shall not be derived from one (1) or more ingredients unless all ingredients are included in the name, except as specified by Section 2 or 3 of this administrative regulation; provided that the name of an ingredient or combination of ingredients may be used as a part of the product name if:

(1) The ingredient or combination of ingredients is present in sufficient quantity to impart a distinctive characteristic to the product or is present in amounts which have a material bearing upon the price of the product or upon acceptance of the product by the purchaser thereof; or

(2) It does not constitute a representation that the ingredient or combination of ingredients is present to the exclusion of other ingredients.

Section 6. Contractions or coined names referring to ingredients shall not be used in the brand name of a pet food or specialty pet food unless it is in compliance with Sections 2, 3, or 4 of this administrative regulation.

Section 7. (1) If pet food or specialty pet food consists of raw milk, the words, "Raw (blank) Milk" shall appear conspicuously on the principal display panel.

(2) The (blank) shall be completed by using the species of animal from which the raw milk is collected. [(4) A flavor designation

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shall:

(a) Not be used on a pet food label unless the flavor is:

1. Detectable by a recognized test method; or
2. Distinguishable by the pet; and

(b) Conform to the name of its source as shown in the ingredient statement. The word "flavor" shall be printed in the same size type and equally conspicuous as the ingredient term from which the flavor is derived.

(2) A distributor shall supply verification of the designated or claimed flavor upon request of the director.

~~Section 2. The designation "100 percent" or "all" or words of similar connotation shall not be used in the brand or product name of a pet food if it contains more than one (1) ingredient. Water sufficient for processing, a required decharacterizing agent or trace amount of a preservative or a condiment shall not be considered an ingredient.~~

~~Section 3. The terms "meat" or "meat by-products" shall be qualified to designate the animal or animals from which the meat or meat by-products are derived, unless the meat is from cattle, swine, sheep, or goats.~~

~~Section 4. The name of the pet food shall not be derived from one (1) or more ingredients of a mixture to the exclusion of the other ingredients, except as specified by Sections 1, 5, and 6 of this administrative regulation. If an ingredient or combination of ingredients is intended to impart a distinctive characteristic that is important to the purchaser, the name of that ingredient or combination of ingredients may be used as a part of the name of the pet food if:~~

~~(1) The ingredient or combination of ingredients is present in sufficient quantity to impart a distinctive characteristic to the product or is present in an amount which has a significant bearing upon the price of the product or upon acceptance of the product by the purchaser;~~

~~(2) The name does not imply that the ingredient or combination of ingredients is present to the exclusion of other ingredients; and~~

~~(3) The name is not false or misleading.~~

~~Section 5. If an ingredient or a combination of ingredients derived from animals, poultry, or fish constitutes ninety-five (95) percent or more of the total weight of a pet food, the name or names of the ingredient or ingredients may be a part of the product name. If more than one (1) ingredient is part of the product name, all of the ingredient names shall be in the same size, style and color print. Water sufficient for processing shall be excluded when calculating the percentage of the ingredients. The named ingredients shall constitute at least seventy (70) percent of the total product.~~

~~Section 6. (1) If an ingredient or a combination of ingredients constitutes at least twenty-five (25) percent but less than ninety-five (95) percent of the total weight of a pet food, the name or names of the ingredient or ingredients may form a part of the name of the pet food if:~~

~~(a) Each of the ingredients constitutes at least three (3) percent of the product weight excluding sufficient water for processing; and~~

~~(b) The product name:~~

~~1. Includes a primary descriptive term such as "dinner", "platter", or similar designation; and~~

~~2. Describes the contents of the product without being misleading;~~

~~(2) If the names of more than one (1) ingredient are shown, they shall appear in the order of their predominance by weight.~~

~~(3) An ingredient name and the primary descriptive term shall be in the same size, style and color print.~~

~~(4) Water sufficient for processing shall be excluded when calculating the percentage of the ingredients. The named ingredients shall constitute at least ten (10) percent of the total product.~~

~~Section 7. A contraction or coined name referring to an~~

~~ingredient shall not be used in the brand name of a pet food unless it is in compliance with Sections 1, 4, 5, or 6 of this administrative regulation.]~~

DR. RICK BENNETT, Director

APPROVED BY AGENCY: May 31, 2018

FILED WITH LRC: June 7, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2018 at 1:30 p.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Darrell Johnson, Executive Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2435, fax (859) 323-9931, darrell.johnson@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Darrell Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the conditions for use of a brand or product name.

(b) The necessity of this administrative regulation: Establishes guidelines for use of brand or product names on the labels of pet or specialty pet foods.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Helps allow for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Delineates requirements for use of brand or product names in pet food labeling.

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

(a) How the amendment will change this existing administrative regulation: This regulation was last updated in 1999. These changes bring it up to accepted standards in usage of brand and product names that are currently used and conform to those prescribed by the American Association of Feed Control Officials (AAFCO). This is a standard used by the industry.

(b) The necessity of the amendment to this administrative regulation: Make the regulation current with current industry standards.

(c) How the amendment conforms to the content of the authorizing statutes: Updates the existing regulation.

(d) How the amendment will assist in the effective administration of the statutes: Modernizes guidelines and matches what is the current regulatory standard nationally.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Firms which register commercial feeds in Kentucky 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: Follow these guidelines for use of brand and product names which is already being done by the industry. This amendment is more to update our standards to what is currently being done.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No increased costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): We will now be regulating them on what are already industry standards.

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

(a) Initially: No increased costs.

(b) On a continuing basis: No increased costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Annual budget of the Division of Regulatory 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: No increases needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.571(1)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No increased costs

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

(c) How much will it cost to administer this program for the first year? No increased costs

(d) How much will it cost to administer this program for subsequent years? No increased costs

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

Revenues (+/-): \$0.00
Expenditures (+/-): \$0.00
Other Explanation:

AGRICULTURAL EXPERIMENT STATION
(Amendment)

12 KAR 3:022. Expression of Guarantees.

RELATES TO: KRS 250.501, 250.521

STATUTORY AUTHORITY: KRS 250.521(1)(b), 250.571(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for efficient enforcement of KRS 259.491 to 250.631. KRS 250.521(1)(b) requires that a commercial feed label contain a guaranteed analysis that advises the purchaser of the composition

of the feed or to support claims made in the labeling. This administrative regulation establishes a uniform format for expressing guarantees for pet foods and specialty pet foods.

Section 1. The "Guaranteed Analysis" shall be listed in the following order and format unless otherwise specified in 12 KAR Chapter 3:

(1) A pet food or specialty pet food label shall list the following required guarantees:

(a) Minimum percentage of crude protein;

(b) Minimum percentage of crude fat;

(c) Maximum percentage of crude fat, if required by 12 KAR 3:028;

(d) Maximum percentage of crude fiber;

(e) Maximum percentage of moisture; and

(f) Additional guarantees shall follow moisture.

(2) If ash is listed in the guaranteed analysis on a pet food or specialty pet food label, it shall be guaranteed as a maximum percentage and shall immediately follow moisture.

(3) If listed on the label of a dog or cat food product, guarantees for dietary starch and sugars shall be stated as maximum percentages. Neither guarantee shall be listed without the other. The guarantee for dietary starch shall follow ash, if also listed; or moisture, if ash is not listed. The guarantee for sugars shall follow dietary starch.

(4) A dog or cat food label shall list other required or voluntary guarantees in the same order and units of the nutrients in the AAFCO Dog (or Cat) Food Nutrient Profiles. Guarantees for substances not listed in the AAFCO Dog (or Cat) Food Nutrient Profiles, or not otherwise provided for in 12 KAR Chapter 3, shall immediately follow the listing of the recognized nutrients and shall be accompanied by an asterisk referring to the disclaimer "not recognized as an essential nutrient by the AAFCO Dog (or Cat) Food Nutrient Profiles." The disclaimer shall appear immediately after the last such guarantee in the same size type as the guarantees.

(5) A specialty pet food label shall list other required or voluntary guarantees in the same order and units for the nutrients in an AAFCO-recognized nutrient profile for the specific species; however, if no species-specific AAFCO-recognized nutrient profile is available, the order and units shall follow the same order and units of nutrients in the AAFCO Cat Food Nutrient Profile. Guarantees for substances not listed in an AAFCO recognized nutrient profile for the specific species of animal shall immediately follow the listing of recognized nutrients and shall be accompanied by an asterisk referring to the disclaimer "not recognized as an essential nutrient by the _____." The blank shall be completed by listing the specific AAFCO recognized nutrient profile. This disclaimer shall appear immediately after the last such guarantee in the same size type as the guarantees. Such disclaimer shall not be required unless an AAFCO-recognized nutrient profile is available for the specific species of specialty pet.

Section 2. The sliding scale method of expressing a guaranteed analysis on a pet food or specialty pet food label (for example, "Minimum crude protein 15-18%") shall not be used.

Section 3. The label of a pet food or a specialty pet food which is formulated as and represented to be a mineral supplement shall include:

(1) Minimum guarantees for all minerals from sources declared in the ingredient statement and established by an AAFCO-recognized nutrient profile, expressed as the element in units specified in the nutrient profile; or

(2) Minimum guarantees for all minerals from sources declared in the ingredient statement expressed as the element in units specified in the AAFCO Cat Food Nutrient Profiles if no species-specific nutrient profile has been recognized by AAFCO; and provided that

(3) Mineral guarantees required by subsections (1) and (2) of this section may be expressed in milligrams (mg) per unit (e.g., tablets, capsules, granules, or liquids) consistent with those employed in the quantity statement and directions for use; and

(4) A weight equivalent (e.g., 1 fl. oz. = 28 grams) for liquid products.

Section 4. The label of a pet food or a specialty pet food that is formulated as and represented to be a vitamin supplement shall include:

(1) Minimum guarantees for all vitamins from sources declared in the ingredient statement and established by an AAFCO-recognized nutrient profile, expressed in units specified in the nutrient profile; or

(2) Minimum guarantees for all vitamins from sources declared in the ingredient statement expressed in units specified in the AAFCO Cat Food Nutrient Profiles if no species-specific nutrient profile has been recognized by AAFCO; and provided that

(3) Vitamin guarantees required by subsections (1) and (2) of this section may be expressed in approved units (e.g., IU, mg, g) per unit (e.g., tablets, capsules, granules, or liquids) consistent with those employed in the quantity statement and directions for use; and

(4) A weight equivalent (e.g., 1 fl. oz. = 28 grams) for liquid products.

Section 5. If the label of a pet food or specialty pet food includes a comparison of the nutrient content of the food with levels established by an AAFCO-recognized nutrient profile, such as a table of comparison, a percentage, or any other designation referring to an individual nutrient or all of the nutrient levels, the following shall apply:

(1) The product shall meet the AAFCO-recognized nutrient profile;

(2) The statement of comparison shall be preceded by a statement that the product meets the AAFCO-recognized profile; however, the statement that the product meets the AAFCO-recognized nutrient profile shall not be required if the nutritional adequacy statement as per 12 KAR 3:039, Section 1(1) or Section 2(2)(a) appears elsewhere on the product label;

(3) The statement of comparison of the nutrient content shall constitute a guarantee, but need not be repeated in the guaranteed analysis; and

(4) The statement of comparison may appear on the label separate and apart from the guaranteed analysis.

Section 6. The maximum moisture declared on a pet food or specialty pet food label shall not exceed seventy-eight (78) percent or the natural moisture content of the ingredients, whichever is higher. However, pet food and specialty pet food such as, but not limited to, those consisting principally of stew, gravy, sauce, broth, aspic, juice, or a milk replacer, and that are so labeled, may contain moisture in excess of seventy-eight (78) percent.

Section 7. Guarantees for crude protein, crude fat, and crude fiber shall not be required if the pet food or specialty pet food is intended for purposes other than to furnish these substances or they are of minor significance relative to the primary purpose of the product, such as a mineral or vitamin supplement.

Section 8. Guarantees for microorganisms and enzymes shall be stated in the format as stipulated in 12 KAR 2:021, Sections 7 and 8. [A guaranteed analysis shall not be expressed as a range, such as "protein 15-18 percent".

Section 2. (1) The label of a pet food that is a mineral supplement shall include in the guaranteed analysis the minimum:

(a) And maximum percentages of calcium;

(b) Percentage of phosphorus;

(c) And maximum percentages of added salt; and

(d) Content of all other essential nutrient elements recognized by the Association of American Feed Control Officials (AAFCO) Dog or Cat Food Nutrient Profile.

(2) Each element shall be stated using the unit of measurement identified in the Nutrient Profile, except that:

(a) A product labeled with a quantity statement in units of tablets, capsules, granules, or liquid measures may express the

mineral guarantees in milligrams (mg) per unit. The unit shall be consistent with the unit used in the quantity statement or directions for use; and

(b) A liquid expressed as a volume shall list a weight equivalent, with one (1) fluid ounce equal to twenty-eight (28) grams.

Section 3. The guaranteed analysis on a pet food label shall state the vitamin content as follows:

(1) For Vitamin A, D, or E, in international units per kilogram (IU/kg);

(2) For Vitamin B₁₂, in milligrams per kilogram (mg/kg) or in micrograms per kilogram (ug/kg); or

(3) For all other vitamins, in milligrams per kilogram (mg/kg).

Section 4. A vitamin supplement shall guarantee the minimum content of each vitamin declared in the ingredient statement. A vitamin guarantee shall be stated using the unit of measurement required by Section 3 of this administrative regulation; or per quantity unit (tablet, capsule, granule, or liquid measure) consistent with the quantity statement or directions for use. A liquid expressed as a volume shall list a weight equivalent, with one (1) fluid ounce equal to twenty-eight (28) grams.

Section 5. (1) A comparison may be stated using the units of measurement used by AAFCO if the label:

(a) Does not claim that the pet food is a vitamin or mineral supplement; and

(b) Includes a table comparing a typical analysis of the vitamin, mineral, or nutrient content with the levels recommended in the AAFCO Dog or Cat Food Nutrient Profile.

(2) The statement in a table of comparison of the vitamin, mineral, or nutrient content shall:

(a) Constitute a guarantee; and

(b) Appear on the label separate from the guaranteed analysis.

Section 6. (1) Except as provided in subsection (2) of this section, a percentage or other reference to a nutrient level established by the AAFCO Dog or Cat Food Nutrient Profile shall not be used on a pet food label.

(2) A direct comparison between the individual nutrient contents and the recommended nutrient profile may be made if the comparison is:

(a) Expressed in the same quantitative units; and

(b) Preceded by a statement that the product meets the nutrient profile recommended by AAFCO.

Section 7. A guarantee for crude protein, crude fat, or crude fiber shall not be required if:

(1) The pet food is intended for a purpose other than to furnish that substance; and

(2) The substance is of minor significance to the primary purpose of the product, such as a mineral or vitamin supplement.]

Section 9[8]. Incorporation by Reference. (1) "Official Publication," (2018[1998] Edition), Association of American Feed Control Officials, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, 103 Regulatory Services Building, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. RICK BENNETT, Director

APPROVED BY AGENCY: May 31, 2018

FILED WITH LRC: June 7, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2018 at 1:30 p.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date,

the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Darrell Johnson, Executive Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2435, fax (859) 323-9931, darrell.johnson@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Darrell Johnson (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a uniform format for expressing guarantees for pet foods and specialty pet foods.

(b) The necessity of this administrative regulation: Specifies for pet food and specialty pet food manufacturers the nutrient guarantees they are to place on their product labeling. Helps consumers determine which product they need for their pet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Helps allow for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Established standardized labeling of nutrient guarantees on pet and specialty pet food products.

(2) If 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 was last updated in 1999. This amendment updates guarantees to those now recognized by the American Association of Feed Control Officials in their latest official publication.

(b) The necessity of the amendment to this administrative regulation: This change provides more information to the consumer and more uniformity in guarantees required for the manufacturer selling pet and specialty pet food products in multiple states.

(c) How the amendment conforms to the content of the authorizing statutes: Updates the existing regulation.

(d) How the amendment will assist in the effective administration of the statutes: Provides more uniformity in labeling for companies selling commercial feeds in multiple states.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Firms which register commercial feeds in Kentucky 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: Provide labeling with guarantees 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): No new costs, this is already an industry standard.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): We will now be regulating them on what are already industry standards versus what was last updated in 1999.

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

(a) Initially: No new costs.

(b) On a continuing basis: No increased costs.

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

implementation and enforcement of this administrative regulation: Annual budget of the Division of Regulatory 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: No increased fees or funding needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.571(1)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No increased 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? No change

(b) How 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 change

(c) How much will it cost to administer this program for the first year? No increased costs.

(d) How much will it cost to administer this program for subsequent years? No increased costs.

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

Revenues (+/-): \$0.00

Expenditures (+/-): \$0.00

Other Explanation:

AGRICULTURAL EXPERIMENT STATION (Amendment)

12 KAR 3:027. Ingredients.

RELATES TO: KRS 250.501, 250.521

STATUTORY AUTHORITY: KRS 250.521(1)(c), 250.571(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for efficient enforcement of KRS 250.491 to 250.631. KRS 250.521(1)(c) requires that a commercial feed label list the common or usual name of each ingredient used in the manufacture of a commercial feed, unless the director promulgates an administrative regulation permitting the use of a collective term for a group of ingredients. This administrative regulation establishes the [maximum moisture content allowed and the] required format for listing ingredients on the label of pet foods and specialty pet foods.

Section 1. Each ingredient of a pet food or specialty pet food shall be listed in the ingredient statement as follows:

(1) The names of all ingredients in the ingredient statement shall be shown in letters or type of the same size, style, and color;

(2) The ingredients shall be listed in descending order by their predominance by weight in non-quantitative terms;

(3) Ingredients shall be listed and identified by the name and definition established by AAFCO; and

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(4) Any ingredient for which no name and definition have been so established shall be identified by the common or usual name of the ingredient.

Section 2. The ingredients "meat" or "meat by-products" shall be qualified to designate the animal from which the meat or meat by-products are derived unless the meat or meat by-products are derived from cattle, swine, sheep, goats, or any combination thereof. For example, ingredients derived from horses shall be listed as "horsemeat" or "horsemeat by-products".

Section 3. Brand or trade names shall not be used in the ingredient statement.

Section 4. The quality, nature, form, or other attribute of an ingredient may be referenced if the reference meets all of the following:

(1) The designation is not false or misleading;

(2) The ingredient imparts a distinctive characteristic to the pet food or specialty pet food because it possesses that attribute; and

(3) A reference to quality or grade of the ingredient does not appear in the ingredient statement. (1) Except as provided in subsection (2) of this section, the maximum moisture in pet food shall be guaranteed and shall not exceed seventy-eight (78) percent by weight or the natural moisture content of the constituent ingredients of the product, whichever is greater.

(2) Pet food that consists principally of stew, gravy, sauce, broth, juice or a milk replacer, which is so labeled, may contain moisture in excess of seventy-eight (78) percent.

Section 2. Each ingredient of the pet food shall be:

(1) Listed in the ingredient statement;

(2) Shown in letters or type of the same size;

(3) Listed in descending order by the ingredient's predominance by weight; and

(4) Identified by the:

(a) Name of the ingredient as established by the Association of American Feed Control Officials, if a name and definition has been established; or

(b) Common or usual name of the ingredient, if a name and definition has not been established. A brand or trade name shall not be used in the ingredient statement.

Section 3. The term "dehydrated" may precede the name of an ingredient if it has been artificially dried.

Section 4. A reference to the quality or grade of an ingredient shall not appear in the ingredient statement unless the:

(1) Designation of quality, nature, form, or other attribute of an ingredient is accurate; and

(2) Ingredient imparts a distinctive characteristic to the pet food.]

Section 5. Incorporation by Reference. (1) "Official Publication", (2018[4998] Edition), Association of American Feed Control Officials, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, 103 Regulatory Services Building, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. RICK BENNETT, Director

APPROVED BY AGENCY: May 31, 2018

FILED WITH LRC: June 7, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2018 at 1:30 p.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public.

Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Darrell Johnson, Executive Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, (859) 218-2435, fax (859) 323-9931, darrell.johnson@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Darrell Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the required format for listing ingredients on the label of pet foods and specialty pet foods.

(b) The necessity of this administrative regulation: Provides a uniform guide on how ingredients are to be expressed on product labeling so all manufacturers are playing by the same rules.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Helps allow for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Provides clear rules on how ingredients are to be listed on product labeling.

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

(a) How the amendment will change this existing administrative regulation: Regulation was last revised in 1999. This amendment references newer version of AAFCO Official Publication since many ingredients have changed since the last revision.

(b) The necessity of the amendment to this administrative regulation: This amendment updates the ingredients that may be listed since many changes have occurred since the last revisions in 1999.

(c) How the amendment conforms to the content of the authorizing statutes: Updates the existing regulation.

(d) How the amendment will assist in the effective administration of the statutes: Updates the existing regulation from 1999 ingredient tables to 2018.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Firms which register commercial feeds in Kentucky 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: Labeling submitted after acceptance of this amendment must define ingredients as referenced 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): No new costs, this is already an industry standard.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): We will now be regulating them on what are already industry standards versus what was last updated in 1999.

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

(a) Initially: No new costs.

(b) On a continuing basis: No new costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Annual budget of the Division of Regulatory 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: No increases necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.571(1)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No change

(b) How 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 change

(c) How much will it cost to administer this program for the first year? No increased costs

(d) How much will it cost to administer this program for subsequent years? No increased costs

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

Revenues (+/-): \$0.00
Expenditures (+/-): \$0.00
Other Explanation:

AGRICULTURAL EXPERIMENT STATION
(Amendment)

12 KAR 3:032. Feeding directions[for use].

RELATES TO: KRS 250.491-250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631. This administrative regulation establishes requirements for feeding directions to ensure that[~~special purpose~~] pet food and specialty pet food products have adequate labeling to provide for safe and effective use.

Section 1. (1) Dog or cat food, including snacks or treats, labeled as complete and balanced for any or all life stages, as provided in 12 KAR 3:039, Section 3(1), except those pet foods labeled in accordance with 12 KAR 3:039, Section 4, shall list feeding directions on the product label.

(2) These directions shall be consistent with the intended uses indicated in the nutritional adequacy statement, unless a limited use or more limited life stage designation is declared elsewhere (e.g., "adult formula").

(3) These directions shall be expressed in common terms and shall appear prominently on the label.

(4) Feeding directions shall, at a minimum, state:

(a) "Feed (weight/unit of product) per (weight) of dog (or cat).";
and

(b) The frequency of feeding.

Section 2. If a dog or cat food is intended for use by or under the supervision or direction of a veterinarian, the statement: "Use only as directed by your veterinarian" may be used in lieu of feeding directions.

Section 3. (1) Specialty pet food, including snacks or treats, labeled as complete and balanced for any or all life stages, as provided in 12 KAR 3:039, Section 1, shall list feeding directions on the product label.

(2) These feeding directions shall be adequate to meet the nutritional requirements of the intended species of specialty pet as recommended by the AAFCO-recognized nutritional authority.

(3) These directions shall be expressed in common terms and shall appear prominently on the label.

(4) The frequency of feeding shall also be specified.

Section 4. Incorporation by Reference. (1) "Official Publication", (2018 Edition), Association of American Feed Control Officials, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, 103 Regulatory Services Building, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m. [The label of a pet food product which is suitable only for intermittent or supplemental feeding or for some other limited purpose should:

- (1) Bear a clear and conspicuous disclosure to that effect; or
- (2) Contain specific feeding directions which clearly state that the product should be used only in conjunction with other foods.]

DR. RICK BENNETT, Director

APPROVED BY AGENCY: May 31, 2018

FILED WITH LRC: June 7, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2018 at 1:30 p.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Darrell Johnson, Executive Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2435, fax (859) 323-9931, darrell.johnson@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Darrell Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation ensures that pet and specialty pet food products have adequate labeling to provide for safe and effective use.

(b) The necessity of this administrative regulation: To ensure proper feeding directions on the labeling of pet and specialty pet food products.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Helps allow for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: Provides clarity on how feeding directions should be constructed on pet food labels.

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

(a) How the amendment will change this existing administrative regulation: Updates from 1999 to 2018 standards.

(b) The necessity of the amendment to this administrative regulation: Modernize the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Just updates the existing regulation.

(d) How the amendment will assist in the effective administration of the statutes: Brings the existing regulation up to current industry standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Firms which register commercial feeds in Kentucky 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: They will need to follow these guidelines for feeding directions but these are currently a standard nationally.

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The standards in Kentucky will now match those they follow in most states.

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

(a) Initially: No increased costs.

(b) On a continuing basis: No increased costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Annual budget of the Division of Regulatory 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: No increase in fees or funding needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new or increased fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.571(1)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No effect.

(b) How 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 effect.

(c) How much will it cost to administer this program for the first year? No increased costs.

(d) How much will it cost to administer this program for

subsequent years? No increased costs.

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

Revenues (+/-): \$0.00

Expenditures (+/-): \$0.00

Other Explanation:

AGRICULTURAL EXPERIMENT STATION (Amendment)

12 KAR 3:037. Drugs and pet food additives.

RELATES TO: KRS 250.501, 250.511, 250.541(1)(a), (b), (c), (d), (e), (f), (j), (2)(c), (d), (e), 21 C.F.R. Parts 70, 71, 73, 74, 80, 81, 82, 501.22, 570.3(1), 570.30, 582, 21 U.S.C. 360(b)

STATUTORY AUTHORITY: KRS 250.571(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for efficient enforcement of KRS 250.491 to 250.631. KRS 250.541 defines adulterated commercial feeds and states how they may be adulterated by additives. KRS 250.551(1) and (2) prohibits the manufacturing and distribution of adulterated products as animal feeds. This administrative regulation establishes requirements to ensure that a drug or additive used in pet food or specialty pet food is safe and effective for its intended purpose.

Section 1. An artificial color may be used in a pet food or specialty pet food only if it has been shown to be harmless to pets or specialty pets. The permanent or provisional listing of an artificial color in 21 C.F.R. Part 70, 71, 73, 74, 80, 81, or 82, or 501.22 as safe for use, together with the conditions, limitations, and tolerances, if any, shall be satisfactory evidence that the color is harmless to pets or specialty pets.

Section 2. Before approval of a label and a registration application, the distributor of a pet food, containing an additive including a drug, another special purpose additive, or a nonnutritive additive shall, upon request of the director, submit evidence to prove the safety and efficacy of the pet food if used according to label directions. Satisfactory evidence of the safety and efficacy of a pet food or specialty pet food shall be:

(1) If the pet food or specialty pet food contains an additive that conforms to 21 C.F.R. 570.3(1), 570.30, or Part 582; or

(2) If the pet food or specialty pet food is a drug as defined in KRS 250.501(7) and is generally recognized by the Food and Drug Administration as safe and effective for its labeled use or is marketed subject to an application approved by the Food and Drug Administration under 21 U.S.C. 360(b).

Section 3. If a drug is included in a pet food or specialty pet food, the medicated labeling format recommended by the Association of American Feed Control Officials in its Official Publication shall be used to insure that adequate labeling is provided.

Section 4. Incorporation by Reference. (1) "Official Publication", (2018[1998] Edition), Association of American Feed Control Officials, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, 103 Regulatory Services Building, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. RICK BENNETT, Director

APPROVED BY AGENCY: May 31, 2018

FILED WITH LRC: June 7, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2018 at 1:30 p.m. in the conference room at 1600

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University Court, Lexington, Kentucky 40546. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Darrell Johnson, Executive Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2435, fax (859) 323-9931, darrell.johnson@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Darrell Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements to ensure that a drug or additive used in pet food or specialty pet food is safe and effective for its intended purpose.

(b) The necessity of this administrative regulation: Provide guidelines for safe use of drugs and additives in pet or specialty pet foods.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Helps allow for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Defines proper usage of drugs or additives in pet or specialty pet foods.

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

(a) How the amendment will change this existing administrative regulation: Adds specialty pets (e.g. turtles, snakes) in addition to pets (e.g. dogs and cats). Updates language to match the Model Bill of the American Association of Feed Control Officials.

(b) The necessity of the amendment to this administrative regulation: Make sure specialty pets are covered under our regulations.

(c) How the amendment conforms to the content of the authorizing statutes: Updates the existing regulation.

(d) How the amendment will assist in the effective administration of the statutes: Spells out that this regulation also covers specialty pet foods.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Firms which register commercial feeds in Kentucky 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: No real effect as this is already being done but clarifies our regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No increased costs

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clarifies that specialty pets are also included under our regulation.

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

(a) Initially: No increased costs.

(b) On a continuing basis: No increased costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Annual budget of the Division of Regulatory 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: No increases.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.571(1)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No changes

(a) How much 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 changes

(b) How 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 changes

(c) How much will it cost to administer this program for the first year? No increased costs

(d) How much will it cost to administer this program for subsequent years? No increased costs

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

Revenues (+/-): \$0.00

Expenditures (+/-): \$0.00

Other Explanation:

AGRICULTURAL EXPERIMENT STATION (Amendment)

12 KAR 3:042. Statements[Statement] of calorie[caloric] content.

RELATES TO: KRS 250.501, 250.521

STATUTORY AUTHORITY: KRS 250.571(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for efficient enforcement of KRS 250.491 to 250.631. This administrative regulation establishes a uniform procedure for determining the caloric content of dog and cat foods and expressing it on product labels.

Section 1. [H] The label of a dog or cat food, including snacks, treats, and supplements, shall bear[bears] a statement of calorie content and meet[.], all of the following[requirements shall be met]:

(1) The[calorie] statement shall be separate and distinct from the "Guaranteed Analysis" and shall appear under the heading "Calorie Content".

(2) The statement shall be measured in terms of metabolizable energy (ME) on an "as fed" basis and must be expressed both as "kilocalories per kilogram" ("kcal/kg") of product, and as kilocalories per familiar household measure (e.g., cans or cups) or unit of

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product (e.g., treats or pieces).

(3) The calorie content shall be determined by one of the following methods:

(a) By calculation using the following "Modified Atwater" formula:

$$ME(kcal/kg) = 10[(3.5 \times CP) + (8.5 \times CF) + (3.5 \times NFE)]$$

where ME = metabolizable energy,

CP = % crude protein "as fed,"

CF = % crude fat "as fed,"

NFE = % nitrogen-free extract (carbohydrate) "as fed," and the percentages of CP and CF are the average values of these components in the product as determined by sound scientific methods, such as, but not limited to scientifically accurate calculations made from the formula of the product or upon chemical analysis of the product. The NFE is calculated as the difference between 100 and the sum of CP, CF, and the percentages of crude fiber, moisture and ash (determined in the same manner as CP and CF); or

(b) In accordance with a testing procedure established by AAFCO.

(4) [:(a) In terms of metabolizable energy (ME);

(b) On an as-fed basis; and

(c) Expressed as:

1. "Kilocalories per kilogram" (kcal/kg) of product; or

2. Kilocalories (kcal) per familiar household measure, which shall be a can, cup, pound, or similar designation.

(3) An affidavit shall be provided upon request of the director, substantiating that the calorie content was determined by:

(a) 12 KAR 3:042, Section 1(3)(a) in which case the summary data used in the calculation shall be included in the affidavit; or

(b) 12 KAR 3:042, Section 1(3)(b) in which case the summary data used in the determination of calorie content shall accompany the affidavit.

(5) The caloric content statement shall appear as one (1) of the following:

(a) The heading "Calorie Content" on the label or other labeling shall be followed parenthetically by the word "calculated" if the caloric content is determined in accordance with Section 1(3)(a) of this administrative regulation; or

(b) The heading "Calorie Content" on the label or other labeling shall be followed parenthetically by the word "fed" if the caloric content is determined in accordance with Section 1(3)(b) of this administrative regulation.

Section 2 [the method established in paragraph (a) or (b) of this subsection:

(a) Calculation using the Modified Atwater formula:

$ME(kcal/kg) = 10((3.5 \times CP) + (8.5 \times CF) + (3.5 \times NFE))$
where CP = percent crude protein as fed, CF = percent crude fat as fed, NFE = percent nitrogen-free extract (carbohydrate) as fed, and the percentages of CP and CF are the arithmetic averages from proximate analyses of at least four (4) production batches of the product and the NFE is calculated as the difference between 100 and the sum of CP, CF, and the percentages of crude fiber, moisture, and ash (determined in the same manner as CP and CF). The results of all the analyses used in the calculation shall accompany the affidavit, and the claim on the label shall be followed parenthetically by the word "calculated"; or

(b) Testing using the procedure established by the Association of American Feed Control Officials in the Official Publication. The summary data used in the determination of calorie content shall accompany the affidavit. The value stated on the label shall not exceed or understate the value determined by the Modified Atwater formula by more than fifteen (15) percent.

(4) A comparative claim shall:

(1) [(a)] Not be false, misleading, or given undue emphasis; and

(2) [(b)] Be based on the same methodology for all products compared.

Section 3[2]. Incorporation by Reference. (1) "Official Publication", (2018[4998] Edition), Association of American Feed Control Officials, is incorporated by reference.

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

subject to applicable copyright law, at the Division of Regulatory Services, 103 Regulatory Services Building, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. RICK BENNETT, Director

APPROVED BY AGENCY: May 31, 2018

FILED WITH LRC: June 7, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2018 at 1:30 p.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Darrell Johnson, Executive Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2435, fax (859) 323-9931, darrell.johnson@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Darrell Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a uniform procedure for determining the caloric content of dog and cat foods and expressing it on product labels.

(b) The necessity of this administrative regulation: Provide needed information to consumers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Helps allow for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Provides direction in product labeling.

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

(a) How the amendment will change this existing administrative regulation: Updates our regulation to the language in the AAFCO model bill which is followed nationwide by those in the industry.

(b) The necessity of the amendment to this administrative regulation: Update the current regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Provides for correct labeling of pet food products.

(d) How the amendment will assist in the effective administration of the statutes: Updates the regulation from 1999 version to what is commonly used today.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Firms which register commercial feeds in Kentucky 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: This updates our regulation to rules that are now commonly followed in the industry to help those companies selling in multiple states.

(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 changes is this is an industry standard.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No new costs

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Updates our regulation to what is currently followed in many other states.

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

(a) Initially: No new costs.

(b) On a continuing basis: No new costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Annual budget of the Division of Regulatory 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: No increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.571(1)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No change

(a) How much 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 change

(b) How 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 change

(c) How much will it cost to administer this program for the first year? No increased cost

(d) How much will it cost to administer this program for subsequent years? No increased cost

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

Revenues (+/-): \$0.00

Expenditures (+/-): \$0.00

Other Explanation:

KENTUCKY STATE BOARD OF ELECTIONS (Amendment)

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

RELATES TO: KRS 116.085, 116.155, 117.025, 117.225

STATUTORY AUTHORITY: KRS 117.015

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

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

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

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

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

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

(b) Nomination papers with the Office of the Secretary of State or county clerk.

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

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

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

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

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

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

Section 2. Correction of Voter Registration Records. (1) Each county clerk shall instruct the precinct election officers of the necessity for informing each voter that he or she shall correct any error existing in his or her address as it appears upon the precinct signature roster.

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

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

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

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

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

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

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

- (1) Use for scholarly, journalistic, political (including political fund raising), or governmental purposes;
- (2) Use for publication, broadcast, or related use by a newspaper, magazine, radio station, television station, or other news medium in its news or other publications or broadcasts; or
- (3) Use in a publication provided or sold to duly qualified candidates, political party committees, or officials thereof, or any committee that advocates or opposes an amendment or public question.

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

- ~~(1) The minimum charge for lists and label orders shall be ten (10) dollars.~~
- ~~(2) The charge for alphabetical lists shall be four (4) dollars per precinct.~~
- ~~(3) The charge for street order lists shall be four (4) dollars per precinct.~~
- ~~(4) The charge for alphabetical labels shall be ten (10) dollars per thousand labels.~~
- ~~(5) The charge for household labels by street order shall be ten (10) dollars per thousand labels.~~
- ~~(6) The charge for household labels by zip code order shall be ten (10) dollars per thousand labels.~~
- ~~(7) Upon request, any of the above lists may be made available in a password-protected elec-tronic format at like charge.~~

Section 6. Incorporation by Reference. (1) "Request for Voter Registration Data", SBE 84, May 2018 [October 2009], is incorporated by reference.

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

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

APPROVED BY AGENCY: April 16, 2018

FILED WITH LRC: May 22, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2018 at 10:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lindsay Hughes Thurston

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for requesting voter registration data.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for

requesting voter registration data.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the State Board of Elections to fulfill its duties under KRS 117.025(3)(h), this administrative regulation is necessary to establish the procedure for requesting voter registration data.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for requesting voter registration data.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the form SBE 84 to accurately reflect requirements in the regulation, which is incorporated by reference and update the fees.

(b) The necessity of the amendment to this administrative regulation: This amendment updates the form SBE 84 to accurately reflect requirements in the regulation, which is incorporated by reference, as well as allow the fees to be set by the State Board of Elections.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute, KRS 117.015(1).

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates the form SBE 84 to accurately reflect requirements in the regulation, which is incorporated by reference, as well as allow the fees to be set by the State Board of Elections.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect any candidate, representative of a political party committee or official, representative of a committee that advocates or opposes an amendment or public question and others, as approved by the State Board of Elections.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated individuals identified in question (3) will have to familiarize themselves with the law.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Individuals identified in question (3) will incur no costs in order to comply.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The changes to the SBE form 84 are neutral as it pertains to a benefit.

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

(a) Initially: There is no material cost of the State Board of Elections for new forms as they are provided electronically and updated within SBE.

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

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

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation

applies equally to all those individuals or entities regulated by it.
FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact requesters of voter registration data and registered Kentucky voters.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 117.025(3)(h).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional revenue for state or local governments during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any additional revenue for state or local governments during subsequent years of implementation.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**STATE BOARD OF ELECTIONS
(Amendment)**

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

RELATES TO: KRS 117.045

STATUTORY AUTHORITY: KRS 117.045(1)

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

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

(1) Determine if the person submitted a signed statement in accordance with KRS 117.045(2);

(2) Determine if the person meets the qualifications set forth in KRS 117.045(9); and

(3) Determine if the person has a history of refusing to follow election procedures or has demonstrated a complete lack of understanding of proper election procedures while serving as a precinct election officer in the past.

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

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

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

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

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

APPROVED BY AGENCY: June 5, 2018

FILED WITH LRC: June 11, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2018, at 10:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lindsay Hughes Thurston

(1) Provide a brief summary of:

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

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

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

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

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

(a) How the amendment will change this existing administrative regulation: This amendment outlines the requirement that the county board of elections submit the list of precinct election officers to the State Board of Elections by a certain date.

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

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

content of the authorizing statute, KRS 117.045(1).

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

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated individuals identified in question (3) will have to familiarize themselves with this amended administrative regulation.

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

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

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

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

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 117.045(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional revenue for state or local governments during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any additional revenue for state or local governments during

subsequent years of implementation.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATE BOARD OF ELECTIONS (Amendment)

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

RELATES TO: KRS 117.015, 117.045

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.045(5) and (6)

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

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

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

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

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

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

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

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

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

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

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

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

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

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precinct officers[and the appointments shall be invalid].

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

Section 4. Request to Appoint Emergency Precinct Officers. A county board of elections seeking permission to appoint emergency precinct officers pursuant to KRS 117.045(5) shall file with the State Board of Elections SBE 24, Emergency Precinct Officer Request, which contains the following information:

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

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

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

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

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

(a) In the event more than one (1) emergency precinct officer is needed, the county clerk shall make every effort to insure the emergency precinct officers are of equal political party representation; and

(b) If it appears from the list of emergency precinct officers submitted to the State Board of Elections pursuant to KRS 117.045(8) that the emergency precinct officers submitted will result in an imbalance between the political parties represented by the State Board, then the State Board of Elections may deny the request to appoint emergency precinct officers.

(c) In the event the State Board denies the list of emergency precinct workers as provided in subsection (b) above, the State Board may appoint properly trained officers from within or outside the affected county in order to insure a balance prescribed in KRS 117.045(4). The State Board may provide training for or insure training is provided to emergency precinct election officers referenced in this section and shall be determined on an individualized basis.

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

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

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

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

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

APPROVED BY AGENCY: June 5, 2018

FILED WITH LRC: June 11, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2018, at 10:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

Lindsay.thurston@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lindsay Hughes Thurston

(1) Provide a brief summary of:

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

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

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

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

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

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

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

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

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

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated individuals identified in question (3) will have to familiarize themselves with this amended administrative regulation. (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is unknown if individuals identified in question (3) will incur costs in order to comply.

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

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

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

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

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

implementation and enforcement of this administrative regulation: There is no source funding since there is no cost to implement this administrative regulation.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional revenue for state or local governments during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any additional revenue for state or local governments during subsequent years of implementation.

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

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

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

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

PERSONNEL CABINET
(Amendment)

101 KAR 2:020. Job classification plan.

RELATES TO: KRS 18A.005, 18A.030(2), 18A.032, 18A.110(1)(c), (7)

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(1)(c), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(c) and (7) require[requires] the Secretary of Personnel to promulgate administrative regulations, which govern the classification plan for all positions in the classified service so that the same qualifications may reasonably be required for, and the same schedule of pay equitably applied to, all positions in the same job classification. This administrative regulation establishes the classification plan for classified service.

Section 1. Interpretation of Job Class Specifications. (1) Job class specifications shall describe and explain the job duties and responsibilities typically assigned to a position within a particular job classification.

(2) Job class specifications shall indicate the kinds of positions to be allocated to the various job classifications as determined by their characteristics and duties or responsibilities. Characteristics and duties or responsibilities of a job classification shall be general statements indicating the level of responsibility and discretion of positions in that job classification.

(3) Examples of duties or responsibilities of a job classification shall not be construed as:

(a) Describing what the duties or responsibilities of a position shall be; or

(b) Limiting the appointing authority's ability to assign or alter the duties and responsibilities of a position.

(4) The use of examples describing the duties or responsibilities of a job classification shall not be regarded as excluding assignment of other duties or responsibilities not mentioned which are of similar kind or quality.

(5) Job class specifications shall establish the minimum requirements, which are comprehensive statements of the minimum background as to education, experience, and other qualifications required for the job classification.

(6) The job class specification may contain special requirements, additional requirements, unique physical requirements, or typical working conditions.

(7) The Personnel Cabinet may change any job class specification in whole or part.

Section 2. Official Copy of Job Class Specifications. (1) The Personnel Cabinet shall maintain a master set of all approved job class specifications. These specifications shall constitute the official job class specifications in the job classification plan. The copies of the specification for each job classification shall indicate the date of establishment or the last revision of the specification.

(2) The Personnel Cabinet shall make available job class specifications in an electronic format.

Section 3. Title of Position and Job Classification. (1) The official title of the job classification to which a position has been allocated shall be used to designate the position in payrolls and other official records, documents, and communications in connection with all personnel processes. For purposes of internal administration or for a purpose not involving the personnel processes, an office title or abbreviation may be used in lieu of the job classification title.

(2) The Personnel Cabinet may change the title of a job classification to more accurately describe job functions that have been or may be assigned to a job classification.

Section 4. Position Descriptions. Position descriptions shall state, in detail, the duties and responsibilities assigned to an individual position. If the duties and responsibilities assigned to a position are changed in a material and permanent way, the supervisor making the recommendation shall timely submit to the appointing authority for the agency a position description, stating the revised duties and responsibilities. If the appointing authority approves the material and permanent assignment of the duties and responsibilities, the new position description shall be forwarded to the Secretary of the Personnel Cabinet with the appointing authority's recommendation for reclassification.

THOMAS B. STEPHENS, Secretary

APPROVED BY AGENCY: May 25, 2018

FILED WITH LRC: June 12, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2018 at 10:00 a.m. at 501 High Street, 3rd floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled.

This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on July 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lesley Bilby, Executive Director, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email Lesley.Bilby@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Lesley Bilby

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the classification plan for all positions in KRS Chapter 18A classified service.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure the same qualifications may reasonably be required for, and the same schedule of pay may be equitably applied to, all positions in the same class.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110(1)(c) and (7) require the Secretary of Personnel to promulgate administrative regulations which govern a position classification plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists with the consistent application and handling of the job classification plan.

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

(a) How the amendment will change this existing administrative regulation: A paragraph is added to clarify that the Personnel Cabinet has the authority to change a job class specification.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure the continued consistent application and handling of the job classification plan.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is consistent with the authority provided in 18A.030(2); and KRS 18A.110(1)(c) and (7).

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates language to assist with the consistent application and handling of the job classification plan.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A employees in classified positions and their agencies will be subject to the provisions of 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: No additional action is required.

(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 anticipated to any entity identified above.

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

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with classified positions covered under KRS Chapter 18A.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030(2); KRS 18A.110(1)(c) and (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.

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

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the amendments to this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer the amendments to this regulation.

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

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

PERSONNEL CABINET
(Amendment)

101 KAR 2:034. Classified compensation administrative regulations.

RELATES TO: KRS 18A.030(2), 18A.110, 18A.165

STATUTORY AUTHORITY: KRS 18A.110(1)(c), (d), (g), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary of Personnel to promulgate administrative regulations which govern the pay plan for all employees in the classified service. This administrative regulation establishes requirements to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

Section 1. New Appointments. (1) An appointing authority shall appoint a new employee at a salary not to exceed the midpoint of the pay grade.

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(2) The appointing authority shall adjust to that salary an employee who is earning less than the new appointee's salary, if the appointing authority determines that the incumbent employee:

- (a) Is in the same job classification;
- (b) Is in the same work county; and
- (c) Has a similar combination of education and experience relating to the relevant job class specification.

Section 2. Reentrance to Classified Service. (1) Returning retirees. An employee who was formerly employed under KRS Chapter 18A and who is appointed to a position covered by the provisions of KRS Chapter 18A while receiving retirement payments through the Kentucky Retirement Systems or Kentucky Teachers Retirement System shall be appointed in accordance with the provisions for new appointments in this administrative regulation.

(2) Other reentering employees.

(a) Former classified employees. An appointing authority shall set the salary of a former classified employee, other than a returning retiree, who is being reemployed, reinstated, or probationarily appointed in one (1) of the following ways:

1. In accordance with the standards used for making new appointments in this administrative regulation; or

2. Up to the same salary as that paid at the time of separation from the classified service, if that salary does not exceed the midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary.

(b) Former unclassified employees with prior classified service. An appointing authority shall set the salary of a former classified employee who moved to the unclassified service and who is reinstated, reemployed or probationarily appointed to a position in the classified service in one (1) of the following ways:

1. In accordance with the standards for making new appointments;

2. Up to the same salary as that paid at the time of separation from the classified service, if that salary does not exceed the pay grade midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary;

3. At a salary that is the same as the salary the employee last received in the classified service with adjustments for increases that would have been received if the employee had remained in the classified service prior to resignation if the salary does not exceed the pay grade midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary; or

4. At a salary up to five (5) percent above the pay grade entry level wage for each year of service in the KRS Chapter 18A system, if the salary does not exceed the pay grade midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary. Salary shall be calculated using whole percentages.

(c) Former unclassified employees with no previous classified service. An appointing authority shall set the salary of a former unclassified employee with no previous classified service, who is probationarily appointed or reemployed, in one of the following ways:

1. In accordance with the standards for making new appointments; or

2. At a salary up to five (5) percent above the minimum salary for each year of service in the unclassified service, if the salary does not exceed the pay grade midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary. Salary shall be calculated using whole percentages.

(d) Laid off employees. A former employee, separated from the classified service by layoff and reinstated or reemployed in the same or similar job classification within five (5) years from the date of layoff, may receive the salary they were receiving at the time of layoff, even if the salary is above the maximum of the pay grade.

(3) Probationary increments upon reentrance to state service. ~~[(a)]~~ A former employee who is probationarily appointed at a salary at or below the midpoint of the pay grade shall receive a probationary increment upon successful completion of the

~~probationary period. [(b) A former employee who is probationarily appointed at a salary that equals or exceeds the midpoint of the pay grade may, at the discretion of the appointing authority, receive a probationary increment at the time of successful completion of the probationary period. If the employee is not granted a probationary increment at the time of completion of the probationary period, an increment shall be awarded at the beginning of the month following completion of twelve (12) months of service from the date of appointment.]~~

Section 3. Salary Adjustments. (1) Promotion.

~~(a) An employee who is promoted shall receive the greater of five (5) percent for each grade, or an increase to the minimum of the new grade except as provided under subsection (2)(b) of this section; or~~

~~(b) If sufficient funds are available and except as provided under subsection (2)(b) of this section, an appointing authority may adjust the employee's salary up to the midpoint of the pay grade as long as the increase is greater than the increase specified in subsection (1)(a) of this section.~~

(2) Demotion.

(a) If an employee is demoted, the appointing authority shall determine the salary in one (1) of the following ways:

1. The employee's salary shall be reduced by five (5) percent for each grade the employee is reduced; or

2. The employee shall retain the salary received prior to demotion. If the employee's salary is not reduced upon demotion, the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel files.

(b) An employee whose salary is not reduced by five (5) percent per grade upon demotion shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty, reallocation, ~~[or]~~ pay grade change, or successful completion of promotional probation until the employee[he] is moved to a job classification with a higher pay grade than that from which he was demoted. If a promotion, reclassification, detail to special duty, ~~[or]~~ reallocation, or pay grade change occurs, it shall be deemed as having been made from the grade from which the employee had been demoted.

(3) Reclassification.

~~(a) An appointing authority shall adjust the salary of an employee who is advanced to a higher pay grade through reclassification in one of the following ways:~~

~~1. [shall receive] The greater of five (5) percent for each grade or the new grade minimum except as provided under subsection (2)(b) of this section; or~~

~~2. If sufficient funds are available and except as provided under subsection (2)(b) of this section, up to the midpoint of the pay grade as long as the increase is greater than the increase specified in subparagraph 1. of this paragraph.~~

(b) An employee who is placed in a lower pay grade through reclassification shall receive the same salary received prior to reclassification but shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty, ~~[or]~~ reallocation, or pay grade change occurs, it shall be deemed as having been made from the grade from which the employee had been reclassified.

~~(c) An employee shall not be reclassified from a job classification that does not require the supervision of employees to a job classification that requires the supervision of employees as mandated within the job class specification.~~

(4) Reallocation.

(a) An employee who is advanced to a higher pay grade through reallocation shall receive the greater of five (5) percent for each grade or the new grade minimum except as provided under subsection (2)(b) of this section.

(b) An employee who is placed in a lower pay grade through reallocation shall receive the same salary received prior to reallocation but shall not be eligible for a salary increase upon

promotion, reclassification, detail to special duty,~~or~~ reallocation, pay grade change, or successful completion of promotional probation until he is moved to a job classification with a higher pay grade than that from which he was reallocated. If a promotion, reclassification, detail to special duty,~~or~~ reallocation, or pay grade change occurs, it shall be deemed as having been made from the grade from which the employee had been reallocated.

(5) Detail to special duty.

(a) An employee who is approved for detail to special duty shall receive, during the period of detail, the greater of five (5) percent for each grade or the new grade minimum except as provided under subsection (2)(b) of this section.

(b) An employee who is approved for detail to the same or lower pay grade shall receive the same salary received prior to detail.

(6) Reversion.

(a) The salary of an employee who is reverted while serving a promotional probationary period, or following detail to special duty in a higher pay grade, shall be adjusted to:

1. The salary received prior to the promotion or detail; and
2. All salary advancements and adjustments which would have been awarded if the promotion or detail had not occurred.

(b) The salary of an employee who is reverted from a position in the unclassified service to a position in the classified service shall be adjusted to:

1. The salary received prior to leaving the classified service; and
2. All salary advancements and adjustments which would have been awarded if the individual had remained in the classified service.

(c) The increment date of an employee who is reverted from a position in the unclassified service to a position in the classified service shall be restored to the increment date set prior to leaving the classified service.

(7) Pay grade changes.

(a) If a job classification is assigned to a higher pay grade, the appointing authority shall raise the salary of an employee below the new grade minimum to the new grade minimum. If sufficient funds are available, an appointing authority may uniformly adjust the salary of all employees in that agency in that job classification to:

1. The greater of the new grade minimum or five (5) percent; or
2. The greater of the new grade minimum or ten (10) percent;

~~or~~
~~3. The greater of the new grade minimum or a dollar amount approved by the secretary].~~

(b) If a job classification is assigned to a lower pay grade, an employee in that job classification shall retain his current salary.

(8) Special entrance rates. If a special entrance rate is established for a job classification, an appointing authority shall adjust the salary of an employee in that job classification who is below the special entrance rate to the new rate. If sufficient funds are available, on the same date as the establishment of the special entrance rate, an appointing authority may uniformly grant to all employees in that job classification, except those employees who are on initial probation, a salary adjustment equal to the difference between the former entrance rate and the new entrance rate.

(9) Other salary adjustments. On the 16th of a month, an appointing authority may grant a salary adjustment to all employees in a job classification within an agency who were eligible for, but did not receive, a five (5) percent salary adjustment as a result of a grade change applicable to the job classification, on or after January 1, 1999. The total adjustment granted at the time of the grade change and under this paragraph shall equal five (5) percent of the employee's salary immediately prior to the grade change.

(10) Conversion rule. The salary of an employee whose position changes from a thirty-seven and five-tenths (37.5) hour workweek to a forty (40) hour workweek, or vice versa, shall be converted to accurately reflect the employee's hourly rate of base pay. This conversion shall be applied before applying any other salary adjustment to which the employee is entitled pursuant to this section.

Section 4. Salary Advancements. (1) Initial probation increase. A full-time or part-time employee who completes an initial probationary period shall be granted a five (5) percent salary advancement on the first of the month following completion of the probationary period~~, except as specified under Section 2(3) of this administrative regulation].~~

(2) Promotional probation increase. An employee shall receive a five (5) percent salary advancement on the first of the month following completion of the promotional probationary period except as provided under Sections 3(2)(b), 3(3)(b), and 3(4)(b) of this administrative regulation.

(3) Annual increment dates shall be established as follows:

(a) Upon completion of an initial probationary period;

(b) When a former employee has been probationarily appointed and has received compensation in any~~completed a total of~~ twelve (12) months~~of service]~~ without receiving an increment; or

(c) When an employee returns from leave without pay under the provisions of subsection (5) of this section.

(4) Annual increment dates shall not change if an employee:

(a) Is in a position which is assigned a new or different pay grade;

(b) Receives a salary adjustment as a result of a reallocation;

(c) Is promoted;

(d) Is transferred;

(e) Is demoted;

(f) Is detailed to special duty;

(g) Receives an educational achievement award;

(h) Returns from military leave;

(i) Is reclassified; ~~or~~

(j) Receives a promotional increase after completion of a promotional probationary period; or

(k) Is reemployed after layoff.

(5) Return from leave without pay. An employee returning to duty from leave without pay shall receive an annual increment on the first of the month after receiving compensation in any~~completing~~ twelve (12) months~~of service]~~ since the last increment was received.

(6) Service computation. Full-time and part-time service shall be counted in computing service for the purpose of determining increment eligibility.

(7) Order of calculating increments and other salary increases which occur at the same time. If an employee's increment date occurs on the same date that a salary adjustment or advancement is granted, the increment shall be applied before the adjustment or advancement is added to the employee's salary, except if the adjustment is based on a reversion, pay grade change~~or~~ a salary schedule change, or establishment of a special entrance rate.

Section 5. Educational Achievement Award. (1) On the 16th of a month, an appointing authority may grant a five (5) percent increase to an employee's base salary based on educational achievement as specified in this section.

(2) An agency may elect not to participate in the educational achievement program if sufficient funds are not available.

(3) An employee shall not receive more than one (1) educational achievement award in a fiscal year.

(4) An employee shall not receive an educational achievement award and an adjustment for continuing excellence (ACE) based on the same training.

(5) By submitting a personnel action to grant an educational achievement award, the appointing authority shall certify that all of the qualifying conditions established by this section for the appropriate type of educational achievement award have been met.

(a) For a high school diploma, high school equivalency certificate, or a passing score on the GED test, the qualifying conditions shall be met if:

1. The employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test:

a. Outside of work hours;

b. While in state service; and

c. After establishing an increment date~~(On or after January 1, 1984);~~

2. The employee has not previously attained a high school diploma, equivalency certificate, or passing score on the GED test; and

3. The employee has not completed college coursework on the undergraduate or graduate level prior to obtaining the high school diploma, equivalency certificate or a passing score on the GED test.

(b) For postsecondary education or training, the qualifying conditions shall be met if:

1. The employee has completed 260 hours of job-related instruction, or the equivalent;

2. The employee began the course work after becoming a state employee and completed the course work after establishing an increment date;

3. The employee has completed the course work within five (5) years of the date on which it was begun;

4. The course work has not previously been applied toward an educational achievement award;

5. The agency has not paid for the course work or costs associated with it, in whole or in part; and

6. The employee was not on educational or extended sick leave when the courses were taken. ~~[(c) For the Kentucky Certified Public Manager Program, the qualifying conditions shall be met if:~~

~~1. The employee has successfully completed the Kentucky Certified Public Manager Program offered by the Governmental Services Center at Kentucky State University; and~~

~~2. The employee has not previously received an educational achievement award for completing the Kentucky Certified Manager Program.]~~

Section 6. Salary Schedule Adjustment. If the secretary authorizes an adjustment of ~~[all grades in]~~ the salary schedule, an appointing authority shall adjust the salaries of all employees below the new minimum rate to the new minimum rate. If sufficient funds are available, the secretary may authorize an appointing authority to grant a salary increase for all employees equal to the difference in the old schedule minimum for the grade and the new schedule minimum for the grade.

Section 7. Paid Overtime. (1) Overtime for which pay is authorized shall be in accordance with 101 KAR 2:102, Section 5, and the Fair Labor Standards Act, 29 U.S.C. Section 201, et seq., as amended.

(2) Eligibility for overtime pay shall be approved by the appointing authority, and shall be subject to review by the Secretary of Personnel ~~[and the Secretary of the Finance and Administration Cabinet].~~

(3) An employee who is eligible for overtime shall request permission from or be directed in advance by the supervisor to work overtime.

(4) An overtime payment shall not be added to base salary or wages.

Section 8. Maintenance and Maintenance Allowance. If an employee, or the employee and family, is provided with full or partial maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, the maintenance shall be treated as partial payment of wages. The value of those services shall be deducted from the employee's salary in accordance with a maintenance schedule developed by the appropriate appointing authority after consultation with the Secretary of the Finance and Administration Cabinet.

Section 9. Supplemental Premiums. (1) Locality premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a locality premium for an employee who is regularly or temporarily assigned to work in a job classification, work county, and organizational unit where the agency can demonstrate sustained recruitment and retention issues impacting the mission of the agency.

(b) Once authorized, this premium shall apply to all employees

in that organizational unit who are regularly or temporarily assigned to work in the job classification and work county for which the locality premium is approved.

(c) An employee shall not receive a locality premium after transfer, reclassification, reallocation, detail to special duty, promotion or demotion to a position in a job classification, organizational unit, or work county that is ineligible for a locality premium.

(d) The secretary may rescind authorization to pay a locality premium for a job classification at any time.

(e) Locality premium pay shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(2) Shift premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a supplemental premium for an employee who is regularly assigned to work an evening or night shift in that agency.

(b) Once authorized, this premium shall apply to all employees in that agency who are regularly assigned to work an evening or night shift in a job classification for which the shift premium is approved.

(c) An employee shall not receive a shift premium after shift reassignment, transfer, promotion or demotion to a position that is ineligible for a shift differential premium.

(d) The secretary may rescind authorization to pay shift premium for a job classification at any time.

(e) Shift differential pay shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(3) [(2)] Weekend premium.

(a) Upon request by an appointing authority, the secretary shall authorize the payment of a weekend premium for an employee in a specific job classification who is regularly assigned to work on Saturdays, Sundays, or state holidays as part of the usual work week.

(b) Once authorized, the premium shall apply to all employees in the specified job classifications in that agency who are regularly assigned to work Saturdays, Sundays, or state holidays as part of their usual work week.

(c) An employee shall not receive a weekend premium after reassignment, transfer, promotion, or demotion to a position that is ineligible for weekend premium.

(d) The secretary may rescind authorization to pay weekend premium at any time.

(e) Weekend premium pay shall not be considered part of the employee's base salary or wages and shall not be applied to any leave time usage.

(f) An agency may request, and be authorized for, both shift premium and weekend premium for the same job classifications.

(4) [(3)] Multilingual hourly premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a supplemental multilingual hourly premium for an employee who is assigned to complete work duties in a specified foreign language. An employee completing work duties in a specified foreign language shall receive a multilingual hourly premium based on the percentage of time multilingual skills are performed. An employee in a job classification that includes interpreting services as a characteristic of the job on the job class specification shall not be eligible for this premium.

(b) Language proficiency testing shall be completed prior to an employee receiving the multilingual hourly premium. Testing shall indicate a standard level of multilingual proficiency as required by the appointing authority.

(c) An appointing authority shall submit the multilingual premium request to the Personnel Cabinet in writing. The request shall contain, at a minimum:

1. An explanation of the reason or reasons for granting the multilingual premium;

2. The percentage of time the employee will use multilingual skills; and

3. Certification by the appointing authority that the employee has completed multilingual testing and received a standard level of multilingual proficiency rating. This certification shall include the name of the testing facility or organization, the format of the test

taken (oral, written, or a combination of oral and written), and the level of proficiency granted in the request for the multilingual premium.

(d) Once authorized, the multilingual hourly premium shall apply to all employees in that agency who are regularly assigned to complete work in a specified foreign language once the employees are individually approved in accordance with this subsection.

(e) An employee shall not receive a multilingual hourly premium after reassignment, reclassification, transfer, promotion, reallocation, or demotion to a position which no longer requires work in a specified foreign language.

(f) An employee who ceases to perform work duties in a specified foreign language shall not be eligible to receive a multilingual hourly premium.

(g) The secretary may rescind the multilingual hourly premium authorization provided to an agency or individual employee at any time.

(h) The multilingual hourly premium shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

Section 10. Employee Recognition Award (ERA). (1) On the 16th day of a month, an appointing authority may grant an employee an ~~employee recognition award, or~~ ERA ~~in~~ the form of a lump sum payment of any whole percentage from one (1) [up] to ten (10) percent of the grade midpoint under the following conditions:

(a) The employee has established an annual increment date and has worked at least twenty-four (24) consecutive months in KRS Chapter 18A state service, twelve (12) consecutive months of which is in the department or office granting the award;

(b) The employee has not received an ERA ~~or a distinguished service award~~ in the preceding twenty four (24) months, nor an Adjustment for Continuing Excellence [continuing excellence] (ACE) award in the preceding twelve (12) months; and

(c)1. The appointing authority determines that the employee's acts or ideas have resulted in significant financial savings or improvements in services to the Commonwealth and its citizens; ~~or~~

2. The employee has exhibited distinguished performance during participation in special projects that have had a significant beneficial impact on the department, office, or governmental operations; or

3. The employee has demonstrated a sustained level of exceptional job performance.

(2) An employee shall not be eligible for an ERA under this section for an act or idea that has been approved or submitted for consideration as an Employee Suggestion System Award. An employee who has received an ERA shall not be eligible to be considered for an Employee Suggestion System Award for those acts or ideas upon which the ERA is based.

(3) The granting of an ERA shall be within the sole discretion of the appointing authority.

(4) If an appointing authority grants an ERA, the justification for the award shall be stated in writing, and placed in the employee's personnel files.

(5) An appointing authority shall not grant an ERA to more than twenty-five (25) percent of the total number of full-time employees in a [the] department or office in a calendar year.

(6) An appointing authority shall submit a written justification [letter or memorandum] to the Personnel Cabinet [cabinet] to award an ERA. The justification [letter or memorandum] shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. Sufficient funds are available within the department or office; and

2. The criteria and limitations established in this section have been met.

Section 11. Adjustment for Continuing Excellence (ACE) Award. (1) On the 16th day of a month, an appointing authority

may grant a salary adjustment of any whole percentage from one (1) [up] to ten (10) percent of the grade midpoint to a full-time employee's base pay as an ACE award [adjustment for continuing excellence award (ACE)] under the following conditions:

(a) The employee has an established annual increment date;

(b) The employee has worked at least twenty-four (24) consecutive months in KRS Chapter 18A state service, twelve (12) consecutive months of which shall have been served in the department or office granting the award;

(c) The employee has not received an ACE award ~~or a distinguished service award~~ in the preceding twenty-four (24) months or an ERA [employee recognition award (ERA)] in the preceding twelve (12) months; and

(d)1. The employee has demonstrated a sustained level of exceptional job performance;

2. The employee has assumed a significant level of additional job responsibilities or duties consistent with the assigned job classification, and has performed them in an exceptional manner; or

3. The employee has acquired professional or technical skills or knowledge through department or office directed or authorized attainment of a job related licensure, certification, or formal training that will substantially improve job performance.

(2) An employee shall not be eligible for an ACE award under this section if an educational achievement award has been granted for the same training.

(3) The granting of an ACE award shall be within the sole discretion of the appointing authority.

(4) An appointing authority shall not grant an ACE award to more than twenty-five (25) percent of the total number of full-time employees in a department or office; in a calendar year ~~shall not receive an ACE award~~.

(5) An appointing authority shall submit a written justification [letter or memorandum] to the Personnel Cabinet [cabinet] to grant an ACE award. The justification [letter or memorandum] shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. The criteria and limitations established in this section have been met; and

2. Sufficient funds are available within the department's or office's current recurring base budget to support the award.

Section 12. Incorporation by Reference. (1) "Voluntary Transfer/Demotion/Promotion Employee Agreement Form", September 2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

THOMAS B. STEPHENS, Secretary, Personnel Cabinet

APPROVED BY AGENCY: May 25, 2018

FILED WITH LRC: June 12, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on July 24, 2018 at 10:00 a.m. at 501 High Street, 3rd floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on July 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lesley Bilby, Executive Director, Office

of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone: (502) 564-7430, fax (502) 564-0224, email Lesley.Bilby@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Lesley Bilby

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes requirements for administration of the pay plan for classified employees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to assure uniformity and equity for administration of the pay plan for classified employees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.110 requires the secretary to promulgate administrative regulations which govern the pay plan for all employees in the classified service.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation ensures the consistent application and handling of classified compensation.

(2) If 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 clarify salary options and calculations for reentrance to the classified service; remove the option of deferring probationary salary increases; update provisions surrounding salary changes, overtime, and supplemental premiums; provide for salary adjustments up to midpoint of the pay grade upon promotion and reclassification; describe the limitation on reclassification to a supervisory position; eliminate the Kentucky Certified Manager Program as an option for an Educational Achievement Award; establish a locality premium as a new type of supplemental premium; provide for an Employee Recognition Award based on a sustained level of exceptional job performance; incorporate a standard form required by Personnel Board administrative regulations; and generally correct and update grammar throughout.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify requirements and promote consistency for classified compensation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 18A.110 requires the secretary to promulgate administrative regulations which govern the pay plan for all employees in the classified service.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies requirements and promotes consistency for classified compensation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A employees in classified positions are subject to the provisions of 101 KAR 2:034.

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

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

(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 anticipated to any entity identified above.

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

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with classified employees covered under KRS Chapter 18A.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.110(1)(c), (d), (g), and (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.

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

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the amendments to this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer the amendments to this regulation.

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

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

PERSONNEL CABINET (Amendment)

101 KAR 2:076. Vacancies, detail to special duty and temporary overlap.

RELATES TO: KRS 18A.005, 18A.110(1)(g), (7), 18A.115, 18A.120

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(1)(g), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(g) and (7) require[requires] the Secretary of Personnel to promulgate administrative regulations to govern the types of appointments as necessary to implement KRS Chapter 18A. This administrative regulation establishes the requirements for filling a vacancy, for detail to special duty, and for temporary overlap.

Section 1. Filling of Vacancies. A vacancy in the classified service shall be filled by appointment, demotion, promotion, reemployment, reinstatement, reversion, or transfer[, which is not filled by promotion, transfer, or demotion, shall be filled by probationary appointment, reemployment of a career or laid-off

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employee, reversion, or reinstatement].

Section 2. Detail to Special Duty. (1)(a) With ~~prior~~ approval of the secretary, if the services of an employee with status are needed in a vacant position within an agency other than the position to which the employee is regularly assigned, the employee may be detailed to that position. If detailed to that position, the period shall not exceed one (1) year.

(b) With prior approval of the secretary and approval of the receiving appointing authority, if the services of an employee with status are needed in a vacant position in a different agency, the employee may be detailed to that position. If detailed to that position, the period shall not exceed ninety (90) calendar days.

(2) For detail to special duty, the secretary may waive the minimum requirements if requested and justified by the appointing authority in writing.

~~(3) [Upon approval by the secretary,]~~ The appointing authority shall notify the employee, in writing, of:

(a) The detail to special duty;

(b) The reasons for the action;~~and~~

(c) The employee's retention of status in the position from which he was detailed to special duty; ~~and~~[-]

(d) The pay grade of the position to which the employee is detailed, the work week, and the salary.

Section 3. Temporary Overlap. For training purposes or if it is in the best interests of the service, with the approval of the secretary, an agency may place an employee in a position currently occupied by another employee. If an employee is so placed, the period shall not exceed ninety (90) calendar days.

Section 4. Detail to Special Duty with Temporary Overlap. (1) For training purposes or the best interest of the service, with the approval of the secretary, an agency may detail an employee to a position currently occupied by another employee within the agency. If an employee is so placed, the period shall not exceed ninety (90) calendar days. This detail with temporary overlap shall not be considered a part of the one (1) year detail to special duty to a vacant position. The detail to special duty with temporary overlap shall be a separate action.

(2) For training purposes or the best interest of the service, with the prior approval of the secretary, an agency may detail an employee to a position currently occupied by another employee in a different agency with the approval of the receiving appointing authority. If an employee is so placed, the period shall not exceed ninety (90) calendar days.

(3) For detail to special duty with temporary overlap, the secretary may waive the minimum requirements if requested and justified by the appointing authority in writing.

(4) The appointing authority shall notify the employee, in writing, of:

(a) The detail to special duty with temporary overlap;

(b) The reasons for the action;

(c) The employee's retention of status in the position held prior to the detail to special duty with temporary overlap; and

(d) The pay grade of the position to which the employee is detailed with temporary overlap, the work week, and the salary.

THOMAS B. STEPHENS, Secretary

APPROVED BY AGENCY: May 25, 2018

FILED WITH LRC: June 12, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2018 at 10:00 a.m. at 501 High Street, 3rd floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written

comments shall be accepted until 11:59 p.m. on July 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lesley Bilby, Executive Director, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone: (502) 564-7430, fax (502) 564-0224, email Lesley.Bilby@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lesley Bilby

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation addresses vacancies, detail to special duty and temporary overlap in the classified service.

(b) The necessity of this administrative regulation: This regulation is necessary for the effective and proper application of requirements for employees in the classified service.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.110(1)(g) and (7) require the Secretary of Personnel to promulgate administrative regulations to govern the types of appointments as necessary to implement KRS Chapter 18A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation currently specifies requirements for vacancies, detail to special duty and temporary overlap for employees in the classified service.

(2) If 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 alphabetically reorders the types of personnel actions used to fill vacancies. This amendment provides for cross-agency detail to special duty. This amendment also updates the requirements for timing and notification of detail to special duty. Finally, a new section is added to describe the requirements for combining detail to special duty and temporary overlap.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure the continued consistent application and handling of vacancies, detail to special duty and temporary overlap in the classified service.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is consistent with the authority provided in KRS 18A.110(1)(g) and (7).

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates language to assist with the continued consistent application and handling of vacancies, detail to special duty and temporary overlap in the classified service.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A employees in classified positions and their agencies will be subject to the provisions of 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: No additional action is required.

(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 anticipated to any entity identified above.

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

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

(a) Initially, this regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not

anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with classified positions covered under KRS Chapter 18A.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.110(1)(g) and (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.

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

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the amendments to this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer the amendments to this regulation.

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

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

PERSONNEL CABINET
(Amendment)

101 KAR 2:095. Classified service general requirements.

RELATES TO: KRS 18A.030(2), 18A.110, 26 U.S.C. 501(c)(3)
STATUTORY AUTHORITY: KRS 18A.030, 18A.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary of Personnel to promulgate comprehensive administrative regulations for the classified service. This administrative regulation establishes requirements for the classified service and governs the maintenance of employee and other records and reports in the cabinet and other conditions of employment.

Section 1. Definitions. (1) "Charitable federation" means a legally constituted grouping, made up of or supporting at least ten (10) health and human welfare organizations, all of which:

- (a) Qualify as exempt voluntary charitable organizations pursuant to 26 U.S.C. 501(c)(3); and
- (b) Have a substantial Kentucky presence.

(2) "Designated nonprofit agency" means an organization with proof of tax-exempt status pursuant to 26 U.S.C. 501(c)(3) written in on a pledge card by a state employee as a choice to receive contributions.

(3) "State employee" means a person, including an elected public official, who is employed by a department, board, agency, or branch of state government, except one (1) relating to a state college or university.

(4) "Substantial Kentucky presence" means a facility, staffed by professionals or volunteers, available to provide its services and open at least fifteen (15) hours a week and with a regional or statewide presence that meets the requirements of Section 8(2) of this administrative regulation.

Section 2. Requirements for the Kentucky Employees Charitable Campaign. (1) General Purpose. The purpose of the Kentucky Employees Charitable Campaign shall be to:

(a) Provide an opportunity for employees to contribute to eligible Kentucky organizations through the state's payroll deduction process;

(b) Ensure accountability for participants in regard to the funds raised;

(c) Encourage the involvement of state employees as responsible citizens;

(d) Give recognition to state employee volunteers; and

(e) Minimize workplace disruption and administrative costs to Kentucky taxpayers by allowing only one (1) statewide payroll deduction charitable solicitation per year.

(2) An organization shall be considered to have a substantial Kentucky presence if the requirements established in this subsection are met.

(a) Services shall be available to state employees in the local community.

(b) Services shall directly benefit human beings whether children, youth, adults, the aged, the ill and infirm, or the mentally or physically disabled.

(c) Services shall consist of:

- 1. Care, research, education, or prevention in the fields of human health or social adjustment and rehabilitation;
- 2. Relief for victims of natural disasters and other emergencies;

or

3. Assistance to those who are impoverished and in need of food, shelter, clothing, and basic human welfare services.

(3) The secretary shall approve a charitable organization for participation in the campaign if the charitable organization demonstrates:

(a) Proof of tax exempt status pursuant to 26 U.S.C. 501(c)(3);

(b) Proof of current registration and compliance with the reporting requirements of the Secretary of State and the Office of the Attorney General;

(c) Proof of financial responsibility, including:

- 1. Adoption of a detailed annual budget;
- 2. Use of generally accepted accounting principles and procedures;

3. The board of directors' approval for deviations from the approved budget; and

4. An annual financial audit;

(d) Proof of direction by an active volunteer board of directors, which shall meet regularly and whose members shall serve without compensation;

(e) A written nondiscrimination policy;

(f) Public disclosure of fundraising administrative costs with a statement demonstrating that, if fund and administrative expenses are in excess of twenty-five (25) percent of total support and revenue, actual expenses for those purposes are reasonable under all the circumstances in its case; and

(g) Publication of an annual report available to the general public, which includes a full description of the organization's Kentucky activities including fundraising activities.

(4) A federation may apply on behalf of all their member organizations if both the federation and all federation members meet the criteria established in subsection (3) of this section.

(5) Authority of the Secretary of Personnel.

VOLUME 45, NUMBER 1 – JULY 1, 2018

(a) The Secretary of Personnel shall have the full authority over the procedures and policies relating to the operation of the Kentucky Employees Charitable Campaign.

(b) The secretary shall designate a group of state employees to compose the Kentucky Employees Charitable Campaign Committee to make recommendations on related matters.

(c) The committee shall be composed of a cross-section of state employees, involving the large cabinets and small agencies.

(d) The chair of the committee shall be appointed by the secretary.

(6) Functions of the committee. The committee shall make recommendations on the following:

(a) Designation of a campaign administrator.

1. The campaign administrator shall serve for a minimum period of two (2) years.

2. The campaign administrator shall be charged to manage and administer the charitable fund campaign for the Commonwealth, subject to the direction and control of the Secretary of Personnel. The campaign administrator shall have statewide workplace campaign experience and have the necessary staff and volunteer support to administer the Kentucky Employee Charitable Campaign;

(b) Establishment of minimum amount, based on cost effectiveness, that an employee may authorize to be deducted for each approved federation;

(c) The format of the brochure, pledge card, or other promotional materials for the annual campaign;

(d) The dates and duration of the campaign;

(e) The annual campaign budget submitted by the campaign administrator; and

(f) The costs of the campaign, which shall be detailed in the budget, and which shall be borne by each recipient organization proportionally.

(7) Charitable federations to apply for statewide campaign.

(a) A federation desiring inclusion shall make application by February 15 of each year.

(b) A federation that has previously participated in the campaign shall update its application with a letter and a copy of the most recent year's audit.

(c) A charitable organization that has previously participated in the campaign shall be eligible if it fulfills all conditions of eligibility.

(8) The campaign administrator. The campaign administrator shall:

(a) Provide staffing to manage and administer the annual campaign. This shall include preparing drafts of campaign materials for consideration by the Secretary of Personnel;

(b) Serve as the central accounting point for both campaign cash and for payroll deductions received from the Personnel Cabinet including:

1. The preparation and submission of an annual campaign budget. Costs of the campaign shall be divided among recipient organizations; and

2. A separate account maintained for managing the income and expenses of the campaign;

(c) Distribute campaign funds received from the Personnel Cabinet to participating organizations in accordance with agreed upon time periods. This shall include distribution of funds to designated nonprofit agencies;

(d) Provide an end-of-campaign report to the Secretary of Personnel and to participating organizations; and

(e) Annually furnish a financial statement prepared by a certified public accountant.

Section 3. Attendance; Hours of Work. (1) The number of hours a full-time employee shall be required to work shall be thirty-seven and one-half (37 1/2) hours per week or forty (40) hours per week, unless specified otherwise by the appointing authority or the statutes.

(2) The normal work day shall be from:

(a) 8 a.m. to 4:30 p.m., local time, Monday through Friday, for a thirty-seven and one-half (37 1/2) hour work schedule; or

(b) 8 a.m. to 5 p.m., local time, Monday through Friday, for a forty (40) hour work schedule.

(3) An appointing authority may require an employee to work hours and days other than regular days and hours, including an overtime or inclement weather schedule if it is in the best interest of the agency.

(4) An employee who works for an agency that requires more than one (1) shift or seven (7) days a week operation may be reassigned from one (1) shift to another or from one (1) post to another or alternate days off by the agency to meet staffing requirements or to maintain security or provide essential services of the agency.

(5) An employee shall give reasonable notice in advance of absence from a work station.

Section 4[3]. Work Station and Temporary Assignment. (1) Each employee shall be assigned a work station by the appointing authority.

(2) A work station may be changed to better meet the needs of the agency.

(3) An employee may be temporarily assigned to a different work station in a different county. The assignment shall be to the same job classification.

(a) If an employee is temporarily assigned to a different work station in a different county, the assignment shall not last more than sixty (60) calendar days.

(b) Temporary assignment may be renewed with prior[~~the~~] approval of the Secretary of Personnel.

(c) A temporarily reassigned employee shall be reimbursed for travel expenses in accordance with 200 KAR 2:006, and the appointing authority shall notify the employee in writing prior to the effective date of the action.

(4) An appointing authority may assign an employee to work in a different site within the county of employment within the same job classification.

Section 5[4]. Dual Employment.[~~(4)~~] An employee holding a full-time position covered under KRS Chapter 18A[~~with the Commonwealth~~] shall not hold another KRS Chapter 18A[~~state~~] position except upon recommendation of the appointing authority and the written approval of the secretary.

[~~(2) A complete list of all employees holding more than one (1) state position shall be furnished to the Legislative Research Commission quarterly by the secretary.~~]

Section 6[5]. Notice of Resignation and Retirement. (1) An employee who decides[~~desires~~] to terminate his or her service[~~with the state~~] shall submit a written resignation or notice of retirement to the appointing authority.

(2) A resignation or notice of retirement shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's notice[~~resignation~~] shall be attached to the separation personnel action[~~effecting the separation~~] and placed in the personnel files maintained by[~~be filed in the employee's service record in~~] the agency and the Personnel Cabinet.

(3) Failure of an employee to give fourteen (14) calendar days' notice[~~with his resignation or notice of retirement~~] may result in forfeiture of accrued annual leave, based on:

(a) If the fourteen (14) day deadline was:

1. Practicable under the circumstances;

2. Appropriate for the situation; and

3. Complied with; or

(b) If the appointing authority and the employee have agreed that the employee shall retain the leave.

(4) The effective date of a separation shall be the next calendar day following the last work day unless the employee has been approved for the use of annual, compensatory, or sick leave prior to termination.

Section 7[6]. Records and Reports. (1) An appointing authority shall provide a request to the Personnel Cabinet for a personnel action or status change.

(a) The Secretary of the Personnel Cabinet shall determine which personnel actions warrant a Personnel Action Notification to the employee, in accordance with KRS 18A.020 and 18A.095.

(b) The secretary shall provide a Personnel Action Notification to the appointing authority.

(c) The appointing authority shall provide a copy of a Personnel Action Notification to the employee affected by the action.

(2) The secretary shall maintain a leave record showing for each employee:

- (a) Annual leave earned, used and unused;
- (b) Sick leave earned, used and unused;
- (c) Compensatory leave earned, used and unused; and
- (d) Special leave or other leave with or without pay.

Section 8[7]. Telecommuting. (1) Telecommuting shall be a work arrangement in which a selected state employee is allowed to perform the normal duties and responsibilities of his or her position through the use of computer or telecommunications at home or another place apart from the employee's usual work station.

(2) An appointing authority may establish a telecommuting program for all or any part of the agency.

(3) Eligibility and selection for participation in a telecommuting program shall be the decision of the agency, with no implied or specific right to participation being granted to an employee.

(4) The telecommuter's conditions of employment shall remain the same as for a nontelecommuting employee.

(a) Employee salary, benefits, and employer-sponsored insurance coverage shall not change as a result of telecommuting.

(b) The telecommuter shall be responsible for the security and confidentiality of data, as well as the protection of state-provided equipment, used and accessed during telecommuting.

(c) The telecommuter shall agree to maintain a clean, safe workplace.

(d) An on-site visit by the employer for monitoring of safety issues shall ~~not require advance notice by the employer~~[be arranged in advance].[Section 8. Requirements for the Kentucky Employees Charitable Campaign. (1) General Purpose. The purpose of the Kentucky Employees Charitable Campaign shall be to:

(a) Provide an opportunity for employees to contribute to eligible Kentucky organizations through the state's payroll deduction process;

(b) Ensure accountability for participants in regard to the funds raised;

(c) Encourage the involvement of state employees as responsible citizens;

(d) Give recognition to state employee volunteers; and

(e) Minimize workplace disruption and administrative costs to Kentucky taxpayers by allowing only one (1) statewide payroll deduction charitable solicitation per year.

(2) An organization shall be considered to have a substantial Kentucky presence if the requirements established in this subsection are met.

(a) Services shall be available to state employees in the local community.

(b) Services shall directly benefit human beings whether children, youth, adults, the aged, the ill and infirm, or the mentally or physically disabled.

(c) Services shall consist of:

1. Care, research, education, or prevention in the fields of human health or social adjustment and rehabilitation;

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or

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(3) The secretary shall approve a charitable organization for participation in the campaign if the charitable organization demonstrates:

(a) Proof of tax exempt status pursuant to 26 U.S.C. 501(c)(3);

(b) Proof of current registration and compliance with the reporting requirements of the Secretary of State and the Office of the Attorney General;

(c) Proof of financial responsibility, including:

1. Adoption of a detailed annual budget;

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procedures;

3. The board of directors' approval for deviations from the approved budget; and

4. An annual financial audit;

(d) Proof of direction by an active volunteer board of directors, which shall meet regularly and whose members shall serve without compensation;

(e) A written nondiscrimination policy;

(f) Public disclosure of fundraising administrative costs with a statement demonstrating that, if fund and administrative expenses are in excess of twenty-five (25) percent of total support and revenue, actual expenses for those purposes are reasonable under all the circumstances in its case; and

(g) Publication of an annual report available to the general public, which includes a full description of the organization's Kentucky activities including fundraising activities.

(4) A federation may apply on behalf of all their member organizations if both the federation and all federation members meet the criteria established in subsection (3) of this section.

(5) Authority of the Secretary of Personnel.

(a) The Secretary of Personnel shall have the full authority over the procedures and policies relating to the operation of the Kentucky Employees Charitable Campaign.

(b) The secretary shall designate a group of state employees to compose the Kentucky Employees Charitable Campaign Committee to make recommendations on related matters.

(c) The committee shall be composed of a cross-section of state employees, involving the large cabinets and small agencies.

(d) The chair of the committee shall be appointed by the secretary.

(6) Functions of the committee. The committee shall make recommendations on the following:

(a) Designation of a campaign administrator.

1. The campaign administrator shall serve for a minimum period of two (2) years.

2. The campaign administrator shall be charged to manage and administer the charitable fund campaign for the Commonwealth, subject to the direction and control of the Secretary of Personnel. The campaign administrator shall have statewide workplace campaign experience and have the necessary staff and volunteer support to administer the Kentucky Employee Charitable Campaign;

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(a) A federation desiring inclusion shall make application by February 15 of each year.

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and expenses of the campaign;

~~(c) Distribute campaign funds received from the Personnel Cabinet to participating organizations in accordance with agreed upon time periods. This shall include distribution of funds to designated nonprofit agencies;~~

~~(d) Provide an end-of-campaign report to the Secretary of Personnel and to participating organizations; and~~

~~(e) Annually furnish a financial statement prepared by a certified public accountant.]~~

Section 9. Workplace Violence Policy. (1) Workplace violence shall be prohibited and shall include:

(a) The attempted, threatened, or actual conduct of a person who endangers or is likely to endanger the health and safety of state employees or the general public; or

(b) A threatening statement, harassment, or behavior that gives a state employee or member of the general public reasonable cause to believe that his or her health or safety is at risk.

(2) Examples of prohibited workplace violence shall include:

(a) Threats of harm;

(b) Brandishing or displaying a weapon or an object that looks like a weapon in a manner that would present a safety risk to a state employee or a member of the general public or threatens or intimidates them;

(c) Intimidating, threatening, or directing abusive language toward another person, either verbally, in writing or by gesture;

(d) Stalking;

(e) Striking, slapping, or otherwise physically attacking another person; or

(f) Disobeying or failing to follow the reasonable directive of a supervisor to take action or cease actions that create a risk to the health or safety of a state employee or the public or threatens or intimidates them.

(3) Violation of this section shall constitute grounds for disciplinary action and referral for criminal prosecution.

Section 10. Issuance of Pay to State Employees. (1) Pay shall be issued to state employees on the 15th and 30th day of each month.

(2) If the regularly scheduled pay date falls on a weekend, state employees shall be issued pay on the preceding Friday.

(3) If the regularly scheduled pay date falls on a state holiday as defined in KRS 18A.190, pay shall be issued on the workday preceding the holiday.

Section 11. Incorporation by Reference. (1) "Personnel Action Notification", PAN, August 2011, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

THOMAS B. STEPHENS, Secretary

APPROVED BY AGENCY: May 25, 2018

FILED WITH LRC: June 12, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2018 at 10:00 a.m. at 501 High Street, 3rd floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on July 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lesley Bilby, Executive Director, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone: (502) 564-7430, fax (502) 564-0224, email Lesley.Bilby@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lesley Bilby

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements governing employee records, the maintenance and handling of these records, and other conditions of employment.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the oversight and maintenance of the state employment system pursuant to KRS Chapter 18A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to satisfy the statutory requirement of establishing for the state a system of personnel administration based on merit principles. This regulation sets forth general terms and conditions of employment, to assist in the consistent application and treatment of KRS Chapter 18 employees.

(2) If 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 moves the Kentucky Employees Charitable Campaign (KECC) section to collocate with the KECC definitions. Language pertaining to temporary assignment is updated to clarify that such assignment shall be to the same job classification and that renewal requires advance approval of the secretary. Dual employment language is amended to clarify that applicability is for KRS Chapter 18A employees and positions. This amendment clarifies the effective date of a resignation. Finally, the telecommuting section is amended to clarify that an on-site visit by the employer does not require advance notice to the employee.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure the continued consistent application and handling of employment activities, records, and reports.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is consistent with the authority provided in KRS 18A.030 and 18A.110.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates language to assist with the continued consistent application and handling of employment activities, records, and reports.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A employees and other individuals subject to the provisions of 101 KAR 2:095 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: No additional action is required.

(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 anticipated to any entity identified above.

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

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with employees covered under KRS Chapter 18A.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030 (2) and 18A.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? No revenue will be generated.

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

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the amendments to this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer the amendments to this regulation.

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

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

PERSONNEL CABINET
(Amendment)

101 KAR 3:045. Compensation plan and pay incentives for unclassified service.

RELATES TO: KRS 18A.110, 18A.155, 18A.202, 199.555
STATUTORY AUTHORITY: KRS 18A.030(2), 18A.155(1)(b), (e), 18A.110(2), 18A.202(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.155 requires the Secretary of Personnel to promulgate administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (t) and (u). KRS 18A.110 requires the secretary to promulgate comprehensive administrative regulations for the unclassified service. KRS 18A.202 authorizes the secretary to implement work-related incentive programs for state employees. This administrative regulation establishes the compensation plan and pay incentives for employees in

unclassified service.

Section 1. New Appointments. An appointing authority shall appoint a new employee at a salary not to exceed the midpoint of the pay grade.

Section 2. Reentrance to State Service. (1) Returning retirees. An employee who was formerly employed under KRS Chapter 18A and who is appointed to a position covered by the provisions of KRS Chapter 18A, while receiving retirement payments through the Kentucky Retirement Systems or Kentucky Teachers Retirement System, shall be appointed in accordance with the provisions for new appointments in this administrative regulation.

(2) Other reentering employees. An appointing authority shall set the salary of a former classified or unclassified employee, other than a returning retiree:

(a) In accordance with the standards used for making new appointments in this administrative regulation; or

(b) Up to a salary formerly paid in the classified or unclassified service, if that salary is within the current pay grade.

Section 3. Salary Adjustments. (1) Promotion.

(a) An employee who is promoted shall receive a five (5) percent increase or an increase to the minimum of the new grade, whichever is greater; ~~or~~[-]

(b) An appointing authority may grant a salary increase of five (5) percent per grade upon promotion; ~~or~~

(c) If sufficient funds are available, an appointing authority may adjust the employee's salary up to the midpoint of the pay grade as long as the increase is greater than the increase specified in subsection (1)(a) of this section.

(2) Demotion. If an employee is demoted, the appointing authority shall determine the salary in one (1) of the following ways:

(a) The employee's salary shall be reduced to a rate that is not below the minimum for the job classification to which the demotion is made; or

(b) The employee shall retain the salary received prior to the demotion. If the employee's salary is not reduced upon demotion, the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel files.

(3) Reclassification.

(a) An appointing authority shall adjust the salary of an employee who is advanced to a higher pay grade through reclassification in one of the following ways:

1. The greater of five (5) percent or the new grade minimum [shall receive a five (5) percent increase or an increase to the minimum of the new grade, whichever is greater.]; ~~or~~

2. The greater of five (5) percent for each grade or the new grade minimum [An appointing authority may grant a salary increase of five (5) percent per grade upon reclassification to a higher grade]; ~~or~~

3. If sufficient funds are available, up to the midpoint of the pay grade as long as the increase is greater than the increase specified in subparagraph 1. of this paragraph .

(b) An employee who is placed in a lower pay grade through reclassification shall receive the same salary received prior to reclassification.

(c) An employee shall not be reclassified from a job classification that does not require the supervision of employees to a job classification that requires the supervision of employees as mandated within the job class specification.

(4) Reallocation.

(a) An employee who is advanced to a higher pay grade through reallocation shall receive a five (5) percent increase or an increase to the new grade minimum, whichever is greater. An appointing authority may grant a five (5) percent increase per grade upon reallocation to a higher grade.

(b) An employee who is placed in a lower pay grade through reallocation shall receive the same salary received prior to reallocation.

(5) Detail to special duty.

(a) An employee who is detailed to special duty in a higher grade shall receive a five (5) percent increase or an increase to the

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minimum of the grade, whichever is greater, for the duration of the period of the detail. An appointing authority may grant a salary increase of five (5) percent per grade for the duration of the detail.

(b) An employee who is detailed to special duty to the same or lower grade shall continue to receive the same salary.

(6) Reversion.

(a) The salary of an employee who is reverted following detail to special duty in a higher pay grade shall be adjusted to:

1. The salary received prior to the detail; and

2. All salary advancements and adjustments which would have been awarded if the detail had not occurred.

(b) The salary of an employee who is reverted from a position in the unclassified service to a position in the classified service shall be adjusted to:

1. The salary received prior to leaving the classified service; and

2. All salary advancements and adjustments which would have been awarded if the individual had remained in the classified service.

(7) Pay grade changes.

(a) If a job classification is assigned to a higher pay grade, the appointing authority shall raise the salary of an employee below the new grade minimum to the new grade minimum. If sufficient funds are available, an appointing authority may uniformly adjust the salary of all employees in that agency in that job classification to:

1. The greater of the new grade minimum or five (5) percent; or

2. The greater of the new grade minimum or ten (10) percent; or

~~3. The greater of the new grade minimum or a dollar amount approved by the secretary.~~

(b) If a job classification is assigned to a lower pay grade, an employee in that job classification shall retain his current salary.

(8) Special entrance rates. If a special entrance rate is established for a job classification, an appointing authority shall adjust the salary of an employee in that job classification, who is below the special entrance rate, to the new rate. If sufficient funds are available, on the same date as the establishment of the special entrance rate, an appointing authority may also grant a salary adjustment equal to the difference between the former entrance rate and the new special entrance rate to other employees in that job classification, except those employees who are on initial probation.

(9) Other salary adjustments.

(a) On the 16th of a month, an appointing authority may grant a five (5) percent salary adjustment to an employee who was eligible for but did not receive an increase upon the completion of six (6) months service following promotion.

(b) On the 16th of a month, an appointing authority may grant a salary adjustment to an employee within an agency who was eligible for, but did not receive at least a five (5) percent advancement as a result of a grade change on or after January 1, 1999. The total adjustment under this provision when combined with an increase at the time of the grade change shall equal five (5) percent of the employee's salary immediately prior to the grade change.

(10) Conversion rule. The salary of an employee whose position changes from a thirty-seven and five-tenths (37.5) hour workweek to a forty (40) hour workweek, or vice versa, shall be converted to accurately reflect the employee's hourly rate of base pay. This conversion shall be applied before applying any other salary adjustment to which the employee is entitled pursuant to this section.

Section 4. Salary Advancements. (1) Initial appointment increase. An appointing authority ~~may~~shall grant a five (5) percent increase to an employee, except an interim employee,:

~~(a) on the first day of the month following completion of six (6) months of service; or~~

~~(b) No later than the first day following twelve (12) months of service.~~

~~(c) If the appointing authority elects not to grant the initial appointment increase upon completion of six (6) months service,~~

~~the increase may be granted on the first day of any month following the date the employee was eligible, but shall be granted no later than the first day following twelve (12) months of service].~~

(2) Six (6) month promotional increase. An employee may receive a five (5) percent increase following the completion of six (6) months service after promotion.

(3) Annual increment dates shall be established as follows:

~~(a) On the first day of the month following completion of the initial probation period~~(the date of receiving an initial appointment increase); or

~~(b) On the first day of the month following completion of twelve (12) months service since receiving the last annual increment for~~by a former employee who is appointed or reappointed, except in the case of an interim employee; or

~~(c) On the first day of the month following completion of twelve (12) months service by~~ an employee, other than an interim employee, who returns from leave without pay.

(4) Annual increment dates shall not change if an employee:

(a) Is in a position which is assigned a new or different pay grade;

(b) Receives a salary adjustment as a result of his position being reallocated;

(c) Is promoted;

(d) Is transferred;

(e) Is demoted;

(f) Is detailed to special duty;

(g) Receives an educational achievement award;

(h) Returns from military leave;

(i) Is reclassified; or

(j) Receives an increase six (6) months following promotion.

(5) Return from leave without pay. An employee, other than an interim employee, returning to duty from leave without pay shall receive an annual increment on the first of the month after receiving compensation in any~~(completing)~~ twelve (12) months~~of service]~~ since the last increment was received.

(6) Service computation. Full-time and part-time service shall be counted when computing service for purposes of determining increment eligibility. Service as an interim employee, or in the former seasonal, temporary, or emergency categories shall not be considered.

(7) Order of calculating increments and other salary increases which occur at the same time. If an employee's increment date occurs on the same date that a salary adjustment or advancement is granted, the increment shall be applied before the adjustment or advancement is added to the employee's salary, except if the adjustment is based on a reversion, pay grade change,~~or~~ a salary schedule change, or establishment of a special entrance rate.

Section 5. Educational Achievement Award. (1) On the 16th of a month, an appointing authority may grant a five (5) percent increase to an employee's base salary based on educational achievement as specified in this section.

(2) An agency may elect not to participate in the educational achievement program if sufficient funds are not available.

(3) An employee shall not receive more than one (1) educational achievement award in a fiscal year.

(4) An employee shall not receive an educational achievement award and an adjustment for continuing excellence (ACE) based on the same training.

(5) By submitting a personnel action to grant an educational achievement award, the appointing authority shall certify that all of the qualifying conditions established by this section for the appropriate type of educational achievement award have been met.

(a) For a high school diploma, high school equivalency certificate, or a passing score on the GED test, the qualifying conditions shall be met if:

1. The employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test:

a. Outside of work hours;

b. While in state service; and

c. After establishing an increment date; and

~~d. On or after January 1, 1984;]~~

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2. The employee has not previously attained a high school diploma, equivalency certificate, or passing score on the GED test; and

3. The employee has not completed college coursework on the undergraduate or graduate level prior to obtaining the high school diploma, equivalency certificate or a passing score on the GED test.

(b) For postsecondary education or training, the qualifying conditions shall be met if:

1. The employee has completed 260 hours of job-related instruction, or the equivalent;

2. The employee began the course work after becoming a state employee and completed the course work after establishing an increment date;

3. The employee has completed the course work within five (5) years of the date on which it was begun;

4. The course work has not previously been applied toward an educational achievement award;

5. The agency has not paid for the course work or costs associated with it, in whole or in part; and

6. The employee was not on educational or extended sick leave when the courses were taken. ~~[(c) For the Kentucky Certified Public Manager Program, the qualifying conditions shall be met if:~~

~~1. The employee has successfully completed the Kentucky Certified Public Manager Program offered by the Governmental Services Center at Kentucky State University; and~~

~~2. The employee has not previously received an educational achievement award for completing the Kentucky Certified Manager Program.]~~

Section 6. Salary Schedule Adjustment. If the secretary authorizes an adjustment of ~~[all grades in]~~ the salary schedule, an appointing authority shall adjust the salaries of all employees below the new minimum rate to the new minimum rate. If sufficient funds are available, the secretary may authorize an appointing authority to grant a salary increase for all employees equal to the difference in the old schedule minimum for the grade and the new schedule minimum for the grade.

Section 7. Maintenance and Maintenance Allowance. If an employee, or the employee and family, is provided with full or partial maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, the maintenance shall be treated as partial payment of wages. The value of those services shall be deducted from the employee's salary in accordance with a maintenance schedule developed by the appropriate appointing authority after consultation with the Secretary of the Finance and Administration Cabinet.

Section 8. Supplemental Premiums. (1) Locality premium. (a) Upon request by an appointing authority, the secretary may authorize the payment of a locality premium for an employee who is regularly or temporarily assigned to work in a job classification, work county, and organizational unit where the agency can demonstrate sustained recruitment and retention issues impacting the mission of the agency.

(b) Once authorized, this premium shall apply to all employees in that organizational unit who are regularly or temporarily assigned to work in the job classification and work county for which the locality premium is approved.

(c) An employee shall not receive a locality premium after transfer, reclassification, reallocation, detail to special duty, promotion or demotion to a position in a job classification, organizational unit, or work county that is ineligible for a locality premium.

(d) The secretary may rescind authorization to pay a locality premium for a job classification at any time.

(e) Locality premium pay shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(2) Shift premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a supplemental premium for an employee who is regularly assigned to work an evening or night shift in that

agency.

(b) Once authorized, this premium shall apply to all employees in that agency who are regularly assigned to work an evening or night shift in a job classification for which the shift premium is approved.

(c) An employee shall not receive a shift premium after shift reassignment, transfer, promotion or demotion to a position that is ineligible for a shift differential premium.

(d) The secretary may rescind authorization to pay shift premium for a job classification at any time.

(e) Shift differential pay shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

~~(3) [(2)]~~ Weekend premium.

(a) Upon request by an appointing authority, the secretary shall authorize the payment of a weekend premium for an employee in a specific job classification who is regularly assigned to work on Saturdays, Sundays, or state holidays as part of the usual work week.

(b) Once authorized, the premium shall apply to all employees in the specified job classifications in that agency who are regularly assigned to work Saturdays, Sundays, or state holidays as part of their usual work week.

(c) An employee shall not receive a weekend premium after reassignment, transfer, promotion, or demotion to a position that is ineligible for weekend premium.

(d) The secretary may rescind authorization to pay weekend premium at any time.

(e) Weekend premium pay shall not be considered part of the employee's base salary or wages and shall not be applied to any leave time usage.

(f) An agency may request, and be authorized for, both shift premium and weekend premium for the same job classifications.

~~(4) [(3)]~~ Multilingual hourly premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a supplemental multilingual hourly premium for an employee who is assigned to complete work duties in a specified foreign language. An employee completing work duties in a specified foreign language shall receive a multilingual hourly premium based on the percentage of time multilingual skills are performed. An employee in a job classification that includes interpreting services as a characteristic of the job on the job class specification shall not be eligible for this premium.

(b) Language proficiency testing shall be completed prior to an employee receiving the multilingual hourly premium. Testing shall indicate a standard level of multilingual proficiency as required by the appointing authority.

(c) An appointing authority shall submit the multilingual premium request to the Personnel Cabinet in writing. The request shall contain, at a minimum:

1. An explanation of the reason or reasons for granting the multilingual premium;

2. The percentage of time the employee will use multilingual skills; and

3. Certification by the appointing authority that the employee has completed multilingual testing and received a standard level of multilingual proficiency rating. This certification shall include the name of the testing facility or organization, the format of the test taken (oral, written, or a combination of oral and written), and the level of proficiency granted in the request for the multilingual premium.

(d) Once authorized, the multilingual hourly premium shall apply to all employees in that agency who are regularly assigned to complete work in a specified foreign language once the employees are individually approved in accordance with this subsection.

(e) An employee shall not receive a multilingual hourly premium after reassignment, reclassification, transfer, promotion, reallocation, or demotion to a position which no longer requires work in a specified foreign language.

(f) An employee who ceases to perform work duties in a specified foreign language shall not be eligible to receive a multilingual hourly premium.

(g) The secretary may rescind the multilingual hourly premium authorization provided to an agency or individual employee at any

time.

(h) The multilingual hourly premium shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

Section 9. Employee Recognition Award (ERA). (1) On the 16th day of a month, an appointing authority may grant an ~~employee recognition award, or~~ ERA~~;~~ in the form of a lump sum payment of any whole percentage from one (1)[up] to ten (10) percent of the grade midpoint under the following conditions:

(a) The employee has established an annual increment date and has worked at least twenty-four (24) consecutive months in KRS Chapter 18A state service, twelve (12) consecutive months of which is in the department or office granting the award;

(b) The employee has not received an ERA~~or a distinguished service award~~ in the preceding twenty four (24) months, nor an Adjustment for Continuing Excellence~~(continuing excellence)~~ (ACE) award in the preceding twelve (12) months; and

(c)1. The appointing authority determines that the employee's acts or ideas have resulted in significant financial savings or improvements in services to the Commonwealth and its citizens;~~or~~

2. The employee has exhibited distinguished performance during participation in special projects that have had a significant beneficial impact on the department, office, or governmental operations;~~or~~

3. The employee has demonstrated a sustained level of exceptional job performance.

(2) An employee shall not be eligible for an ERA under this section for an act or idea that has been approved or submitted for consideration as an Employee Suggestion System Award. An employee who has received an ERA shall not be eligible to be considered for an Employee Suggestion System Award for those acts or ideas upon which the ERA is based.

(3) The granting of an ERA shall be within the sole discretion of the appointing authority.

(4) If an appointing authority grants an ERA, the justification for the award shall be stated in writing, and placed in the employee's personnel files.

(5) An appointing authority shall not grant an ERA to more than twenty-five (25) percent of the total number of full-time employees in a[the] department or office in a calendar year.

(6) An appointing authority shall submit a written justification~~(letter or memorandum)~~ to the Personnel Cabinet~~(cabinet)~~ to award an ERA. The justification~~(letter or memorandum)~~ shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. Sufficient funds are available within the department or office; and

2. The criteria and limitations established in this section have been met.

Section 10. Adjustment for Continuing Excellence (ACE) Award. (1) On the 16th day of a month, an appointing authority may grant a salary adjustment of any whole percentage from one (1)[up] to ten (10) percent of the grade midpoint to a full-time employee's base pay as an ACE award~~[adjustment for continuing excellence award (ACE)]~~ under the following conditions:

(a) The employee has an established annual increment date;

(b) The employee has worked at least twenty-four (24) consecutive months in KRS Chapter 18A state service, twelve (12) consecutive months of which shall have been served in the department or office granting the award;

(c) The employee has not received an ACE award~~or a distinguished service award~~ in the preceding twenty-four (24) months or an ERA~~employee recognition award (ERA)]~~ in the preceding twelve (12) months; and

(d)1. The employee has demonstrated a sustained level of exceptional job performance;

2. The employee has assumed a significant level of additional

job responsibilities or duties consistent with the assigned job classification, and has performed them in an exceptional manner; or

3. The employee has acquired professional or technical skills or knowledge through department or office directed or authorized attainment of a job related licensure, certification, or formal training that will substantially improve job performance.

(2) An employee shall not be eligible for an ACE award under this section if an educational achievement award has been granted for the same training.

(3) The granting of an ACE award shall be within the sole discretion of the appointing authority.

(4) An appointing authority shall not grant an ACE award to more than twenty-five (25) percent of the total number of full-time employees in a department or office, in a calendar year~~, shall not receive an ACE award~~.

(5) An appointing authority shall submit a written justification~~(letter or memorandum)~~ to the Personnel Cabinet~~(cabinet)~~ to grant an ACE award. The justification~~(letter or memorandum)~~ shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. The criteria and limitations established in this section have been met; and

2. Sufficient funds are available within the department's or office's current recurring base budget to support the award.

Section 11. Adoption Benefit Program. The provisions of the Adoption Benefit Program established in 101 KAR 2:120 shall apply to an employee in the unclassified service.~~(1) A state employee who finalizes a legal adoption procedure for the adoption of a child, other than the child of a spouse, on or after November 1, 1998, shall be eligible to receive reimbursement for actual costs associated with the adoption of a special needs child, as defined by KRS 199.555(1), or any other child. Total state funds for this program shall not exceed \$150,000 in a fiscal year.~~

~~(2) The eligible employee shall receive:~~

~~(a) Up to \$5,000 in unreimbursed direct costs related to the adoption of a special needs child; or~~

~~(b) Up to \$3,000 in unreimbursed direct costs related to the adoption of any other child.~~

~~(3) Unreimbursed direct costs related to the adoption of a special needs child or other child shall include:~~

~~(a) Licensed adoption agency fees;~~

~~(b) Legal fees;~~

~~(c) Medical costs;~~

~~(d) Court costs; and~~

~~(e) Other reasonable fees or costs associated with child adoption in accordance with state and federal law and after review and approval by the court at the finalization of the adoption.~~

~~(4) Application for financial assistance shall be made by submitting a completed State Employee Adoption Assistance Application to the Secretary of Personnel along with documentary evidence of:~~

~~(a) Finalization of the adoption;~~

~~(b) Certification by the Secretary of the Cabinet for Health and Family Services that the adopted child is a special needs child, if reimbursement for special needs adoption is sought; and~~

~~(c) A copy of an affidavit of expenses related to the adoption filed with and approved by the court at the time of finalization of the adoption.~~

~~(5) If both adoptive parents are executive branch state employees, the application for financial assistance shall be made jointly and the amount of reimbursement shall be limited to that specified in subsection (2) of this section.~~

~~(6) Upon approval of the application for financial assistance, the employee's agency shall dispense funds in the amount authorized by the Secretary of Personnel.~~

Section 12. Incorporation by Reference. (1) "State Employee Adoption Assistance Application", May 2015, is incorporated by reference.

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~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, Third Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

THOMAS B. STEPHENS, Secretary
MATTHEW G. BEVIN, Governor

APPROVED BY AGENCY: June 5, 2018

FILED WITH LRC: June 12, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2018 at 10:00 a.m. at 501 High Street, 3rd floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on July 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lesley Bilby, Executive Director, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email Lesley.Bilby@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Lesley Bilby

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the compensation plan and pay incentives for employees in unclassified service.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to assure uniformity and equity for administration of the pay plan and pay incentives for unclassified employees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.155 requires the Secretary of Personnel to promulgate administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (t) and (u). KRS 18A.110 requires the secretary to promulgate comprehensive administrative regulations for the unclassified service. KRS 18A.202 authorizes the secretary to implement work-related incentive programs for state employees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation ensures the consistent application and handling of compensation and pay incentives for employees in unclassified service.

(2) If 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 describe the limitation on reclassification to a supervisory position; modify options for salary adjustment due to a pay grade change; make optional the provision for a salary increase after completion of six months of service; clarify provisions for annual increment dates and supplemental premiums; eliminate the Kentucky Certified Manager Program as an option for an Educational Achievement Award; establish a locality premium as a new type of supplemental premium; provide for an Employee Recognition Award based on a sustained level of exceptional job performance; consolidate adoption benefit program requirements into 101 KAR 2:120; and generally correct and update grammar throughout.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify requirements and promote consistency for unclassified compensation and pay incentives.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 18A.155 requires the Secretary of Personnel to promulgate administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (t) and (u). KRS 18A.110 requires the secretary to promulgate comprehensive administrative regulations for the unclassified service. KRS 18A.202 authorizes the secretary to implement work-related incentive programs for state employees.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies requirements and promotes consistency for unclassified compensation and pay incentives.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KRS Chapter 18A employees in unclassified positions within executive branch agencies are subject to the provisions of 101 KAR 3:045.

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

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

(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 anticipated to any entity identified above.

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

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with unclassified employees covered under KRS Chapter 18A.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030(2), 18A.155(1)(b), (e), 18A.110(2), 18A.202(1)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

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

years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the amendments to this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer the amendments to this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**PERSONNEL CABINET
(Amendment)**

101 KAR 3:050. Unclassified service; promotion, transfer, and disciplinary actions.

RELATES TO: KRS 12.040, 12.050, 18A.110, 18A.115, 18A.155

STATUTORY AUTHORITY: KRS 18A.110 (2), 18A.155(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 (2) requires the Secretary of Personnel to promulgate comprehensive administrative regulations for the unclassified service. KRS 18A.155(1) requires the Secretary of Personnel to promulgate administrative regulations for persons in positions as established in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (t), and (u). ~~[KRS 18A.155(2) authorizes administrative regulations pursuant to KRS 18A.155(1), which may be used on behalf of employees as established in KRS 18A.115(1)(a), (b), (d), (e), (p), (u), and (w) and on behalf of members of state boards and commissions that work on a full-time, salaried basis.]~~ This administrative regulation establishes requirements for the employment, promotion, transfer, or discipline of employees in unclassified service.

Section 1. Appointment. (1) An employee appointed to a position in the unclassified service, subject to this administrative regulation, shall meet the minimum requirements established for the class of position to which the appointment is made.

(2) If an interim employee serves in an interim capacity, the interim shall be for less than nine (9) full months in a single department or office during a twelve (12) month period.

(3) An employee appointed to a position subject to this administrative regulation shall serve at the will of the appointing authority and shall be subject to termination without prior notice or cause.

(4) If the appointment is to a position requiring approval pursuant to KRS 12.040 or 12.050, approval shall be obtained prior to the effective date of the appointment.

Section 2. Promotion. (1) A vacant graded position subject to this administrative regulation, other than an interim position, may be filled by promotion from the classified or unclassified service.

(2) If the promotion is to a position requiring approval pursuant to KRS 12.040 or 12.050, approval shall be obtained prior to the effective date of the promotion.

Section 3. Transfer. (1) A vacant position subject to this administrative regulation, other than an interim position, may be filled by transfer within the unclassified service, if in the best interest of the agency.

(2) If the transfer is to a position requiring approval pursuant to KRS 12.040 or 12.050, approval shall be obtained prior to the effective date of the transfer.

Section 4. Demotion. (1) An employee subject to this administrative regulation, other than an interim employee, may be demoted to another position with or without cause on a voluntary or involuntary basis. An involuntary demotion shall be done on an intra-agency basis only.

(2) If the demotion is to a position requiring approval pursuant to KRS 12.040 or 12.050, approval shall be obtained prior to the effective date of the action.

Section 5. Detail to Special Duty. (1) If the services of an employee subject to this administrative regulation, other than an interim employee, are needed in a vacant[an] unclassified position within an agency other than the position to which regularly assigned, the employee may be detailed to that position for a period not to exceed one (1) year with approval of the Secretary of Personnel.

(2) If the detail is to a position requiring approval pursuant to KRS 12.040 or 12.050, approval shall be obtained prior to the effective date of the detail.

(3) The appointing authority shall notify the employee, in writing, of:

(a) The detail to special duty;

(b) The reasons for the action; and

(c) The pay grade of the position to which the employee is detailed, the work week, and the salary.

Section 6. Temporary Overlap. (1) For training purposes or if it is in the best interests of the service, with the ~~[prior]~~ approval of the secretary ~~[of Personnel]~~, an agency may place an employee, other than an interim employee, in an unclassified position currently occupied by another employee. If an employee is so placed, the period [The placement] shall not exceed ninety (90) calendar days[for training purposes].

(2) If the overlap is in a position requiring approval pursuant to KRS 12.040 or 12.050, approval shall be obtained prior to the effective date of the action.

Section 7. Detail to Special Duty with Temporary Overlap. (1) For training purposes or the best interest of the service, with the approval of the secretary, an agency may detail an employee to a position currently occupied by another employee. If an employee is so placed, the period shall not exceed ninety (90) calendar days. This detail with temporary overlap shall not be considered a part of the one (1) year detail to special duty to a vacant position. The detail to special duty with temporary overlap shall be a separate action.

(2) If the overlap is in a position requiring approval pursuant to KRS 12.040 or 12.050, approval shall be obtained prior to the effective date of the action.

(3) The appointing authority shall notify the employee, in writing, of:

(a) The detail to special duty with temporary overlap;

(b) The reasons for the action; and

(c) The pay grade of the position to which the employee is detailed with temporary overlap, the work week, and the salary.

Section 8. Separations. (1) Resignations and retirement.

(a) An employee who decides[desires] to terminate his or her service ~~[with the state]~~ shall submit a written resignation or notice of retirement to the appointing authority.

(b) A resignation or notice of retirement shall be submitted at least fourteen (14) calendar days' before the final working day. A copy of an employee's ~~[resignation or] notice[of retirement]~~ shall be attached to the separation personnel action ~~[effecting the separation]~~ and placed in the personnel files maintained by[shall be filed in the employee's service record in] the agency and the Personnel Cabinet.

(c) Failure of an employee to give fourteen (14) calendar days notice ~~[of resignation or notice of retirement]~~ may result in forfeiture of accrued annual leave, based on:

1. [(a)] If the fourteen (14) day deadline was:

a[1]. Practicable under the circumstances;

b[2]. Appropriate for the situation; and

c[3]. Complied with; or

2. [(b)] If the appointing authority and the employee have agreed that the employee shall retain the leave.

(2) Termination. An employee subject to this administrative regulation may be terminated with or without cause.

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(a) If the appointing authority elects to terminate the employee for cause, the employee shall be provided with notice in writing of the reasons for termination and of the employee's right to appeal to the Personnel Board pursuant to KRS 18A.095.

(b) If the appointing authority elects to terminate the employee without cause, this decision shall be stated in the written notice to the employee.

Section 8. Applicability for ~~Unclassified~~[Classified] Employees. Except as provided in this administrative regulation, the provisions of 101 KAR 2:095, 2:105, ~~2:106~~, 2:140, 2:150 and 2:160 shall apply to an employee in the unclassified service.

THOMAS B. STEPHENS, Secretary
MATTHEW G. BEVIN, Governor

APPROVED BY AGENCY: June 5, 2018

FILED WITH LRC: June 12, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2018 at 10:00 a.m. at 501 High Street, 3rd floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. July 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lesley Bilby, Executive Director, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email Lesley.Bilby@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lesley Bilby

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the employment, promotion, transfer or discipline of employees in unclassified service.

(b) The necessity of this administrative regulation: This regulation is necessary for the effective and proper application of requirements for employees in the unclassified service.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.110 (2) requires the Secretary of Personnel to promulgate comprehensive administrative regulations for the unclassified service. KRS 18A.155(1) requires the Secretary of Personnel to promulgate administrative regulations for persons in positions as established in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (t), and (u).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for the employment, promotion, transfer or discipline of employees in unclassified service. This regulation assists in the effective administration of the unclassified service.

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

(a) How the amendment will change this existing administrative regulation: Along with general maintenance, this administrative regulation is amended to clarify that approval pursuant to KRS Chapter 12 may be required prior to an appointment. This amendment also updates the requirements for timing and notification of detail to special duty. The temporary overlap section is amended to dovetail with the requirements of the overlap provision in the classified service administrative regulation. Finally,

a new section is added to describe the requirements for combining detail to special duty and temporary overlap.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for the effective and proper application of requirements for employees in the unclassified service.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 18A.110 (2) requires the Secretary of Personnel to promulgate comprehensive administrative regulations for the unclassified service. KRS 18A.155(1) requires the Secretary of Personnel to promulgate administrative regulations for persons in positions as established in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (t), and (u).

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies requirements and promotes consistency for unclassified promotion, transfer, and disciplinary actions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KRS Chapter 18A employees in unclassified positions within executive branch agencies are subject to the provisions of 101 KAR 3:050.

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

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

(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 anticipated to any entity identified above.

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

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with unclassified employees covered under KRS Chapter 18A.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.110(2) and 18A.155(1)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No

revenue will be generated.

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

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the amendments to this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer the amendments to this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(Amendment)**

201 KAR 2:015. Continuing education.

RELATES TO: KRS 315.065, 315.120

STATUTORY AUTHORITY: KRS 315.065, 315.110(1), 315.191(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.065(2) and (3) requires the Board of Pharmacy to establish continuing education requirements for pharmacists. This administrative regulation establishes requirements for the continuing pharmacy education of registered pharmacists and requires all registered pharmacists holding a license issued by the board to participate in continuing pharmacy education as a means of renewal of their licenses.

Section 1. Definitions. (1) "Continuing education unit" or "CEU" is defined by KRS 315.010(7).

(2) "Sponsor" means a person, school, association, company, corporation, or group who wishes to develop a continuing education program.

Section 2. (1) Continuing education hours for credit shall be relevant to the practice of pharmacy and free of commercial bias.

(2) Continuing education hours shall be approved if approved by:

(a) The Accreditation Council for Pharmacy Education (ACPE); or

(b) The board, [may be compiled in the following areas if the sponsor grants the participant a certificate of completion: (1) Cassette and audiovisual presentation;

(2) In-company professional seminars;

(3) Accredited school of pharmacy continuing education programs;

(4) Postgraduate courses in pharmaceutical sciences;

(5) Correspondence courses;

(6) Programs granted continuing education credit by other states;

(7) The Accreditation Council for Pharmacy Education;

(8) Continuing education television series;

(9) Programs sponsored by allied professional groups; or

(10) Professional society and association sponsored programs.]

Section 3. (1) Continuing education sponsors shall submit an Application for Provider CE Approval to the board;

(a) At least sixty (60) days prior to the presentation date, if pre-approval is sought; or

(b) Between sixty (60) days prior and thirty (30) days after the presentation date, if pre-approval is not sought [for final accreditation continuing education programs for participants. (1) Programs shall be submitted to the board at least sixty (60) days

prior to planned participation so the participants can know the value of the experience prior to actual participation].

(2) Program changes shall be submitted to and approved [accredited] by the board, or the approval [evaluation and accreditation] of the program shall be void.

(3) Continuing education credit shall be given only once for each program per participant.

(4) Sponsors shall retain a file of each participant's program completion for three (3) years.

(5) Board approval [The board approval] of each program shall expire [at the end of] three (3) years after the date of approval.

Section 4. (1) Pharmacists [Sponsors and pharmacists] requesting approval of individually obtained continuing pharmacy education shall submit an Application for Pharmacist CE Approval to the board within thirty (30) days of completion of the educational presentation [the Kentucky Board of Pharmacy Continuing Education Program Approval Form. Pharmacists shall keep valid records, receipts, and certifications of continuing pharmacy education programs completed for three (3) years and submit the certification to the board on request].

(2) The board shall notify the requesting pharmacist whether the application request has been approved or denied [Submission of a fraudulent statement or certificate concerning continuing pharmacy education shall subject the pharmacist to discipline as provided in KRS 315.121].

(3) Continuing education that has not been approved by ACPE or the board shall not be used to meet continuing education requirements for renewal or issuance of a license.

Section 5. (1) A pharmacist shall:

(a) Complete a minimum of one and five-tenths (1.5) CEU (fifteen (15) contact hours) annually between January 1 and December 31; and

(b) Not transfer or apply excess hours or units for future years.

(2) A pharmacist may be granted a deferral on a year-to-year basis at the discretion of the board for illness, incapacity, or other extenuating circumstances.

(3) A pharmacist first licensed by the board within twelve (12) months immediately preceding the annual renewal date shall be exempt from the continuing pharmacy education provisions for that year.

(4) Pharmacists shall keep valid records, receipts, and certifications of continuing pharmacy education programs completed for three (3) years and submit that documentation to the board on request.

(5) Submission of a fraudulent statement or certificate concerning continuing pharmacy education shall subject the pharmacist to discipline as provided in KRS 315.121.

Section 6. All pharmacists shall keep the board informed of their correct addresses.

Section 7. CEU may be transferred from another state to Kentucky if the transfer state recognizes Kentucky CEU.

Section 8. A licensee who failed to timely renew his or her license shall:

(1) Comply with the applicable provisions of KRS 315.120(2) or (3); and

(2) Complete fifteen (15) hours of continuing education for each year the applicant failed to renew his or her license, up to a maximum of seventy-five (75) hours.

Section 9. Incorporation by Reference. (1)(a) The "Application for Provider CE Approval", June 2018, [Kentucky Board of Pharmacy Continuing Education Program Approval Form", 2002,] is incorporated by reference.

(b) The "Application for Pharmacist CE Approval", June 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, Frankfort, Kentucky

VOLUME 45, NUMBER 1 – JULY 1, 2018

40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CATHY HANNA, R.Ph., President

APPROVED BY AGENCY: May 16, 2018

FILED WITH LRC: June 7, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2018, at 9 a.m. at the board's office, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry Hadley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes continuing education requirements.

(b) The necessity of this administrative regulation: KRS 315.065(2) and (3) requires the board to promulgate a regulation that includes guidelines and criteria for reviewing and approving acceptable continuing education programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes guidelines and criteria for reviewing and approving acceptable continuing education programs as required by KRS 315.065(2) and (3).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Pharmacists will understand continuing education requirements necessary for renewal of licenses.

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

(a) How the amendment will change this existing administrative regulation: The amendments better clarify continuing education requirements.

(b) The necessity of the amendment to this administrative regulation: The criteria needed to be updated for a better understanding of continuing education requirements and procedures for approval.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.065(2) and (3) requires the board to promulgate a regulation that includes guidelines and criteria for reviewing and approving acceptable continuing education programs; the amendments include guidelines and criteria to review and approve acceptable continuing education programs.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will help pharmacists to better understand continuing education requirements necessary for renewal of licenses.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates approximately 100 pharmacists and sponsors will apply for continuing education credit 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: Pharmacists or sponsors will submit applications for continuing education credit.

(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 expected costs for the identities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Pharmacists will receive continuing education credit required for renewal.

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

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding to enforce the 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 required because of this new regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacists and sponsors that desire approval for continuing education credit.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.065(3) requires the board to establish continuing education requirements.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the board 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 not generate revenue for the board in subsequent years.

(c) How much will it cost to administer this program for the first year? No costs are required to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No costs are required 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. N/A

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)**

301 KAR 1:115. Propagation of aquatic organisms.

RELATES TO KRS ~~[150.025, 150.280,]~~ 150.290, 150.485
STATUTORY AUTHORITY: KRS 150.025, 150.180, 150.280,
150.450, 50 C.F.R. 17.11

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations regarding the buying, selling, and transporting of fish and wildlife, restrict the places where taking is permitted, and to make administrative regulations apply to a limited area or to the entire state. KRS 150.180 authorizes the department to promulgate administrative regulations regarding the buying, selling, and transporting of mussels and fishes by licensed fish propagation permit holders. KRS 150.280 authorizes the department to promulgate administrative regulations governing the propagation or holding of protected wildlife. KRS 150.450 requires the department to promulgate reasonable administrative regulations governing the taking of minnows and crayfish from the waters of the Commonwealth. 50 C.F.R. 17.11 establishes federally threatened and endangered fish species[provides that no person shall propagate or hold wildlife without a permit]. This administrative regulation establishes the requirements for obtaining a propagation permit for aquatic organisms and establishes the requirements for propagation[that shall be followed by] permit holders.

Section 1. Definitions. (1) "Aquatic organisms" means fishes, frogs, crayfish and other aquatic vertebrates and invertebrates.

(2) "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; or

(b) Redear sunfish less than six (6) inches in length["Minnows" are defined in 301 KAR 1:130].

(3) "Permit" means a fisheries commercial propagation permit.

(4) "Water supply lake" means a lake that[is]:

(a) Is owned by a municipality or other public water supply entity;

(b) Provides potable water supply for the public;

(c) Is not owned by the state; and

(d) Is not managed by the department.

Section 2. Permit Requirements and Application Procedures.

(1) Before acquiring or propagating aquatic organisms, a person shall obtain a permit from the department by:

(a) Completing an application provided by the department; and

(b) Paying the permit fee as established in 301 KAR 3:022.

(2) The department shall issue a free permit to elementary, middle, and secondary schools and similar educational institutions if the propagated organisms are to be used for educational purposes[A permit applicant shall obtain the permit application form from the department].

Section 3. Acquisition of Brood Stock from Public Waters. (1) A permit holder may obtain from public waters a maximum of 1,500 live bait fishes or crayfish per surface acre of water used for propagation of a particular species.

(2) Each permit holder shall obtain brood stock from public waters no more than one (1) time for both live bait fishes[minnows] and crayfish.

(3) A conservation officer shall supervise the acquisition of brood stock from public waters.

(4) A permit holder shall use gear as established in[authorized by] 301 KAR 1:130 to acquire aquatic organisms from public waters. ~~[(a) Upon request at the time of application for a permit, the department may authorize an applicant to use seines larger than ten (10) feet in length, gillnets, and other fish collection gear.~~

~~(b) A permit holder shall attach a metal tag, furnished by the department, to authorized seines over ten (10) feet, gillnets, and other fish collection gear showing:~~

~~1. The name of the owner;~~

~~2. Gear type; and~~

~~3. The date the permit expires.~~

~~(c) A permit holder shall use approved fish collection gear in waters designated in the application.]~~

~~(5)[Section 4. Sale of Aquatic Organisms.] A permit holder may sell propagated aquatic organisms. [Section 5. The department may issue a permit with no fee to elementary, middle and secondary schools and similar educational institutions if the propagated organisms are to be used for educational purposes.]~~

Section 4[6]. A person may request a[The commissioner may grant approval and issue a] permit for paddlefish to be stocked and reared in a[approved] water supply lake[lakes] for aquaculture purposes as established[provided for] in 301 KAR 1:110 by completing a permit application and submitting it to the department.

(1) A municipality may allow a permitted second party to rear paddlefish[if the commissioner grants approval and issues a permit for paddlefish to be stocked and reared] in a[an approved] water supply lake.

(2) If a municipality or other public water supply entity allows a second party to rear paddlefish, a contractual agreement between the two (2) granting permission to use the lake for rearing paddlefish shall be required for the extent of the rearing period. A copy of the contractual agreement shall be submitted to the department before a permit is issued.

(3) Water supply lakes that are currently open to sport fishing shall be required to remain open to sport fishing throughout the length of the rearing of paddlefish.

(4) Paddlefish shall be the only species permitted to be stocked by the permit holder in a[the approved] water supply lake[lakes].

(5) The number of paddlefish stocking events for each rearing period shall be limited to one (1) for each approved water supply lake. Any additional stocking events shall require prior approval by the commissioner.

(6) The permit applicant shall list the name of each water supply lake on the permit application.

(7) A permit shall be obtained for every year of the paddlefish rearing period.

(8) The department shall not:

(a) Enforce the protection of the stocked paddlefish; or

(b) Establish paddlefish sport fish administrative regulations in any of the[approved] water supply lakes.

(9) Paddlefish that escape in the stream, either above or below the lake, shall not be considered property of the permit holder.

(10) The department shall not be responsible for any corrective actions associated with fish populations in the[approved] water supply lakes used for aquaculture purposes.

(11) If a municipality rears paddlefish without a contractual agreement with a second party, it shall provide the department with a name of a person responsible for the rearing of the paddlefish in the [approved] water supply lake[lakes].

(12) A permit holder may use gill nets to take paddlefish only from the[approved] water supply lakes listed on the permit. A permit holder or a designated representative in possession of a valid copy of the permit shall be on site each time gill nets are used in the[approved] water supply lakes.

(a) The department shall be notified at least three (3) days[one (1) week] in advance of any paddlefish harvest from a[approved] water supply lake[lakes], including the random sampling of the stocked paddlefish that require the use of gill nets.

(b) Gill nets shall only be used in a[the approved] water supply lake[lakes] from November[December] 1 through March 31.

(c) Gill nets shall not have a bar mesh size smaller than five (5) inches.

(d) A permit holder shall attach a metal tag provided by the department to each gill net used.

(e) Paddlefish shall be the only species of fish harvested, and[:] any other species of fish captured shall be immediately released without undue injury.

Section 5[7]. Inspection of Facilities and Revocation of Permits.

(1) A permit holder shall allow a conservation officer to inspect his

or her facilities.

(2) The department shall:

(a) Revoke the permit of a person who violates~~[found guilty of violating]~~ a statute or administrative regulation pertaining to propagation of aquatic organisms;~~[and]~~

(b) Deny a permit for a person who has violated any department statute or administrative regulation within the last year;~~and~~

(c) Not renew the permit for a period of up to two (2) years of a person that has been found guilty of violating a statute or administrative regulation pertaining to propagation of aquatic organisms.

(3) Fees paid for revoked permits shall not be refunded.

(4) An individual whose permit has been denied,~~[or]~~ revoked, or to whom a non-renewal period has been applied may request an administrative hearing pursuant to KRS Chapter 13B.

Section ~~(6)~~[8]. Incorporation by Reference. (1) "Fisheries Commercial Propagation Permit Application", 2006 ~~edition, [Department of Fish and Wildlife Resources,]~~ is incorporated by reference.

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

FRANK JEMLEY III, Acting Commissioner
REGINA STIVERS,

For DON PARKINSON, Secretary

APPROVED BY AGENCY: June 12, 2018

FILED WITH LRC: June 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2018 at 9:00 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 July 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for obtaining a permit to propagate aquatic organisms and the associated requirements for all permit holders.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish minimum standards for fisheries propagation permit holders and to help conserve native aquatic resources.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to promulgate administrative regulations regarding the buying, selling, and transporting of fish and wildlife, restrict the places where taking is permitted, and to make administrative regulations apply to a limited area or to the entire state. KRS 150.180 authorizes the department to promulgate administrative

regulations regarding the buying, selling, and transporting of mussels and fishes by licensed fish propagation permit holders. KRS 150.280 authorizes the department to promulgate administrative regulations governing the propagation or holding of protected wildlife. KRS 150.450 requires the department to promulgate reasonable administrative regulations governing the taking of minnows and crayfish from the waters of the Commonwealth. 50 C.F.R. 17.11 establishes federally threatened and 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 the statutes by providing individuals the ability to propagate and hold native aquatic species.

(2) If 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 allow a designated representative to be on site in place of the permit holder when paddlefish are harvested from permitted water supply lakes. This amendment will also change the starting date for paddlefish harvest to November 1 and will allow permit holders to give the department notice of intent to harvest paddlefish within three days instead of one week. The definition of "minnows" in Section 1 was changed to "live bait fishes" to match a change that was made to Section 1 of 301 KAR 1:130 for consistency.

(b) The necessity of the amendment to this administrative regulation: This amendment addresses several concerns reservoir ranchers had with the regulated paddlefish harvesting process. It lessens the harvesting notification period, provides another month of paddlefish harvesting, and allows the permit holder to stay at their processing facility while a designated representative is on site during the harvest process.

(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 people wanting to rear paddlefish in water supply lakes for commercial aquaculture purposes 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: Reservoir ranchers will now only have to provide a three-day notice of intent to harvest paddlefish. In addition, paddlefish harvest can begin one month earlier, and a designated representative can be used during the paddlefish harvest process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the entities identified in question (3) to comply with this regulation amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Reservoir ranchers can schedule their paddlefish harvest with less restrictions, can harvest paddlefish for an extra month, and can utilize a designated representative during the paddlefish harvest process.

(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 cost on a continuing basis to the Department.

(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 propagate aquatic organisms or raise paddlefish in permitted water supply lakes 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, 150.180, 150.280, 150.450, 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:

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Regulation and Inspection
(Amendment)

302 KAR 29:020. General provisions for structural pest control.

RELATES TO: KRS Chapter 217B, 7 U.S.C. 136I, 49 U.S.C. 51

STATUTORY AUTHORITY: KRS 217B.050
NECESSITY, FUNCTION AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. This administrative regulation establishes requirements for recordkeeping, the storage and handling of restricted use[restricted-use] pesticides, trainee supervision, and certification denial, suspension, modification, or revocation.

Section 1. Pesticide Sales Agents. There shall be two (2) classifications of pesticide sales agent licenses: resident pesticide sales agent and remote pesticide sales agent. (1) An individual located within the Commonwealth of Kentucky who sells or

distributes restricted use pesticides or sells and makes recommendations for the use or application of pesticides to the final user shall be licensed as a resident pesticide sales agent.

(2) An individual located outside the Commonwealth of Kentucky who sells or distributes restricted use pesticides for delivery within the Commonwealth of Kentucky or sells and makes recommendations for the use or application of pesticides to the final user accepting delivery within the Commonwealth of Kentucky shall be licensed as a remote pesticide sales agent.

(3) An individual located outside the Commonwealth of Kentucky and employed by a dealer registered in Kentucky may be licensed as a resident pesticide sales agent.

(4) A resident pesticide sales agent license or remote pesticide sales agent license shall not be issued unless the applicant holds a valid Category 12 certification as provided in 302 KAR 28:050.

(5) An employee or agent of a manufacturer who sells pesticides solely to a dealer for redistribution or resale shall be exempt from licensure under this administrative regulation.

Section 2. Recordkeeping Requirements. (1) Pesticide sales agents. A remote pesticide sales agent shall provide his license number to the purchaser at the commencement of the transaction and upon delivery of the pesticides, and shall have and maintain a system to ensure restricted use pesticides are delivered only to properly certified individuals. A resident pesticide sales agent or remote pesticide sales agent who is not employed by a dealer shall maintain the following records with respect to each sale of restricted use pesticides:

- (a) Brand, amount, and type of restricted use pesticide sold;
- (b) Buyer's name and address;
- (c) Certification number of the purchaser; and
- (d) Intended use: target pest or resale.

(2) Commercial and noncommercial structural applicators. All commercial and noncommercial structural applicators who apply pesticides or any termiticides shall maintain the following records:

- (a) Date of application;
- (b) Name and address of person receiving services and location of performance of services;
- (c) Beginning[time of application] and ending time of an application, if made in a school;
- (d) The target pests to be treated;
- (e) Brand or product name of pesticides applied;
- (f) A description of the use of the area where the pesticide application is made;
- (g) Estimated amount of each pesticide applied; and
- (h) Name of applicator.

(3) Retention. All persons required to maintain records under subsection (1) of this section shall retain the records for a period of two (2) years from the date of the sale and shall submit copies monthly to the Department of Agriculture, Division of Pesticide Regulation, Frankfort, Kentucky 40601. All persons required to maintain records under subsection (2) of this section shall retain the records for a period of three (3) years from the date of use or application. Maintenance of duplicate records shall not be required. If a use or application of a pesticide is made in the name of a person or business entity, maintenance of only one (1) set of records for each job or use shall be required by that person or business entity, even though one or more persons may have used or applied pesticides.

(4) Availability. Records required under this section shall be made available to the department upon request.

Section 3. Storage and Handling of Pesticides. (1) Applicability. This administrative regulation shall apply to all persons holding a Category 7(a), Category 7(b), Category 8, or Category 12 license who have occasion to store pesticides.

- (2) Standards for storage:
 - (a) Sites for the storage of pesticides shall be of sufficient size to store all stocks in designated areas;
 - (b) Storage sites shall be cool, dry, and airy or have an exhaust system installed to reduce concentrations of toxic fumes and to regulate temperatures and moisture. If an exhaust system is installed to reduce fumes, heat, or moisture, the ventilation exhaust

shall not connect with offices or other areas frequented by people;

(c) Storage sites shall be adequately lighted so that labels and label information can be easily read;

(d) Floor sweep compound of adsorptive clay, sand, sawdust, hydrated lime, or similar materials shall be kept on hand to absorb spills or leaks. The contaminated material shall be disposed of per label directions; and

(e) ~~Restricted use~~Restricted-use pesticides shall be located in designated and segregated areas apart from general use pesticides. These segregated areas may remain open if the entire storage area is locked when authorized personnel cannot control access to the area. Entrance to these segregated areas shall be plainly labeled on the outside with signs containing the words "pesticide storage area" and "danger" or "poison."

(3) Standards for transportation of pesticides. All pesticides transported on or in vehicles owned or operated by commercial structural applicators shall be transported consistent with 49 U.S.C. 51.

Section 4. Denial, Suspension, or Revocation of Pesticide Certification. The department shall review for possible denial, suspension, or revocation, the license or certification of any person if the licensee or certified person has been convicted or is subject to a final order imposing a civil or criminal penalty pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act of 1972, as amended, 7 U.S.C. 136l.

Section 5. Pesticide Application by Structural Commercial and Noncommercial Applicators. Any person governed by this administrative regulation shall be certified in Category 7(a), Structural Pest Control, pursuant to 302 KAR 29:060, before making application of pesticides to a structure, except new employees being trained pursuant to KRS 217B.560.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: June 14, 2018

FILED WITH LRC: June 14, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2018, at 10:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation creates the general provisions for structural pest control.

(b) The necessity of this administrative regulation: This regulation is necessary for the clear communication of requirements for structural pest control applications and the record keeping requirements thereof.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 217B authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for pesticide application. This administrative regulation establishes the general provisions for structural pest control.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of requirements for structural pest control applications and the record keeping requirements thereof.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes the time record keeping requirement for structural applications made in places other than schools.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary due to reduce the volume of records required by regulation that are not required by the pesticide label.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 217B authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for application. This administrative regulation amendment alters one of these requirements.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation removes a record requirement that is not required by the product label.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: No more than 2,142 possible current applicators, and the KDA.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, 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: Participants will spend nothing additional to comply with this regulation. The record will simply not require the application times be recorded for non-school applications.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of reduced volume of the record, and the time to complete that portion.

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

(a) Initially: No additional cost to this program.

(b) On a continuing basis: No additional cost to this program.

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

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

(9) TIERING: Is tiering applied? No. All regulated entities have 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 Kentucky Department of Agriculture.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 217B.

(3) Estimate the effect of this administrative regulation on the 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 is associated with this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is associated with this amendment.

(c) How much will it cost to administer this program for the first year? No additional costs are anticipated, and this is an ongoing program.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated, and this is an ongoing program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189A.500 requires the Transportation Cabinet to promulgate administrative regulations to carry out provisions regarding the implementation of the commonwealth's ignition interlock program for motor vehicle drivers who violate KRS 189A.010. This administrative regulation establishes the duties and responsibilities of ignition interlock device providers wishing to enter into an agreement with the Commonwealth of Kentucky and the Transportation Cabinet for the administration and implementation of the ignition interlock device program and requirements for certifying ignition interlock devices under this program. This administrative regulation also establishes the requirements for a defendant charged with a violation of KRS 189A.010 to obtain an ignition interlock device and license[KRS 189A.085 states that, after a license plate suspension by a judge pursuant to that provision, the circuit court clerk shall transmit surrendered plates to the Transportation Cabinet in the manner set forth by the Transportation Cabinet in administrative regulation. KRS 189A.340(4)(f) states that the Transportation Cabinet shall promulgate administrative regulations to carry out the provisions of that subsection regarding interlock devices. This administrative regulation outlines the procedure for surrendering plates to the Transportation Cabinet pursuant to court order, providing registration information on a convicted violator to the court, approving interlock device manufacturers, installers, and servicing entities and making an approved list available to the public].

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

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

(3) "Defendant" means an individual who is determined to be eligible and who is ordered by the court to drive only motor

vehicles that have certified ignition interlock devices installed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Diagnostic trouble shooting;

(b) Repair or replacement of a malfunctioning device; or

(c) Removal of a device from an inoperable vehicle.

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

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

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

(25) "Technician" means a service provider employee or contractor who installs, calibrates, and removes ignition interlock devices within the Commonwealth of Kentucky.

(26) "Violation" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) A defendant seeking a medical accommodation due to diminished lung capacity shall submit with the application a completed Breath Alcohol Ignition Interlock Physician Statement, TC 94-176.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) An ignition interlock device provider seeking certification to provide devices and services within the commonwealth shall comply in all respects with the requirements of solicitation issued by the cabinet. Non-compliance shall result in a denial of certification.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Device tampering or circumvention violations; or

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

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

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

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

(b) Device rental on a monthly basis;

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

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

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

(f) Missed appointments without notice;

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

(h) Device removal.

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

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

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

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

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

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

(7) An ignition interlock device provider shall ensure that technicians installing the device:

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

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

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

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

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

(8) The cabinet shall:

(a) Maintain a periodically updated, rotating list of certified ignition interlock device providers and approved facilities available

at <http://drive.ky.gov>:

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

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

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

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

(a) Photo identification;

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

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

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

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

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

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

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

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

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

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

(a) A device in use by that provider and previously certified by the cabinet is discontinued by the manufacturer or device provider;

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

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

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

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

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

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

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

(i) The device provider requests a voluntary suspension.

(2)(a) The device provider shall be given thirty (30) days

written notice of the existence of one (1) or more of the conditions specified in subsection (1) of this section by letter from the Commissioner of the Department of Vehicle Regulation, served by certified mail, and an opportunity to respond to the allegations or correct the deficiencies within that period.

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

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

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

(a) Providing notice to defendants; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(1) Upon receipt of a request for a vehicle registration inventory from a court, the Transportation Cabinet shall:~~

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

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

~~(c) Return the results of the search to the court by 12 noon Eastern time, the next working day after the request is received, provided the request is received by 12 noon Eastern time. Requests received after 12 noon Eastern time shall be returned to the court by the close of business the second working day after they are received.~~

~~(2) Upon receipt of a court order suspending a licensee's plates, pursuant to KRS 189A.085, the Transportation Cabinet shall suspend the licensee's registration. The cabinet shall not suspend the registration of any person pursuant to KRS 189A.085 unless a court order has been received.~~

~~(3) The court shall return all confiscated license plates to the Transportation Cabinet. The cabinet shall bear the responsibility for reasonable postage or shipping costs for the return of all confiscated license plates.~~

~~(4) After the motor vehicle registration suspension period has expired, the county clerk shall reissue a motor vehicle registration plate and registration receipt upon the request of the vehicle owner as follows:~~

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

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

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

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

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

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

~~(d) The ignition interlock device shall prevent engine ignition if the device has not been calibrated within a period of ninety-seven (97) days subsequent to the last calibration;~~

~~(e) The ignition interlock device shall:~~

- ~~1. Record each time the vehicle is started;~~
- ~~2. Record results of the alcohol concentration test;~~
- ~~3. Record how long the vehicle is operated; and~~
- ~~4. Detect any indications of bypassing or tampering with the~~

~~device;~~

~~(f) The ignition interlock device shall permit a sample free restart for a period of two (2) minutes or less after a stall;~~

~~(g) The ignition interlock device shall require:~~

~~1. That the operator of the vehicle submit to a retest within ten (10) minutes of starting the vehicle;~~

~~2. That retests continue at intervals not to exceed sixty (60) minutes after the first retest;~~

~~3. That retests occur during operation of the vehicle; and~~

~~4. That the device enter a lockout condition in five (5) days if a retest is not performed or the results of the test exceeds the maximum allowable alcohol concentration;~~

~~(h) The ignition interlock device shall be equipped with a method of immediately notifying peace officers:~~

~~1. If the retest is not performed; or~~

~~2. If the results exceed the maximum allowable alcohol concentration; and~~

~~(i) The ignition interlock device shall include instructions recommending a fifteen (15) minute waiting period between the last drink of an alcoholic beverage and the time of breath sample delivery into the device.~~

~~(2) An ignition interlock device shall be:~~

~~(a) Installed by the manufacturer or by private sector installers in conformance with the prescribed procedures of the manufacturer; and~~

~~(b) Be used in accordance with the manufacturer's instructions.~~

~~(3)(a) An ignition interlock device shall be calibrated at least once every ninety (90) days to maintain the device in proper working order.~~

~~(b) The manufacturer or installer shall calibrate the device or exchange the installed device for another calibrated device in lieu of calibration.~~

~~(c) The record of installation and calibration shall be kept in the vehicle at all times for inspection by a peace officer and shall include the following information:~~

~~1. Name of the person performing the installation and calibration;~~

~~2. Dates of activity;~~

~~3. Value and type of standard used;~~

~~4. Unit type and identification number of the ignition interlock device checked; and~~

~~5. Description of the vehicle in which the ignition interlock device is installed, including the registration plate number and state, make, model, vehicle identification number, year and color.~~

~~(4) An ignition interlock device in a lockout condition shall be returned to the site of installation for service.~~

~~Section 3. Division of Driver Licensing Requirements. (1) The Division of Driver Licensing shall maintain a list of all manufacturers of ignition interlock devices meeting the requirements of this administrative regulation who have provided documentation to the division confirming that they offer appropriate ignition interlock devices and related services within the Commonwealth.~~

~~(2) The list of manufacturers who provide appropriate devices, approved installers, and servicing and monitoring entities shall be published and periodically updated by the Division of Driver Licensing on the Transportation Cabinet Web site.~~

~~(3) The Division of Driver Licensing shall provide a notation on the face of the operator's license stating that:~~

~~(a) The licensee is required by order of the court to be using a vehicle with an ignition interlock device; and~~

~~(b) The license has been granted an exception for employment purposes pursuant to KRS 189A.340, if granted by the court.~~

~~(4) Manufacturers, installers, and servicing and monitoring entities shall apply to the Division of Driver Licensing for approval and placement on the list maintained by the cabinet.~~

~~Section 4. Incorporation by Reference. (1) Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDS), 57 FR 11772-11787 (April 7, 1992), 40 pages, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained,~~

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subject to applicable copyright law, at the Transportation Cabinet, Division of Driver Licensing, 2nd Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.]

GREG THOMAS, Secretary
MATTHEW D. HENDERSON, Commissioner
D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: June 6, 2018

FILED WITH LRC: June 13, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2018 at 10:00 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: D. Ann Dangelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, email Ann.Dangelo@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the administration and implementation of the ignition interlock program.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 189A.500.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes forms, creates a uniform certificate of installation for ignition interlock devices, certifies the devices approved for use in the Commonwealth, and creates an ignition interlock license to be issued upon court approval.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the regulatory requirements of KRS 189A.500.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary:

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the Commissioner's role in the submission of transfer plans by providers in Section 7.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to amend Section 7 (6)(d) that currently requires the Commissioner to approve, rather than to simply review a transfer plan.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 189A.500 that requires the cabinet to implement the ignition interlock program. (d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify provisions in the current administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect:

companies desiring to provide ignition interlock devices and services within Kentucky; motor vehicle drivers who violate KRS 189A.010 (defendants); the cabinet's Division of Drivers Licensing within the Division of Vehicle Regulation; circuit clerks, and the Administrative Office of the Courts.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Companies desiring to provide ignition interlock devices and services will apply to the cabinet for device certification and authorization; defendants will apply for both the ignition interlock device and authorization to operate with an ignition interlock license pursuant to court order; divisions within the department will approve and process the application forms; and circuit clerks will issue the ignition interlock licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Defendants will pay device and servicing fees pursuant to KRS 189A.500, and an application fee in the amount of \$105 pursuant to KRS 189A.420(6).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If eligible pursuant to KRS chapter 186, defendants will be approved to drive with an Ignition Interlock license; businesses desiring to provide Ignition Interlock devices and services will be granted certification for devices and authority to provide services.

(5): Provide an estimate of how much it will cost the administrative body to implement the administrative regulation:

(a) Initially: Inspections, mailing of documents and staff time necessary to begin processing applications is estimated at \$525,000.

(b) On a continuing basis: \$105 per defendant and up to approximately \$525,000 annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Initially FHWA – Hazard Elimination Fund. There is presently no appropriation in place to administer or enforce this program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An appropriation will be needed to maintain this program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative fees created herein are pursuant to statute to offset any costs to KYTC.

(9) TIERING: Is tiering applied? No tiering is required for device providers. All device providers meeting or exceeding the qualifications will be treated the same. Tiering for defendants in this program is pursuant to statute and judicially determined indigency status.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? KYTC Department of Vehicle Regulation, Division of Driver Licensing, the Circuit Clerks, Administrative Office of the Courts, County Attorneys.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 189A.500(1)(f).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. For local government, costs should be minimal as the process is judicially driven and the regulatory actions will be performed within the context of DUI prosecutions.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for the first year? This administrative regulation is not expected to generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation is not expected to generate revenue.

(c) How much will it cost to administer this program for the first year? Up to approximately \$525,000.

(d) How much will it cost to administer this program for subsequent years? Unknown.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No revenues will be generated by this program.

Expenditures (+/-): Additional programming to the driver licensing system will need to be implemented. The cost is unknown.

Other Explanation: The cabinet is unsure precisely how many defendants will move for eligibility under this program and whether efficiencies can be achieved if they do.

LABOR CABINET
Department of Workers' Claims
(Amendment)

803 KAR 25:089. Workers' compensation medical fee schedule for physicians.

RELATES TO: KRS 342.0011(32), 342.019, 342.020, 342.035
STATUTORY AUTHORITY: KRS 342.020, 342.035(1), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035(1) requires the commissioner of the Department of Workers' Claims to promulgate administrative regulations to ensure that all fees, charges and reimbursements for medical services under KRS Chapter 342 are limited to charges that are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. KRS 342.035(4) requires the commissioner to promulgate an administrative regulation establishing the workers' compensation medical fee schedule for physicians. Pursuant to KRS 342.035, a schedule of fees is to be reviewed and updated, if appropriate, every two (2) years on July 1. This administrative regulation establishes the medical fee schedule for physicians.

Section 1. Definitions. (1) "Medical fee schedule" means the 2018 Kentucky Workers' Compensation Schedule of Fees for Physicians~~[2016 Kentucky Workers' Compensation Fee Schedule for Physicians]~~.

(2) "Physician" is defined by KRS 342.0011(32).

Section 2. Services Covered. (1) The medical fee schedule shall govern all medical services provided to injured employees by physicians under KRS Chapter 342.

(2) The medical fee schedule shall also apply to other health care or medical services providers to whom a listed CPT code is applicable unless:

(a) Another fee schedule of the Department of Workers' Claims applies;

(b) A lower fee is required by KRS 342.035 or a managed care plan approved by the commissioner pursuant to 803 KAR 25:110; or

(c) An insurance carrier, self-insured group, or self-insured employer has an agreement with a physician, medical bill vendor, or other medical provider to provide reimbursement of a medical bill at an amount lower than the medical fee schedule.

Section 3. Fee Computation. (1) The appropriate fee for a procedure or item covered by the medical fee schedule shall be the Maximum Allowable Reimbursement (MAR) listed in the 2018

Kentucky Workers' Compensation Schedule of Fees for Physicians for those procedures or items for which a specific monetary amount is listed~~[obtained by multiplying a relative value unit for the medical procedure by the applicable conversion factor]; and~~

(2) Procedures Listed Without Specified Maximum Allowable Reimbursement Monetary Amount: The appropriate fee for a procedure or item for which no specific monetary amount is listed shall be determined and calculated in accordance with numerical paragraph six (6) of the General Instructions of the medical fee schedule unless more specific Ground Rules are applicable to that service or item, in which case the fee shall be calculated in accordance with the applicable Ground Rules;~~[The resulting fee shall be the maximum fee allowed for the service provided.]~~

(3) The resulting fee shall be the maximum fee allowed for the service provided.

Section 4. (1) A physician or healthcare or medical services provider located outside the boundaries of Kentucky shall be deemed to have agreed to be subject to this administrative regulation if it treats a patient~~[accepts a patient for treatment]~~ who is covered under KRS Chapter 342.

(2) Pursuant to KRS 342.035, medical fees due to an out-of-state physician or healthcare or medical services provider shall be calculated under the fee schedule in the same manner as for an in-state physician.

Section 5. Incorporation by Reference. (1) "2018 Kentucky Workers' Compensation Schedule of Fees for Physicians", the edition effective July 1, 2018,~~["2016 Kentucky Workers' Compensation Fee Schedule for Physicians", May 12, 2016 edition,]~~ is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT L. SWISHER, Commissioner

APPROVED BY AGENCY: June 11, 2018

FILED WITH LRC: June 11, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, July 26, 2018, at 1:00 p.m. (EDT) at the offices of the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, 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 July 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: B. Dale Hamblin, Jr., Assistant General Counsel, Workers' Claims Legal Division, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, email dale.hamblin@ky.gov, phone (502) 782-446, fax (502) 564-0681.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. Dale Hamblin, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates the medical fee schedule for physicians and the requirements for using the fee schedule.

(b) The necessity of this administrative regulation: Pursuant to KRS 342.035, the commissioner is required to promulgate an administrative regulation regarding fee schedules.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: This administrative regulation incorporates the extensive fee schedule for physicians and requirements for the fee schedule.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It is imperative to have fee schedules to control the medical costs of the workers' compensation system. Injured employees should receive quality medical care and physicians should be appropriately paid.

(2) If 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 medical fee schedule has been updated and will be incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The statute requires the schedule of fees to be reviewed and updated every two (2) years, if appropriate.

(c) How the amendment conforms to the content of the authorizing statutes: The schedule of fees has been appropriately updated to insure that medical fees are fair, current, and reasonable for similar treatment in the same community for general health insurance payments.

(d) How the amendment will assist in the effective administration of the statutes: The schedule of fees assists the workers' compensation program by updating fees for physicians to insure injured workers get qualified and appropriate medical treatment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All physicians and medical providers providing services to injured workers pursuant to KRS Chapter 342, injured employees, insurance carriers, self-insurance groups, and self-insured employers and employers, third party administrators.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, 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: Insurance carriers, self-insured groups, self-insured employers, third party administrators, and medical providers must purchase the new schedule of fees to accurately bill and pay for medical services. Other parties to workers' compensation claims are only indirectly impacted by the new fee schedule.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Insurance carriers, self-insured groups, self-insured employers or third party administrators and medical providers can purchase the fee schedule book with disk for \$120 or the disk for \$60.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Medical providers will receive fair, current, and reasonable fees for services provided to injured workers. Injured workers will be treated by qualified medical providers.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The contract for reviewing and updating the physicians fee schedule is \$66,935.00.

(b) On a continuing basis: No continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal budget is the source of funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding 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 sets forth a current schedule of fees

to be paid to physicians. Fees have been updated to be fair, current, and reasonable for similar treatment in the same community as paid by health insurers.

(9) TIERING: Is tiering applied? Tiering is not applied, because the updated fee schedule applies to all parties 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 Workers' Claims and all parts of government with employees

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.035

3. Estimate the effect of this administrative regulation on the 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. As an employer, there may be some increased costs for medical services. It is impossible to estimate not knowing what medical services will be needed by injured workers.

(a) How much 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 generated

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? No new administrative costs

(d) How much will it cost to administer this program for subsequent years? No new administrative 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
Kentucky Department of Insurance
Agent Licensing Division
(Amendment)**

806 KAR 9:360. Pharmacy Benefit Manager License.

RELATES TO: KRS 304.1-050, 304.9-053, 304.9-054, 45 C.F.R. 156.122

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-053(2), 304.9-054(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.9-053(2) requires a pharmacy benefit manager seeking a license to apply to the commissioner in writing on a form provided by the department. KRS 304.9-054(6) requires the department to promulgate administrative regulations to implement and enforce the provisions of KRS 304.9-054, 304.9-053, 304.9-055, and 304.17A-162. This administrative regulation establishes requirements for the licensure of pharmacy benefit managers.

Section 1. Definitions. (1) "Admitted insurer" is defined by KRS 304.10-030(1).

(2) "Commissioner" is defined by KRS 304.1-050(1).

(3) "Department" is defined by KRS 304.1-050(2).

(4) "Maximum allowable cost" is defined by KRS 304.17A-161(3).

(5) "Nonadmitted insurer" is defined by KRS 304.10-030(8).

(6) "Pharmacy benefit manager" is defined by KRS 304.9-

020(15).

Section 2. Initial License and Renewal. (1) An applicant for a pharmacy benefit manager license or renewal license from the commissioner shall submit the following in hard copy format to the department:

- (a) The Pharmacy Benefit Manager License Application;
- (b) The fee set forth in KRS 304.9-053(3) and the penalty fee, if applicable, set forth in KRS 304.9-053(5);

(c) The following evidence of financial responsibility:

1. A certificate of insurance from either an admitted insurer or a nonadmitted insurer ~~[The certificate of an insurer authorized to write legal liability insurance in this commonwealth], in accordance with KRS 304.10-040~~, stating that the insurer has and will keep in effect on behalf of the pharmacy benefit manager a policy of insurance covering the legal liability of the licensed pharmacy benefit manager's erroneous acts or failure to act in his or her capacity as a pharmacy benefit manager, and payable to the benefit of any aggrieved party in the sum of not less than ~~\$1,000,000 [one million dollars (\$1,000,000)]~~; or

2. A cash surety bond issued by a corporate surety authorized to issue surety bonds in this commonwealth, in the sum of ~~\$1,000,000 [one million dollars (\$1,000,000)]~~, which shall be subject to lawful levy of execution by any party to whom the licensee has been found to be legally liable;

(d) The name of at least one (1) responsible individual who shall be responsible for the pharmacy benefit manager's compliance with the insurance laws and administrative regulations of this state and who is:

- 1. Licensed as an administrator in Kentucky; and
- 2. Designated in accordance with KRS 304.9-133;

(e) If performing utilization review in accordance with KRS 304.17A-607, the pharmacy benefit manager's utilization review registration number;

(f) The following written policies and procedures to be used by the pharmacy benefit manager:

- 1. Appeals dispute resolution process;
- 2. Maximum allowable cost appeals process;
- 3. Exceptions policy and override policy required by 45 C.F.R. 156.122(c) and KRS 304.17A-163 and KRS 304.17A.165; and
- 4. Pharmacy and Therapeutics committee membership standards and duties as required by 45 C.F.R. 156.122(a); and

(g) Proof of registration with the Kentucky Secretary of State.

(2)(a) Upon receipt of a complete application as required by subsection (1) of this section, the commissioner shall review the application and

- 1.a. Approve the application; and
- b. Issue the applicant the pharmacy benefit manager license;
- 2. Notify the applicant that additional information is needed in accordance with paragraph (b) of this subsection; or
- 3. Deny the application in accordance with paragraph (c) of this subsection.

(b)1. If supplemental or additional information is necessary to complete the application, the applicant shall submit that information within thirty (30) days from the date of the notification from the commissioner.

2. If the missing or necessary information is not received within thirty (30) days from the date of the notification, the commissioner shall deny the application unless good cause is shown.

(c) If the commissioner determines that the applicant does not meet the requirements for licensure, or if the application is denied pursuant to paragraph (b)2. of this subsection, the commissioner shall:

- 1. Provide written notice to the applicant that the application has been denied; and
- 2. Advise the applicant that a request for a hearing may be filed in accordance with KRS 304.2-310.

(3)(a) Except as provided in paragraph (b) of this subsection, a pharmacy benefit manager license shall:

- 1. Be renewed annually as required by subsection ~~(4)~~~~(5)~~ of this section; or
 - 2. Expire on March 31.
- (b) If the license was issued on or before January 1, 2017, the

license shall expire on March 31, 2018, if not renewed as required by subsection ~~(4)~~~~(5)~~ of this section.

(4)(a) A renewal application shall include the items required by subsection (1) of this section.

(b) If the renewal application is submitted between April 1 and May 31, the application required by subsection (1) of this section shall be accompanied by a penalty fee of \$500 in accordance with KRS 304.9-053(5).

Section 3. Notice of Changes. Within thirty (30) days of any change, a licensee shall notify the commissioner of all changes among its members, directors, officers, and other individuals designated or registered to the license, and any changes to its written policies and procedures submitted pursuant to Section 2(1)(f) of this administrative regulation.

Section 4. Incorporation by Reference. (1) "Pharmacy Benefit Manager License Application", Form PBM, 09/2016, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

NANCY G. ATKINS, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: June 14, 2018

FILED WITH LRC: June 14, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2018 at 10:00 a.m. Eastern Time at the Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the Kentucky Department of Insurance in writing by July 18, 2018, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2018 (11:59 p.m.). Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick D. O'Connor II, Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-2669, email Patrick.OConnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends the licensing process for pharmacy benefit managers to provide broader flexibility satisfying the financial security requirements of KRS 304.9-053. Currently, an insurer must provide a certificate of insurance from a carrier admitted in Kentucky. Unfortunately, these insurance policies are not readily available in the admitted market to all PBMs. In the event they are available, the coverage can be more expensive than the revenue generated by the Kentucky business. Pharmacy benefit managers can typically find suitable coverage in the surplus lines market, but this form of coverage does not satisfy the current requirements. As a result, some pharmacy benefit managers may be compelled to exit the Kentucky market rather than comply with the unnecessarily strict, admitted requirements. By permitting pharmacy benefit managers to obtain insurance coverage in either the admitted or non-admitted markets, more pharmacy benefit managers will be able to compete to do business in Kentucky.

(b) The necessity of this administrative regulation: The amendment is necessary to broaden the manner in which a pharmacy benefit manager can satisfy the insurance and financial security requirements of KRS 304.9-053. By allowing pharmacy benefit managers the option to purchase insurance in either the admitted or non-admitted markets, the number of pharmacy benefit managers able to do business in Kentucky will increase without sacrificing consumer protection.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment continues to require the same level of financial security required by KRS 304.9-053, but broadens the manner in which the requirement may be satisfied.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The amendment clarifies the manner in which the insurance and financial security requirements may be satisfied. The Department has received multiple inquiries on this particular issue, and the change will permit greater flexibility for the Department to approve the license applications of pharmacy benefit managers that obtain insurance from non-admitted carriers.

(2) If 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 permits pharmacy benefit managers to use the admitted and non-admitted markets to procure the insurance necessary to meet the financial security requirements.

(b) The necessity of the amendment to this administrative regulation: Multiple pharmacy benefit managers have advised the Department during the licensure process that they are unable to obtain insurance through the admitted market. As currently drafted, these pharmacy benefit managers would be unable to meet the strict requirements and could no longer operate in Kentucky. In order to increase competition within Kentucky, this amendment to the licensing regulation will permit the procurement of insurance through both the admitted and non-admitted market to satisfy these requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.9-053(3) mandates financial security requirements that can be satisfied through the procurement of insurance. The amendment maintains these requirements, and expands the options for satisfying them.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the requirements, removes an unnecessary barrier to the Kentucky market, and will allow more pharmacy benefit managers to become licensed in Kentucky. The additional entities will increase market competition in Kentucky providing employers and insurers with more options.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact approximately thirty-eight (38) offering pharmacy benefit manager services 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: Pharmacy benefit managers will not be required to take any action in order to comply with the amendment. For those pharmacy benefit managers currently insured in the non-admitted market, these entities may now apply to become licensed with their insurance coverage and financial security requirements satisfied.

(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 any cost to pharmacy benefit managers, and could potentially result in savings through the procurement of lower cost qualifying insurance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be able to become licensed in Kentucky, and the market for pharmacy benefit

managers will likely expand due to the broadened requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department does not anticipate any cost associated with the amendment.

(b) On a continuing basis: The Department does not anticipate any continuing costs associated with the amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department does not anticipate any cost to implement and enforce the amendment. However, the Department utilizes the license fees required by KRS 304.9-053 to fund the implementation and enforcement of the overall licensing requirements.

(7) Provide an assessment of whether an 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 Department does not anticipate the need for an increase in fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly or indirectly establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this regulation apply equally to all entities doing business as a pharmacy benefit manager.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department of Insurance.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, KRS 304.9-053, KRS 304.9-054.

3. Estimate the effect of this administrative regulation on the 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 Department of Insurance does not anticipate any revenue for state or local government from the amendment to the administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The Department of Insurance does not anticipate any revenue for state or local government from the amendment to the administrative regulation.

(c) How much will it cost to administer this program for the first year? The Department does not anticipate any initial cost to administer the amendment to the administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The Department does not anticipate any cost in subsequent years to administer the 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 Insurance (Amendment)

806 KAR 17:570. Minimum standards for Medicare supplement insurance policies and certificates.

RELATES TO: KRS 304.2-310, 304.2-320, 304.3-240, 304.12-020, 304.14-120, 304.14-500-304.14-550, 304.17-311, 304.17A-

VOLUME 45, NUMBER 1 – JULY 1, 2018

005, 304.18-034, 304.32-275, 304.33-030, 304.38-205, 45 C.F.R. 46, 42 C.F.R. 409.87, 74 F.R. 18808 (2009), 29 U.S.C. 1002, 42 U.S.C. 426, 42 U.S.C. 1320c-3 and d-2, 42 U.S.C. 1395-1395ggg, 42 U.S.C. 1396, Pub. L. 108-173

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.14-510, 304.32-250, 304.38-150[~~EO-2009-535~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner of the Department of Insurance[~~Executive Director of Insurance~~] to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.14-510 authorizes the commissioner of the Department of Insurance[~~Executive Director of Insurance~~] to promulgate administrative regulations establishing minimum standards for Medicare supplement insurance policies. KRS 304.32-250 authorizes the commissioner of the Department of Insurance[~~Executive Director of Insurance~~] to promulgate administrative regulations [which he deems] necessary for the proper administration of KRS 304.32. KRS 304.38-150 authorizes the commissioner of the Department of Insurance[~~Executive Director of Insurance~~] to promulgate administrative regulations[which he deems] necessary for the proper administration of KRS Chapter 304.38.[~~EO-2009-535, effective June 12, 2009, established the Department of Insurance and the Commissioner of Insurance as the head of the department.~~] This administrative regulation establishes minimum standards for Medicare supplement insurance policies and certificates.

Section 1. Definitions. (1) "Applicant" is defined by KRS 304.14-500(1).

(2) "Bankruptcy" means a petition for declaration of bankruptcy filed by or filed against a Medicare Advantage organization that is not an insurer and has ceased doing business in the state.

(3) "Certificate" is defined by KRS 304.14-500(2).

(4) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the insurer.

(5) "Commissioner" means Commissioner of the Department of Insurance.

(6) "Compensation" means monetary or non-monetary remuneration of any kind relating to the sale or renewal of the policy or certificate including bonuses, gifts, prizes, awards, and finder's fees.

(7) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare Select insurer or its network providers.

(8) "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than sixty-three (63) days.

(9) "Creditable coverage" is defined by KRS 304.17A-005(8).

(10) "Employee welfare benefit plan" means a plan, fund, or program of employee benefits as defined in 29 U.S.C. Section 1002 of the Employee Retirement Income Security Act.

(11) "Family member" means, with respect to an individual, any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of the individual.

(12) "Genetic information" means except for information relating to the sex or age:

(a) With respect to any individual:

1. Information about the individual's genetic tests, the genetic tests of family members of the individual, and the manifestation of a disease or disorder in family members of the individual; or

2. Any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by the individual or any family member of the individual.

(b) Any reference to genetic information concerning an individual or family member of an individual who is a pregnant woman, including:

1. Genetic information of any fetus carried by a pregnant woman; or

2. With respect to an individual or family member utilizing reproductive technology, genetic information of any embryo legally held by an individual or family member.

(13) "Genetic services" means a genetic test, genetic counseling (including obtaining, interpreting, or assessing genetic information), or genetic education.

(14) "Genetic test":

(a) Means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detect genotypes, mutations, or chromosomal changes;

(b) Except for an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that may reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

(15) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select insurer or its network providers.

(16) "Health care expenses" shall be defined as expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers.

(17) "Insolvency" is defined by KRS 304.33-030(18).

(18) "Insurer" includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.

(19) "Insurer of a Medicare supplement policy or certificate" means an insurer or third-party administrator, or other person acting for or on behalf of the insurer.

(20) "Medicare" is defined by KRS 304.14-500(4).

(21) "Medicare Advantage plan" means a plan of coverage for health benefits under Medicare Part C as defined in 42 U.S.C. 1395w-28(b)(1), including:

(a) A coordinated care plan, which provides health care services, including the following:

1. A health maintenance organization plan, with or without a point-of-service option;

2. A plan offered by provider-sponsored organization; and

3. A preferred provider organization plan;

(b) A medical savings account plan coupled with a contribution into a Medicare Advantage plan medical savings account; and

(c) A Medicare Advantage private fee-for-service plan.

(22) "Medicare Select insurer" means an insurer offering, or seeking to offer, a Medicare Select policy or certificate.

(23) "Medicare Select policy" or "Medicare Select certificate" means, respectively, a Medicare supplement policy or certificate that contains restricted network provisions.

(24) "Medicare supplement policy" is defined by KRS 304.14-500(3).

(25) "Network provider" means a provider of health care, or a group of providers of health care, which has entered into a written agreement with the insurer to provide benefits insured under a Medicare Select policy.

(26) "Policy form" means the form on which the policy is delivered or issued for delivery by the insurer[~~"Pre-Standardized Medicare supplement benefit plan," "Pre-Standardized benefit plan" or "Pre-Standardized plan" means a group or individual policy of Medicare supplement insurance issued prior to January 1, 1992~~].

(27) "Pre-Standardized Medicare supplement benefit plan," "Pre-Standardized benefit plan" or "Pre-Standardized plan" means a group or individual policy of Medicare supplement insurance issued prior to January 1, 1992[~~"Policy form" means the form on which the policy is delivered or issued for delivery by the insurer~~].

(28) "Restricted network provision" means any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.

(29) "Secretary" means the Secretary of the U.S. Department of Health and Human Services.

(30) "Service area" means the geographic area approved by the commissioner within which an insurer is authorized to offer a Medicare Select policy.

(31) "Structure, language, and format" means style,

arrangement and overall content of a benefit.

(32) "Underwriting purposes" means:

(a) Rules for, or determination of, eligibility, including enrollment and continued eligibility, for benefits under the policy;

(b) The computation of premium or contribution amounts under the policy;

(c) The application of any pre-existing condition exclusion under the policy; and

(d) Other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

(33) "1990 Standardized Medicare supplement benefit plan," "1990 Standardized benefit plan" or "1990 plan" means a group or individual policy of Medicare supplement insurance issued on or after January 1, 1992, with an effective date for coverage prior to June 1, 2010 including Medicare supplement insurance policies and certificates renewed on or after that date which are not replaced by the insurer at the request of the insured.

(34) "2010 Standardized Medicare supplement benefit plan," "2010 Standardized benefit plan" or "2010 plan" means a group or individual policy of Medicare supplement insurance issued with an effective date for coverage on or after June 1, 2010.

Section 2. Purpose. The purpose of this administrative regulation shall be to:

(1) Provide for the reasonable standardization of coverage and simplification of terms and benefits of Medicare supplement policies;

(2) Facilitate public understanding and comparison of the policies;

(3) Eliminate provisions contained in the policies which may be misleading or confusing in connection with the purchase of the policies or with the settlement of claims; and

(4) Provide for full disclosures in the sale of accident and sickness insurance coverage to persons eligible for Medicare.

Section 3. Applicability and Scope. (1) Except as provided in Sections ~~6, 15, 16, 19, and 24~~[~~6, 14, 15, 18, and 23~~], the requirements of this administrative regulation shall apply to:

(a) All Medicare supplement policies delivered or issued for delivery in Kentucky on or after the effective date of this administrative regulation; and

(b) All certificates issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in Kentucky.

(2) This administrative regulation shall not apply to a policy or contract:

(a) Of one (1) or more employers or labor organizations, or of the trustees of a fund established by one (1) or more employers or labor organizations, or combination thereof;

(b) For employees or former employees, or a combination thereof; or

(c) For members or former members, or a combination thereof, of the labor organizations.

Section 4. Policy Definitions and Terms. A policy or certificate shall not be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy or certificate unless the policy or certificate contains definitions or terms that conform to this section.

(1) "Accident", "accidental injury", or "accidental means" shall be defined to employ "result" language and shall not include words that establish an accidental means test or use words including "external, violent, visible wounds" or similar words of description or characterization.

(a) The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(b) The definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless the definition is prohibited by law.

(2) "Activities of daily living" shall include bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(3) "At-home recovery visit" shall mean the period of a visit required to provide at home recovery care, without limit on the duration of the visit, except each consecutive four (4) hours in a ~~twenty-four (24) hour~~[~~twenty-four hour~~] period of services provided by a care provider shall be one (1) visit.

(4) "Benefit period" or "Medicare benefit period" shall not be defined more restrictively than as defined in the Medicare program.

(5) "Care provider" shall mean a duly qualified or licensed home health aide or homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

(6) "Convalescent nursing home", "extended care facility", or "skilled nursing facility" shall not be defined more restrictively than as defined in the Medicare program.

(7) "Emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

(8) "Home" shall mean any place used by the insured as a place of residence, if the place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

(9) "Hospital" may be defined in relation to its status, facilities, and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but shall not be defined more restrictively than as defined in the Medicare program.

(10) "Medicare" shall be defined in the policy and certificate. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended", or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof", or words of similar import.

(11) "Medicare eligible expenses" shall mean expenses of the kinds covered by Medicare Parts A and B, to the extent recognized as reasonable and medically necessary by Medicare.

(12) "Physician" shall not be defined more restrictively than as defined in the Medicare program.

(13) "Preexisting condition" shall not be defined more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

(14) "Sickness" shall not be defined to be more restrictive than the following: "Sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force." The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability, or similar law.

Section 5. Policy Provisions. (1) Except for permitted preexisting condition clauses as described in Sections 6(2)(a), 7(1)(a), and ~~8(1)~~ [~~8(1)(a)~~] of this administrative regulation, a policy or certificate shall not be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy if the policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

(2) A Medicare supplement policy or certificate shall not:

(a) Contain a probationary or elimination period; or

(b) Use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

(3) A Medicare supplement policy or certificate in force in the state shall not contain benefits that duplicate benefits provided by Medicare.

(4)(a) Subject to Sections 6(2)(d), (e), and (g), and 7(1)(d) and (e) of this administrative regulation, a Medicare supplement policy with benefits for outpatient prescription drugs in existence prior to January 1, 2006, shall be renewed for current policyholders who do

not enroll in Part D at the option of the policyholder.

(b) A Medicare supplement policy with benefits for outpatient prescription drugs shall not be issued after December 31, 2005.

(c) After December 31, 2005, a Medicare supplement policy with benefits for outpatient prescription drugs may not be renewed after the policyholder enrolls in Medicare Part D unless:

1. The policy is modified to eliminate outpatient prescription coverage for expenses of outpatient prescription drugs incurred after the effective date of the individual's coverage under a Part D plan; and

2. Premiums are adjusted to reflect the elimination of outpatient prescription drug coverage at Medicare Part D enrollment, accounting for any claims paid, if applicable.

Section 6. Minimum Benefit Standards for Pre-Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery Prior to January 1, 1992. (1) A policy or certificate shall not be advertised, solicited, or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards, which shall not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

(2) General standards. The following standards shall apply to Medicare supplement policies and certificates and are in addition to all other requirements of this administrative regulation.

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition and the policy or certificate shall not define a preexisting condition more restrictively than Section 4(13) of this administrative regulation.

(b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance amounts. Premiums may be modified to correspond with the changes.

(d) A "noncancellable," "guaranteed renewable," or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:

1. Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or

2. Be cancelled or nonrenewed by the insurer solely on the grounds of deterioration of health.

(e)1. An insurer shall not cancel or nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

2. If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in paragraph (e)4 of this subsection, the insurer shall offer certificate holders an individual Medicare supplement policy with at least the following choices:

a. An individual Medicare supplement policy currently offered by the insurer having comparable benefits to those contained in the terminated group Medicare supplement policy; and

b. An individual Medicare supplement policy which provides the benefits as are required to meet the minimum standards as defined in Section 8(2) of this administrative regulation.

3. If membership in a group is terminated, the insurer shall:

a. Offer the certificate holder the conversion opportunities described in subparagraph 2 of this paragraph; or

b. At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

4. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the insurer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination, and coverage under the new group policy shall not result in any exclusion for preexisting conditions that would

have been covered under the group policy being replaced.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits. Receipt of Medicare Part D benefits shall not be considered in determining a continuous loss.

(g) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108-173, the modified policy shall satisfy the guaranteed renewal requirements of this subsection.

(3) Minimum benefit standards.

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

(c) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(d) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety (90) percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(e) Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood, or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(a)(2), unless replaced in accordance with 42 C.F.R. 409.87(c)(2) or already paid for under Part B;

(f) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible;

(g) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood, or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(a)(2), unless replaced in accordance with 42 C.F.R. 409.87(c)(2) or already paid for under Part A, subject to the Medicare deductible amount.

Section 7. Benefit Standards for 1990 Standardized Medicare Supplement Benefit Plan and Policies or Certificates Issued or Delivered on or After January 1, 1992, and With an Effective Date for Coverage Prior to June 1, 2010. The following standards shall apply to all Medicare supplement policies or certificates delivered or issued for delivery in Kentucky on or after January 1, 1992, and with an effective date for coverage prior to June 1, 2010. A policy or certificate shall not be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards. (1) General Standards. The following standards shall apply to Medicare supplement policies and certificates and are in addition to all other requirements of this administrative regulation.

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition and the policy or certificate shall not define a preexisting condition more restrictively than section 4(13).

(b) A Medicare supplement policy or certificate shall not **indemnify against losses resulting from sickness on a different basis than losses resulting from accidents**:-

1. Contain a probationary or elimination period; or

2. Indemnify against losses resulting from sickness on a different basis than losses resulting from accidents].

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare shall be changed automatically to coincide with any

changes in the applicable Medicare deductible, copayment, or coinsurance amounts. Premiums may be modified to correspond with the changes.

(d) A Medicare supplement policy or certificate shall not provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(e) Each Medicare supplement policy shall be guaranteed renewable.

1. The insurer shall not cancel or nonrenew the policy solely on health status of the individual.

2. The insurer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

3. If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Section 7(1)(e)5 of this administrative regulation, the insurer shall offer certificate holders an option to choose an individual Medicare supplement policy which, at the option of the certificate holder:

a. Provides for continuation of the benefits contained in the group policy; or

b. Provides for benefits that meet the requirements of this subsection.

4. If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the insurer shall:

a. Offer the certificate holder the conversion opportunity described in Section 7(1)(e)3 of this administrative regulation; or

b. At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

5. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the insurer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

6. If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement and Modernization Act of 2003, Pub. L. 108-173, the modified policy shall satisfy the guaranteed renewal requirements of this paragraph.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(g)1. A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period, not to exceed twenty-four (24) months, in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq., but only if the policyholder or certificate holder notifies the insurer of the policy or certificate within ninety (90) days after the date the individual becomes entitled to assistance.

2. If suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstated, effective as of the date of termination of entitlement, as of the termination of entitlement if the policyholder or certificate holder provides notice of loss of entitlement within ninety (90) days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

3. Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended, for any period that may be provided by 42 U.S.C. 1395ss(q)(5), at the request of the policyholder if the policyholder is entitled to benefits under Section 226 (b) of the Social Security Act, 42 U.S.C. 426(b), and is

covered under a group health plan, as defined in Section 1862 (b)(1)(A)(v) of the Social Security Act, 42 U.S.C. 1395Y(b)(1)(A)(v). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstated, effective as of the date of loss of coverage, if the policyholder provides notice of loss of coverage within ninety (90) days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan.

4. Reinstatement of coverages as described in subparagraphs 2 and 3 of this paragraph:

a. Shall not provide for any waiting period with respect to treatment of preexisting conditions;

b. Shall provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension. If the suspended Medicare supplement policy provided coverage for outpatient prescription drugs, reinstatement of the policy for Medicare Part D enrollees shall be without coverage for outpatient prescription drugs and shall provide substantially equivalent coverage to the coverage in effect before the date of suspension; and

c. Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.

(h) If an insurer makes a written offer to the Medicare Supplement policyholders or certificate holders of one or more of its plans, to exchange during a specified period from his or her 1990 Standardized plan, as described in Section 9 of this administrative regulation, to a 2010 Standardized plan, as described in Section 10 of this administrative regulation, the offer and subsequent exchange shall comply with the following requirements:

1. An insurer shall not be required to provide justification to the commissioner if the insured replaces a 1990 Standardized policy or certificate with an issue age rated 2010 Standardized policy or certificate at the insured's original issue age. If an insured's policy or certificate to be replaced is priced on an issue age rate schedule at offer, the rate charged to the insured for the new exchanged policy shall recognize the policy reserve buildup, due to the pre-funding inherent in the use of an issue age rate basis, for the benefit of the insured. The method proposed to be used by an insurer shall be filed with the commissioner in accordance with KRS 304.14-120 and 806 KAR 14:007;

2. The rating class of the new policy or certificate shall be the class closest to the insured's class of the replaced coverage.

3. An insurer may not apply new pre-existing condition limitations or a new incontestability period to the new policy for those benefits contained in the exchanged 1990 Standardized policy or certificate of the insured, but may apply pre-existing condition limitations of no more than six (6) months to any added benefits contained in the new 2010 Standardized policy or certificate not contained in the exchanged policy.

4. The new policy or certificate shall be offered to all policyholders or certificate holders within a given plan, except if the offer or issue would be in violation of state or federal law.

5. An insurer may offer its policyholders or certificate holders the following exchange options:

a. Selected existing plans; or

b. Certain new plans for a particular existing plan.

(2) Standards for basic (core) benefits common to benefit plans A to J. Every insurer shall make available a policy or certificate including at a minimum the following basic "core" package of benefits to each prospective insured. An insurer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each

Medicare lifetime inpatient reserve day used;

(c) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days;

(d) Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood, or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(a)(2), unless replaced in accordance with 42 C.F.R. 409.87(c)(2); and

(e) Coverage for the coinsurance amount or for hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible;

(3) Standards for Additional Benefits. The following additional benefits shall be included in Medicare Supplement Benefit Plans "B" through "J" only as provided by Section 9 of this administrative regulation:

(a) Medicare Part A Deductible, which is coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.

(b) Skilled Nursing Facility Care, which is coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A.

(c) Medicare Part B Deductible, which is coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(d) Eighty (80) Percent of the Medicare Part B Excess Charges, which is coverage for eighty (80) percent of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program, and the Medicare-approved Part B charge.

(e) 100 Percent of the Medicare Part B Excess Charges, which is coverage for all of the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation established by the Medicare Program or state law, and the Medicare-approved Part B charge.

(f) Basic Outpatient Prescription Drug Benefit which is coverage for fifty (50) percent of outpatient prescription drug charges, after a \$250 calendar year deductible, to a maximum of \$1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.

(g) Extended Outpatient Prescription Drug Benefit, which is coverage for fifty (50) percent of outpatient prescription drug charges, after a \$250 calendar year deductible to a maximum of \$3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.

(h) Medically Necessary Emergency Care in a Foreign Country, which is coverage to the extent not covered by Medicare for eighty (80) percent of the billed charges for Medicare eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of \$250, and a lifetime maximum benefit of \$50,000.

(i) 1. Preventive Medical Care Benefit, which is coverage for the following preventive health services not covered by Medicare:

a. An annual clinical preventive medical history and physical examination that may include tests and services from subparagraph 2 of this paragraph and patient education to address preventive health care measures;

b. Preventive screening tests or preventive services, the selection and frequency of which are determined to be medically appropriate by the attending physician.

2. Reimbursement shall be for the actual charges up to 100 percent of the Medicare approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of \$120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

(j) At-Home Recovery Benefit, which is coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.

1. Coverage requirements and limitations.

a. At-home recovery services provided shall be primarily services which assist in activities of daily living.

b. The insured's attending physician shall certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

c. Coverage is limited to:

(i) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare-approved home health care visits under a Medicare-approved home care plan of treatment;

(ii) The actual charges for each visit up to a maximum reimbursement of forty (40) dollars per visit;

(iii) \$1,600 per calendar year;

(iv) Seven (7) visits in any one (1) week;

(v) Care furnished on a visiting basis in the insured's home;

(vi) Services provided by a care provider as described in Section 4(5) of this administrative regulation;

(vii) At-home recovery visits while the insured is covered under the policy or certificate and not excluded;

(viii) At-home recovery visits received during the period the insured is receiving Medicare-approved home care services or no more than eight (8) weeks after the service date of the last Medicare-approved home health care visit.

3. Coverage is excluded for:

a. Home care visits paid for by Medicare or other government programs; and

b. Care provided by family members, unpaid volunteers, or providers who are not care providers.

(4) Standards for Plans K and L.

(a) Standardized Medicare supplement benefit plan "K" shall consist of the following:

1. Coverage of 100 percent of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;

2. Coverage of 100 percent of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;

3. Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days.

4. Medicare Part A Deductible, which is coverage for fifty (50) percent of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

5. Skilled Nursing Facility Care, which is coverage for fifty (50) percent of the coinsurance amount for each day used from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

6. Hospice Care, which is coverage for fifty (50) percent of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in Subparagraph 10 of this paragraph;

7. Coverage for fifty (50) percent, under Medicare Part A or B, of the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, pursuant to 42

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C.F.R. 409.87(a)(2), unless replaced in accordance with 42 C.F.R. 409.87(c)(2), until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

8. Except for coverage provided in subparagraph 9 of this paragraph, coverage for fifty (50) percent of the cost sharing applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

9. Coverage of 100 percent of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

10. Coverage of 100 percent of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of \$4000 in 2006, indexed each year by the appropriate inflation adjustment specified by the secretary.

(b) Standardized Medicare supplement benefit plan "L" shall consist of the following:

1. The benefits described in paragraph (a)1, 2, 3, and 9 of this section;

2. The benefit described in paragraph (a)4, 5, 6, 7, and 8 of this section, but substituting seventy-five (75) percent for fifty (50) percent; and

3. The benefit described in paragraph (a)10 of this section, but substituting \$2000 for \$4000.

Section 8. Benefit Standards for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery with an Effective Date for Coverage on or After June 1, 2010. The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in Kentucky with an effective date for coverage on or after June 1, 2010. A policy or certificate shall not be advertised, solicited, delivered, or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless it complies with these benefit standards. An insurer shall not offer any 1990 Standardized Medicare supplement benefit plan for sale on or after June 1, 2010. Benefit standards applicable to Medicare supplement policies and certificates issued before June 1, 2010, remain subject to the requirements of Sections 7 and 9 of this administrative regulation. (1) General Standards. The general standards of Section 7(a) through (g), except 7(e)(6), shall apply to all policies under Section 8 of this administrative regulation. [The following standards shall apply to Medicare supplement policies and certificates and shall be in addition to all other requirements of this regulation.

~~—(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition.~~

~~—(b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.~~

~~—(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance amounts. Premiums may be modified to correspond with changes.~~

~~—(d) A Medicare supplement policy or certificate shall not provide for termination of coverage of a spouse solely because of the occurrence specified for termination of coverage of the insured, other than the nonpayment of premium.~~

~~—(e) Each Medicare supplement policy shall be guaranteed renewable.~~

~~—1. The insurer shall not cancel or nonrenew the policy solely health status of the individual.~~

~~—2. The insurer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.~~

~~—3. If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under subsection (1)(e)5 of this section, the insurer shall offer certificate holders an~~

~~individual Medicare supplement policy which, at the option of the certificate holder:~~

~~—a. Provides for continuation of the benefits contained in the group policy; or~~

~~—b. Provides for benefits that meet the requirements of this Subsection.~~

~~—4. If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the insurer shall:~~

~~—a. Offer the certificate holder the conversion opportunity described in subsection (1)(e)5 of this section; or~~

~~—b. At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.~~

~~—5. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the insurer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.~~

~~—(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits shall not be considered in determining a continuous loss.~~

~~—(g) 1. A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period, not to exceed twenty-four (24) months, in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq., but only if the policyholder or certificate holder notifies the insurer of the policy or certificate within ninety (90) days after the date the individual becomes entitled to assistance.~~

~~—2. If suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstated, effective as of the date of termination of entitlement, as of the termination of entitlement if the policyholder or certificate holder provides notice of loss of entitlement within ninety (90) days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.~~

~~—3. Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended, for any period that may be provided by 42 U.S.C. 1395ss(q)(5)(A), at the request of the policyholder if the policyholder is entitled to benefits under Section 226 (b) of the Social Security Act, 42 U.S.C. 426(b), and is covered under a group health plan, as defined in Section 1862 (b)(1)(A)(v) of the Social Security Act, 42 U.S.C. 1395Y(b)(1)(A)(v). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstated, effective as of the date of loss of coverage, if the policyholder provides notice of loss of coverage within ninety (90) days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan.~~

~~—4. Reinstitution of coverages as described in subparagraphs 2 and 3 of this paragraph shall:~~

~~—a. Not provide for any waiting period with respect to treatment of preexisting conditions;~~

~~—b. Provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension; and~~

~~—c. Provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.]~~

(2) Standards for Basic (Core) Benefits Common to Medicare Supplement Insurance Benefit Plans A, B, C, D, F, High Deductible F, G, M and N. Every insurer of Medicare supplement insurance

benefit plans shall make available a policy or certificate including, at a minimum, the following basic "core" package of benefits to each prospective insured. An insurer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.

~~(a) The basic core benefits included within Section 7(2)(a) through (e) are applied to plans under Section 8; and [Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;~~

~~—(b) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;~~

~~—(c) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days;~~

~~—(d) Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood, or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(a)(2), unless replaced in accordance with 42 C.F.R. 409.87(c)(2);~~

~~—(e) Coverage for the coinsurance amount, or for hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible;]~~

~~(b)[(f)] Hospice Care, which is coverage of cost sharing for all Part A Medicare eligible hospice care and respite care expenses.~~

(3) Standards for Additional Benefits. The following additional benefits shall be included in Medicare supplement benefit Plans B, C, D, F, High Deductible F, G, M, and N as provided by Section 10 of this administrative regulation.

(a) Medicare Part A Deductible, which is coverage for 100 percent of the Medicare Part A inpatient hospital deductible amount per benefit period.

(b) Medicare Part A Deductible, which is coverage for fifty (50) percent of the Medicare Part A inpatient hospital deductible amount per benefit period.

(c) Skilled Nursing Facility Care, which is coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A.

(d) Medicare Part B Deductible, which is coverage for 100 percent of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(e) 100 percent of the Medicare Part B Excess Charges, which is coverage for the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation established by the Medicare program, and the Medicare-approved Part B charge.

(f) Medically Necessary Emergency Care in a Foreign Country, which is coverage to the extent not covered by Medicare for eighty (80) percent of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of \$250, and a lifetime maximum benefit of \$50,000.

Section 9. Standard Medicare Supplement Benefit Plans for 1990 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery on or After January 1, 1992, and with an Effective Date for Coverage Prior to June 1, 2010. (1) An insurer shall make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic core benefits, as defined in Section 7(2) of this administrative regulation.

(2) Groups, packages or combinations of Medicare supplement

benefits other than those listed in this section shall not be offered for sale in Kentucky, except as may be permitted in Section 9(7) and 11 of this administrative regulation.

(3) Benefit plans shall be uniform in structure, language, designation, and format to the standard benefit plans "A" through "L" listed in this section and conform to the definitions in Section 1 of this administrative regulation. Each benefit shall be structured in accordance with the format provided in Sections 7(2) and 7(3) or 7(4) and shall list the benefits in the order shown in this section.

(4) An insurer may use, in addition to the benefit plan designations required in Subsection (3) of this section, other designations to the extent permitted by law.

(5) Make-up of benefit plans:

(a) Standardized Medicare supplement benefit Plan "A" shall be limited to the basic (core) benefits common to all benefit plans, as described in Section 7(2) of this administrative regulation.

(b) Standardized Medicare supplement benefit Plan "B" shall include only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible as described in Section 7(3)(a).

(c) Standardized Medicare supplement benefit Plan "C" shall include only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible and medically necessary emergency care in a foreign country as described in Sections 7(3)(a), (b), (c), and (h) respectively.

(d) Standardized Medicare supplement benefit Plan "D" shall include only the following: The core benefit, as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in an foreign country and the at-home recovery benefit as described in Sections 7(3)(a), (b), (h), and (j) respectively.

(e) Standardized Medicare supplement benefit Plan "E" shall include only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and preventive medical care as described in Sections 7(3)(a), (b), (h), and (i) respectively.

(f) Standardized Medicare supplement benefit Plan "F" shall include only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, the skilled nursing facility care, the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as described in Section 7(3)(a), (b), (c), (e), and (h) respectively.

(g) Standardized Medicare supplement benefit high deductible Plan "F" shall include only the following: 100 percent of covered expenses following the payment of the annual high deductible Plan "F" deductible. The covered expenses include the core benefits as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as described in Section 7(3)(a), (b), (c), (e), and (h) respectively. The annual high deductible Plan "F" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement Plan "F" policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan "F" deductible shall be \$1,500 for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of ten (10) dollars.

(h) Standardized Medicare supplement benefit Plan "G" shall include only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, eighty (80) percent of the Medicare Part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as described in Section 7(3)(a), (b), (d), (h), and (j) respectively.

(i) Standardized Medicare supplement benefit Plan "H" shall

consist of only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, basic prescription drug benefit and medically necessary emergency care in a foreign country as described in Section 7(3)(a), (b), (f), and (h) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(j) Standardized Medicare supplement benefit Plan "I" shall consist of only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country and at-home recovery benefit as described in Section 7(3)(a), (b), (e), (f), (h), and (j) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(k) Standardized Medicare supplement benefit Plan "J" shall consist of only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care and at-home recovery benefit as described in Section 7(3)(a), (b), (c), (e), (g), (h), (i), and (j) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(l) Standardized Medicare supplement benefit high deductible Plan "J" shall consist of only the following: 100 percent of covered expenses following the payment of the annual high deductible Plan "J" deductible. The covered expenses include the core benefits as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care benefit and at-home recovery benefit as described in Section 7(3)(a), (b), (c), (e), (g), (h), (i) and (j) respectively. The annual high deductible Plan "J" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement Plan "J" policy, and shall be in addition to any other specific benefit deductibles. The annual deductible shall be \$1500 for 1998 and 1999, and shall be based on a calendar year. It shall be adjusted annually thereafter by the secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of ten (10) dollars. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(6) Design of two (2) Medicare supplement plans mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA), Pub. L. 108-173;

(a) Standardized Medicare supplement benefit plan "K" shall consist of only those benefits described in Section 7(4)(a).

(b) Standardized Medicare supplement benefit plan "L" shall consist of only those benefits described in Section 7(4)(a).

(7) New or Innovative Benefits: An insurer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not available, cost-effective, and offered in a manner that is consistent with the goal of simplification of Medicare supplement policies. After December 31, 2005, the innovative benefit shall not include an outpatient prescription drug benefit.

Section 10. Standard Medicare Supplement Benefit Plans for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates with an Effective Date for Coverage on or After June 1,

2010. The following standards are applicable to all Medicare supplement policies or certificates with an effective date for coverage in this state on or after June 1, 2010. A policy or certificate shall not be advertised, solicited, delivered or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless it complies with these benefit plan standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued before June 1, 2010, remain subject to the requirements of Section 7 and 9 of this administrative regulation. (1)(a) An insurer shall make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic (core) benefits, as described in Section 8(2) of this administrative regulation.

(b) If an insurer makes available any of the additional benefits described in Section 8(3), or offers standardized benefit Plans K or L, as described in Sections 10(5)(h) and (i) of this administrative regulation, then the insurer shall make available to each prospective policyholder and certificate holder, in addition to a policy form or certificate form with only the basic (core) benefits as described in subsection (1) of this section, a policy form or certificate form containing either standardized benefit Plan C, as described in Section 10(5)(c) of this administrative regulation, or standardized benefit Plan F, as described in 10(5)(e) of this administrative regulation.

(2) Groups, packages or combinations of Medicare supplement benefits other than those listed in this Section shall not be offered for sale in this state, except as may be permitted in Section 10(6) and in Section 11 of this administrative regulation.

(3) Benefit plans shall be uniform in structure, language, designation and format to the standard benefit plans listed in this Subsection and conform to the definitions in Section 1 of this administrative regulation. Each benefit shall be structured in accordance with the format provided in Sections 8(2) and 8(3) of this administrative regulation; or, in the case of plans K or L, in Sections 10(5)(h) or (i) of this administrative regulation and list the benefits in the order shown.

(4) In addition to the benefit plan designations required in Subsection (3) of this section, an insurer may use other designations if approved by the commissioner in accordance with Subsection (6) of this Section.

(5) 2010 Standardized Benefit Plans:

(a) Standardized Medicare supplement benefit Plan A shall include only the following: The basic (core) benefits as described in Section 8(2) of this administrative regulation.

(b) Standardized Medicare supplement benefit Plan B shall include only the following: The basic (core) benefit as described in Section 8(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible as described in section 8(3)(a) of this administrative regulation.

(c) Standardized Medicare supplement benefit Plan C shall include only the following: The basic (core) benefit as described in Section 8(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B deductible, and medically necessary emergency care in a foreign country as described in section 8(3)(a), (c), (d), and (f) of this administrative regulation, respectively.

(d) Standardized Medicare supplement benefit Plan D shall include only the following: The basic (core) benefit, as described in Section 8(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as described in Sections 8(3)(a), (c), and (f) of this administrative regulation, respectively.

(e) Standardized Medicare supplement Plan F shall include only the following: The basic (core) benefit as described in Section 8(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, the skilled nursing facility care, 100 percent of the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as described in Sections 8(3)(a), (c), (d), (e), and (f), respectively.

(f) Standardized Medicare supplement Plan High Deductible F

shall include only the following: 100 percent of covered expenses following the payment of the annual deductible set forth in Paragraph (f)2 of this subsection.

1. The basic (core) benefit as described in Section 8(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as described in Sections 8(3)(a), (c), (d), (e), and (f) of this administrative regulation, respectively.

2. The annual deductible in High Deductible Plan F shall consist of out-of-pocket expenses, other than premiums, for services covered by Plan F, and shall be in addition to any other specific benefit deductibles. The basis for the deductible shall be \$1,500 and shall be adjusted annually from 1999 by the Secretary of the U.S. Department of Health and Human Services to reflect the change in the Consumer Price Index for all urban consumers for the twelve (12) month period ending with August of the preceding year, and rounded to the nearest multiple of ten (10) dollars.

(g) Standardized Medicare supplement benefit Plan G shall include only the following: The basic (core) benefit as described in Section 8(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as described in Sections 8(3)(a), (c), (e), and (f), respectively. Effective January 1, 2020, the standardized benefit plans described in Section (11)(1)(d) (Redesignated Plan G High Deductible) may be offered to any individual who was eligible for Medicare prior to January 1, 2020.

(h) Standardized Medicare supplement Plan K is mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003, Pub. L. 108-173, and shall include only the following:

1. Part A Hospital Coinsurance 61st through 90th days: Coverage of 100 percent of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;

2. Part A Hospital Coinsurance, 91st through 150th days: Coverage of 100 percent of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;

3. Part A Hospitalization After 150 Days: Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days;

4. Medicare Part A Deductible: Coverage for fifty (50) percent of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

5. Skilled Nursing Facility Care: Coverage for fifty (50) percent of the coinsurance amount for each day used from the twenty-first (21) [24th] day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

6. Hospice Care: Coverage for fifty (50) percent of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

7. Blood: Coverage for fifty (50) percent, under Medicare Part A or B, of the reasonable cost of the first three (3) pints of blood, or equivalent quantities of packed red blood cells, as described under 42 C.F.R. 409.87(a)(2) unless replaced in accordance with 42 C.F.R. 409.87(c)(2) until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

8. Part B Cost Sharing: Except for coverage provided in subparagraph 9 of this paragraph, coverage for fifty (50) percent of the cost sharing applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket

limitation is met as described in subparagraph 10 of this paragraph;

9. Part B Preventive Services: Coverage of 100 percent of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

10. Cost Sharing After Out-of-Pocket Limits: Coverage of 100 percent of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of \$4000 in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

(i) Standardized Medicare supplement Plan L is mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003, Pub. L. 108-173, and shall include only the following:

1. The benefits described in subparagraphs 10(5)(h)1, 2, 3, and 9;

2. The benefit described in subparagraphs 10(5)(h)4, 5, 6, 7, and 8, but substituting seventy-five (75) percent for fifty (50) percent; and

3. The benefit described in subparagraph 10(5)(h)10, but substituting \$2000 for \$4000.

(j) Standardized Medicare supplement Plan M shall include only the following: The basic core benefit as described in Section 8(2) of this administrative regulation, plus fifty (50) percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as described in Sections 8(3)(a), (c) and (f) of this administrative regulation, respectively.

(k) Standardized Medicare supplement Plan N shall include only the following: The basic core benefit as described in Section 8(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as described in Sections 8(3)(a), (c) and (f) of this administrative regulation, respectively, with copayments in the following amounts:

1. The lesser of twenty (20) dollars or the Medicare Part B coinsurance or copayment for each covered health care provider office visit, including visits to medical specialists; and

2. The lesser of fifty (50) dollars or the Medicare Part B coinsurance or copayment for each covered emergency room visit; however, this copayment shall be waived if the insured is admitted to any hospital and the emergency visit is subsequently covered as a Medicare Part A expense.

(6) New or Innovative Benefits: An insurer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits, in addition to the standardized benefits provided in a policy or certificate that complies with the applicable standards of this section. The new or innovative benefits shall include only benefits that are appropriate to Medicare supplement insurance, are new or innovative, are not available, and are cost-effective. Approval of new or innovative benefits shall not adversely impact the goal of Medicare supplement simplification. New or innovative benefits shall not include an outpatient prescription drug benefit. New or innovative benefits shall not be used to change or reduce benefits, including a change of any cost-sharing provision, in any standardized plan.

Section 11. Standard Medicare Supplement Benefit Plans for 2020 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery to individuals Newly Eligible for Medicare on or After January 1, 2020. The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) requires the following standards to be applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state to individuals newly eligible for Medicare on or after January 1, 2020. No policy or certificate providing coverage of the Medicare Part B deductible may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate to individuals newly eligible for Medicare on or after January 1, 2020. All policies must comply with the following benefit standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued to individuals eligible for Medicare before

January 1, 2020, remain subject to the requirements of Section 9 and 10 of this administrative regulation.

(1) Benefit Requirements. The standards and requirements of Section 10 shall apply to all Medicare supplement policies and certificates delivered or issued for delivery to individuals newly eligible for Medicare on or after January 1, 2020, with the following exceptions:

(a) Standardized Medicare supplement benefit Plan C is redesignated as Plan D and shall provide the benefits contained in Section (10)(5)(c) of this administrative regulation but shall not provide coverage for any portion of the Medicare Part B deductible.

(b) Standardized Medicare supplement benefit Plan F is redesignated as Plan G and shall provide the benefits contained in Section (10)(5)(e) of this administrative regulation but shall not provide coverage for 100% or any portion of the Medicare Part B deductible.

(c) Standardized Medicare supplement benefit plans C, F, and F with High Deductible may not be offered to individuals newly eligible for Medicare on or after January 1, 2020.

(d) Standardized Medicare supplement benefit Plan F with High Deductible is redesignated as Plan G with High Deductible and shall provide the benefits contained in Section (10)(5)(f) of this regulation but shall not provide coverage for any portion of the Medicare Part B deductible; provided further that, the Medicare Part B deductible paid by the beneficiary shall be considered an out of pocket expense in meeting the annual high deductible.

(2) Applicability to Certain Individuals. This section applies only to individuals that are newly eligible for Medicare on or after January 1, 2020:

(a) By reason of attaining age 65 on or after January 1, 2020;
or

(b) By reason of entitlement to benefits under Part A pursuant to section 226(b) or 226A of the Social Security Act, or who is deemed eligible for benefits under section 226(a) of the Social Security Act on or after January 1, 2020.

(3) Guaranteed Issue for Eligible Persons. For purposes of Section 14(5) of this administrative regulation, in the case of any individual newly eligible for Medicare on or after January 1, 2020, any reference to a Medicare supplement policy C or F (including F with High Deductible) shall be deemed to be a reference to Medicare supplement policy D or G (including G with High Deductible) respectively that meet the requirements of this section.

(4) Offer of Redesignated Plans to Individuals Other than Newly Eligible. On or after January 1, 2020, the standardized benefit plans described in subsection (1)(d) of this section may be offered to any individual who was eligible for Medicare prior to January 1, 2020 in addition to the standardized plans described in Section 10(5) of this administrative regulation.

Section 12. Medicare Select Policies and Certificates. (1)(a) This section shall apply to Medicare Select policies and certificates, as described in this section.

(b) A policy or certificate shall not be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section.

(2) The commissioner may authorize an insurer to offer a Medicare Select policy or certificate, pursuant to this section and Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990, 42 U.S.C. 1395ss and 42 U.S.C. 1320c-3, if the commissioner finds that the insurer has satisfied all of the requirements of this regulation.

(3) A Medicare Select insurer shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the commissioner pursuant to this section and KRS 304.14-120.

(4) A Medicare Select insurer shall file a proposed plan of operation with the commissioner. The plan of operation shall contain at least the following information:

(a) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

1. Covered services may be provided by network providers

with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall not be more than sixty (60) miles from the insured's place of residence.

2. The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:

a. To deliver adequately all services that are subject to a restricted network provision; or

b. To make appropriate referrals.

3. There are written agreements with network providers describing specific responsibilities.

4. Emergency care is available twenty-four (24) hours per day and seven (7) days per week.

5. If covered services are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This subparagraph shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate.

(b) A statement or map providing a clear description of the service area.

(c) A description of the grievance procedure to be utilized.

(d) A description of the quality assurance program, including:

1. The formal organizational structure;

2. The written criteria for selection, retention and removal of network providers; and

3. The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action if warranted.

(e) A list and description, by specialty, of the network providers.

(f) Copies of the written information proposed to be used by the insurer to comply with subsection (8) of this section.

(g) Any other information requested by the commissioner in accordance with this section, KRS 304.14-120, and 304.14-130.

(5)(a) A Medicare Select insurer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the commissioner prior to implementing the changes. Changes shall be considered approved by the commissioner after sixty (60) days unless specifically disapproved.

(b) An updated list of network providers shall be filed with the commissioner at least quarterly.

(6) A Medicare Select policy or certificate shall not restrict payment for covered services provided by nonnetwork providers if:

(a) The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury, or a condition;

(b) It is not reasonable to obtain services through a network provider; or

(c) There are no network providers available within sixty (60) miles of the insured's place of residence.

(7) A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

(8) A Medicare Select insurer shall make full and fair disclosure in writing of the provisions, restrictions and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:

(a) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:

1. Other Medicare supplement policies or certificates offered by the insurer; and

2. Other Medicare Select policies or certificates.

(b) A description, which shall include address, phone number and hours of operation of the network providers, including primary care physicians, specialty physicians, hospitals and other providers.

(c) A description of the restricted network provisions, including

payments for coinsurance and deductibles when providers other than network providers are utilized. Except to the extent specified in the policy or certificate, expenses incurred when using out-of-network providers shall not count toward the out-of-pocket annual limit contained in plans K and L.

(d) A description of coverage for emergency and urgently needed care and other out-of-service area coverage.

(e) A description of limitations on referrals to restricted network providers and to other providers.

(f) A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate offered by the insurer.

(g) A description of the Medicare Select insurer's quality assurance program and grievance procedure.

(9) Prior to the sale of a Medicare Select policy or certificate, a Medicare Select insurer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to subsection (8) of this section and that the applicant understands the restrictions of the Medicare Select policy or certificate.

(10) A Medicare Select insurer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. The procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

(a) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

(b) Upon issuance of the policy or certificate, the insurer shall provide detailed information to the policyholder describing how a grievance may be registered with the insurer.

(c) A grievance shall be considered in a timely manner and shall be transmitted to appropriate decision makers who have authority to fully investigate the issue and take corrective action.

(d) If a grievance is found to be valid, corrective action shall be taken promptly.

(e) All concerned parties shall be notified about the results of a grievance.

(f) The insurer shall report no later than each March 31st to the commissioner regarding its grievance procedure, including the number of grievances filed in the past year and a summary of the subject, nature and resolution of grievances.

(11) Upon initial purchase, a Medicare Select insurer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the insurer.

(12)(a) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select insurer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the insurer which has comparable or lesser benefits and which does not contain a restricted network provision. The insurer shall make the policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six (6) months.

(b) For the purposes of this subsection, a Medicare supplement policy or certificate shall be considered to have comparable or lesser benefits unless it contains one (1) or more of the following significant benefits not included in the Medicare Select policy or certificate being replaced, coverage for:

1. The Medicare Part A deductible;
2. At-home recovery services; or
3. Part B excess charges.

(13) Medicare Select policies and certificates shall provide for continuation of coverage if the secretary determines that Medicare Select policies and certificates issued pursuant to this section shall be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.

(a) Each Medicare Select insurer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the insurer which has comparable or lesser benefits and which does not contain a restricted network provision. The insurer shall make these policies and certificates available

without requiring evidence of insurability.

(b) For the purposes of this subsection, a Medicare supplement policy or certificate shall be considered to have comparable or lesser benefits unless it contains one (1) or more of the following significant benefits not included in the Medicare Select policy or certificate being replaced, coverage for:

1. The Medicare Part A deductible;
2. At-home recovery services; or
3. Part B excess charges.

(14) A Medicare Select insurer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program.

~~Section 13~~~~[Section 12]~~. Open Enrollment. (1)(a) An insurer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in Kentucky, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant if:

1. An application for a policy or certificate is submitted prior to or during the six (6) month period beginning with the first day of the first month in which an individual is sixty-five (65) years of age or older; and

2. The applicant is enrolled for benefits under Medicare Part B.

(b) Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this subsection without regard to age.

(2)(a) If an applicant qualifies under subsection (1) of this section and submits an application during the time period referenced in subsection (1) of this section and, as of the date of application, has had a continuous period of creditable coverage of at least six (6) months, the insurer shall not exclude benefits based on a preexisting condition.

(b) If the applicant qualifies under subsection (1) of this section and submits an application during the time period referenced in subsection (1) of this section and, as of the date of application, has had a continuous period of creditable coverage that is less than six (6) months, the insurer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The Secretary shall specify the manner of the reduction under this subsection.

(3) Except as provided in Subsection (2) and Sections ~~14 and 25~~~~13 and 24~~ of this administrative regulation, subsection (1) of this section shall not be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificate holder received treatment or was diagnosed during the six (6) months before the coverage became effective.

~~Section 14~~~~[Section 13]~~. Guaranteed Issue for Eligible Persons. (1) Guaranteed Issue:

(a) Eligible persons are those individuals described in subsection (2) of this section who seek to enroll under the policy during the period specified in subsection (3) of this section, and who submit evidence of the date of termination, disenrollment, or Medicare Part D enrollment with the application for a Medicare supplement policy.

(b) With respect to eligible persons, an insurer shall not:

1. Deny or condition the issuance or effectiveness of a Medicare supplement policy described in subsection (5) of this section that is offered and is available for issuance to new enrollees by the insurer;

2. Discriminate in the pricing of a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition; and

3. Impose an exclusion of benefits based on a preexisting condition under a Medicare supplement policy.

(2) An eligible person shall include the following:

(a) An individual that is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan

ceases to provide all the supplemental health benefits to the individual;

(b) An individual is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, and:

1. The individual is sixty (65) years of age or older and is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under Section 1894 of the Social Security Act, 42 U.S.C. 1395eee, and there are circumstances similar to those described in subparagraph 2 that would permit discontinuance of the individual's enrollment with the provider if the individual were enrolled in a Medicare Advantage plan; or

2. Any of the following circumstances apply:

a. The certification of the organization or plan has been terminated;

b. The organization has terminated or discontinued providing the plan in the area in which the individual resides;

c. The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the secretary, but not including termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act, 42 U.S.C. 1395w-21(g)(3)(B), if the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856, 42 U.S.C. 1395w-26, or the plan is terminated for all individuals within a residence area;

d. The individual demonstrates, in accordance with guidelines established by the secretary, that:

(i) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide the covered care in accordance with applicable quality standards; or

(ii) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(iii) The individual meets the other exceptional conditions as the secretary may provide.

(c) 1. An individual is enrolled with:

a. An eligible organization under a contract under Section 1876 of the Social Security Act, 42 U.S.C. 1395mm regarding Medicare cost;

b. A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

c. An organization under an agreement under Section 1833(a)(1)(A) of the Social Security Act, 42 U.S.C. 1395(a)(1)(A), regarding health care prepayment plan; or

d. An organization under a Medicare Select policy; and

2. The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under subsection (2)(b) of this section.

(d) The individual is enrolled under a Medicare supplement policy and the enrollment ceases due to any of the following reasons:

1.a. The insolvency of the insurer or bankruptcy of the non-insurer organization; or

b. The involuntary termination of coverage or enrollment under the policy;

2. The insurer of the policy substantially violated a material provision of the policy; or

3. The insurer, or an agent or other entity acting on the insurer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;

(e)1. An individual that was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any of the following:

a. A Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare;

b. An eligible organization under a contract under Section 1876 of the Social Security Act, 42 U.S.C. 1395mm regarding Medicare cost;

c. A similar organization operating under demonstration project

authority;

d. A PACE provider under Section 1894 of the Social Security Act, 42 U.S.C. 1395eee; or

e. A Medicare Select policy; and

2. The subsequent enrollment under subparagraph (e)1 of this subsection is terminated by the enrollee during any period within the first twelve (12) months of subsequent enrollment during which the enrollee is permitted to terminate the subsequent enrollment under Section 1851(e) of the federal Social Security Act, 42 U.S.C. 1395w-21(e); or

(f) An individual who, upon first becoming eligible for benefits under part A of Medicare at age 65, enrolls in:

1. A Medicare Advantage plan under part C of Medicare, or with a PACE provider under Section 1894 of the Social Security Act, 42 U.S.C. 1395eee; and

2. Disenrolls from the plan or program by not later than twelve (12) months after the effective date of enrollment; or

(g) An individual that:

1. Enrolls in a Medicare Part D plan during the initial enrollment period;

2. Upon enrollment in Part D, was enrolled under a Medicare supplement policy that covers outpatient prescription drugs; and

3. Terminates enrollment in the Medicare supplement policy and submits evidence of enrollment in Medicare Part D along with the application for a policy described in subsection (5)(d) of this section.

(3) Guaranteed Issue Time Periods.

(a) For an individual described in subsection (2)(a) of this section, the guaranteed issue period shall:

1. Begin on the later of the date:

a. The individual receives a notice of termination or cessation of all supplemental health benefits, or, if a notice is not received, notice that a claim has been denied because of a termination or cessation; or

b. That the applicable coverage terminates or ceases; and

2. End sixty-three (63) days thereafter;

(b) For an individual described in subsection (2)(b), (c), (e), or (f) of this section whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends sixty-three (63) days after the date the applicable coverage is terminated;

(c) For an individual described in subsection (2)(d)1 of this section, the guaranteed issue period shall end on the date that is sixty-three (63) days after the date the coverage is terminated and shall begin on the earlier of the date that:

1. The individual receives a notice of termination, a notice of the insurer's bankruptcy or insolvency, or other the similar notice if any; or

2. The applicable coverage is terminated;

(d) For an individual described in subsection (2)(b), (d)2, (d)3, (e) or (f) of this section who disenrolls voluntarily, the guaranteed issue period shall begin on the date that is sixty (60) days before the effective date of the disenrollment and shall end on the date that is sixty-three (63) days after the effective date;

(e) For an individual described in subsection (2)(g) of this section, the guaranteed issue period shall begin on the date the individual receives notice pursuant to Section 1882(v)(2)(B) of the Social Security Act, 42 U.S.C. 1395ss(v)(2)(B), from the Medicare supplement insurer during the sixty (60) day period immediately preceding the initial Part D enrollment period and shall end on the date that is sixty-three (63) days after the effective date of the individual's coverage under Medicare Part D; and

(f) For an individual described in subsection (2) of this section but not described in the preceding provisions of this subsection, the guaranteed issue period shall begin on the effective date of disenrollment and shall end on the date that is sixty-three (63) days after the effective date.

(4) Extended Medigap Access for Interrupted Trial Periods.

(a) For an individual described in subsection (2)(e) of this section whose enrollment with an organization or provider described in Subsection (2)(e)1 of this section is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls with another

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organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in subsection(2)(e) of this section;

(b) For an individual described in subsection (2)(f) of this section whose enrollment with a plan or in a program described in Subsection (2)(f) of this section is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls in another plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in subsection (2)(f) of this section; and

(c) For purposes of subsection (2)(e) and (f) of this section, enrollment of an individual with an organization or provider described in subsection (2)(e)1 of this section, or with a plan or in a program described in subsection (2)(f) of this section, shall not be deemed to be an initial enrollment under this paragraph after the two (2) year period beginning on the date on which the individual first enrolled with an organization, provider, plan, or program.

(5) Products to Which Eligible Persons are Entitled. The Medicare supplement policy to which eligible persons are entitled under:

(a) Section 14(2)(a), (b), (c) and (d)[13(2)(a), (b), (c) and (d)] of this administrative regulation is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, F, high deductible F, K, or L offered by any insurer.

(b)1. Subject to subparagraph 2 of this paragraph, a person eligible pursuant to Section 14(2)(e)[13(2)(e)] of this administrative regulation is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same insurer, or, if not so available, a policy described in paragraph (a) of this subsection;

2. After December 31, 2005, if the individual was most recently enrolled in a Medicare supplement policy with an outpatient prescription drug benefit, a Medicare supplement policy described in this subparagraph is:

a. The policy available from the same insurer but modified to remove outpatient prescription drug coverage; or

b. At the election of the policyholder, an A, B, C, F, high deductible F, K, or L policy that is offered by any insurer;

(c) Section 14(2)(f)[13(2)(f)] of this administrative regulation shall include any Medicare supplement policy offered by any insurer;

(d) Section 14(2)(g)[13(2)(g)] of this administrative regulation is a Medicare supplement policy that:

1. Has a benefit package classified as Plan A, B, C, F, high deductible F, K, or L; and

2. Is offered and available for issuance to new enrollees by the same insurer that issued the individual's Medicare supplement policy with outpatient prescription drug coverage.

(6) Notification provisions.

(a) Upon an event described in subsection (2) of this section resulting in a loss of coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the insurer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of the individual's rights under this section, and of the obligations of insurers of Medicare supplement policies under subsection (1) of this section. This notice shall be communicated simultaneously with the notification of termination.

(b) Upon an event described in subsection (2) of this section resulting in an individual ceasing enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the insurer offering the policy, or the administrator of the plan, respectively, shall notify the individual of the individual's rights under this section, and of the obligations of insurer of Medicare supplement policies under Section 14(1)[13(1)] of this administrative regulation. The notice shall be communicated within ten (10) working days of the insurer receiving notification of disenrollment.

Section 15[Section 14]. Standards for Claims Payment. (1) An insurer shall comply with 42 U.S.C. 1395ss, section 1882(c)(3) of

the Social Security Act, by:

(a) Accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form required and making a payment determination on the basis of the information contained in that notice;

(b) Notifying the participating physician or supplier and the beneficiary of the payment determination;

(c) Paying the participating physician or supplier;

(d) Upon enrollment, furnishing each enrollee with a card listing the policy name, number and a central mailing address to which notices from a Medicare carrier may be sent;

(e) Paying user fees for claim notices that are transmitted electronically or in another manner; and

(f) Providing to the Secretary of, at least annually, a central mailing address to which all claims may be sent by Medicare carriers.

(2) Compliance with the requirements established in subsection (1) of this section shall be certified to the commissioner as part of the insurer's annual filing pursuant to KRS 304.3-240.

Section 16[Section 15]. Loss Ratio Standards and Refund or Credit of Premium. (1) Loss Ratio Standards.

(a)1. Pursuant to KRS 304.14-530, a Medicare Supplement policy form or certificate form shall not be delivered or issued for delivery in Kentucky unless it is expected to return to policyholders and certificate holders in the form of aggregate benefits, not including anticipated refunds or credits, provided under the policy form or certificate form which total:

a. At least seventy-five (75) percent of the aggregate amount of premiums earned in the case of group policies; or

b. At least sixty-five (65) percent of the aggregate amount of premiums earned in the case of individual policies;

2. The calculation shall be in accordance with accepted actuarial principles and practices; and

a. Based on:

(i) Incurred claims experience or incurred health care expenses if coverage is provided by a health maintenance organization on a service rather than reimbursement basis; and

(ii) Earned premiums for the period; and

b. Incurred health care expenses if coverage is provided by a health maintenance organization shall not include:

(i) Home office and overhead costs;

(ii) Advertising costs;

(iii) Commissions and other acquisition costs;

(iv) Taxes;

(v) Capital costs;

(vi) Administrative costs; and

(vii) Claims processing costs.

(b) A filing of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.

(c) For policies issued prior to October 14, 1990, expected claims in relation to premiums shall meet:

1. The originally filed anticipated loss ratio when combined with the actual experience since inception;

2. The appropriate loss ratio requirement from subsection (1)(a)1a and b of this section when combined with actual experience beginning with July 5, 1996, to date; and

3. The appropriate loss ratio requirement from subsection (1)(a)1a and b of this section over the entire future period for which the rates are computed to provide coverage.

(2) Refund or Credit Calculation.

(a) An insurer shall collect and file with the commissioner by May 31 of each year the data contained in the applicable reporting form contained in HL-MS-1 for each type in a standard Medicare supplement benefit plan:

(b) If on the basis of the experience as reported the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio

since inception (ratio 3), then a refund or credit calculation shall be required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(c) For policies or certificates issued prior to October 14, 1990, the insurer shall make the refund or credit calculation separately for all individual policies, including all group policies subject to an individual loss ratio standard when issued, combined and all other group policies combined for experience after July 5, 1996.

(d) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds the level as identified on the annual refund calculation form HL-MS-1. The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but it shall not be less than the average rate of interest for thirteen (13) week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

(3) Annual filing of Premium Rates.

(a) An insurer of Medicare supplement policies and certificates issued before or after January 14, 1992, in this state shall file annually for approval by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner in KRS 304-14-120:

1. Rates;
2. Rating schedule; and
3. Supporting documentation, including ratios of incurred losses to earned premiums by policy duration.

(b) The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves.

(c) An expected third-year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three (3) years.

(d) As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every insurer of Medicare supplement policies or certificates in this state shall file with the commissioner, in accordance with KRS 304-14.120:

1.a. Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. The supporting documents necessary to justify the adjustment shall accompany the filing.

b. Appropriate premium adjustments necessary to produce an expected loss ratio under the policy or certificate to conform to minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the insurer for the Medicare supplement policies or certificates. A premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described in this subsection shall not be made with respect to a policy at any time other than upon its renewal date or anniversary date.

c. If an insurer fails to make premium adjustments acceptable to the commissioner in accordance with this section, the commissioner may order premium adjustments, refunds or premium credits necessary to achieve the loss ratio required by this section.

2. Any appropriate riders, endorsements, or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. The riders, endorsements, or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

(4) Public Hearings. The commissioner may conduct a public hearing pursuant to KRS 304.2-310, to gather information concerning a request by an insurer for an increase in a rate for a policy form or certificate form issued before or after January 1, 1992, if the experience of the form for the previous reporting period

is not in compliance with the applicable loss ratio standard. The determination of compliance shall be made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished in accordance with KRS 304.2-320.

~~Section 17~~~~[Section 46]~~. Filing and Approval of Policies and Certificates and Premium Rates. (1) An insurer shall not deliver or issue for delivery a policy or certificate to a resident of Kentucky unless the policy form or certificate form has been filed with and approved by the commissioner in accordance with filing requirements and procedures in KRS 304.14-120.

(2) An insurer shall file, with the commissioner, any riders or amendments to policy or certificate forms, issued in Kentucky, to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108-173.

(3) An insurer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed with and approved by the commissioner in accordance with KRS 304.14-120.

(4)(a) Except as provided in Paragraph (b) of this subsection, an insurer shall not file for approval more than one (1) form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

(b) An insurer may offer, with the approval of the commissioner, up to four (4) additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one (1) for each of the following cases:

1. The inclusion of new or innovative benefits;
2. The addition of either direct response or agent marketing methods;
3. The addition of either guaranteed issue or underwritten coverage;
4. The offering of coverage to individuals eligible for Medicare by reason of disability.

(c) A type of a policy or certificate form shall include:

1. An individual policy;
2. A group policy;
3. An individual Medicare Select policy; or
4. A group Medicare Select policy.

(5)(a) Except as provided in subparagraph 1 of this paragraph, an insurer shall continue to make available for purchase any policy form or certificate form issued after January 1, 1992, that has been approved by the commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the insurer has actively offered it for sale in the previous twelve (12) months.

1. An insurer may discontinue the availability of a policy form or certificate form if the insurer provides to the commissioner in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner, the insurer shall not offer for sale the policy form or certificate form in Kentucky.

2. An insurer that discontinues the availability of a policy form or certificate form pursuant to Subparagraph 1 of this paragraph shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the insurer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(b) The sale or other transfer of Medicare supplement business to another insurer shall be considered a discontinuance for the purposes of this subsection.

(c) A change in the rating structure or methodology shall be considered a discontinuance under paragraph (a) of this subsection unless the insurer complies with the following requirements:

1. The insurer provides an actuarial memorandum, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates; and

2. The insurer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential that is in the public interest.

(6)(a) Except as provided in paragraph (b) of this subsection, the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in Section 16 [45] of this administrative regulation.

(b) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

(7) An insurer shall not present for filing or approval a rate structure for its Medicare supplement policies or certificates issued after October 4, 2005, based upon a structure or methodology with any groupings of attained ages greater than one (1) year. The ratio between rates for successive ages shall increase smoothly as age increases.

Section 18~~[Section 17]~~. Permitted Compensation Arrangements. (1) An insurer or other entity may provide commission or other compensation to an agent or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than 200 percent of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

(2) The commission or other compensation provided in subsequent (renewal) years shall be the same as that provided in the second year or period and shall be provided for no fewer than five (5) renewal years.

(3) An insurer or other entity shall not provide compensation to its agents or other producers and an agent or producer shall not receive compensation greater than the renewal compensation payable by the replacing insurer on renewal policies or certificates if an existing policy or certificate is replaced.

Section 19~~[Section 18]~~. Required Disclosure Provisions. (1) General Rules.

(a)1. Medicare supplement policies and certificates shall include a renewal or continuation provision.

2. The language or specifications of a renewal or continuation provision shall be consistent with the type of contract issued.

3. The renewal or continuation provision shall:

a. Be appropriately captioned;

b. Appear on the first page of the policy; and

c. Include any reservation by the insurer of the right to change premiums and any automatic renewal premium increases based on the policyholder's age.

(b)1. A rider or endorsement added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured, except for a rider or endorsement by which an insurer:

a. Effectuates a request made in writing by the insured;

b. Exercises a specifically reserved right under a Medicare supplement policy; or

c. Is required to reduce or eliminate benefits to avoid duplication of Medicare benefits.

2. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless:

a. The benefits are required by the minimum standards for Medicare supplement policies; or

b. If the increased benefits or coverage is required by law.

3. If a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.

(c) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described

as "usual and customary," "reasonable and customary" or words of similar import.

(d) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, these limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."

(e) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate, or attached thereto, stating in substance that the policyholder or certificate holder shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.

(f)1. Insurers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to persons eligible for Medicare shall provide to those applicants a Guide to Health Insurance for People with Medicare in the language, format, type size, type proportional spacing, bold character, and line spacing developed jointly by the National Association of Insurance Commissioners and Centers for Medicare and Medicaid Services and in a type size no smaller than twelve (12) point type.

2. Delivery of the guide described in subparagraph 1 of this paragraph shall be made:

a. Whether or not the policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as described in this administrative regulation.

b. To the applicant upon application and acknowledgement of receipt of the guide shall be obtained by the insurer, except that direct response insurer shall deliver the guide to the applicant upon request but not later than at policy delivery.

(2) Notice requirements.

(a) As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare benefit changes, an insurer shall notify its policyholders and certificate holders of modifications it has made to Medicare supplement insurance policies or certificates. The notice shall:

1. Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate; and

2. Inform each policyholder or certificate holder as to if any premium adjustment is to be made due to changes in Medicare.

(b) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(c) The notices shall not contain or be accompanied by any solicitation.

(3) Insurers shall comply with any notice requirements of the Medicare Prescription Drug, Improvement and Modernization Act of 2003, Pub.L. 108-173.

(4) Outline of Coverage Requirements for Medicare Supplement Policies.

(a) An insurer shall provide an outline of coverage to all applicants when an application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgement of receipt of the outline from the applicant; and

(b) If an outline of coverage is provided at application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany the policy or certificate when it is delivered and contain the following statement, in no less than twelve (12) point type, immediately above the company name:

"NOTICE: READ THIS OUTLINE OF COVERAGE CAREFULLY. IT IS NOT IDENTICAL TO THE OUTLINE OF COVERAGE PROVIDED UPON APPLICATION AND THE COVERAGE ORIGINALLY APPLIED FOR HAS NOT BEEN ISSUED."

(c) The outline of coverage provided to applicants pursuant to this section shall consist of four (4) parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the insurer. The outline of coverage shall be in the language and format prescribed in the HL-MS-4 or the Plan Benefit Chart in no less than twelve (12) point type. All

plans shall be shown on the cover page, and the plans that are offered by the insurer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

(5) Notice Regarding Policies or Certificates Which Are Not Medicare Supplement Policies.

(a)1. Any accident and sickness insurance policy or certificate, other than a Medicare supplement policy, a policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act, 42 U.S.C. 1395 et seq., disability income policy, or other policy identified in Section 3(2) of this administrative regulation, issued for delivery in Kentucky to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate.

2. The notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy, or certificate delivered to insureds.

3. The notice shall be in no less than twelve (12) point type and shall contain the following language:

"THIS (POLICY OR CERTIFICATE) IS NOT A MEDICARE SUPPLEMENT (POLICY OR CONTRACT). If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company."

(b) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in subsection (5)(a) of this section shall disclose, using the applicable statement in HL-MS-3 the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.

Section 20~~[Section 19]~~. Requirements for Application Forms and Replacement Coverage. (1) Comparison statement.

(a) If a Medicare Advantage or Medicare supplement policy or certificate is to replace another Medicare supplement or Medicare Advantage policy or certificate, there shall be presented to the applicant, no later than the application date, HL-MS-5.

(b) Direct response insurers shall present the comparison statement to the applicant not later than when the policy is delivered.

(c) Agents shall:

1. Obtain the signature of the applicant on the comparison statement;

2. Sign the comparison statement; and

3. Send the comparison statement to the insurer and attach a copy of the comparison statement to the replacement policy.

(2)(a) Application forms shall include the questions on HL-MS-6 designed to elicit information as to whether, as of the date of the application:

1. The applicant currently has Medicare supplement, Medicare Advantage, Medicaid coverage, or another health insurance policy or certificate in force; or

2. A Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force.

(b) An agent shall provide the HL-MS-07 to the applicant.

(c) A supplementary application or other form to be signed by the applicant and agent containing the questions as found on the HL-MS-06 and statements on HL-MS-07 may be used.

(3) Agents shall list, on HL-MS-06 or on the supplementary form as identified in subsection (2)(c), any other health insurance policies they have sold to the applicant including:

(a) Policies sold which are still in force; and

(b) Policies sold in the past five (5) years that are no longer in force.

(4) For an insurer that uses direct response, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

(5) Upon determining that a sale will involve replacement of

Medicare supplement coverage, any insurer, other than an insurer that uses direct response, or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One (1) copy of the notice signed by the applicant and the agent, except if the coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the insurer. An insurer that uses direct response shall deliver to the applicant at issuance of the policy, the notice regarding replacement of Medicare supplement coverage. Upon receipt of the notice, the applicant or their designee shall notify the insurer who previously provided Medicare supplement coverage of the replacement coverage.

(6) The notice required by Subsection (5) of this section for an insurer shall be provided as specified HL-MS-08, in no less than twelve (12) point type or in a form developed by the insurer, which shall:

(a) Meet the requirements of this section; and

(b) Be filed with and approved by the commissioner prior to use.

Section 21~~[Section 20]~~. Filing Requirements for Advertising and Policy Delivery. (1) An insurer shall provide a copy of any Medicare supplement advertisement intended for use in Kentucky whether through written, electronic, radio, or television, or any other medium to the commissioner for review prior to use. Advertisements shall not require approval prior to use, but an advertisement shall not be used if it has been disapproved by the commissioner and notice of the disapproval has been given to the insurer.

(2) Insurers and agents shall not use the names and addresses of persons purchased as "leads" unless the solicitation material used to obtain the names and addresses of the "leads" are filed as advertisement as required by this section. Insurers and agents shall not use "leads" if the solicitation materials have been disapproved by the commissioner.

(3) If a Medicare supplement policy is not delivered by mail, the agent or insurer shall obtain a signed and dated delivery receipt from the insured. If the delivery receipt is obtained by an agent, the agent shall forward the delivery receipts to the insurer.

Section 22~~[Section 21]~~. Standards for Marketing. (1) An insurer, directly or through its agents or other representatives, shall:

(a) Establish marketing procedures to assure that any comparison of policies by its agents or other representatives will be fair and accurate.

(b) Establish marketing procedures to assure excessive insurance is not sold or issued.

(c) Display prominently by type, stamp or other appropriate means, on the first page of the policy the following disclosure:

"Notice to buyer: This policy may not cover all of your medical expenses."

(d) Inquire and make every reasonable effort to identify if a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any insurance.

(e) Establish auditable procedures for verifying compliance with subsection (1) of this section.

(2) In addition to the practices prohibited in KRS 304.12 and 806 KAR 12:092, the following acts and practices shall be prohibited:

(a) Twisting. Making any unfair or deceptive representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert an insurance policy or to take out a policy of insurance with another insurer.

(b) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(c) Cold lead advertising. Making use of any method of

marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

(3) The terms "Medicare Supplement," "Medigap," "Medicare Wrap-Around" and similar words shall not be used unless the policy is issued in compliance with this administrative regulation.

Section 23~~[Section 22]~~. Appropriateness of Recommended Purchase and Excessive Insurance. (1) In recommending the purchase or replacement of any Medicare supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

(2) Any sale of a Medicare supplement policy or certificate that will provide an individual more than one Medicare supplement policy or certificate shall be prohibited.

(3) An insurer shall not issue a Medicare supplement policy or certificate to an individual enrolled in Medicare Part C unless the effective date of the coverage is after the termination date of the individual's Part C coverage.

Section 24~~[Section 23]~~. Reporting of Multiple Policies. (1) On or before March 1 of each year, an insurer shall report to the commissioner the following information, using HL-MS-2, for every individual resident of Kentucky for which the insurer has in force more than one Medicare supplement policy or certificate:

- (a) Policy and certificate number; and
- (b) Date of issuance.

(2) The items set forth in subsection (1) of this section shall be grouped by individual policyholder.

Section 25~~[Section 24]~~. Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods and Probationary Periods in Replacement Policies or Certificates. (1) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate to the extent time was spent under the original policy.

(2) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six (6) months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods and probationary periods.

Section 26~~[Section 25]~~. Prohibition Against Use of Genetic Information and Requests for Genetic Testing. This Section shall apply to all policies with policy years beginning on or after the effective date of this administrative regulation. (1) An insurer of a Medicare supplement policy or certificate shall not:

(a) Deny or condition the issuance or effectiveness of the policy or certificate, including the imposition of any exclusion of benefits under the policy based on a pre-existing condition, on the basis of the genetic information with respect to any individual; and

(b) Discriminate in the pricing of the policy or certificate, including the adjustment of premium rates, of an individual on the basis of the genetic information with respect to any individual.

(2) Nothing in subsection (1) of this section shall be construed to limit the ability of an insurer, to the extent permitted by law, from:

(a) Denying or conditioning the issuance or effectiveness of the policy or certificate or increasing the premium for a group based on the manifestation of a disease or disorder of an insured or applicant; or

(b) Increasing the premium for any policy issued to an individual based on the manifestation of a disease or disorder of an individual who is covered under the policy, and the manifestation of a disease or disorder in one individual cannot also be used as genetic information about other group members and to further increase the premium for the group.

(3) An insurer of a Medicare supplement policy or certificate shall not request or require an individual or a family member of an individual to undergo a genetic test.

(4) Subsection (3) of this section shall not be construed to prohibit an insurer of a Medicare supplement policy or certificate from obtaining and using the results of a genetic test in making a determination regarding payment, as described for the purposes of applying the regulations promulgated under part C of title XI of the Social Security Act, 42 U.S.C.A. 1320d et seq., and section 264 of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d-2 and consistent with subsection (1) of this section.

(5) For purposes of carrying out subsection (4) of this section, an insurer of a Medicare supplement policy or certificate may request only the minimum amount of information necessary to accomplish the intended purpose.

(6) Notwithstanding subsection (3) of this section, an insurer of a Medicare supplement policy may request, but not require, that an individual or a family member of the individual undergo a genetic test if each of the following conditions is met:

(a) The request shall be made pursuant to research that complies with 45 C.F.R. part 46, or equivalent Federal regulations, and any applicable state or local law, or administrative regulations, for the protection of human subjects in research.

(b) The insurer clearly indicates to each individual, or if a minor child, to the legal guardian of the child, to whom the request is made that:

- 1. Compliance with the request shall be voluntary; and
- 2. Noncompliance shall have no effect on enrollment status or premium or contribution amounts;

(c) Genetic information collected or acquired under this Subsection shall not be used for underwriting, determination of eligibility to enroll or maintain enrollment status, premium rates, or the issuance, renewal, or replacement of a policy or certificate.

(d) The insurer notifies the secretary in writing that the insurer is conducting activities pursuant to the exception provided for under this Subsection, including a description of the activities conducted.

(e) The insurer complies with other conditions as the secretary may by federal regulation require for activities conducted under this subsection.

(7) An insurer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information for underwriting purposes.

(8) An insurer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information with respect to any individual prior to an individual's enrollment under the policy in connection with enrollment.

(9) If an insurer of a Medicare supplement policy or certificate obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning any individual, the request, requirement, or purchase shall not be considered a violation of subsection (8) of this section if the request, requirement, or purchase is not in violation of subsection (7) of this section.

Section 27~~[Section 26]~~. Incorporated by Reference. (1) The following material is incorporate by reference:

- (a) "HL-MS-1", July 2009 edition;
- (b) "HL-MS-2", July 2009 edition;
- (c) "HL-MS-3", July 2009 edition;
- (d) "HL-MS-4", October 2009 edition;
- (e) "HL-MS-5", May 2018~~[July 2009]~~ edition;
- (f) "HL-MS-06", July 2009 edition;
- (g) "HL-MS-07", July 2009 edition; and
- (h) "HL-MS-08", October 2009 edition;
- (i) "Plan Benefit Chart", April 2018 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

NANCY G. ATKINS, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: June 14, 2018

FILED WITH LRC: June 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

VOLUME 45, NUMBER 1 – JULY 1, 2018

public hearing on this administrative regulation shall be held on July 25, 2018 at 9:00 a.m. Eastern Time at the Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the Kentucky Department of Insurance in writing by July 18, 2018, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2018 (11:59 p.m.). Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick D. O'Connor II, Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-2669, email Patrick.oconnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick D. O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: The amendments incorporate required changes to state law for the marketing and sale of Medicare Supplement insurance policies. The Medicare Access and CHIP Reauthorization Act of 2015 ("MACRA") prohibits the sale of Medicare Supplement policies that cover Part B deductibles to "newly eligible" Medicare beneficiaries defined as those who: (a) have attained age 65 on or after January 1, 2020; or (b) first become eligible for Medicare due to age, disability, or end stage renal disease, on or after January 1, 2020. Currently, Medicare Supplement plans C and F include Part B deductibles. These plans will remain in place following January 1, 2020, but they will be unavailable to newly eligible individuals. Individuals eligible for Medicare prior to January 1, 2020 who have a Plan C or F are permitted to keep the plan. As a result, the Department is unable to simply delete all reference to Plans C and F. Instead, after January 1, 2020, all references for "newly eligible" individuals to Plans C or F will pertain to Plan D or G. Plans D and G will serve as the guaranteed issue plans taking the place of Plans C and F for newly eligible individuals beginning January 1, 2020. The changes included in the amendment have been uniformly adopted by the National Association of Insurance Commissioners (NAIC) in Model Law 651 and all other states where Medicare Supplement insurance is marketed and sold.

(b) The necessity of this administrative regulation: The Federal Government requires the amendments in order to preserve state control over the regulation and enforcement of Medicare Supplement markets. In the event the changes are not adopted, the Department's authority to regulate these products will be usurped by the Federal Government.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation includes only the necessary changes included within Section 401 of MACRA.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation includes all required changes to conform to the current federal standards for the marketing and sale of Medicare Supplement insurance plans beginning January 1, 2020. All documents incorporated by reference and impacted by the changes have been amended, including the "Plan Benefit Chart" outlining all available plans and their benefits for potential purchasers.

(2) If 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 incorporate the provisions within Section 401 of MACRA by eliminating all Part B deductible coverage for Medicare Supplement plans for newly eligible

individuals, as defined. Since Plans C and F were not simply eliminated forcing individuals onto new plans, the requirements surrounding those grandfathered Plans C and F must remain in place. Therefore, the newly amended Section 11 of the administrative regulation includes an explanation of the new requirements for Plans D and G taking the place of Plans C and F, and the prohibition of sale for Plans C and F to newly eligible individuals after January 1, 2020. The amendment also incorporates a new plan benefit chart outlining the benefits included within each plan after January 1, 2020.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary for compliance with Federal laws by eliminating all Part B deductible coverage for Medicare Supplement plans for those newly eligible individuals, as defined. Since Plans C and F were not simply eliminated forcing individuals onto new plans, the requirements surrounding those grandfathered Plans C and F must remain in place. Therefore, the newly amended Section 11 of the administrative regulation includes an explanation of the new requirements for Plans D and G taking the place of Plans C and F, and the prohibition of sale for Plans C and F to newly eligible individuals after January 1, 2020. The amendment also incorporates a new plan benefit chart outlining the benefits included within each plan after January 1, 2020.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment incorporates the requirements of Section 401 of MACRA prohibiting coverage of the Part B deductible. It also re-designated Plans C and F as Plans D and G to ensure newly eligible individuals have access to guaranteed issue plans.

(d) How the amendment will assist in the effective administration of the statutes: The amendment incorporates the prohibitions included with Section 401 of MACRA. The adoption of the amendment will permit insurers offering Medicare Supplement insurance plans to develop and file new, conforming plans for regulatory approval and begin marketing and selling these plans on January 1, 2020.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: According to the America's Health Insurance Plans ("AHIP"), 215,143 Kentuckians had a Medicare Supplement policy as of 2016, and thousands more Kentuckians will become "newly eligible" for Medicare after January 1, 2020. Kentucky, currently, has 64 companies approved and marketing Medicare Supplement plans.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, 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: Insurance companies will be required to develop and file new plans compliant with the changes dictated by Section 401 of MACRA throughout 2019 in order to obtain regulatory approval before the January 1, 2020 changes become effective. Insurance companies face a potential fine up to \$25,000 for each prohibited act.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Insurance companies have been on notice since 2015 of the requirements included within the amendment. The update of plans will result in additional administrative cost for industry to comply with the new policies and forms, but the Department is unable to estimate the amount at this time. Additionally, the changes apply nationwide, and any cost can be spread over a larger number of policyholders.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The requirements in Kentucky will match those in all other states, and permit entities to avoid having different requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department does not anticipate any cost to

implement this administrative regulation.

(b) On a continuing basis: The Department does not anticipate any 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: The Department intends to utilize its current budget and personnel 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 will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? Tiering is unnecessary as the regulation applies to all insurers offering Medicare Supplement policies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 administrative regulation will not impact any parts or divisions of state or local government beyond the Department of Insurance.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The Medicare Access and CHIP Reauthorization Act of 2015 (H.R. 2, Pub. L. 114-10) requires the changes included within the amended 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 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 administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? The administrative regulation will not have any administration costs.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation will not have any administration costs.

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: Neutral.

PUBLIC PROTECTION CABINET
Department of Professional Licensing
(Amendment)

830 KAR 1:010.[Forms for] Application, certificate of registration, and fees.

RELATES TO: KRS 433.900 - 433.906
STATUTORY AUTHORITY: KRS 433.902
NECESSITY, FUNCTION, AND CONFORMITY: KRS 433.902(4) requires the Department of Professional Licensing[cabinet] to promulgate administrative regulations to establish registration forms and fees for secondary metals recyclers. This administrative regulation establishes the required forms and fees for registration as a secondary metals recycler.

Section 1. Application. (1) An applicant for a certificate of registration shall submit:

(a) A completed[Pursuant to KRS 433.902(4)(b);] Form SMR-1, Application for Registration as a Secondary Metals Recycler;

(b) [shall be completed in order to receive a certificate of registration.

(2) The application shall be accompanied by:

(a) Payment of the application fee by check or money order made payable to the Kentucky State Treasurer in the amount of \$75 for each location, if more than one[\$400]; and

(c)[(b)] A copy of the results of a name-based background check on the applicant performed by the Kentucky State Police [in accordance with KRS 433.902(2)].

(2) Renewal applications shall include the applicant's registration number and any changes to information previously submitted to the Department.

Section 2. Registration. (1) If an application is approved, the Department shall issue a certificate to the applicant[(3) Pursuant to KRS 433.902(4)(f), Form SMR-2, Registry for Secondary Metals Recyclers, shall be issued if the application is approved].

(2) Registrations shall be valid for one (1) year from the date of issuance.

Section 3[2]. Incorporation by Reference. (1)[The following material is incorporated by reference:

(a) Form SMR-1, "Application for Registration as a Secondary Metals Recycler", June 2018.[42/2012]is incorporated by reference]; and

(b) "Form SMR-2, Registry for Secondary Metal Recyclers", 42/2012].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing[Office of Occupations and Professions], 911 Leawood Drive, Frankfort, Kentucky 40602, Monday through Friday, 8:00 a.m. to 4:30 p.m.

ISAAC VANHOOSE, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: June 14, 2018
FILED WITH LRC: June 14, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation amendment shall, if requested, be held on July 24, 2018, at the hour of 10:00 a.m., at the Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing at least 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 five (5) business days prior to the hearing, the hearing may be cancelled. 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 amendment. A transcript of the public hearing will not be made unless a written request for a transcript is made five (5) business days prior to the hearing. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation amendment. Written comments shall be accepted until July 31, 2018. Send written notification of intent to attend the public hearing, and/or written comments on the proposed administrative regulation amendment to:

CONTACT PERSON: David C. Trimble, General Counsel, Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 782-8823 email DavidC.Trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the procedures and forms for registration of Secondary Metals Recyclers.

(b) The necessity of this administrative regulation: This

regulation is necessary to provide procedures and forms for registration of Secondary Metals Recyclers for compliance with 433.902.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 433.902 authorizes the Department of Professional Licensing to promulgate administrative regulations for procedures and forms for registration of Secondary Metals Recyclers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Department of Professional Licensing is charged with the responsibility of registration of Secondary Metals Recyclers in Kentucky. Regulations are necessary for implementation of this law.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment adds a procedure for renewal of registrations and reduces the application fee from \$100 to \$75 to more accurately reflect the actual administrative costs of processing an application.

(b) The necessity of the amendment to this administrative regulation: Prior regulations omitted a procedure for renewal and included a higher cost for processing an application.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 433.902 authorizes the Department of Professional Licensing to promulgate administrative regulations for procedures and forms for registration of Secondary Metals Recyclers. These amendments therefore conform to the content of the authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: This amendment adds a procedure for renewal of registrations. Prior regulations omitted a procedure for renewal and included a higher cost for processing an application.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Secondary metals recyclers include any business which converts metals from their original use into a form that can be used for a secondary, or further use. There are currently 71 registered secondary metals recyclers registered with the Department.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, 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: Applicants will have to check a box on the updated form indicating whether they are an initial applicant or a renewal, as well as pay the newly reduced fee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): Entities identified in question (3) will incur no new costs to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities identified in question (3) will have a clearer and easier initial application and renewal process as a result of compliance.

(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 initially implement this regulation.

(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: There is no additional funding necessary to implement this amendment to the administrative regulation. The Department already receives and processes secondary metals recycler applications and will continue to do so with existing staff.

(7) Provide an assessment of whether an 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 increases in fees or funding will be necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This amendment reduces fees to applicants to ensure that fees established are reasonable and equal to the actual administrative costs of processing an application for a certificate of registration.

(9) TIERING: Is tiering applied? No. This amendment applies equally to all persons or entities who apply for a secondary metals recycling certificate of registration.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Professional Licensing is the agency responsible for implementing this regulation. All others affected are private entities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS433.900-433.906, as amended, creates the Secondary Metals Recyclers registry and directs that the Department of Professional Licensing shall operate and oversee the registry.

3. Estimate the effect of this administrative regulation on the 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 amended administrative regulation will result in a small decrease in revenue for the Department of Professional Licensing. No other state or local government agency will be affected.

(a) How much 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 directly generate any new or additional 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 amendment will not directly generate any new or additional revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No additional administrative cost will be incurred by amending this regulation.

(d) How much will it cost to administer this program for subsequent years? No additional administrative cost will be incurred by amending this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): -\$1,775 per year

Expenditures (+/-): None

Other Explanation: The \$25 application fee reduction will reduce the cost of compliance for new and current registrants.

CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General (Amendment)

906 KAR 1:190. Kentucky National Background Check Program (NBCP).

RELATES TO: KRS Chapter 13B, 42 U.S.C. 1320 a-7I, 42 U.S.C. 5119a(a)(1), 42 U.S.C. 5119c

STATUTORY AUTHORITY: KRS 194A.050(1), 42 U.S.C. 1320a-7I

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities

vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C. 1320a-71 directs the secretary of the United States Department of Health and Human Services to establish a program to identify efficient, effective, and economical procedures for long-term care facilities or providers to conduct background checks on prospective direct patient access employees on a nationwide basis. ~~On May 20, 2014, the Commonwealth of Kentucky was the twelfth state to receive a National Background Check Program (NBCP) grant awarded by the Centers for Medicare and Medicaid Services under 42 U.S.C. 1320a-71. On the date this amendment was filed with the Legislative Research Commission, twenty-six (26) states and territories had received an NBCP grant.~~ The Cabinet for Health and Family Services, Office of Inspector General, is charged with responsibility to oversee and coordinate Kentucky's fingerprint-supported NBCP ~~[grant]~~ initiative. This administrative regulation establishes procedures for the implementation of Kentucky's NBCP as a voluntary program. The conditions set forth in this administrative regulation for voluntary KARES system participants are in addition to the name-based, state only background check requirements of KRS 216.533, 216.712(2), 216.787, and 216.789.

Section 1. Definitions. (1) "Applicant" means an individual who:

- (a) Applies for employment with an employer identified in subsection (6) of this section; or
- (b) Is subject to background screening by a professional licensing board that enrolls contingent upon approval by the Federal Bureau of Investigation and Department of Kentucky State Police in the Kentucky NBCP.

(2) "Cabinet" means the Cabinet for Health and Family Services.

(3) "Criminal background check" means a state and national fingerprint-supported criminal history background check performed by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) and includes a comparison of the applicant's fingerprints with any fingerprints that may be on file with KSP or the FBI.

(4) "Disqualifying offense" means:

(a) A conviction of, or a plea of guilty, an Alford plea, or a plea of nolo contendere to:

- 1. A misdemeanor offense related to:
 - a. Abuse, neglect, or exploitation of an adult as defined by KRS 209.020(4);
 - b. Abuse, neglect, or exploitation of a child;
 - c. A sexual offense;
 - d. Assault occurring less than seven (7) years from the date of the criminal background check;
 - e. Stalking occurring less than seven (7) years from the date of the criminal background check;
 - f. Theft occurring less than seven (7) years from the date of the criminal background check, excluding KRS 514.040;
 - g. Fraud occurring less than seven (7) years from the date of the criminal background check;
 - h. Unlawfully possessing or trafficking in a legend drug or controlled substance occurring less than seven (7) years from the date of the criminal background check; ~~[or]~~
 - i. KRS 525.130, Cruelty to animals in the second degree – Exemptions – Offense involving equines;
 - j. KRS 525.135, Torture of dog or cat; or
 - k. Any other misdemeanor offense relating to abuse, neglect, or exploitation that is not listed in this subsection and occurred less than seven (7) years from the date of the criminal background check;
- 2. A criminal offense against a victim who is a minor, as defined in KRS 17.500;
- 3. A felony offense involving a child victim;
- 4. A felony offense under:
 - a. KRS Chapter 209, protection of adults;
 - b. KRS 217.182, Sale, distribution, administration, prescription, or possession of legend drugs – Penalty;
 - c. KRS Chapter 218A, controlled substances;
 - d. KRS 506.120, Engaging in organized crime;

- e. ~~[e.]~~ KRS Chapter 434, offenses against property by fraud;
- f. ~~[d.]~~ KRS Chapter 507, criminal homicide;
- g. ~~[e.]~~ KRS Chapter 507A, fetal homicide;
- h. ~~[f.]~~ KRS Chapter 508, assault and related offenses;
- i. ~~[g.]~~ KRS Chapter 509, kidnapping and related offenses;
- j. ~~[h.]~~ KRS Chapter 510, sexual offenses;
- k. ~~[i.]~~ KRS Chapter 511, burglary and related offenses;
- l. ~~[j.]~~ KRS Chapter 512, criminal damage to property;
- m. ~~[k.]~~ KRS Chapter 513, arson and related offenses;
- n. ~~[l.]~~ KRS Chapter 514, theft and related offenses, excluding KRS 514.040;

- o. ~~[m.]~~ KRS Chapter 515, robbery;
- p. ~~[n.]~~ KRS Chapter 516, forgery and related offenses;
- q. ~~[e.]~~ KRS Chapter 517, business and commercial frauds;
- r. ~~[p.]~~ KRS Chapter 520, escape and other offenses related to custody;
- s. ~~[q.]~~ KRS Chapter 525, riot, disorderly conduct, and related offenses;
- t. ~~[r.]~~ KRS Chapter 527, offenses relating to firearms and weapons;
- u. ~~[s.]~~ KRS Chapter 529, prostitution offenses;
- v. ~~[t.]~~ KRS Chapter 530, family offenses, excluding KRS 530.050;

- w. ~~[u.]~~ KRS Chapter 531, pornography; or
- x. ~~[v.]~~ Any other felony offense relating to abuse, neglect, exploitation, drugs, theft, or fraud not listed in this subsection;

- 5. An offense under a criminal statute of the United States or of another state similar to an offense specified in this paragraph; or
- 6. A crime described in 42 U.S.C. 1320a-7;
- (b) A pending charge or an outstanding warrant for a criminal offense related to:

- 1. A sex crime as defined by KRS 17.500(8);
- 2. KRS Chapter 209, protection of adults;
- 3. KRS 218A.1412, Trafficking in controlled substance in first degree – Penalties;
- 4. KRS Chapter 507, Criminal homicide;
- 5. KRS Chapter 508, Assault and related offenses;
- 6. KRS Chapter 509, Kidnapping and related offenses;
- 7. KRS Chapter 510, Sexual offenses;
- 8. KRS Chapter 513, Arson and related offenses;
- 9. KRS Chapter 515, Robbery;
- 10. KRS Chapter 516, Forgery; or
- 11. KRS Chapter 531, Pornography;

(c) An out-of-state or federal charge that is pending or any outstanding warrant from another state or jurisdiction that is similar to an offense specified in subsection (b) of this section;

(d) A substantiated finding of neglect, abuse, or misappropriation of property by a state or federal agency pursuant to an investigation conducted in accordance with 42 U.S.C. 1395i-3 or 1396r;

(e)[(e)] Registration as a sex offender under federal law or under the law of any state; or

(f)[(d)] Being listed on a registry as defined in subsection (10) of this section.

(5) "Employee" means an individual who:

(a)1. Is hired directly or through contract by an employer defined in subsection (6) of this section, and has duties that involve or may involve one-on-one contact with a patient, resident, or client; or

2. Unless excluded pursuant to Section 2(3)(c) through (e) of this administrative regulation, is a volunteer who has duties that are equivalent to the duties of an employee providing direct services and the duties involve, or may involve, one-on-one contact with a patient, resident, or client; and

(b) Has access to the personal belongings or funds of a patient, resident, or client.

(6) "Employer" means:

(a) A long-term care facility as defined in KRS 216.510;

(b) A nursing pool as defined in subsection (9) of this section providing staff to a long-term care facility or provider;

(c) An adult day health care program as defined in KRS 216B.0441;

(d) An assisted living-community as defined in KRS 194A.700;

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(e) A home health agency as defined in KRS 216.935;
(f) A provider of hospice care as defined in 42 U.S.C. 1395x(dd)(1) and licensed pursuant to KRS Chapter 216B;

(g) A personal services agency as defined in KRS 216.710;

(h) A long-term care hospital as defined in 42 U.S.C. 1395ww(d)(1)(B)(iv);

(i) A provider of home and community-based services authorized under KRS Chapter 205;

(j) A staffing agency with a contracted relationship to provide one (1) or more employers as listed in this subsection with staff whose duties are equivalent to duties performed by an employee pursuant to subsection (5) of this section; or

(k) ~~Any other health facility or service licensed pursuant to KRS Chapter 216B that applies to participate voluntarily in Kentucky's National Background Check Program; or~~

(h) Any other provider licensed by the cabinet for which a state and national background check is required as a condition of employment.

(7) "KARES system" means the cabinet's secure, web-based application used to facilitate abuse registry and fingerprint-supported state and national criminal background checks for authorized users of the system.

(8) "Kentucky National Background Check Program" or "NBCP" means a background screening program administered by the Cabinet for Health and Family Services, Office of Inspector General to facilitate registry and fingerprint-supported state and national criminal history background checks conducted by the Department of Kentucky State Police and the Federal Bureau of Investigation for the following: [i]

(a) Prospective employees of any employer identified in subsection (6)(a) through (j) [(k)] of this section that participates voluntarily in the Kentucky National Background Check Program;

(b) Any other individuals required by state law or administrative regulation to submit to a state and national background check as a condition of:

1. Employment; or

2. Licensure, certification, or registration by a professional licensing board that enrolls contingent upon approval by the Federal Bureau of Investigation and Department of Kentucky State Police in the Kentucky NBCP; and

(c) May include individuals seeking approval as a kinship caregiver or foster or adoptive parent.

(9) "Nursing pool" means a person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in or with a long-term care facility or provider for medical personnel, including nurses, nursing assistants, nursing aides, and orderlies.

(10) "Registry" means the:

(a) Nurse aide abuse registry maintained pursuant to 906 KAR 1:100 and 42 C.F.R. 483.156;

(b) Child abuse and neglect registry maintained pursuant to 922 KAR 1:470 and required by 42 U.S.C. 671(a)(20);

(c) List of Excluded Individuals and Entities maintained by the United States Department of Health and Human Services, Office of Inspector General pursuant to 42 U.S.C. 1320a-7;

(d) Caregiver misconduct registry required by KRS 209.032; and

(e) Any available abuse registry, including the abuse and neglect registries of another state if an applicant resided or worked in that state.

(11) "State" is defined by KRS 446.010(40).

(12) "Violent offender" is defined by KRS 439.3401(1).

Section 2. Applicability and Exceptions. (1) This administrative regulation shall establish requirements for registry and criminal background checks of prospective employees seeking employment with a:

(a) State-owned or operated health facility licensed pursuant to KRS Chapter 216B; or

(b) Private long-term care employer that participates voluntarily in Kentucky's NBCP.] apply to:

(a) Prospective cabinet staff whose duties include conducting inspections of:

1. Health facilities and services licensed pursuant to KRS Chapter 216B; or

2. Services regulated pursuant to KRS 194A.700 through 194A.729, or KRS 216.710 through 216.714;

(b) Prospective employees of state-owned or operated health facilities licensed pursuant to KRS Chapter 216B;

(c) Prospective cabinet staff who have or may have one-on-one contact with a patient or resident of an employer defined by Section 1(6) of this administrative regulation; and

(d) Prospective employees seeking employment with a private employer that participates voluntarily in the Kentucky National Background Check Program.]

(2) This administrative regulation shall not apply to current [cabinet staff or current] employees of any employer that participates voluntarily in the Kentucky National Background Check program.

(3) A prospective employee shall not include:

(a) An individual who independently contracts with a KARES-participating employer to provide utility, construction, communications, or other services if the contracted services are not directly related to the provision of services to a resident, patient, or client of the employer;

(b) A physician, surgeon, dentist, psychologist, psychiatrist, podiatrist, audiologist, ophthalmologist, optometrist, dietician, therapist, phlebotomist, or any health care practitioner who is licensed to practice in Kentucky and is under contract with a participating employer in which a background check is required as a condition of professional licensure;

(c) A member of a community-based or faith-based organization that provides volunteer services that do not involve unsupervised interaction with a patient or resident;

(d) A student participating in an internship program; or

(e) A family member or friend visiting a patient or resident.

Section 3. Continuous Assessment. (1) To ensure that the information remains current in the KARES system, the cabinet shall collaborate with the Department of Kentucky State Police (KSP) to implement a mechanism for continuous assessment in which KSP:

(a) Retains the fingerprints of an individual screened under the Kentucky NBCP:

1. For a minimum period of five (5) years from the date of fingerprint submission; and

2. On a five (5) year renewal basis thereafter; and

(b) Facilitates the retention of the fingerprints by the FBI upon approval to participate in the FBI's Next Generation Identification (NGI) rap back service.

(2) Upon implementation of the process for continuous assessment, the Department of Kentucky State Police may provide notification to the cabinet of triggering events for each applicant after initial processing of the applicant's criminal background check, subject to any applicable administrative regulations of the Department of Kentucky State Police and the FBI.

Section 4. Enrolling in the Kentucky NBCP. To enroll in the Kentucky NBCP, an employer or a participating professional licensing board shall:

(1) Log on to the KARES portal; and

(2) Confirm acceptance of the terms and conditions for using the KARES system.

Section 5. Registry and Criminal Background Checks: Procedures and Payment. (1) To initiate the process for obtaining a background check on a prospective employee or licensee, the employer or participating professional licensing board shall:

(a) Request that the applicant provide a copy of his or her driver's license or other government-issued photo identification and verify that the photograph clearly matches the applicant;

(b) Request that the applicant sign the OIG 1:190-1, Disclosures to be Provided to and Signed by Applicant for Employment or Licensure;

(c) Request that the applicant complete the OIG 1:190-2, Waiver Agreement and Statement; and

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(d) Log on to the KARES portal, which shall be a secure web-based system maintained by the cabinet, and enter the applicant's demographic information for a check of:

1. Each registry as defined by Section 1(10) of this administrative regulation; and

2. Available databases maintained separately by the Kentucky Board of Medical Licensure, Kentucky Board of Nursing, Kentucky Board of Physical Therapy, and any other available professional licensing board with oversight of health care professionals, including behavioral health professionals, to validate the applicant's professional licensure status, if applicable.

(2) If an applicant is cleared for hire after a check of the registries and databases identified in subsection (1)(d) of this section, the participating entity shall submit payment via credit or debit card for the criminal background check.

~~(3)(a) [Until NBCP grant funds are depleted, employers identified in Section 1(6)(a) through (j) of this administrative regulation shall pay a fee of twenty (20) dollars for a fingerprint-supported state and national criminal background check, which includes the cost of the Kentucky NBCP and the fees of the Department of Kentucky State Police and the FBI.~~

~~(b)] A participating entity enrolled in the Kentucky NBCP [and not identified in Section 1(6)(a) through (j) of this administrative regulation] shall pay a non-refundable fee not to exceed twenty-five (25) dollars to cover the cabinet's administrative cost for facilitating a criminal background check in addition to any fees charged by the Department of Kentucky State Police and the FBI for the actual cost of processing a fingerprint-supported state and national criminal background check and for providing continuous assessment services as described in Section 3(2) of this administrative regulation.~~

~~(b)](e) If an applicant's continuous assessment period identified under Section 3 of this administrative regulation has not expired, a fee of twenty (20) dollars shall be charged to view the applicant's current fitness determination and process a new application, in which case a new fingerprint check is not needed. [(d) 1. After NBCP grant funds are depleted, the total cost of a fingerprint-supported state and national criminal background check charged to an employer identified in Section 1(6) of this administrative regulation shall not exceed actual costs of the Kentucky NBCP and the fees charged by the Department of Kentucky State Police and the FBI for the actual cost of processing criminal background checks and for continuous assessments.~~

~~2. If an applicant has not been previously fingerprinted under the Kentucky NBCP or if the applicant's continuous assessment period has expired, a fee not to exceed twenty-five (25) dollars shall be charged to the employer to cover the cabinet's administrative cost for facilitating a criminal background check in addition to any fees charged by the Department of Kentucky State Police and the FBI for a fingerprint-supported state and national criminal background check and for continuous assessment services as described in Section 3(2) of this administrative regulation.]~~

(4)(a) Upon submission of payment pursuant to subsection (3) of this section, the employer or other participating entity shall print a copy of the Live Scan Fingerprinting Form from the KARES portal and provide the form to the applicant.

(b) The applicant shall:

1. Have thirty (30) calendar days from the date of payment pursuant to subsection (2) of this section to submit his or her fingerprints at an authorized collection site; and

2. Present the Live Scan Fingerprinting Form and driver's license or other government-issued photo identification to the designated agent at an authorized collection site prior to fingerprint submission.

(5) Upon completion of a criminal background check, the cabinet:

(a) Shall provide notice to the employer that the applicant is:

1. Eligible for hire; or

2. Not eligible for hire if the applicant is found by the cabinet to have a disqualifying offense as identified in Section 1(4) of this administrative regulation;

(b) May release any record of state criminal history found in the

files of the Kentucky centralized criminal history record information system to the employer or entity listed on the OIG 1:190-2, Waiver Agreement and Statement incorporated by reference in Section 14 of this administrative regulation; and

(c) Shall, upon receipt of a written request from an applicant, send a copy if any of a KSP or FBI criminal history report to the applicant by certified mail, restricted delivery service. The applicant shall show proof of identity and sign to receive his or her criminal history report from the local post office.

(6) An employer shall not be obligated to employ or offer employment to an individual who has been found by the cabinet to be eligible for hire pursuant to subsection (5)(a) of this section.

Section 6. Provisional Employment. (1) If an applicant is not found on a registry and the individual's license has been validated, if applicable, an employer may hire the applicant for a period of provisional employment pending completion of the criminal background check.

(2) The period of provisional employment shall:

(a) Not commence prior to the date the applicant submitted his or her fingerprints; and

(b) Not exceed sixty (60) calendar days from the date of fingerprint collection.

(3) During the period of provisional employment, the individual shall not have supervisory or disciplinary power or routine contact with patients, residents, or clients without supervision on-site and immediately available to the individual.

Section 7. Individuals Ineligible to be Hired. An employer participating in the KARES program [~~an agency within the cabinet responsible for conducting inspections of any employer,~~] or a state-owned or operated health facility shall not employ, contract with, or permit to work as an employee any applicant that submits to a background check if one (1) or more of the following are met:

(1) The applicant refuses to provide photo identification or complete the Disclosures Form or Waiver Agreement and Statement Form required by Section 5(1) (b) and (c) of this administrative regulation;

(2) The applicant is found on a registry as defined by Section 1(10) of this administrative regulation;

(3) The applicant's professional license is not in good standing, if applicable;

(4) The applicant fails to submit his or her fingerprints at an authorized collection site within thirty (30) calendar days of payment submitted pursuant to Section 5(3) of this administrative regulation; or

(5) Upon completion of the initial criminal background check for an applicant, or subsequent to the initial fingerprint check on a current employee, the employer, cabinet agency, or state-owned or operated health facility receives notice from the cabinet that the applicant is not eligible for hire based on a cabinet determination that the individual has been found to have a disqualifying offense.

Section 8. Notice of a Disqualifying Offense and Appeals. (1) The cabinet shall notify each applicant or current employee determined to have a disqualifying offense.

(2) In addition to the cabinet's notification required by subsection (1) of this section, an employer that receives notice from the cabinet that an individual has been determined to have a disqualifying offense shall notify the individual of the cabinet's determination within three (3) business days of receipt of the notice.

(3) An applicant or current employee who receives notice of a disqualifying offense may:

(a) Challenge the accuracy of the cabinet's determination regarding a disqualifying offense by submitting a written request for informal review, including any information the applicant wishes to be considered, to the Office of Inspector General, Cabinet for Health and Family Services, 275 East Main Street, 5E-A, Frankfort, Kentucky 40621, within ten (10) calendar days of the date of notice of the disqualifying offense; or

(b) Request a rehabilitation review pursuant to Section 10(2) of this administrative regulation.

(4) Upon completion of an informal review if requested pursuant to subsection (3)(a) of this section, the Office of Inspector General shall within ten (10) calendar days of receipt of the request provide written notice to the applicant or employee of the cabinet's decision to uphold or rescind the notice of the disqualifying offense.

(5) An applicant or current employee may appeal the results of an informal review or a rehabilitation review conducted in accordance with Section 10 of this administrative regulation by submitting a written request for an administrative hearing within thirty (30) calendar days from the date of notice of the decision from an informal review or rehabilitation review.

(6)(a) A written request for an administrative hearing shall be mailed to the Office of Ombudsman, Cabinet for Health and Family Services, 275 East Main Street, 1E-B, Frankfort, Kentucky 40621.

(b) The administrative hearing shall be held no later than forty-five (45) calendar days from the date that the request is received by the Office of Ombudsman unless the applicant or employee agrees to a later date.

(c) The issues considered at the hearing shall be limited to the issues directly raised and considered during the informal review or rehabilitation review.

(d) The administrative hearing shall be conducted pursuant to KRS 13B.080.

(e) The hearing officer shall issue a recommended order pursuant to KRS 13B.110.

(f) The secretary or designee shall issue a final order pursuant to KRS 13B.120.

(7) If an applicant or current employee wishes to challenge the accuracy of a criminal background check, the cabinet shall refer the individual to the appropriate state or federal law enforcement agency.

(8) If an applicant or current employee challenges the finding that he or she is the true subject of the results from a registry check, the cabinet shall refer the individual to the agency responsible for maintaining the registry.

Section 9. Termination of an Employee Upon Receipt of Notice of a Disqualifying Offense. (1) If a provisional employee or current employee has not requested an informal review or a rehabilitation review pursuant to Section 8(3) of this administrative regulation, the employer shall:

(a) Terminate the employee no later than fifteen (15) calendar days after receipt of notice of the disqualifying offense; and

(b) Use the KARES system to provide electronic notification to the cabinet affirming the employee's dismissal within three (3) business days of termination.

(2)(a) If a provisional employee or current employee requests an informal review or a rehabilitation review pursuant to Section 8(3) of this administrative regulation, the employer:

1. May retain the employee pending resolution of the employee's informal review or rehabilitation review; and

2. Shall ensure that the employee is:

a. Subject to direct, on-site supervision; or

b. Reassigned to duties that do not involve one-on-one contact with a resident, patient, or client of the employer.

(b) An employer shall terminate the employee if the:

1. Informal review upholds the cabinet's determination of a disqualifying offense or the rehabilitation review committee does not grant a waiver; and

2. The employee does not request an administrative hearing in accordance with Section 8(5) of this administrative regulation, in which case the employer shall terminate the employee no later than the thirty-first calendar day following written notice of the results of the informal review or rehabilitation review.

(c) If an employee requests an administrative hearing to appeal the decision from an informal review or rehabilitation review, the employer:

1. May retain the employee pending resolution of the appeal if the employee:

a. Remains subject to direct, on-site supervision; or

b. Is reassigned to duties that do not involve one-on-one contact with a resident, patient, or client; and

2. Shall terminate the employee as soon as practicable upon

issuance of a final order if the employee does not prevail.

(d) Using the KARES system, the employer shall provide electronic notification to the cabinet affirming the individual's dismissal within three (3) business days of termination.

Section 10. Rehabilitation Review. (1)(a) An applicant or employee found to have a disqualifying offense upon completion of the criminal background check shall be eligible for consideration of rehabilitation under an independent review process.

(b) Consideration of a disqualifying offense under the rehabilitation review process described in this section shall not apply to:

1. A disqualifying felony offense that occurred less than seven (7) years prior to the date of the criminal background check;

2. Any disqualifying felony or misdemeanor offense related to abuse, neglect, or exploitation of an adult defined by KRS 209.020(4) or child, or a sexual offense;

3. Registration as a sex offender under federal law or under the law of any state; [ø]

4. Any person who is a violent offender as defined by Section 1(12) of this administrative regulation; or

5. A pending charge or an outstanding warrant for a criminal offense described in Section 1(4)(b) of this administrative regulation.

(2)(a) An applicant or employee may submit a written request for a rehabilitation review to the cabinet no later than fourteen (14) calendar days from the date of the notice of the cabinet's determination issued pursuant to Section 8(1) of this administrative regulation regarding a determination of a disqualifying offense.

(b) If an applicant or employee requests a rehabilitation review, the employee may be retained on staff and shall be subject to termination in accordance with Section 9(2) of this administrative regulation.

(3) The request for a rehabilitation review shall include the following information:

(a) A written explanation of each disqualifying offense, including:

1. A description of the events related to the disqualifying offense;

2. The number of years since the occurrence of the disqualifying offense;

3. The age of the offender at the time of the disqualifying offense; and

4. Any other circumstances surrounding the offense;

(b) Official documentation showing that all fines, including court-imposed fines or restitution, have been paid or documentation showing adherence to a payment schedule, if applicable;

(c) The date probation or parole was satisfactorily completed, if applicable; and

(d) Employment and character references, including any other evidence demonstrating the ability of the individual to perform the employment responsibilities and duties competently.

(4) A rehabilitation review shall be conducted by a committee of three (3) employees of the cabinet, none of whom:

(a) Is an employee of the Office of Inspector General; or

(b) Was responsible for determining that the individual has a disqualifying offense.

(5) The committee shall consider the information required under subsection (3) of this section, and shall also consider mitigating circumstances including:

(a) The amount of time that has elapsed since the disqualifying offense;

(b) The lack of a relationship between the disqualifying offense and the position for which the individual has applied; and

(c) Evidence that the applicant has pursued or achieved rehabilitation with regard to the disqualifying offense.

(6) No later than thirty (30) calendar days from receipt of the written request for the rehabilitation review, the Office of Inspector General shall send the committee's determination on the rehabilitation waiver to the applicant.

(7) The decision of the committee shall be subject to appeal in accordance with Section 8(5) and (6) of this administrative

regulation.

(8) An employer shall not be obligated to employ or offer employment to an individual who is granted a waiver pursuant to this section.

Section 11. Pardons and Expungement. An applicant who has received a pardon for a disqualifying offense or has had the record expunged may be employed.

Section 12. Status of Employment. An employer participating in KARES shall maintain the employment status of each employee who has submitted to a fingerprint-supported criminal background check by reporting the status using the KARES web-based system.

Section 13. Kentucky National Background Check Fund. (1)(a) The cabinet shall establish a trust and agency fund called the Kentucky National Background Check fund to be administered by the Finance and Administration Cabinet.

(b) The fund shall be funded with moneys collected under Section 5(3) of this administrative regulation.

(2) Moneys in the fund shall be used solely to operate the Kentucky National Background Check program.

Section 14. Termination of Participation. The cabinet shall terminate a voluntarily participating employer's participation in the Kentucky NBCP for a period of no less than ninety (90) days if there has been substantial failure by the employer to comply with the provisions of this administrative regulation.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) OIG 1:190-1, "Disclosures to be Provided to and Signed by Applicant for Employment or Licensure", September 2016;

(b) OIG 1:190-2, "Waiver Agreement and Statement", September 2016; and

(c) OIG 1:190-D, "Live Scan Fingerprinting Form", May 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN D. DAVIS, Inspector General

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: May 25, 2018

FILED WITH LRC: June 7, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 23, 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 July 16, 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 July 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Brammer-Barnes, email

stephanie.brammer@ky.gov, phone 502-564-2888; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures and requirements for implementation of the Kentucky National Background Check Program (NBCP). Under Kentucky's NBCP, a secure, web-based application called the KARES system is used to facilitate abuse registry and fingerprint-supported State and FBI criminal background checks for authorized users.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures and requirements for implementation of Kentucky's NBCP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: As stated in the Necessity, Function, and Conformity paragraph of this administrative regulation, 42 U.S.C. 1320a-7l directs the secretary of the United States Department of Health and Human Services to establish a program to identify efficient, effective, and economical procedures for long-term care facilities or providers to conduct background checks on prospective direct patient access employees on a nationwide basis. KRS 216.789, KRS 216.787, and KRS 216.712 authorize the secretary of the Cabinet for Health and Family Services to establish procedures for criminal background checks for employees of certain entities which provide direct services to the elderly or individuals with disabilities. Therefore, this administrative regulation conforms to the content of the authorizing statutes by establishing procedures and requirements for implementation of a comprehensive, Cabinet-administered state and national background check program called the Kentucky NBCP.

(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 procedures and requirements for implementation of Kentucky's NBCP.

(2) If 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 revises the definition of "disqualifying offense" by adding misdemeanor offenses related to animal cruelty and misdemeanor offenses related to unlawfully possessing or trafficking in a legend drug if the misdemeanor occurred within seven (7) years prior to the criminal background check; adds clarifying language to exclude "cold checks" as an employment disqualifier; adds felony offenses related to unlawfully possessing or trafficking in a legend drug as an employment disqualifier; adds felony offenses related to organized crime as an employment disqualifier; adds pending charges or outstanding warrants related to sexual offenses, violent offenses, or drug trafficking as an employment disqualifier; removes obsolete language related to the background check fees prior to expiration of the NBCP grant; clarifies that the background check fee is non-refundable; and adds a new section to permit the Cabinet to terminate a voluntarily participating employer's participation in Kentucky's NBCP for a period of no less than ninety (90) days if there has been substantial failure by the employer to comply with the provisions of this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to make revisions as described under (2)(a).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by establishing procedures and requirements for implementation of Kentucky's NBCP.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the current administration of the statutes by establishing procedures and requirements to facilitate fingerprint-supported state and national background checks requested under Kentucky's NBCP.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects authorized users of the KARES system.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Authorized users will not be required to take any additional action beyond compliance with the current procedures for requesting fingerprint-supported State and FBI checks under the KARES system.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Authorized users will not incur additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a fingerprint-supported State and FBI background check program, voluntarily participating long-term care providers benefit from using a pre-employment screening system that is more comprehensive than the minimum requirement in state law for a name-based, State-only criminal background check of applicants.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This amendment imposes no additional costs.

(b) On a continuing basis: This amendment imposes no additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky's NBCP is supported by background check fees and agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fee or funding increase is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment affects authorized users of the KARES system. This amendment also impacts the Cabinet for Health and Family Services (CHFS), Office of Inspector General.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 42 U.S.C. 1320a-71, 42 U.S.C. 5119a(a)(1), KRS 216.712, KRS 216.787, KRS 216.789

3. Estimate the effect of this administrative regulation on the 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? Revenue generated from fees not to exceed the actual cost of processing fingerprint-supported State and FBI checks is used to sustain the KARES system.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue generated from fees will be used to sustain the KARES system on an ongoing basis.

(c) How much will it cost to administer this program for the first year? This amendment imposes no additional costs to CHFS.

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs to CHFS.

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 Quality Living
(Amendment)**

910 KAR 1:090. Personal care attendant program and assistance services.

RELATES TO: KRS Chapter 13B, 205.455(4), 205.900 - 205.925[~~-,337.275~~]

STATUTORY AUTHORITY: KRS 194A.050(1), 205.910, 205.920

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.910 requires the Cabinet for Health and Family Services to establish an eligibility standard for personal care assistance services which takes into consideration the unique economic and social needs of severely physically disabled adults. KRS 205.920 authorizes the cabinet to promulgate administrative regulations to implement provisions concerning personal care assistance services. This administrative regulation establishes the Personal Care Attendant Program.

(1) "Administrative support personnel" means staff designated within a contract agency who offer technical assistance to, and monitor the activities of, the qualified agency.

(2) "Approved plan" means an agreement between the department and a contract agency to administer the personal care attendant program.

(3) "Assessment" means the collection and evaluation of information:

(a) About a person's situation and functioning;

(b) To determine the applicant's or participant's service level; and

(c) To develop a plan of care utilizing a holistic, person centered approach by the evaluation team.

(4) "Attendant" means a person who provides personal care assistance services.

(5)[(4)] "Contract agency" means the agency with which the cabinet has contracted to administer the personal care attendant program.

(6)[(5)] "Department" means the Department for Aging and Independent Living or its designee[~~"District" is defined by KRS 205.455(4).~~]

(7)[(6)] "Evaluation team" is defined by KRS 205.900(2).

(8)[(7)] "Evaluation team's recommendations" means the official response of the evaluation team signed by all three (3) team members.

(9) "Immediate family" means a legal guardian, parent, step parent, foster parent, adoptive parent, sibling, grandparent, child, or spouse.

(10)[(8)] "Income eligibility standard" means a formula to determine an applicant's income eligibility for the personal care attendant program[~~which addresses the "unique economic needs of severely physically disabled adults"~~] pursuant to KRS 205.910(1).

(11) "Natural supports" means a non-paid person or persons or community resource, that can provide, or has historically provided, assistance to the participant or due to the familial relationship, would be expected to provide assistance.

(12)[(9)] "Participant" means a person accepted into the personal care attendant program and who has met the eligibility requirements of a severely physically disabled adult.

(13)[(40)] "Personal care assistance services" is defined by KRS 205.900(3).

(14)[(44)] "Prescreening" means a process that assesses whether or not an applicant appears to meet the basic

requirements for eligibility.

~~(15)~~~~(12)~~ "Qualified agency or organization" is defined by KRS 205.900(4).

~~(16)~~ "Reassessment" means reevaluation of the situation and functioning of a client.

~~(17)~~~~(13)~~ "Service area" means those counties listed in an approved plan of the qualified agency or organization.

~~(18)~~~~(14)~~ "Severely physically disabled adult" is defined by KRS 205.900(6).

~~(19)~~~~(15)~~ "Subsidy" means a financial reimbursement paid by the cabinet to an adult who qualifies to receive personal care assistance services in accordance with KRS 205.905(1).

~~(20)~~~~(16)~~ "Work agreement" means an agreement of time and tasks developed by the participant as the employer, for the attendant as the employee.

Section 2. Eligibility. (1) To be eligible for participation in the personal care attendant program an applicant shall:

(a) Be a severely physically disabled adult who:

1. Meets the qualifications required by KRS 205.905(1); and
2. Has the ability to be responsible for performing the functions required by KRS 205.905(2) to receive a subsidy;

(b) Agree to obtain an initial ~~assessment~~~~[evaluation]~~ for eligibility and a ~~re-assessment~~~~[re-evaluation]~~ at least ~~annually~~~~[biennially]~~ by an evaluation team in accordance with KRS 205.905(2)(b)1 and 2;

(c) Be able to reside or reside in a non-institutional setting;

(d) Work with a program coordinator in establishing a work agreement between the participant and attendant;~~and~~

(e) Be responsible for attendant payroll reports and computing required employer tax statements;

~~(f) Have immediate family or natural supports to meet the individual's needs when a paid attendant is not available; and~~

~~(g) Not be receiving the same services obtainable from any federal, state, or combination of federal and state funded programs. If the individual's needs cannot be met with the funding received from any of those programs, the individual may be eligible to receive personal care attendant program services above and beyond what the other programs provide.~~

(2) An applicant shall be accepted for service if:

(a) ~~The evaluation team~~~~[A program coordinator]~~ determines that the applicant is eligible to participate in the program;~~and~~

(b) ~~The department agrees with the determination; and~~

~~(c) Funds are available.~~

~~(3)~~~~[f]~~ An applicant shall be income eligible if they are eligible for:

~~(a)~~~~[receives]~~ Supplemental Security Income; or

~~(b)~~ Medicaid~~[health care, the applicant shall be income eligible].~~

(4) If an applicant's gross annual income is less than 200 percent of the official poverty income guidelines published annually in the Federal Register by the United States Department of Health and Human Services, the applicant shall be income eligible.

(5) If an applicant is not eligible pursuant to subsections (3) or (4) of this section, the income eligibility standard shall be determined by a program coordinator ~~using the~~~~[with a DAIL-PCAP-05~~~~[08]~~ Income Eligibility form as follows:

(a) Determine the adjusted gross income by deducting:

1. The cost of ~~unreimbursed~~~~[un-reimbursed]~~ extraordinary medical expenses~~[verified with a DAIL-PCAP-03 Authorization Statement for Extraordinary Medical Expenses]~~, and impairment-related expenses ~~as recorded on the PCAP-05;~~

2. An amount adjusted for family size based on ~~200~~~~[400]~~ percent of the official poverty guidelines published annually in the Federal Register by the United States Department of Health and Human Services; and

3. Dependent care expenses.

(b) If the adjusted gross income is less than 200 percent of the annual federal poverty guidelines, the applicant is income eligible.

(c) If the adjusted gross income is more than 200 percent of the annual federal poverty guidelines, the following shall be used to determine the applicant's contribution to cost of care:

1. From the adjusted gross income subtract a current annual standard deduction for one (1) as determined by the Internal Revenue Service;

2. Divide the remaining income by two (2) to allow for the unique economic and social needs of the severely disabled adult;

3. Divide the final income by fifty-two (52) weeks; and

4. Calculate the estimated cost of personal care services by multiplying the estimated number of hours of personal care assistance services per week times the cost per hour of service.

(d)1. If the resulting monetary amount in paragraph (c)3₂ of this subsection is less than the estimated cost of services calculated in paragraph (c)4₂ of this subsection~~[of this section]~~, the qualified agency shall provide the full subsidy.

2. If the resulting monetary amount in paragraph (c)3₂ of this subsection is more than the estimated cost of services calculated in paragraph (c)4₂ of this subsection, the participant shall pay the difference between the cost of services and the qualified agency's maximum hourly rate.

(6) The income eligibility criteria set out in subsections (3) - (5) of this section shall be applied to a current participant at the time of the participant's next ~~reassessment~~~~[re-evaluation]~~.

Section 3. Application and Evaluation. (1) A referral to the personal care attendant program may be made by:

- (a) Self;
- (b) Family;
- (c) Another person; or
- (d) Agency.

(2) If an opening for services is available, a program coordinator shall:

(a) Visit and assist an applicant in the completion of a ~~[DAIL-PCAP-01 Application for Services]~~; and

(b) Complete and have all evaluation team members sign a~~[DAIL-PCAP-04~~~~[07]~~ Evaluation Team Findings and Recommendations.

(3) A qualified agency shall:

(a) Report an evaluation team's findings and recommendations to ~~the~~~~[a]~~ contract agency for final review of the applicant or participant; and

(b) Notify the applicant or participant if the findings and recommendations are accepted by the contract agency.

(4) A contract agency shall:

(a) Review recommendations of the evaluation team and notify the qualified agency in writing of the final determination within ten (10) business days of receipt of the recommendations; and

(b) Notify the applicant or participant in writing within twenty (20) business days of receipt of the recommendations in ~~accordance~~~~[compliance]~~ with KRS 205.905(3):

1. Whether the recommendations of the evaluation team are accepted or not accepted; and
2. The reasons for the contract agency's decision.

Section 4. Waiting List. (1) If the personal care attendant program is at capacity, an eligible applicant shall be placed on an approved waiting list and, as a vacancy occurs, be accepted for services in priority order based on the following categories:

(a) Emergency situation because of an ~~imminent~~~~[eminent]~~ danger to self or at risk of institutionalization;

(b) Urgent situation because there are no community supports; ~~or~~~~[and]~~

(c) Stable because there is a currently reasonable support system.

(2) Every effort shall be used to provide referrals to other services if personal care assistance services are not available.

Section 5. Relocation. (1) If an eligible participant receiving personal care assistance services relocates to another service area to complete a training or educational course, the participant shall remain a client of the service area of origin, if the:

(a) Participant considers the personal care attendant program ~~service area~~~~[district]~~ of origin to be his or her place of residence; and

(b) Participant's purpose for relocation is to complete a course

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of education or training to increase employment skills.

(2) The receiving service area shall provide courtesy monitoring to coordinate the aspects of program requirements.

(3) The service area of origin shall retain responsibility for:

(a) Payment of a subsidy, if the participant meets eligibility for the duration of the educational or training course; and

(b) Monthly programmatic and financial reports.

(4) The receiving service area shall forward a copy of reports to the service area of origin.

(5) If a participant moves from one service area of origin to another for any reason other than relocation for a training or educational course, the participant's program funding shall be transferred to the receiving service area.

(6) If a participant's personal care assistance services terminate, the program funding shall return to the ~~original~~ service area of origin.

Section 6. Suspension of Services. (1) Suspension of services shall occur for the following reasons:

(a) Condition improved – on ~~reassessment~~~~[re-evaluation]~~ a participant is determined to need less than fourteen (14) hours of care per week;

(b) Condition worsened - on ~~reassessment~~~~[re-evaluation]~~ a participant is determined to need more hours of care than the program can provide and to be in danger if left alone due to lack of other caregivers;

(c) Participant's behavior clearly presents a danger to the program coordinator or attendant;

(d) Participant does not submit required employer taxes to the qualified agency;

(e) Participant moves from Kentucky;

(f) Participant moves into an area of Kentucky where no services are contracted, unless such relocation remains feasible for the closest qualified agency, feasibility being determined by the qualified agency;

(g) Participant fails to hire an attendant;

(h) Participant dies;

(i) Participant chooses to:

1. Give up personal care assistance services; and

2. Be admitted to a long-term care facility; or

(j) Participant requests suspension of services.

(2) Services may be suspended if either of the following occurs:

(a) A non-return of an overpayment of services; or

(b) [may result in services being suspended.

~~(3) An intentional deception to obtain services [may result in services being suspended].~~

(3) Suspension of services shall occur if there are any substantiated deceptive practices of paying for services that are:

(a) Not actually provided; or

(b) Duplicative services obtained through another program or agency at the same time.

Section 7. Participant Responsibilities. A participant shall:

(1) Meet the eligibility requirements to receive a subsidy set out in Section 2(1) of this administrative regulation;

(2) Select an attendant for personal care assistance services including screening and interviewing the attendant for employment;

(3) Instruct the attendant on specific personal care assistance services;

(4) Evaluate the attendant's personal care assistance services;

(5) Discuss and come to a written agreement with each attendant about:

(a) ~~[What]~~ Services that shall be provided; and

(b) The terms of employment including:

1. Time;

2. Hours;

3. Duties; and

4. Responsibilities;

(6) Keep records and report to the qualified agency attendant hours worked for payment to the attendant;

(7) Be responsible for all requirements of being an employer, including [computing]:

(a) Employee payroll;

(b) Withholdings;

(c) Actual payment of required withholdings; ~~and~~

(d) Taxes appropriate to being an employer; ~~and~~

(e) Issuing the employee a W-2 as required by the Internal Revenue Service;

(8) Negotiate for room and board for an attendant as specified in Section 9~~(4)~~~~(5)~~(a) of this administrative regulation; and

(9) Coordinate with a program coordinator the aspects of program requirements.

Section 8. Attendant Responsibilities. (1) An attendant shall:

(a) Enter into and comply with the written agreement for terms of work required by Section 7(5) of this administrative regulation;

(b) Perform personal care assistance services and other tasks that may include:

1. Turning;

2. Repositioning;

3. Transferring;

4. Assistance with oxygen;

5. Hygiene;

6. Grooming;

7. Washing hair;

8. Skin care;

9. Shopping;

10. Transportation;

11. Chores;

12. Light correspondence;

13. Equipment cleaning; and

14. Emergency procedures, if necessary;

(c) Perform tasks consistent with the work agreement as instructed by the participant;

(d) Report to work as scheduled;

(e) Maintain the privacy and confidentiality of the participant;

(f) If unable to report for work as scheduled, notify the participant at least six (6) hours in advance unless an emergency arises;

(g) Maintain a list of emergency numbers;

(h) Attend attendant training provided by the participant related to specific care needs;

(i) Keep a daily record of hours worked and services rendered;

(j) Submit to the participant documents and material necessary to comply with the formal payment process;

(k) Meet with the participant and program coordinator for monitoring and coordinating the aspects of the program;

(l) Disclose misdemeanor or felony convictions to the applicant or participant through a law enforcement agency;

(m) Authorize a qualified agency to obtain Kentucky nurse ~~aid~~~~[Aid-Abuse]~~ registry, central registry, Adult Protective Services caregiver misconduct registry, and criminal background checks as specified in Section 11(6) of this administrative regulation; and

(n) Notify the program coordinator of conditions which seriously threaten the health or safety of the participant or attendant.

(2) An individual shall not be hired as an attendant if the individual:

(a) Has not submitted to the background checks specified in subsection (1)(m) of this section;

(b) Is on any of the following registries:

1. Kentucky nurse ~~aid~~[Aid-Abuse] registry [maintained in accordance with 906 KAR 1:100];

2. Adult Protective Services caregiver misconduct registry; or

3. Central registry;

(c) Has pled guilty or been convicted of committing:

1. A felony [sex crime or violent] crime related to theft or drugs;

or
2. A misdemeanor or felony crime related to sexual or violent offenses including assault; or [and]

(d) Is not able to understand and carry out a participant's instructions.

Section 9. Attendant Payment. (1) The amount of attendant payment ~~[determined]~~ shall be in compliance with the following:

(a) The maximum hourly subsidized rate for direct personal

care assistance services shall be no more than ten (10) percent over the current minimum wage rate established by KRS 337.275.

(b) If the hourly subsidized rate established in paragraph (a) of this subsection is insufficient to obtain direct personal care assistance services in a specific Kentucky ~~service area~~[district], a provider may request a higher rate by mailing a written request and justification of the need for a higher rate to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Minimum hours for direct personal care assistance services per week shall be fourteen (14).

(d) Maximum hours for direct personal care assistance services per week shall be forty (40).

(2) In an extreme situation that results in a temporary increased need for services, such as the illness of the participant, or illness or death of a caregiver, a temporary waiver of maximum hours and the resulting cost may be granted by the contract agency.

(3) A special night rate may be negotiated:

(a) If a participant does not:

1. Require an attendant during the day; or

2. Need direct personal care assistance services from this attendant; or

(b) To provide for caregiver respite service.

(4)(a) It shall be the responsibility of the participant who is in need of a live-in attendant to directly negotiate, if necessary, with a potential attendant on room and board for personal care assistance services.

(b) A live-in attendant shall not be excluded from employment as a part-time attendant.

(c) Maximum payment under this arrangement shall be for forty (40) hours of personal care assistance services per week, and overtime shall not be provided or paid.

Section 10. Program Coordinator Qualifications and Responsibilities. (1) A program coordinator shall meet at least one (1) of the following minimum qualifying requirements:

(a) A bachelor's degree with two (2) years experience working in the disability community; or

(b) Complete fifty-four (54) semester hours of college with four (4) years ~~[experience]~~ working in the disability community.[:]

(2) The department may waive the education requirements required by subsection (1) of this section based on consideration of work experience involving:

(a) Interviewing to select an employment candidate;

(b) More than five (5) years of experience working with the disability community[Community services work];

(c) Administrative work involving:

1. The review of assessment criteria;

2. Monitoring program compliance;

3. Training program participants, employees and staff regarding program requirements; or

~~(d) [Reviewing;~~

~~(e) Monitoring;~~

~~(f) Training; or~~

~~(g) [Determination [Determining] of eligibility for human services programs.~~

(3) If employed, a program coordinator shall complete the following hours of training:

(a) Within thirty (30) working days of hire:

1. Complete a minimum of sixteen (16) hours of orientation program training; and

2. Shadow an experienced program coordinator for one (1) to two (2) days;

(b) Within the first six (6) months of employment, complete a minimum of fourteen (14) hours of initial program coordination training; and

(c) Complete follow-up quarterly trainings with the department and contract agency.

(4) A program coordinator shall:

(a) Collaborate with the evaluation team to determine if an applicant is eligible to participate in the personal care attendant program in accordance with Section 2 of this administrative

regulation;

(b) Complete the application process required by Section 3(2)(a) of this administrative regulation;

(c) Maintain a waiting list of eligible applicants who are unable to be funded for program participation until an opening occurs; and

(d) Perform the assessments[evaluations] required in Section 12(2) of this administrative regulations.

(5) A program coordinator or program coordinator's designee shall:

(a) Identify severely physically disabled adults who may be eligible for participation in the personal care attendant program;

(b) Prescreen an applicant for eligibility to participate in the personal care attendant program;

(c) Assist a participant in learning how to conduct an interview and screen a prospective attendant;

(d) Assist in or arrange for the training of the attendant, if necessary;

(e) Review with the participant the results of an assessment or reassessment[evaluation or re-evaluation] signed by an evaluation team;

(f) Assist the participant in completing and updating a ~~[DAIL-]PCAP-06~~[9] Plan of Individual Care[Plan];

(g) Assist the participant in developing a work agreement between the participant and attendant;

(h) Obtain a ~~[participant's agreement of release of information with a DAIL-]PCAP-02~~ Authorization for Release of Confidential Information from the participant;

(i) Monitor the program with each participant on a quarterly basis, including:

1. A face-to-face visit with the participant during at least two (2) of the quarters; and

2. Making verbal contact with the participant in the quarters a face-to-face visit is not made;

(j) Assist the participant in finding a back-up attendant for:

1. An emergency; or

2. The regular attendant's time off;

(k) Assist in the recruitment and referral of an attendant, if requested;

(l) Submit monthly activity reports to a qualified agency as specified in Section 15(2) of this administrative regulation; and

(m) Assure that the participant:

1. Enters into agreement to pay employee taxes with a

~~[DAIL-]PCAP-03 Employer~~[04-Employee] Tax Agreement; and

2. Receives training in recordkeeping and tax responsibilities related to services.

Section 11. Qualified Agency Responsibilities. A qualified agency shall:

(1) Employ or contract with an evaluation team pursuant to KRS 205.905(2);

(2) Provide monthly programmatic and financial reports on an attendant per participant to the contract agency;

(3) Develop a procedure for:

(a) Payment of a subsidy; and

(b) Establishment of appropriate fiscal control within the qualified agency;

(4) Employ or contract for the services of a program coordinator;

(5) Oversee the training requirements for a program coordinator as specified in Section 10(3) of this administrative regulation;

(6) Obtain the following~~[checks]~~ on a potential attendant:

1. The results of a criminal record check from the Kentucky Administrative Office of the Courts and[or] equivalent out-of-state agency, if the potential attendant resided or worked outside of Kentucky during the year prior to employment;

2. Within thirty (30)~~[fourteen (14)]~~ days of the date of hire, the results of a central registry check as described in 922 KAR 1:470; and

3. Prior to employment, the results of a nurse aide ~~[abuse]~~ registry check as described in 906 KAR 1:100;

(7) Report evaluation team findings and recommendations to a contract agency as specified in Section 3(3) of this administrative

regulation; and

(8) Maintain participant records as required by Section 15(1) of this administrative regulation.

(9) Provide accessibility to services through proper evaluation of applicants who are deaf or hard-of-hearing by utilizing an interpreter service in accordance with KRS 12.290.

Section 12. Evaluation Team Members and Responsibilities.

(1) An evaluation team:

(a) Shall consist of a program coordinator; and

(b) May consist of:

1. An occupational or physical therapist;
2. A registered nurse;
3. A director or executive director of the qualified agency;
4. A fiscal officer of the qualified agency;
5. A mental health provider;
6. An in-home services coordinator; or
7. Another entity involved in the participant's care.

(2) The program coordinator of the evaluation team shall complete:

(a) An applicant's initial ~~assessment~~[evaluation with a DAIL-PCAP-05-Evaluation] to establish eligibility pursuant to KRS 205.905(2)(b)1; and

(b) A participant's ~~reassessment~~[re-evaluation with a DAIL-PCAP-06 Annual Re-evaluation], at least ~~annually~~[biennially] for continuing services pursuant to KRS 205.905(2)(b)2, or more frequently if changes occur in the participant's situation.

Section 13. Contract Agency Responsibilities. The contract agency shall:

(1) Implement a personal care attendant program according to an approved plan;

(2) Assume fiscal accountability for state funds designated for the program;

(3) Provide necessary administrative support personnel within a contract agency office;

(4) Provide an appeals procedure and hearing process in compliance with:

(a) KRS Chapter 13B; and

(b) KRS 205.915;

(5) Monitor management practices, including program evaluation, to assure effective and efficient program operation and compliance with cabinet financial audit requirements;

(6) Provide, in conjunction with a qualified agency, a procedure for attendant payment;

(7) Review recommendations of an evaluation team and notify a participant and qualified agency as specified in Section 3(4) of this administrative regulation;

(8) Submit monthly program reports to the department as specified in Section 15(3) of this administrative regulation; and

(9) Maintain files and records for cabinet audit, including participant records and statistical reports.

Section 14. Department Responsibilities. The department shall:

(1) Provide a format for the approved plan for the personal care attendant program;

(2) Review proposed plans submitted by a contract agency to administer the personal care attendant program;

(3) Inform the contract agency in writing of the action taken regarding the proposed plan for administration of the personal care attendant program that shall include one (1) of the following outcomes:

(a) Approve the plan as submitted;

(b) Require the contract agency to revise the plan; or

(c) Reject the plan;

(4) Monitor the contract agency at least annually;

(5) Develop and revise program and fiscal requirements;

(6) Allocate available funding;

(7) Advocate for program expansion; and

(8) Provide technical assistance.

Section 15. Reporting and Recording. (1) An individual record for each participant shall be maintained by the qualified agency

and shall include:

(a) The forms specified in Section 17 of this administrative regulation;

(b) A chronological record of contacts with[a]:

1. ~~The~~ participant;

2. ~~The~~ family;

3. ~~The~~ physician; and

4. Others involved in care with quarterly monitoring reports; and

(c) An assessment record of eligibility.

(2) A program coordinator shall:

(a) Submit completed reports for monthly activities to a qualified agency by a designated date in the contract; and

(b) Forward a copy to the contract agency.

(3) A contract agency shall make a copy of reports on monthly activities available to the department.

Section 16. ~~Appeals~~[Request for Fair Hearing]. An applicant or participant may request an ~~appeal~~[a fair hearing]:

(1) In accordance with:

(a) KRS Chapter 13B; and

(b) KRS 205.915; and

(2) Within thirty (30) days of any decision by the:

(a) Cabinet;

(b) Contract agency; or

(c) Qualified agency.

Section 17. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "[DAIL-]PCAP-01 Application for Services", edition ~~4/2018~~[2/08];

(b) "[DAIL-]PCAP-02 Authorization for Release of Confidential Information", edition ~~4/2018~~[2/08];

(c) "[DAIL-]PCAP-03 Employer Authorization Statement for Extraordinary Medical Expenses, edition ~~2/08~~

(d) "~~DAIL-PCAP-04 Employee~~] Tax Agreement", edition ~~4/2018~~[2/08];

(e) "~~DAIL-~~

(d) "~~PCAP-04~~[05 Evaluation", edition ~~2/08~~

(f) "~~DAIL-PCAP-06 Annual Re-evaluation, edition ~~2/08~~;~~

(g) "~~DAIL-PCAP-07~~] Evaluation Team Findings and Recommendations", edition ~~4/2018~~ [2/08];

(e) [(h) "~~DAIL-~~ "PCAP-~~05~~[08] Income Eligibility", edition ~~4/2018~~[2/08]; and

(f) [(i) "~~DAIL-~~PCAP-~~06~~ Plan of Care[~~09 Individual Care Plan~~]", edition ~~4/2018~~[2/08].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TIMOTHY E. FEELEY, Acting Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 12, 2018

FILED WITH LRC: June 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall, if requested, be held on July 23, 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 July 16, 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 July 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if

applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, 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 establishes the eligibility and ongoing requirements for participation in the Personal Care Attendant Program and assistance services for individuals that have the functional loss of two or more limbs pursuant to KRS 205.905(1) and able to meet the responsibilities required by KRS 205.905(2).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the provisions of KRS 205.905 and 205.910. The CHFS is responsible for establishing, by regulation, the eligibility standard to provide a subsidy for personal care assistance services to adults that have a severe physical disability, need not less than fourteen (14) hours a week of personal care assistance services and qualify under KRS 205.910.

(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 eligibility criteria for participation in the Personal Care Attendant Program and assistance services. It also establishes the application and evaluation process, and waiting lists for those when funding is not available.

(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 eligibility criteria for participation in the program and the application and evaluation 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: This amendment updates definitions, provides for backup care from family or natural supports to meet the participants needs when a paid attendant is not available to ensure the safety of participants. Clarifies that the Personal Care Attendant Program and assistant services are not utilized when other programs or service providers are available but may be eligible to receive these services above and beyond what the other programs provide. Clarifies that the evaluation team determines the applicant's eligibility rather than the program coordinator. Addresses that services shall be suspended if the participant pays for services with program funds that are not actually provided or duplicative services are obtained through another program or agency at the same time. Updates the background check requirements to align with all other programs administered by the Department including a check of the Adult Protective Services Caregiver Misconduct Registry, and clarifies which criminal offenses prohibit individuals from being employed by participants if paid by program funds. This amendment clarifies that the participants are to be contacted quarterly with at least two being a face-to-face visit and updates material incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update definitions, eligibility requirements, when a participant can be suspended from receiving services. Clarifies the responsibilities of the participant's, attendants, program coordinator, qualified agencies and the department. Updates the material incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by setting out the eligibility criteria and requirements for participation in the program as authorized by KRS 205.905 and 205.910.

(d) How the amendment will assist in the effective

administration of the statutes: The amendment will assist in the effective administration of statutes by conformity with KRS 205.905 and 205.910. The amendment clarifies requirements and responsibilities of all participants, attendants, and program staff.

(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 are participants in the program, the attendants providing services to the participants and the program administrators. Currently there are 255 participants and 299 paid attendants and three provider agencies.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Participants in this program will be required to have backup providers to assist in meeting their needs when a paid attendant is not available, during the regularly scheduled time, to ensure health, safety and welfare of the participant. Attendants of the participants will be required to authorize a qualified agency to obtain a check of the Adult Protective Services Misconduct Registry in addition to the background checks already required by this regulation. Program coordinators will be required, on a quarterly basis, to complete at least two face-to-face visits with the participants and two additional contacts.

(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 require the cost of the Adult Protective Services Misconduct Registry, as set by the Department for Community Based Services. No other costs are associated 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 with this amended regulation participants will have individuals identified and willing to step in to provide services when the paid attendant is not available during part or all of their shift. This is a vital to ensure the participant is able to have their needs met such as getting out of bed, dressing, grooming, meals, etc. The amendment also provides that those participants that are found to have been deceitful and fraudulent are suspended from the program.

(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 with the implementation of this amendment to the administrative regulation.

(b) On a continuing basis: There is no ongoing cost associated with the 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: The funding for the services and administration of this administrative regulation is 100% state general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no fees assessed as part of this administrative regulation and no increase in funding is needed for the implementation of the amendments.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees established or affected by this amendment.

(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, will be impacted.

(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 amended 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 in subsequent years.

(c) How much will it cost to administer this program for the first year? The personal care attendant and assistant services program currently operates with a \$3.9 million budget, there are no additional costs related to this amendment.

(d) How much will it cost to administer this program for subsequent years? The program has to operate within the designated budget of \$3.9 million annually.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Income Support
Child Support Enforcement
(Amendment)

921 KAR 1:380. Child Support Enforcement Program application and intergovernmental process.

RELATES TO: KRS 205.705, 205.710-205.800, 205.992, 213.046(4), 403.211, 405.430(5), 405.520, 405.467, 406.021, 406.025, 407.5101-407.5903, 610.170, 45 C.F.R. 301.1, 302.30, 302.31, 302.33-302.36, 302.50, 302.65, 302.80, 303.2, 303.3-303.8, 303.15, 303.30-303.31, 303.69, 303.70, 42 U.S.C. 651-654, 657, 663, 666

STATUTORY AUTHORITY: KRS 194A.050(1), 205.795, 405.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 (1), 205.795, and 405.520 authorize the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations to operate the Child Support Enforcement Program (CSEP) in accordance with federal law and regulations. 45 C.F.R. 303.2 requires the child support application process to be accessible to the public. This administrative regulation specifies the process by which an individual may apply for child support services, the scope of services available, and the process for an intergovernmental case.

Section 1. Child Support Enforcement Case Types. (1) Kentucky Transitional Assistance Program (K-TAP) or Kinship Care.

(a)1. An applicant for, or recipient of, K-TAP or Kinship Care shall make an assignment of rights to the state for support that the applicant or recipient may have from any other person in accordance with KRS 205.720(1) and 921 KAR 2:006.

2. The assignment shall:
a. Include members of the case for whom support rights apply; and

b. Be completed when applying for K-TAP or Kinship Care benefits using the application form incorporated by reference in 921 KAR 2:040.

(b) An applicant or recipient shall cooperate in all phases of child support activity that shall, if known, include:

1. The name of the noncustodial parent or obligor;
2. The Social Security number of the noncustodial parent or obligor;
3. Information to assist in the:
 - a. Location of the noncustodial parent or obligor;
 - b. Enforcement of a child support order; or
 - c. Review or modification of a child support order;
4. Establishment of:
 - a. Paternity, if paternity has not been established; and
 - b. An assigned support obligation;
5. Enforcement of:
 - a. An assigned support obligation; and
 - b. A spousal support order if the cabinet is collecting for a child who resides with the spouse or former spouse; and
6. Forwarding any child support payment received to the cabinet's centralized collection unit.

(2) Foster Care.

(a) The CSEP shall collect and disburse child support on behalf of a child for whom:

1. The state is making a foster care maintenance payment as required by 42 U.S.C. 657 and an assignment of rights has been made; or
2. The cabinet has custody, and there is an order for the child's parent or parents to pay child support to the cabinet pursuant to KRS 610.170.

(b) The child's benefit worker with responsibility for the foster care child shall:

1. Cooperate with the CSEP;
2. Review and approve a foster care child support referral;
3. Complete a change of status if a change occurs that relates to the child support process; and
4. Forward to the CSEP a copy of the child support court documents.

(c) If a child with special needs is adopted in accordance with 922 KAR 1:100 and reenters the custody of the cabinet, the cabinet shall:

1. Determine that good cause exists in accordance with Section 2(3) of this administrative regulation; or
2. Establish a child support obligation if:
 - a. A child with special needs adopted in accordance with 922 KAR 1:100 has reentered the custody of the cabinet due to the child's maltreatment or abandonment; and
 - b. The commissioner or designee recommends the establishment of child support.

(3) Medicaid only.

(a) If a Medicaid-only referral is made, the CSEP shall obtain the following information, if available:

1. Medicaid case number;
2. Name of the noncustodial parent or obligor;
3. Social Security number of the noncustodial parent or obligor;
4. Name and Social Security number of the child;
5. Home address of the noncustodial parent or obligor;
6. Name and address of the noncustodial parent or obligor's place of employment; and
7. Whether the noncustodial parent has a health insurance policy and, if so, the policy name, policy number, and name of any person covered.

(b) An application for Medicaid shall include an assignment of rights for medical support, pursuant to 907 KAR 20:005.

(c) Except for a custodial parent who is pregnant or in her postpartum period, pursuant to 907 KAR 20:005, a custodial parent shall cooperate in all phases of medical support activity.

(d) A Medicaid-only recipient desiring full child support services, in addition to the medical support services, shall complete and submit to the CSEP the CS-140, Assignment of Rights and Authorization to Collect Support.

(4) Nonpublic Assistance.

(a) In accordance with KRS 205.721, the CSEP shall make

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child support services available to any individual who:

1. Assigns rights for medical support only;
2. Applies for services pursuant to paragraph (c) of this subsection; or

3. Has been receiving child support services as a public assistance recipient and is no longer eligible for public assistance.

(b) The CSEP shall notify the family no longer eligible for public assistance, within five (5) working days, that child support services shall continue unless the CSEP is notified to the contrary by the family.

(c) Application Process for a Nonpublic Assistance Individual.

1. Upon the request of a nonpublic assistance applicant, the CSEP shall give an application packet to the applicant.

2. If the request is:

- a. Made in person, the packet shall be provided the same day; or
- b. Not made in person, the packet shall be sent to the applicant within five (5) working days of the request.

3. The application packet shall include the:

- a. CS-33, Application for Child Support Services;
- b. CS-202, Authorization for Electronic Deposit of Child Support Payments; and
- c. CS-11, Authorization and Acknowledgement of No Legal Representation.

4. In order to receive child support services, the applicant shall complete and return the:

- a. CS-33, Application for Child Support Services; and
- b. CS-11, Authorization and Acknowledgement of No Legal Representation.

(d) Except for a location-only case, services provided to a nonpublic assistance client through the CSEP shall be those services listed in Section 2 of this administrative regulation.

(e) If a case involves a putative father, services provided shall be those identified in Section 2(1) of this administrative regulation.

(f) The CSEP shall obtain the following information from a nonpublic assistance applicant, if available:

1. Name, date of birth, and Social Security number of the child;
2. Name of the custodial and noncustodial parent or obligor;
3. Social Security number of the custodial and noncustodial parent or obligor;
4. Date of birth of the custodial and noncustodial parent or obligor;
5. Home address or last known address of the custodial and noncustodial parent or obligor; and
6. Name and address of the custodial and noncustodial parent's or obligor's employer or last known employer.

Section 2. General Services and Good Cause for All Case Types. (1) The CSEP shall provide child support services for a case type described in this administrative regulation in accordance with 42 U.S.C. 654. The services shall include:

- (a) Location of the noncustodial parent or obligor;
- (b) Location of the custodial parent for establishment of paternity;

(c) Establishment of paternity based upon the receipt of either:

1. A court order; or
2. An affidavit from the Office of Vital Statistics that a signed, notarized voluntary acknowledgement of paternity has been registered;

(d) Establishment of a child support or medical support obligation by:

1. Petitioning the court or administrative authority to establish child support pursuant to the Kentucky Child Support Guidelines; and

2. Petitioning the court or administrative authority to include [private] health care coverage[insurance] pursuant to 45 C.F.R. 303.31(b)(1) in new or modified court or administrative orders for support; or

3. Petitioning the court or administrative authority to include cash medical support in new or modified orders until health care coverage[insurance] that is accessible and reasonable in cost, as defined by [in] KRS 403.211(8)(a) and (b), becomes available;

(e) Enforcement of a:

1. Child support or medical support obligation; and
2. Spousal support obligation if the:
 - a. Custodial parent is the spouse or ex-spouse;
 - b. Child lives with the spouse or ex-spouse; and
 - c. Cabinet is collecting support on behalf of the child;
- (f) Review and modification of an assigned support obligation in accordance with 921 KAR 1:400;

(g) Collection and disbursement of current and past-due support payments resulting from an assigned support obligation, less an annual twenty-five (25) dollar fee assessed against a custodial parent who has never received assistance, as defined by [in] 42 U.S.C. 654(6)(b)(ii), during each Federal fiscal year in which \$500 has been disbursed for the case; and

(h) Submission of an[Submit] application to the health plan administrator to enroll the child if the parent ordered to provide health care[insurance] coverage is enrolled through the insurer and has failed to enroll the child.

(2) The CSEP shall open a case and determine needed action and services within twenty (20) calendar days of receipt of a:

- (a) Referral from the public assistance agency;
- (b) Foster care referral; or
- (c) Nonpublic assistance application in accordance with Section 1(4)(c) of this administrative regulation.

(3) Good cause.

(a)1. If an applicant or client states that good cause for noncooperation exists, the applicant or client shall have the opportunity to establish a claim pursuant to 921 KAR 2:006.

2. Evidence for determination of good cause shall be pursuant to 921 KAR 2:006.

3. For a foster care child, good cause for nonenforcement of child support shall be determined to exist if evidence and criteria are met pursuant to 921 KAR 2:006 or 922 KAR 1:530.

(b) If the CSEP has reason to believe an allegation of child maltreatment or domestic violence pursuant to KRS 205.730(1), the CSEP shall not attempt location, establishment, modification, or enforcement of an assigned support obligation.

Section 3. Parent Locator Service and Associated Fee for Service. (1) Unless the cabinet has reason to believe an allegation of child maltreatment or domestic violence pursuant to KRS 205.730(1) or 921 KAR 2:006, Section 25, location shall be attempted for a:

- (a) Public assistance case referred to the CSEP; or
- (b) Nonpublic assistance case for which child support services are being provided.

(2) The CSEP shall attempt to locate a noncustodial parent or obligor and the noncustodial parent's or obligor's employer, sources of income, assets, property, and debt, if necessary, for a public assistance case or nonpublic assistance case assigned to the CSEP pursuant to KRS 205.712, 205.730(5), and 45 C.F.R. 303.69 or 303.70.

(3) In accordance with KRS 205.730(4), location services shall be provided in a parental kidnapping case.

(4) The CSEP shall provide location services to a putative father in accordance with KRS 205.730(2) and (4).

Section 4. Intergovernmental Process for Child Support Enforcement Services. In accordance with KRS 205.712, 407.5101-407.5903, and 45 C.F.R. 303.70, the CSEP shall:

(1) Extend to an intergovernmental IV-D child support case the same services available to an intrastate case; and

(2) Provide a responding state with sufficient and accurate information and documentation on the appropriate intergovernmental transmittal forms, the:

- (a) CS-98, General Testimony;
- (b) CS-99, Declaration[Affidavit] in Support of Establishing Parentage:[Paternity; and]

(c) CS-100, Uniform Support Petition;

(d) CS-103, Child Support Enforcement Transmittal #1 – Initial Request;

(e) CS-138, Child Support Locate Request;

(f) CS-153, Child Support Enforcement Transmittal #2 – Subsequent Actions;

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(g) CS-154, Child Support Enforcement Transmittal #3 – Request for Assistance/Discovery;

(h) CS-155, Notice of Determination of Controlling Order;

(i) CS-157, Letter of Transmittal Requesting Registration;

(j) CS-210, Child Support Agency Confidential Information Form;

(k) CS-211, Personal Information Form for UIFSA § 311;

(l) CS-212, Child Support Agency Request for Change of Support Payment Location Pursuant to UIFSA §319; and

(m) CS-213, Child Support Enforcement Transmittal #1 – Initial Request Acknowledgment.

Section 5. Public Awareness. The effort, pursuant to KRS 205.712(2)(g), to publicize the availability of the CSEP's services and encourage their use may include:

- (1) Public service announcements;
- (2) Posters;
- (3) Press releases;
- (4) Videos;
- (5) Annual reports;
- (6) Newsletters;
- (7) Mail inserts;
- (8) Pamphlets;
- (9) Letters; and
- (10) Internet.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "CS-11, Authorization and Acknowledgement of No Legal Representation", 10/12;

(b) "CS-33, Application for Child Support Services", 1/18[8/46];

(c) "CS-98, General Testimony", 1/18[40/42];

(d) "CS-99, Declaration[Affidavit] in Support of Establishing Parentage", 1/18[Paternity", 4/09];

(e) "CS-100, Uniform Support Petition", 1/18[4/09];

(f) "CS-103, Child Support Enforcement Transmittal #1 – Initial Request", 1/18;

(g) "CS-138, Child Support Locate Request", 1/18;

(h) "CS-140, Assignment of Rights and Authorization to Collect Support", 10/12;

(i) "CS-153, Child Support Enforcement Transmittal #2 – Subsequent Actions", 1/18;

(j) "CS-154, Child Support Enforcement Transmittal #3 – Request for Assistance/Discovery", 1/18;

(k) "CS-155, Notice of Determination of Controlling Order", 1/18;

(l) "CS-157, Letter of Transmittal Requesting Registration", 1/18;

(m)[and (g)] "CS-202, Authorization for Electronic Deposit of Child Support Payments", 2/17;

(n) "CS-210, Child Support Agency Confidential Information Form", 1/18;

(o) "CS-211, Personal Information Form for UIFSA § 311", 1/18;

(p) "CS-212, Child Support Agency Request for Change of Support Payment Location Pursuant to UIFSA §319", 1/18; and

(q) "CS-213, Child Support Enforcement Transmittal #1 – Initial Request Acknowledgment", 1/18[8/46].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

W. BRYAN HUBBARD, Commissioner

ADAM M MEIER, Secretary

APPROVED BY AGENCY: June 4, 2018

FILED WITH LRC: June 7, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 23, 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 July 16, 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 July 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Mary W. Sparrow, email mary.sparrow@ky.gov, phone 502-564-2285, ext. 4832; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies the process by which an individual may apply for child support services, the scope of services available, and the process for an intergovernmental case.

(b) The necessity of this administrative regulation: This administrative regulation provides the procedures for applying for child support enforcement services, the scope of child support enforcement services available as well as the procedures for establishing an intergovernmental case in accordance with 42 U.S.C. 651-654, 657, 663, 666 and 45 C.F.R. 302 and 303.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under KRS 194A.050(1), 205.721, 205.795, 405.520, and by virtue of applying for federal funds under 42 U.S.C. 651-654, 657, 663 and 666, to outline the application process for child support services, scope of child support enforcement services available and the procedures for establishing an intergovernmental case.

(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 procedures and processes utilized by the Cabinet for applicants to apply for child support enforcement services, the scope of child support enforcement services available and the procedures for establishing an intergovernmental child support case.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment updates the language to health care coverage, to conform to the statutory change made to KRS 403.211 by 2018 Senate Bill 108 (2018 Ky. Acts ch. 68), and adds 10 intergovernmental forms and updates three forms that have been created or updated by the federal Office of Child Support Enforcement. The Application for Child Support Services (CS-33) and the Authorization for Electronic Payment of Child Support Cases (CS-202) have also been updated.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the language to health care coverage, add new federal intergovernmental forms and update existing forms.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes provide guidance for the Child Support Enforcement (CSE) Program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes through the update of language to health care coverage, addition of the new intergovernmental forms and the updates of existing forms incorporated by reference.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The updates in this regulation will affect participants and workers in the Child Support Enforcement (CSE) Program. There are currently 287,023 cases.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, 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 forms will be completed by child support staff based on answers provided by the participants in the child support case.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There will be no additional costs associated with this update.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Participants will be able to have paternity established for their children and obtain a child support order that sets a monthly obligation amount. If the noncustodial parent does not pay their court-ordered obligation, enforcement actions can be taken by child support staff to enforce the ordered obligation amount.

(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: Federal funds from The Child Support Enforcement State Program under Title IV-D of the Social Security Act support the implementation and enforcement of this administrative regulation. State General Funds are also utilized.

(7) Provide an assessment of whether an 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 new funding or fees are associated with this update.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. No new funding or fees are associated with this update.

(9) TIERING: Is tiering applied? Tiering is not necessary because the child support requirements are applied uniformly.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Applicants and Participants in the Child Support Enforcement Program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 454(6)(B)(ii) and KRS 205.721.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? No additional funding will be necessary.

(d) How much will it cost to administer this program for subsequent years? No additional administrative 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:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Amendment)

921 KAR 3:025. Technical requirements.

RELATES TO: KRS 205.2005, 7 C.F.R. 273.4, 273.5, 273.7, 273.11, 45 C.F.R. 261.2, 7 U.S.C. 2011, 2014, 2015(d)

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4, 272, 273

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 requires the cabinet to administer a Supplemental Nutrition Assistance Program (SNAP) within the state. 7 C.F.R. 272 and 273 set forth requirements for the cabinet to participate in the SNAP. In addition, 7 U.S.C. 2014 establishes that an otherwise-qualified alien who is blind or receiving a disability benefit, who has lived in the United States for at least five (5) years, or who is under eighteen (18) years of age shall be eligible to participate in SNAP regardless of the date he entered the United States. This administrative regulation sets forth the technical eligibility requirements used by the cabinet in the administration of SNAP.

Section 1. Definitions. (1) "Certification period" means a period of time during which a household shall be eligible to receive SNAP benefits.

(2) "Exempt" means excused by the department from participation in the Supplemental Nutrition Assistance Program Employment and Training Program (E&T).

(3) "Qualified alien" is defined by 7 C.F.R. 273.4.

(4) "Student" means a person who is between the ages of eighteen (18) and forty-nine (49), physically and mentally fit, and enrolled at least half-time in an institution of higher education.

Section 2. Technical Eligibility. In accordance with federal regulations promulgated by the Food and Nutrition Service (FNS), of the United States Department of Agriculture, the cabinet shall utilize national uniform requirements of technical eligibility for SNAP.

Section 3. Technical Eligibility Criteria. Technical eligibility requirements shall apply to all households and consist of:

(1) Residency. A household:

(a) Shall reside in the county in which the household receives benefits; and

(b) May apply for benefits in any county as specified in 921 KAR 3:030, Section 3.

(2) Identity.

(a) The applicant's identity shall be verified; and

(b) If an authorized representative applies for the household, the applicant's and the authorized representative's identities shall be verified.

(3) Citizenship and alien status.

(a) An individual shall satisfy the citizenship and alien status requirement if the individual is a:

1. Citizen of the United States;

2. U.S. noncitizen national; or

3. Qualified alien who is lawfully residing in Kentucky.

(b) Except as provided in paragraph (c) of this subsection, an individual whose status is questionable shall be ineligible to participate until verified.

(c) An individual whose status is pending verification from a

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federal agency shall be eligible to participate for up to six (6) months from the date of the original request for verification.

(d) A single household member shall attest in writing to the citizenship or alien status requirements as established in 921 KAR 3:030 for each household member.

(4) Household size. If information is obtained by the Department for Community Based Services (DCBS) that household size differs from the household's stated size, the size of household shall be verified through readily available documentary evidence or through a collateral contact.

(5) Students. A student shall be ineligible to participate unless the student is:

(a) 1. Engaged in paid employment for an average of twenty (20) hours per week; or

2. If self-employed, ~~shall be~~ employed for an average of twenty (20) hours per week and receiving~~receive~~ weekly earnings at least equal to the federal minimum wage multiplied by twenty (20) hours;

(b) Participating in a state or federally financed work study program during the regular school year;

(c) Responsible for the care of a dependent household member under the age of six (6);

(d) Responsible for the care of a dependent household member who has reached the age of six (6), but is under age twelve (12) and for whom the cabinet has determined that adequate child care is not available to enable the individual to attend class and to satisfy the work requirements of paragraphs (a) and (b) of this subsection;

(e) Receiving benefits from the Kentucky Transitional Assistance Program (K-TAP);

(f) Assigned to or placed in an institution of higher learning through a program pursuant to:

1. 29 U.S.C. 2801;
2. 45 U.S.C. 261.2; or
3. 19 U.S.C. 2296;

(g) Enrolled in an institution of higher learning as a result of participation in a work incentive program pursuant to 42 U.S.C. 681;

(h) Enrolled in an institution of higher learning as a result of participation in E&T in accordance with 921 KAR 3:042; or

(i) A single parent with responsibility for the care of a dependent household member under age twelve (12).

(6) Social Security number (SSN).

(a) Households applying for or participating in SNAP shall comply with SSN requirements by providing the SSN of each household member or applying for a number~~one~~ prior to certification.

(b) Failure to comply without good cause shall be determined for each household member and shall result in an individual's disqualification from participation in SNAP until this requirement is met.

(7) Work registration. All household members shall be required to comply with the work registration requirements, unless exempt, as established in Section 4 of this administrative regulation.

(8) Work requirement.

(a) Except for individuals who may be eligible for up to three (3) additional months in accordance with Section 4 of this administrative regulation, an individual shall not be eligible to participate in SNAP as a member of a household if the individual received SNAP for more than three (3) countable months during any three (3) year period, during which the individual did not:

1. Work eighty (80) hours or more per month;
2. Participate in and comply with the requirements of the E&T component pursuant to 7 U.S.C. 2015(d) for twenty (20) hours or more per week;
3. Participate in and comply with the requirements of a program pursuant to:

- a. 29 U.S.C. 2801 to 2945; or
- b. 19 U.S.C. 2296;

4. Participate in and comply with the requirements established in 921 KAR 3:042~~the~~:

~~a. Work Experience Program component of SNAP Employment and Training Program; or~~

~~b. Vocational Education Skill Training Program]; or~~
5. Receive SNAP benefits pursuant to paragraph (b), (c), or (d) of this subsection.

(b) Paragraph (a) of this subsection shall not apply to an individual if the individual is:

1. Under eighteen (18) or fifty (50) years of age or older;
2. Physically or mentally unfit for employment as determined by the cabinet;
3. A parent or other adult member of a household containing a dependent child under the age of eighteen (18);
4. Exempt from work registration as specified in Section 4(4) of this administrative regulation; or
5. Pregnant.

(c) Paragraph (a) of this subsection shall not apply if, pursuant to an approved waiver by FNS, the county or area in which the individual resides:

1. Has an unemployment rate of over ten (10) percent; or
2. Does not have a sufficient number of jobs to provide employment.

(d) Subsequent eligibility.

1. An individual denied eligibility under paragraph (a) of this subsection shall regain eligibility to participate in SNAP if, during a thirty (30) day period, the individual meets the conditions of paragraph (a) 1. through 4. of this subsection, or the individual was not meeting the work requirements in accordance with paragraph (b) of this subsection.

2. An individual who regains eligibility pursuant to subparagraph 1. of this paragraph shall remain eligible as long as the individual meets the requirements of subparagraph 1. of this paragraph.

(e) Loss of employment or training.

1. An individual who regains eligibility under paragraph (d) 1. of this subsection and who no longer meets the requirements of paragraph (a) 1. through 4. of this subsection shall remain eligible for a consecutive three (3) month period, beginning on the date the individual first notifies the cabinet that the individual no longer meets the requirements of paragraph (a) 1. through 4. of this subsection.

2. An individual shall not receive benefits under subparagraph 1. of this paragraph for more than a single three (3) month period in any three (3) year period.

(f) If the individual does not meet all other technical and financial eligibility criteria pursuant to 7 U.S.C. 2011, nothing in this section shall make an individual eligible for SNAP benefits.

(9) Quality control. Refusal to cooperate in completing a quality control review shall result in termination of the participating household's benefits.

(10) Drug felons. An individual convicted under federal or state law of an offense classified as a felony by the law of the jurisdiction involved and that has an element of possession, use, or distribution of a controlled substance as defined in 21 U.S.C. 862(a), may remain eligible for SNAP benefits if the individual meets the requirements pursuant to KRS 205.2005.

(11) Child Support Arrears. (a) In accordance with 7 C.F.R. 273.11(g) to disqualify a noncustodial parent for refusing to cooperate, a noncustodial parent of a child under the age of eighteen (18) shall not be eligible to participate in SNAP if the individual is delinquent in payment of court-ordered support as determined by the Department for Income Support, Child Support Enforcement, unless the individual:

1. Is enrolled in a drug treatment program;
2. Is participating in a state or federally funded employment training program; or
3. Meets good cause for nonpayment. Good cause shall include temporary situations of thirty (30) days or less resulting from illness, job change, or pendency of unemployment benefits.

(b) The disqualification of an individual in accordance with paragraph (a) of this subsection shall be in place as long as the individual remains delinquent as determined by Department for Income Support, Child Support Enforcement.

(c) The income, expenses, and resources of an individual disqualified in accordance with paragraph (a) of this subsection shall be processed in accordance with 921 KAR 3:035, Section

5(4).

Section 4. Work Registration. (1) Unless a household member is exempt from work requirements as specified in subsection (4) of this section, a household member shall register for work:

- (a) At the time of initial application for SNAP; and
- (b) Every twelve (12) months following the initial application.

(2) Work registration shall be completed by the:

- (a) Member required to register; or
- (b) Person making application for the household.

(3) Unless otherwise exempt, a household member excluded from the SNAP case shall register for work during periods of disqualification. An excluded person shall be an:

- (a) Ineligible alien; or
- (b) Individual disqualified for:
 1. Refusing to provide or apply for a Social Security number; or
 2. An intentional program violation.

(4) An individual meeting the criteria of 7 C.F.R. 273.7(b)(1) shall be exempt from work registration requirements.

(5) A household member who loses exemption status due to a change in circumstances shall register for work in accordance with 7 C.F.R. 273.7(b)(2).

(6) After registering for work, a nonexempt household member shall:

(a) Respond to a cabinet request for additional information regarding employment status or availability for work;

(b) In accordance with 7 C.F.R. 273.7(a)(1)(vi), accept a bona fide offer of suitable employment as specified in 7 C.F.R. 273.7(h), at a wage not lower than the state or federal minimum wage; or

(c) In accordance with 7 C.F.R. 273.7(a)(1)(ii), participate in the E&T Program if assigned by the cabinet.

(7) A household member making a joint application for SSI and SNAP in accordance with 921 KAR 3:035 shall have work requirements waived in accordance with 7 C.F.R. 273.7(a)(6).

(8) The cabinet's E&T worker shall explain to the SNAP applicant the:

(a) Work requirements for each nonexempt household member;

(b) Rights and responsibilities of the work-registered household members; and

(c) Consequences of failing to comply.

Section 5. Determining Good Cause. (1) A determination of good cause shall be undertaken if a:

(a) Work registrant has failed to comply with work registration requirements as specified in Section 4 of this administrative regulation; or

(b) Household member has, as described in Section 7 of this administrative regulation, voluntarily:

1. Quit a job; or
2. Reduced the household member's work effort.

(2) In accordance with 7 C.F.R. 273.7(i)(2), good cause shall be granted for circumstances beyond the control of the individual, such as:

- (a) Illness of the individual;
- (b) Illness of another household member requiring the presence of the individual;
- (c) A household emergency;
- (d) Unavailability of transportation; or
- (e) Lack of adequate care for a child who is six (6) to twelve

(12) years of age for whom the individual is responsible.

(3) Good cause for leaving employment shall be granted if:

(a) A circumstance specified in subsection (2) of this section exists;

(b) The employment became unsuitable in accordance with 7 C.F.R. 273.7(h); or

(c) A circumstance specified in 7 C.F.R. 273.7(i)(3) exists.

Section 6. Disqualification. (1) A participant shall be disqualified from the receipt of SNAP benefits if the participant:

(a) Fails to comply with the work registration requirements; or

(b) Is determined to have voluntarily, without good cause, quit a job or reduced the work effort as established in Section 5 of this

administrative regulation.

(2) An individual disqualified from participation in SNAP shall be ineligible to receive SNAP benefits until the latter of the:

(a) Date the individual complies; or

(b) Lapse of the following time periods:

1. Two (2) months for the first violation;
2. Four (4) months for the second violation; or
3. Six (6) months for the third or a subsequent violation.

(3) Ineligibility shall continue until the ineligible member:

(a) Becomes exempt from the work registration; or

(b)1. Serves the disqualification period specified in subsection (2)(b) of this section; and

2. Complies with the work registration requirements.

(4) A disqualified household member who joins a new household shall:

(a) Remain ineligible for the remainder of the disqualification period specified in subsection (2)(b) of this section;

(b) Have income and resources counted with the income and resources of the new household; and

(c) Not be included in the household size in the determination of the SNAP allotment.

Section 7. Disqualification for Voluntary Quit or Reduction in Work Effort. (1) Within thirty (30) days prior to application for SNAP or any time after application, an individual shall not be eligible to participate in SNAP if the individual voluntarily, without good cause:

(a) Quits a job:

1. Of thirty (30) hours or more per week; and
2. With weekly earnings at least equal to the federal minimum wage times thirty (30) hours; or

(b) Reduces the individual's work effort to:

1. Less than thirty (30) hours per week; and
2. After the reduction, weekly earnings are less than the federal minimum wage times thirty (30) hours.

(2) The cabinet shall impose a disqualification period established in Section 6(2)(b) of this administrative regulation on an individual meeting subsection (1)(a) or (1)(b) of this section.

Section 8. Curing Disqualification for Voluntary Quit or Reduction in Work Effort. (1) Eligibility and participation may be reestablished by:

(a) Securing new employment with salary or hours comparable to the job quit;

(b) Increasing the number of hours worked to the amount worked prior to the work effort reduction and disqualification; or

(c) Serving the minimum period of disqualification imposed pursuant to Section 6(2)(b) of this administrative regulation.

(2) If the individual applies again and is determined to be eligible, an individual may reestablish participation in SNAP.

(3) If an individual becomes exempt from work registration, the disqualification period shall end, and the individual shall be eligible to apply to participate in SNAP.

Section 9. Hearing Process. If aggrieved by a cabinet action or inaction that affects participation, a SNAP participant may request a hearing in accordance with 921 KAR 3:070.

ADRIA JOHNSON, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 6, 2018

FILED WITH LRC: June 7, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 23, 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 July 16, 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 July 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, 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 sets forth the technical requirements to receive Supplemental Nutrition Assistance Program (SNAP) benefits.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the technical requirements for eligibility for SNAP.

(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 technical requirements for SNAP eligibility.

(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 technical requirements for SNAP.

(2) If 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 will add a penalty for noncustodial parents who are determined delinquent in the payment of court-ordered child support by the Department for Income Support, Child Support Enforcement Program congruent with concurrent amendment to 921 KAR 3:035. The amendment also makes technical correction in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to reinforce cooperation with child support obligations, a federal option under SNAP.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by implementing a program option found in 7 C.F.R. 273.11 reinforcing cooperation with child support in SNAP.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes governing SNAP by authorizing an additional technical requirement for individuals reinforcing the child support obligation of noncustodial parents.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any SNAP member who is a noncustodial parent and is determined by Department for Income Support, Child Support Enforcement Program to be delinquent in payment of court-ordered child support will be impacted by this administrative regulation. Approximately 12,633 households could be impacted by the amendment.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will require noncustodial parents to be in compliance

with court-ordered child support payments to be technically eligible for SNAP.

(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 reinforce cooperation with court-ordered child support.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Cooperation with child support enforcement will be supported through this administrative regulation, thereby enhancing the resources available to children and the self-sufficiency of households with children.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The projected technology costs are \$233,640 as of June 2017. Total estimated costs are under \$500,000.

(b) On a continuing basis: The ongoing costs consist of workload impacts resulting from the monthly processing of matched individuals, notification requirements, and claims involving individuals who received benefits to which they were not entitled. Ongoing costs are estimated to be less than \$100,000 annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100% federally funded by the U.S. Department of Agriculture. Program administrative costs are funded 50% federal and 50% state and have been appropriated in the enacted budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no increases in fees or funding required with this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish fees, nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4

2.State compliance standards. KRS 194.050(1)

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will impose no stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 (1), 7 C.F.R. 271.4

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for the first year? SNAP does not directly generate any revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? SNAP does not directly generate any revenue for government.

(c) How much will it cost to administer this program for the first year? This amendment is anticipated to create initial technology costs of approximately \$234,000.

(d) How much will it cost to administer this program for subsequent years? The ongoing costs consist of workload impacts resulting from the monthly processing of matched individuals, notification requirements, and claims involving individuals who received benefits to which they were not entitled. Ongoing costs are estimated to be less than \$100,000 annually.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Amendment)**

921 KAR 3:030. Application process.

RELATES TO: KRS 116.048, 7 C.F.R. 273.2, 273.10, 7 U.S.C. 2020(e)(2)(B)(ii), (iii), (iv), 42 U.S.C. 2000d, 52 U.S.C. 20506, Pres. EO 13166

STATUTORY AUTHORITY: KRS 116.048(1), 194A.050(1), 7 C.F.R. 271.4, 7 C.F.R. 273.2(i), 7 U.S.C. 2020(e)(2)(B), 7 U.S.C. 2011-2029, 52 U.S.C. 20506

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 implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 U.S.C. 2011 to 2029 and 7 C.F.R. 271.4 authorize the cabinet to administer a Supplemental Nutrition Assistance Program (SNAP) and prescribe the manner in which the program shall be implemented. 7 U.S.C. 2020(e)(2)(B) requires the cabinet to develop a uniform application process. KRS 116.048(1) designates the cabinet as a voter registration agency in accordance with 52 U.S.C. 20506. This administrative regulation establishes the application and the voter registration processes used by the cabinet in the administration of the SNAP.

Section 1. Right to Apply or Reapply. (1) An individual shall have the right to apply or reapply for SNAP benefits on the same day that the household first contacts the Department for Community Based Services (DCBS) office in person during office hours.

(2) The cabinet shall make the application process readily accessible to a household.

(3) In accordance with the procedures described in 920 KAR 1:070, interpreter services shall be provided for a person who is:

(a) Deaf; or

(b) Hard of hearing.

(4) In accordance with 42 U.S.C. 2000d and Presidential EO 13166, interpreter services shall be provided for a person who is Limited English Proficient.

(5) An application shall be considered filed if:

(a) A FS-1, Application for SNAP, containing the name, address, and signature of the applicant is received by a DCBS office; or

(b) Application for benefits and another public assistance

program is made in accordance with 921 KAR 2:040 and Section 6 of this administrative regulation.

(6) An application shall be processed after the:

(a) Applicant or representative is interviewed;

(b) Required information and verification for the application is provided to the DCBS office; and

(c) Application and related documents are received by the DCBS office, as specified in Section 3(1) of this administrative regulation.

Section 2. Who May Sign an Application. An application for SNAP shall be signed by:

(1) An adult or emancipated child who is a responsible member of the household; or

(2) The household's authorized representative.

Section 3. Where an Application is Filed. (1) Except as provided in subsection (2) of this section, an application shall be filed in any DCBS office or online at benefind.ky.gov.

(2) A concurrent application for Supplemental Security Income (SSI) and SNAP shall be filed in the service area office of the Social Security Administration.

Section 4. Prompt Action on an Application. The cabinet shall provide an eligible household that completes the initial SNAP application process an opportunity to participate as soon as possible. The cabinet shall not provide an opportunity to participate later than:

(1) Thirty (30) days after the application is filed for a household ineligible for expedited services; or

(2) The fifth calendar day following the date an application is filed for a household eligible for expedited services.

Section 5. Expedited Service. The cabinet shall provide expedited services to a household that is eligible in accordance with 7 C.F.R. 273.2(i).

Section 6. Public Assistance Application Process. (1) A household applying for Kentucky Transitional Assistance Program (KTAP) shall be allowed to simultaneously apply for SNAP benefits. A single interview shall be conducted for both programs.

(2) Time standards specified in Section 4 of this administrative regulation shall not apply to a public assistance application. A public assistance application shall be governed by the time standards specified in 921 KAR 2:035, Section 3.

(3) A household in which every member receives, or is authorized to receive, SSI shall be considered categorically eligible unless:

(a) The entire household is institutionalized;

(b) A household member is ineligible due to a drug-related felony conviction;

(c) A household member is disqualified due to an intentional program violation specified in 921 KAR 3:010; or

(d) The head of the household is disqualified for failure to comply with the work requirements specified in 921 KAR 3:042.

(4) A household in which any member receives, or is authorized to receive cash, in-kind, or other benefits funded under Temporary Assistance for Needy Families (TANF) Block Grant (TANF) shall be considered categorically eligible unless:

(a) The entire household is institutionalized;

(b) A household member is ineligible due to a drug-related felony conviction;

(c) A household member is disqualified due to an intentional program violation specified in 921 KAR 3:010; or

(d) The head of household is disqualified for failure to comply with the work requirements specified in 921 KAR 3:042.

(5) If verified by the program, a categorically eligible household shall not be required to verify the following eligibility factors:

(a) Resources;

(b) Gross and net income;

(c) Social Security number;

(d) Sponsored alien information; and

(e) Residency.

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(6) A household that receives a TANF information sheet at application, which makes the household aware of other programs for which the household may qualify, shall be considered expanded categorically eligible.

(7) If verified by the program, an expanded categorically eligible household shall not be required to verify the following factors:

- (a) Resources;
- (b) Social Security number;
- (c) Sponsored alien information; and
- (d) Residency.

Section 7. Joint SSI and SNAP Application Process. A household in which every member is an applicant or recipient of SSI shall be allowed to simultaneously apply for both SSI and SNAP as specified in Section 3(2) of this administrative regulation.

Section 8. Voter Registration. (1) In accordance with KRS 116.048 and 52 U.S.C. 20506, a SNAP applicant or recipient shall be provided the opportunity to complete an application to register to vote or update current voter registration if the applicant or recipient is:

- (a) Age eighteen (18) or over; and
- (b) Not registered to vote or not registered to vote at his current address.

(2) PAFS-706, Voter Registration Rights and Declination, shall be utilized to document a SNAP applicant or recipient's choice to:

- (a) Register to vote;
- (b) Not register to vote; or
- (c) Indicate that they are currently registered to vote.

(3) A voter registration application shall be completed if a SNAP applicant or recipient wants to:

- (a) Register to vote; or
- (b) Update voter registration to provide a new address.

(4) The voter registration process shall not apply to an individual not included in the assistance application, such as an authorized representative.

(5) All information utilized in the voter registration process shall remain confidential and be used only for voter registration purposes.

(6) The State Board of Elections shall approve the application to register to vote and send a confirmation or denial notice to the voter registration applicant.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "FS-1, Application for SNAP", 10/18[247]; and
- (b) "PAFS-706, Voter Registration Rights and Declination", 8/10.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ADRIA JOHNSON, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 6, 2018

FILED WITH LRC: June 7, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 23, 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 July 16, 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 July 31, 2018. Send written notification of intent to

attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, 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 the application and the voter registration processes used by the Cabinet for Health and Family Services, Department for Community Based Services (DCBS) in the administration of the Supplemental Nutrition Assistance Program (SNAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform application standards for SNAP.

(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 an application process for SNAP.

(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 establishing procedures used in the administration of SNAP.

(2) If 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 will provide clarifying information on the SNAP application about the availability of interpreters and the criteria of social security number. The amendment also makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation will ensure the incorporated material meets federal requirements preserving the rights and responsibilities of SNAP applicants.

(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 of incorporated materials conforming to federal requirements.

(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 through its update of incorporated materials in accordance with federal requirements, thereby better ensuring applicants are informed of their rights and responsibilities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment to this administrative regulation will affect Kentucky households that apply for and participate in SNAP. As of February 2018, 292,350 households were active in SNAP.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, 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 have any new burden as a result of this amendment.

(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 does not involve any cost to SNAP participants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): SNAP applicants will have access to additional information on the availability of interpreters and the criteria concerning the provision of a social security number.

(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 is technical and conforming in nature and has no initial cost to implement. Rather, to not undertake the regulatory amendment may subject the state to additional corrective action and possible federal financial penalty.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and has no fiscal impact on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100% federally funded through the U.S. Department of Agriculture. Administrative costs are 50% federally funded and 50% state funded. Funding has been appropriated in the enacted budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: An increase in fees or funding will not be necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 273.2, 7 U.S.C. 2011-2029, 42 U.S.C. 1973gg-10

2. State compliance standards. KRS 116.048, 194A.050 (1)

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 273.2, 7 U.S.C. 2011-2029, 42 U.S.C. 1973gg-10

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment to this administrative regulation will impose no stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Justification for the imposition of a stricter standard, or additional or different responsibilities or requirements, is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Community Based Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 116.048, 194A.050(1), 7 C.F.R. 271.4, and U.S.C. 2011-2029.

(3) Estimate the effect of this administrative regulation on the 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 government and will not generate any additional revenue during

the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue for government and will not generate any additional revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? This amendment will not require any additional costs in the first year.

(d) How much will it cost to administer this program for subsequent years? This amendment will not require any additional 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:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Amendment)

921 KAR 3:035. Certification process.

RELATES TO: 7 C.F.R. 271.2, 273.1, 273.2, 273.4, 273.5, 273.10, 273.11, 273.12, 273.14, 274, 280.1, 7 U.S.C. 2014, 2015(d), 42 U.S.C. 5122, 5179

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4
 NECESSITY, FUNCTION, AND CONFORMITY: 7 C.F.R. 271.4 requires the Cabinet for Health and Family Services to administer a Supplemental Nutrition Assistance Program (SNAP) within the state. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This administrative regulation establishes the certification process used by the cabinet in the administration of SNAP.

Section 1. Eligibility and Benefit Levels. (1) Eligibility and benefit levels shall be determined by the cabinet by considering a household's circumstance for the entire period for which each household is certified.

(2) Certification criteria shall be applicable to all households.

(3) Certain households shall require special or additional certification procedures as specified in Section 5 of this administrative regulation.

Section 2. Certification Periods. (1) In accordance with 7 C.F.R. 273.10(f), the cabinet shall establish a definite period of time within which a household shall be eligible to receive benefits.

(2) Except as provided in subsection (3) of this section, a household shall be certified for:

(a) Four (4) ~~Twelve (12)~~ months if the household contains an able-bodied adult without dependent (ABAWD) in accordance with 7 U.S.C. 2015(d); ~~[e]~~

(b) Six (6) months if the household includes a member who is not ABAWD or elderly or disabled with no earned income; or

(c) Twelve (12) ~~Twenty-four (24)~~ months if all household members:

1. Are elderly or have a disability as defined in 921 KAR 3:010; and

2. Have no earned income.

(3)(a) A household shall be certified for one (1) or two (2) months if the household meets criteria to:

1. Expedite benefits in accordance with 7 C.F.R. 273.2(i)(1); and

2. Postpone verification.

(b) At the end of a one (1) or two (2) month certification, a

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household may be recertified for a ~~four (4), six (6), or twelve (12)~~ [or ~~twenty-four (24)]~~ month certification as specified in subsection (2) of this section.

(4)(a) In accordance with 7 C.F.R. 273.12, a household ~~certified for twelve (12) months in accordance with subsection (2)(c) of this section, which reports a change during the household's initial five (5) months of the certification period of earned income or a new member who is not elderly or disabled, [4.] shall complete an interim report using the FS-2, SNAP REVIEW, [every six (6) months] during the sixth month of the household's certification period [unless all household members meet criteria specified in subparagraph 2 of this paragraph; or~~

~~2. In which all members are elderly or have a disability as defined in 921 KAR 3:010 and have no earned income, shall complete an interim report using the FS-2 during the 12th month of the household's certification period].~~

(b) If a household fails to return a completed FS-2 or the required verification, the cabinet shall take action in accordance with 7 C.F.R. 273.12(a)(5).

Section 3. Certification Notices to Households. In accordance with 7 C.F.R. 273.10(g), the cabinet shall provide an applicant with one (1) of the following written notices as soon as a determination is made, but no later than thirty (30) days after the date of the initial application:

- (1) Notice of eligibility;
- (2) Notice of denial; or
- (3) Notice of pending status.

Section 4. Application for Recertification. The cabinet shall process an application for recertification as specified in 921 KAR 3:030, Section 1, as follows:

(1) If a household files the application:

(a) By the 15th day of the last month of the certification, the cabinet shall:

1. Allow the household to return verification or complete a required action through the last calendar day of the application month; and

2. Provide uninterrupted benefits, if the household is otherwise eligible; or

(b) After the 15th day, but prior to the last day of the last month of the certification, the cabinet shall allow the household thirty (30) days to return verification or complete a required action; or

(2) If the household fails to provide information required for the cabinet to process the application for recertification within a time period established in subsection (1) of this section, the cabinet shall take action in accordance with 7 C.F.R. 273.14(e)(2).

Section 5. Certification Process for Specific Households. Pursuant to 7 C.F.R. 273.11, certain households have circumstances that are substantially different from other households and therefore shall require special or additional certification procedures. (1) A household with a self-employed member shall have its case processed as established in this subsection.

(a) Income shall be annualized over a twelve (12) month period, if self-employment income:

1. Represents a household's annual income; or

2. Is received on a monthly basis ~~that~~ [which] represents a household's annual support.

(b) Self-employment income, which is intended to meet the household's needs for only part of the year, shall be averaged over the period of time the income is intended to cover.

(c) Income from a household's self-employment enterprise that has been in existence for less than one (1) year shall be averaged over the period of time the business has been in operation and a monthly amount projected over the coming year.

(d) The cabinet shall calculate the self-employment income on anticipated earnings if the:

1. Averaged annualized amount does not accurately reflect the household's actual circumstances; and

2. Household has experienced a substantial increase or decrease in business.

(2) A household with a boarder shall have its case processed as established in this subsection.

(a) Income from the boarder shall:

1. Be treated as self-employment income; and

2. Include all direct payments to the household for:

a. Room;

b. Meals; and

c. Shelter expenses.

(b) Deductible expenses shall include:

1. Cost of doing business;

2. Twenty (20) percent of the earned income; and

3. Shelter costs.

(3) A household with a member ineligible due to an intentional program violation, or failure to comply with the work requirements or work registration requirements, shall be processed as established in this subsection.

(a) Income and resources of the ineligible member shall be counted in their entirety as income available to the remaining household members.

(b) Remaining household members shall receive standard earned income, medical, dependent care, and excess shelter deductions.

(c) The ineligible member shall not be included if:

1. Assigning benefit levels;

2. Comparing monthly income with income eligibility standards;

and

3. Comparing household resources with resource eligibility standards.

(4) A household with a member ineligible due to failure to provide a Social Security number, delinquency in payment of court-ordered child support through the Department of Income Support, Child Support Enforcement Program in accordance with 921 KAR 3:025, Section 3(11), or ineligible alien status, shall be processed as established in this subsection.

(a) All resources of an ineligible member shall be considered available to the remaining household members.

(b) A pro rata share, as described in 7 C.F.R. 273.11(c)(2)(ii), of the ineligible member's income shall be attributed to remaining household members.

(c) The twenty (20) percent earned income deduction shall be applied to the pro rata share of earnings.

(d) The ineligible member's share of dependent care and shelter expenses shall not be counted.

(e) The ineligible member shall not be included as specified in subsection (3)(c) of this section.

(5) A household with a nonhousehold member shall be processed as established in this subsection.

(a) With the exception of an ineligible member, the income and resources of a nonhousehold member shall not be considered available to the household with whom they reside.

(b) If the earned income of a household member and a nonhousehold member are combined into one (1) wage, the cabinet shall:

1. Count that portion due to the household as earned income, if identifiable; or

2. Count a pro rata share of earned income, if the nonhousehold member's share cannot be identified.

(c) A nonhousehold member shall not be included in the household size, if determining the eligibility and benefits for the household.

(6) The cabinet shall process the case of a drug or alcoholic treatment program resident, as described in 7 C.F.R. 271.2, as established in this subsection.

(a) An eligible household shall include:

1.a. A narcotic addict; or

b. An alcoholic; and

2. A child of the narcotic addict or alcoholic.

(b) Certification shall be accomplished through use of the treatment program's authorized representative.

(c) SNAP processing standards and notice provisions shall apply to a resident recipient.

(d) A treatment program shall notify the cabinet of a change in a resident's circumstance.

(e) Upon departure of the treatment program, the resident shall be eligible to receive remaining benefits, if otherwise eligible.

(f) The treatment program shall be responsible for knowingly misrepresenting a household circumstance.

(7) The case processing procedures established in this subsection shall apply to residents of a group living arrangement, as defined in 7 C.F.R. 271.2.

(a) Application shall be made by a resident or through use of the group living arrangement's authorized representative.

(b) Certification provisions applicable to all other households shall be applied.

(c) Responsibility for reporting changes shall depend upon who files the application:

1. If a resident applies, the household shall report a change in household circumstance to the cabinet; or

2. If the group living arrangement acts as authorized representative, the group living arrangement shall report a change in household circumstance.

(d) Eligibility of the resident shall continue after departure from the group living arrangement, if otherwise eligible.

(e) Unless the household applied on its own behalf, the group living arrangement shall be responsible for knowingly misrepresenting a household circumstance.

(8) A case of a resident in a shelter for battered women and children shall be processed as established in this subsection.

(a) The shelter shall:

1. Have FNS authorization to redeem SNAP benefits at wholesalers; or

2. Meet the federal definition of a shelter as defined in 7 C.F.R. 271.2.

(b) A shelter resident shall be certified for benefits as established in 7 C.F.R. 273.11(g).

(c) The cabinet shall promptly remove the resident from the former household's case, upon notification.

(9) The case of an SSI recipient shall be processed as established in this subsection.

(a) An application may be filed at the:

1. Social Security Administration (SSA) Office; or

2. Local Department for Community Based Services office.

(b) The cabinet shall not require an additional interview for applications filed at the SSA.

(c) The cabinet shall obtain all necessary verification prior to approving benefits.

(d) Certification periods shall conform to Section 2 of this administrative regulation.

(e) A household change in circumstance shall conform to Section 7 of this administrative regulation.

(10) A household with a member who is on strike shall have its eligibility determined by:

(a) Comparing the striking member's income the day prior to the strike, to the striker's current income;

(b) Adding the higher of the prestrike income or current income to other current household income; and

(c) Allowing the appropriate earnings deduction.

(11) Sponsored aliens.

(a) Income of a sponsored alien, as defined in 7 C.F.R. 273.4(c)(2), shall be:

1. Deemed income from a sponsor and sponsor's spouse, which shall:

a. Include total monthly earned and unearned income; and

b. Be reduced by:

(i) The twenty (20) percent earned income disregard, if appropriate; and

(ii) The SNAP gross income eligibility limit for a household equal in size to the sponsor's household;

2. Subject to appropriate income exclusions as specified in 921 KAR 3:020, Section 3; and

3. Reduced by the twenty (20) percent earned income disregard, if appropriate.

(b) If the sponsor is financially responsible for more than one (1) sponsored alien, the sponsor's income shall be prorated among each sponsored alien.

(c) A portion of income, as specified in paragraph (a) of this

subsection, of the sponsor and of the sponsor's spouse shall be deemed unearned income until the sponsored alien:

1. Becomes a naturalized citizen;

2. Is credited with forty (40) qualifying quarters of work;

3. Meets criteria to be exempt from deeming, in accordance with 7 C.F.R. 273.4(c)(3);

4. Is no longer considered lawfully admitted for permanent residence and leaves the United States; or

5. Dies, or the sponsor dies.

(d) In accordance with 7 U.S.C. 2014(i)(2)(E), deeming requirements shall not apply to sponsored alien children under eighteen (18) years of age.

Section 6. Disaster Certification. The cabinet shall distribute emergency SNAP benefits, pursuant to 42 U.S.C. 5122, to a household residing in a county determined to be a disaster area in accordance with 42 U.S.C. 5179 and 7 C.F.R. 280.1.

Section 7. Reporting Changes. (1) Within ten (10) days of the end of the month in which the change occurs, a household shall report a change that[which] causes:

(a) The household's gross monthly income to exceed 130 percent of poverty level based on household size; or

(b) A household member, who does not have an exemption from work requirements, as specified in 921 KAR 3:025, Section 3(8)(b), to work less than twenty (20) hours per week.

(2) An applying household shall report a change related to its SNAP eligibility and benefits:

(a) At the certification interview; or

(b) Within ten (10) days of the date of the notice of eligibility, if the change occurs after the interview, but prior to receipt of the notice.

Section 8. Incorporation by Reference. (1) The "FS-2, SNAP REVIEW", 9/16, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ADRIA JOHNSON, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 4, 2018

FILED WITH LRC: June 7, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall, if requested, be held on July 23, 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 July 16, 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 July 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091 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 the certification process used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP).

(b) The necessity of this administrative regulation: This administrative regulation establishes the certification process necessary to determine SNAP eligibility.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing the certification process for SNAP eligibility determination.

(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 certification process for SNAP.

(2) If 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 will shorten SNAP households' certifications periods. For households including elderly members or members with a disability and no earned income, the certification period is changed from twenty-four (24) to twelve (12) months. For households including members who are not able-bodied adults without dependents or elderly or disabled with no earned income, the certification period is changed from twelve (12) months to six (6) months. The amendment also creates a four (4) month certification period for households including able-bodied adults without dependents to improve tracking of compliance with employment and training. The amendment supports the disqualification of an individual who is determined delinquent in the payment of court-ordered child support congruent with concurrent amendment to 921 KAR 3:025. The amendment also makes technical corrections in accordance with the drafting and formatting requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to the administrative regulation is necessary to shorten certification periods improving the state's error rate thereby preserving federal funding and program integrity. In addition, the proposed certification periods facilitate required tracking of recipients who are able-bodied adults without dependents. Lastly, the amendment reinforces cooperation with child support obligations. Twenty-six (26) states currently have certification periods of six (6) months or less.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by aligning SNAP certification periods with state options found in Public Law 110-246 and 7 C.F.R. 273.2.

(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 modification of certification periods to improve the overall administration of SNAP and reinforcement of court-ordered child support obligations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All SNAP households will be affected by this administrative regulation. As of February 2018, there were 292,350 active SNAP households.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, 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 require SNAP households to cooperate with court-ordered child support and to re-certify their applications every four (4), six (6), or twelve (12) months to avoid interruption in benefit receipt.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): SNAP households will have more frequent certifications under this proposed administrative regulation;

however, re-certification procedures have been enhanced through the department's call services and online self-service functionalities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation is anticipated to reduce the state's error rate thereby preserving federal funding for the program's administration, improve program integrity, reduce benefit claims, better reinforce able-bodied adults' participation in employment and training, and better support cooperation with court-ordered child support obligations.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Initial costs will include supporting technology changes; however, these costs will be offset by preservation of federal funding and reduced administrative burdens associated with benefit claims.

(b) On a continuing basis: There is no known ongoing cost associated with this regulatory amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100% federally funded. Administrative functions are funded at a 50% state and 50% federal match rate. The funding has been appropriated in the enacted budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation if new, or by the change if it is an amendment: There is no increase in fees or funding required to implement this administrative regulation amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.2, 273.1, 273.2, 273.4, 273.5, 273.10, 273.11, 273.12, 273.14, 274, 280.1, 7 U.S.C. 2014, 2015, 42 U.S.C. 5122, 5179

2. State compliance standards. KRS 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation 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. Justification for the imposition of a stricter standard, or additional or different responsibilities or requirements, is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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. 7 C.F.R. 271.2, 273.1, 273.2, 273.4, 273.5, 273.10, 273.11, 273.12, 273.14, 274, 280.1, 7 U.S.C. 2014, 2015, 42 U.S.C. 5122, 5179, KRS 194A.050(1)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

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(a) How much 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 new 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 new revenue for state or local government.

(c) How much will it cost to administer this program for the first year? This administrative regulation will result in new technology costs for the administrating agency in its first year. These costs, however, should be offset set by the preservation of the state's federal funding and enhanced program integrity. The exact amount of these technology

(d) How much will it cost to administer this program for subsequent years? There is no new ongoing costs to administrative this program as a result of this administrative regulation 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:

NEW ADMINISTRATIVE REGULATIONS

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(New Administrative Regulation)

11 KAR 15:110. Scholarships for Registered
Apprenticeship programs.

RELATES TO: KRS 164.7871-164.7885
STATUTORY AUTHORITY: KRS 164.744(2), 164.748(4),
164.753(3), 164.7884, 164.7894
NECESSITY, FUNCTION, AND CONFORMITY: KRS
164.7884(5) authorizes the authority to promulgate administrative
regulations establishing the procedures for making awards to
KEES-eligible students participating in a registered apprenticeship
program.

Section 1. Eligibility. (1) A student who has earned a KEES
award and who is enrolled in a registered apprenticeship program
is eligible to request reimbursement for post-secondary expenses
beginning with the 2018-2019 academic year.

(2) Reimbursement shall be made only for approved expenses
as provided in KRS 164.7884(3)(a).

Section 2. Election Process. (1) By August 1 prior to the start
of the academic year, a student enrolled in a registered
apprenticeship program shall submit to KHEAA their funding
pathway for postsecondary KEES use.

(2) If a student chooses the traditional KEES pathway, funds
shall be paid to the student's postsecondary institution upon
KHEAA's receipt of enrollment verification from the institution.
Funds shall not be paid directly to the student by KHEAA.

(3) If a student chooses the registered apprenticeship
reimbursement pathway, funds shall be paid directly to the student
upon KHEAA's receipt of both a reimbursement request and proof
of purchase by the student.

(4) Any student who fails to make an election by August 1 shall
automatically be placed on the traditional KEES pathway.

Section 3. Reimbursement Process. (1) Upon receipt of a
student's election to participate in the registered apprenticeship
reimbursement pathway, KHEAA shall provide written confirmation
to the student detailing the reimbursement process.

(2) In order to be eligible for reimbursement, the student must:

(a) Purchase items required for participation in the registered
apprenticeship program;

(b) Complete and submit to KHEAA a reimbursement request;
and

(c) Submit to KHEAA supporting documentation, including an
itemized dated receipt.

(3) Upon receipt of the required documentation and approval of
the reimbursement request, KHEAA shall provide reimbursement
of the approved expenses directly to the student in the form of a
paper check.

(4) In addition to reimbursable purchases, a student may
request a travel allowance of up to \$250 per semester to cover
commuting costs incurred during participation in the registered
apprenticeship program.

(5) The total reimbursement amount per year shall not exceed
the student's KEES award maximum.

(6) Eligibility for reimbursement ends the earlier of:

(a) Five (5) years following the student's date of high school
graduation or GED receipt; or

(b) The student's successful completion of a registered
apprenticeship program; or

(c) Receipt of reimbursement for four (4) academic years.

Section 4. Conversion of Funding Pathway. A student may
elect to change their funding pathway one (1) time after making
their initial election. (1) The change request must be submitted to
KHEAA in writing.

(2) The change shall become effective at the beginning of the

next academic year following KHEAA's receipt and approval of the
request.

(3) The KEES award maximum for a student transitioning from
the traditional KEES pathway to the registered apprenticeship
pathway shall be based on the student's postsecondary renewal
amount for the last academic year completed in the traditional
pathway.

CHARLES VINSON, Chair

APPROVED BY AGENCY: May 30, 2018

FILED WITH LRC: June 14, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
Tuesday, July 24, 2018, at 10:00 a.m. Eastern Time at 100 Airport
Road, Frankfort, Kentucky 40601. Individuals interested in being
heard at this hearing shall notify this agency in writing by 5
workdays prior to the hearing, of their intent to attend. If no
notification of intent to attend the hearing is received by that date,
the hearing may be canceled. This hearing is open to the public.
Any person who 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 July 31, 2018. Send written notification of intent to be
heard at the public hearing or written comments on the proposed
administrative regulation to the contact person.

CONTACT PERSON: Ms. Diana L. Barber, General Counsel,
Kentucky Higher Education Assistance Authority, P.O. Box 798,
Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502)
696-7293, email dbarber@kheaa.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Rebecca Gilpatrick, phone 502-696-7394,
emailrgilpat@kheaa.com, and Diana L. Barber

(1) Provide a brief summary of:

(a) What this administrative regulation does: The Authority is
required to promulgate administrative regulations pertaining to
Kentucky Educational Excellence Scholarship (KEES) program.
Specifically, KRS 164.7884, enacted during the 2017 legislative
session, requires KHEAA to promulgate regulations establishing
procedures for making awards for scholarships for students
participating in registered apprenticeship programs. This regulation
establishes those procedures.

(b) The necessity of this administrative regulation: The
Authority is required to promulgate administrative regulations
pertaining to Kentucky Educational Excellence Scholarship (KEES)
program, including establishing procedures for making awards for
scholarships to students participating in registered apprenticeship
programs. This regulation is necessary to establish those
procedures consistent with the statute.

(c) How this administrative regulation conforms to the content
of the authorizing statutes: This administrative regulation
conforms to the content of the authorizing statute by establishing
procedures for KEES awards to students participating in registered
apprenticeship programs required by the statute.

(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This
administrative regulation will assist with the effective administration
of the statutes by establishing procedures applicable to the
scholarship program for students participating in registered
apprenticeship programs.

(2) If this is an amendment to an existing administrative
regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative
regulation: 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: Students participating in registered apprenticeship programs who have earned KEES awards will be affected by the regulation.

(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: The proposed regulation would positively affect those students participating in registered apprenticeship programs who have earned KEES awards by allowing KEES funds to be used to reimburse the expenses incurred by these students during their participation in the apprenticeship programs.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no cost to implement this administrative regulation.

(b) On a continuing basis: See (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KEES program is funded through net lottery revenues transferred in accordance with KRS 154A.130.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

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? Finance and Administrative Cabinet, Kentucky Higher Education Assistance Authority.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.7874, 164.7877(3), 164.7879(1), (2), (3), 164.7881(4)(a), (c), (6), 164.7884.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue for

subsequent years.

(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

AGRICULTURAL EXPERIMENT STATION (New Administrative Regulation)

12 KAR 3:028. Descriptive terms.

RELATES TO: KRS 250.501, 250.521, 15 U.S.C. 1451-1461
STATUTORY AUTHORITY: KRS 250.521(2)(e), (f), 250.571
NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631. KRS 250.521 requires that pet foods be labeled and establishes the information that shall be stated on the label. This administrative regulation establishes a uniform format for labeling information for pet foods and delineates criteria for the use of descriptive terms.

Section 1. Calorie Terms. (1) "Light."

(a) A dog food product that bears on its label the terms "light," "lite," "low calorie," or words of similar designation shall:

1. Contain no more than 3100 kcal ME/kg for products containing less than twenty (20) percent moisture, no more than 2500 kcal ME/kg for products containing twenty (20) percent or more but less than sixty-five (65) percent moisture, and no more than 900 kcal ME/kg for products containing sixty-five (65) percent or more moisture;

2. Include on the label a calorie content statement:

a. In accordance with the format provided in 12 KAR 3:042; and

b. That states no more than 3100 kcal ME/kg for products containing less than twenty (20) percent moisture, no more than 2500 kcal ME/kg for products containing twenty (20) percent or more but less than sixty-five (65) percent moisture, and no more than 900 kcal ME/kg for products containing sixty-five (65) percent or more moisture; and

3. Include on the label feeding directions that reflect a reduction in calorie intake consistent with the intended use.

(b) A cat food product that bears on its label the terms "light," "lite," "low calorie," or words of similar designation shall:

1. Contain no more than 3250 kcal ME/kg for products containing less than twenty (20) percent moisture, no more than 2650 kcal ME/kg for products containing twenty (20) percent or more but less than sixty-five (65) percent moisture, and no more than 950 kcal ME/kg for products containing sixty-five (65) percent or more moisture;

2. Include on the label a calorie content statement:

a. In accordance with the format provided in 12 KAR 3:042; and

b. That states no more than 3250 kcal ME/kg for products containing less than twenty (20) percent moisture, no more than 2650 kcal ME/kg for products containing twenty (20) percent or more but less than sixty-five (65) percent moisture, and no more than 950 kcal ME/kg for products containing sixty-five (65) percent or more moisture; and

3. Include on the label feeding directions that reflect a reduction in calorie intake consistent with the intended use.

(2) "Less" or "Reduced Calories."

(a) A dog or cat food product that bears on its label a claim of "less calories," "reduced calories," or words of similar designation, shall include on the label:

1. The name of the product of comparison and the percentage

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of calorie reduction (expressed on equal weight basis) explicitly stated and juxtaposed with the largest or more prominent use of the claim on each panel of the label on which the term appears;

2. The comparative statement printed in type of the same color and style and at least one-half the type size used in the claim;

3. A calorie content statement in accordance with the format provided in 12 KAR 3:042; and

4. Feeding directions that reflect a reduction in calories compared to feeding directions for the product of comparison.

(b) A comparison between products in different categories of moisture content (i.e. less than twenty (20) percent, twenty (20) percent or more but less than sixty-five (65) percent, sixty-five (65) percent or more) is misleading.

Section 2. Fat Terms. (1) "Lean."

(a) A dog food product that bears on its label the terms "lean," "low fat," or words of similar designation shall:

1. Contain no more than nine (9) percent crude fat for products containing less than twenty (20) percent moisture, no more than seven (7) percent crude fat for products containing twenty (20) percent or more but less than sixty-five (65) percent moisture, and no more than four (4) percent crude fat for products containing sixty-five (65) percent or more moisture; and

2. Include on the product label in the Guaranteed Analysis:

a. A maximum crude fat guarantee immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in (12 KAR 3:022, Section 1(1)); and

b. A maximum crude fat guarantee that is no more than nine (9) percent crude fat for products containing less than twenty (20) percent moisture, no more than seven (7) percent crude fat for products containing twenty (20) percent or more but less than sixty-five (65) percent moisture, and no more than four (4) percent crude fat for products containing sixty-five (65) percent or more moisture.

(b) A cat food product that bears on its label the terms "lean," "low fat," or words of similar designation shall:

1. Contain a maximum percentage of crude fat that is no more than ten (10) percent crude fat for products containing less than twenty (20) percent moisture, no more than eight (8) percent crude fat for products containing twenty (20) percent or more but less than sixty-five (65) percent moisture, and no more than five (5) percent crude fat for products containing sixty-five (65) percent or more moisture; and

2. Include on the product label in the Guaranteed Analysis:

a. A maximum crude fat guarantee immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in 12 KAR 3:022, Section 1(1)); and

b. A maximum crude fat guarantee that is no more than ten (10) percent crude fat for products containing less than twenty (20) percent moisture, no more than eight (8) percent crude fat for products containing twenty (20) percent or more but less than sixty-five (65) percent moisture, and no more than five (5) percent crude fat for products containing sixty-five (65) percent or more moisture.

(2) "Less" or "Reduced Fat."

(a) A dog or cat food product that bears on its label a claim of "less fat," "reduced fat," or words of similar designation, shall include on the label:

1. The name of the product of comparison and the percentage of fat reduction (expressed on an equal weight basis) explicitly stated and juxtaposed with the largest or most prominent use of the claim on each panel of the label on which the term appears;

2. The comparative statement printed in type of the same color and style and at least one-half the type size used in the claim; and

3. A maximum crude fat guarantee in the Guaranteed Analysis immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in 12 KAR 3:022, Section 1(1).

(b) A comparison on the label between products in different categories of moisture content (i.e. less than twenty (20) percent, twenty (20) percent or more but less than sixty-five (65) percent,

sixty-five (65) percent or more) is misleading.

Section 3. Carbohydrate Terms. (1) "Low" Carbohydrate, Dietary Starch, and Sugars Claims. A claim of "low carbohydrates," "low dietary starch," "low sugars," or a combination thereof is not allowed.

(2) "Less" or "Reduced" Carbohydrates, Dietary Starch, and Sugars claims.

(a) A dog or cat food product which bears on its label a claim of "less _____" or "reduced _____" (the blank shall be completed by using "carbohydrates," "dietary starch," or "sugars") or words of similar designation, shall include on the label:

1. The name of the product of comparison and the percentage of reduction in total dietary starch plus sugars (expressed on an equal weight basis) explicitly stated and juxtaposed with the largest or most prominent use of the claim on each panel of the label on which the term appears;

2. The comparative statement printed in type of the same color and style and not less than one-half the size used in the claim; and

3. Maximum guarantees for dietary starch and sugars as stated in 12 KAR 3:022, Section 1(3).

(b) A comparison between products in different categories of moisture content (i.e., less than twenty (20) percent, twenty (20) percent or more but less than sixty-five (65) percent, sixty-five (65) percent or more) is misleading.

Section 4. Incorporation by Reference. (1) "Official Publication", (2018 Edition), Association of American Feed Control Officials, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, 103 Regulatory Services Building, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. RICK BENNETT, Director

APPROVED BY AGENCY: May 31, 2018

FILED WITH LRC: June 7, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on July 26, 2018 at 1:30 p.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Darrell Johnson, Executive Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2435, fax (859) 323-9931, darrell.johnson@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Darrell Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a uniform format for labeling information for pet foods and delineates criteria for the use of descriptive terms.

(b) The necessity of this administrative regulation: This is a new regulation to describe the proper use of descriptive terms on pet foods (e.g. light, low calorie, low fat) to help clarify pet food labeling for consumers.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: Helps allow for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Provides further clarification on labeling for consumers and a level playing field for manufacturers.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new regulation.

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Firms which register commercial feeds in Kentucky 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: They will need to conform to the descriptive terms defined in this regulation. These descriptive terms have been adopted by many other states so most manufacturers are already doing this. This new regulation brings us up to par with other states and is more to modernize our regulations with the current industry standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No increased costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All manufacturers will be on a level playing field with regards to using descriptive terms on pet foods.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No new costs.

(b) On a continuing basis: No new costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Annual budget of the Division of Regulatory 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: No increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees or increase in existing fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? University of Kentucky Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.571(1)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? No new costs

(d) How much will it cost to administer this program for subsequent years? No new costs

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): \$0.00

Expenditures (+/-): \$0.00

Other Explanation:

AGRICULTURAL EXPERIMENT STATION (New Administrative Regulation)

12 KAR 3:039. Nutritional adequacy.

RELATES TO: KRS 250.501, 250.521, 15 U.S.C. 1451-1461

STATUTORY AUTHORITY: KRS 250.521(2)(e), (f), 250.571

NECESSITY, FUNCTION, AND CONFORMITY: KRS

250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631. KRS 250.521 requires that pet foods and specialty pet foods be labeled and establishes the information that shall be stated on the label. This administrative regulation establishes a uniform format for establishing nutritional adequacy in labeling information for pet foods and specialty pet foods and delineates criteria for product claims.

Section 1. The label of a pet food or specialty pet food that is intended for all life stages and sizes of the pet or specialty pet may include an unqualified claim, directly or indirectly, such as "complete and balanced," "perfect," "scientific," or "100% nutritious" if at least one (1) of the following apply:

(1) The product meets the nutrient requirements for all life stages and sizes established by an AAFCO-recognized nutrient profile;

(2) The product meets the criteria for all life stages as substantiated by completion of the appropriate AAFCO-recognized animal feeding protocols; or

(3) The product is a member of a product family that is nutritionally similar to a lead product that contains a combination of ingredients that has been fed to a normal animal as the sole source of nourishment in accordance with the testing procedures established by AAFCO for all life stages, if:

(a) The nutritional similarity of the family product can be substantiated according to the Procedures for Establishing Pet Food Product Families developed by AAFCO;

(b) The family product meets the criteria for all life stages; and

(c) Under circumstances of reasonable doubt, the director may require the manufacturer to perform additional testing of the family product in order to substantiate the claim of nutritional adequacy.

Section 2. The label of a pet food or specialty pet food that is intended for a limited purpose (such as size of dog) or a specific life stage, but not for all life stages and sizes, may include a qualified claim such as "complete and balanced," "perfect," "scientific," or "100% nutritious" if the product and claim meet all of the following:

(1) The claim is qualified with a statement of the limited purpose of specific life stage for which the product is intended or suitable, for example, "complete and balanced for puppies (or kittens)." The claim and the required qualification shall be juxtaposed on the same label panel and in the same size, style, and color print; and

(2) The product meets at least one (1) of the following:

(a) The nutrient requirements for the limited purpose or specific

life stage established by an AAFCO-recognized nutrient profile;

(b) The criteria for a limited purpose or a specific life stage as substantiated by completion of the appropriate AAFCO-recognized animal feeding protocol; or

(c) The requirements of a product family that is nutritionally similar to a lead product that contains a combination of ingredients that, if fed for the limited purpose, will satisfy the nutrient requirements for the limited purpose and has had its capabilities in this regard demonstrated by adequate testing, and if:

1. The nutritional similarity of the family product can be substantiated according to the Procedures for Establishing Pet Food Product Families developed by AAFCO;

2. The family product meets the criteria for the limited purpose; and

3. Under circumstances of reasonable doubt, the director may require the manufacturer to perform additional testing for the family product to substantiate the claim of nutritional adequacy.

Section 3. Dog and cat food labels shall include a statement of nutritional adequacy or purpose of the product except if the dog or cat food is clearly and conspicuously identified on the principal display panel as "snack," "treat," or "supplement." The statement shall consist of one (1) of the following:

(1) A claim that the dog or cat food meets the requirements of one (1) or more of the recognized categories of nutritional adequacy: gestation/lactation, growth, maintenance, and all life stages. The claim shall be stated verbatim as one (1) of the following:

(a) "(Name of product) is formulated to meet the nutritional levels established by the AAFCO Dog (or Cat) Food Nutrient Profiles for _____." (The blank shall be completed by using the stage or stages of the pet's life, such as gestation/lactation, growth, maintenance, or the words "All Life Stages."). For a dog food, if the blank includes the words "Growth" or "All Life Stages," one (1) of the following phrases shall also be added verbatim to the end of the claim:

1. "including growth of large size dogs (70 lb. or more as an adult)" if the product has been formulated to meet the levels of nutrients specifically referenced in the Dog Food Nutrient Profiles as being applicable to large size growing dogs; or

2. "except for growth of large size dogs (70 lb. or more as an adult)" if the product has not been formulated to meet the levels of nutrients specifically referenced in the Dog Food Nutrient Profiles as being applicable to large size growing dogs;

(b) "Animal feeding tests using AAFCO procedures substantiate that (Name of Product) provides complete and balanced nutrition for _____." (The blank shall be completed by using the stage or stages of the pet's life tested, such as gestation/lactation, growth, maintenance, or the words "All Life Stages."); or

(c) "(Name of Product) provides complete and balanced nutrition for _____" (The blank shall be completed by using the stage or stages of the pet's life, such as gestation and lactation, growth, maintenance, or the words "All Life Stages") and is comparable in nutritional adequacy to a product which has been substantiated using AAFCO feeding test.";

(2) A nutritional or dietary claim for purposes other than those listed in Sections 1 and 2 of this administrative regulation if the claim is scientifically substantiated; or

(3) The statement: "This product is intended for intermittent or supplemental feeding only," if a product does not meet the requirements of Sections 1 and 2 of this administrative regulation or any other special nutritional or dietary need and so is suitable only for limited or intermittent or supplementary feeding.

Section 4. A product intended for use by, or under the supervision or direction of a veterinarian shall make a statement in accordance with Section 3(1) or (3) of this administrative regulation.

Section 5. A signed affidavit attesting that the product meets the requirements of Sections 1 or 2(2) of this administrative regulation shall be submitted to the director upon request.

Section 6. If the nutrient content of a product does not meet those nutrient requirements established by an AAFCO-recognized nutrient profile, or if no requirement has been established by an AAFCO recognized nutritional authority for the life stages of the intended species, the claimed nutritional adequacy or purpose of the product shall be scientifically substantiated.

Section 7. The following AAFCO-recognized nutritional authority, nutrient profile, or animal feeding protocol shall be acceptable as the basis for a claim of nutritional adequacy:

(1) As an AAFCO-recognized nutrient profile or nutritional authority:

(a) For dogs, the AAFCO Dog Nutrient Profiles;

(b) For cats, the AAFCO Cat Nutrient Profiles; and

(c) For specialty pets, the nutrient recommendation approved by the Committee on Animal Nutrition of the National Research Council of the National Academy of Sciences, if this nutrient recommendation is recognized only for the specific specialty pet of which the profile is intended; and

(2) As an AAFCO-recognized animal feeding protocol, the AAFCO Dog and Cat Food Feeding Protocols.

Section 8. Incorporation by Reference. (1) "Official Publication", (2018 Edition), Association of American Feed Control Officials, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, 103 Regulatory Services Building, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. RICK BENNETT, Director

APPROVED BY AGENCY: May 31, 2018

FILED WITH LRC: June 7, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on July 26, 2018 at 1:30 p.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Darrell Johnson, Executive Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2435, fax (859) 323-9931, darrell.johnson@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Darrell Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a uniform format for establishing nutritional adequacy in labeling information for pet foods and specialty pet foods and delineates criteria for product claims.

(b) The necessity of this administrative regulation: This is a new regulation that matches what has been put forth by the American Association of Feed Control Officials as part of their model bill for pet foods. This has been adopted by many states and helps provide uniformity for those companies selling product in multiple states.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Helps allow for the efficient

enforcement of KRS 250.491 to 250.631, regarding commercial feeds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Adds this new regulation to match what is being done in many other states.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new regulation.

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Firms which register commercial feeds in Kentucky 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: Conform to these rules of nutritional adequacy as is being done in many other states.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No new costs as this already an industry standard.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will know they need to conform to the same regulations on nutritional adequacy in Kentucky as in many other states.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No new cost.

(b) On a continuing basis: No new cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Annual budget of the Division of Regulatory 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: No increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? University of Kentucky Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.571(1)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No new revenue

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No new revenue

(c) How much will it cost to administer this program for the first

year? No new costs

(d) How much will it cost to administer this program for subsequent years? No new costs

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): \$0.00

Expenditures (+/-): \$0.00

Other Explanation:

GENERAL GOVERNMENT Board of Cosmetology (Repealer)

201 KAR 12:251. Repeal of 201 KAR 12:085, 201 KAR 12:088, 201 KAR 12:120, 201 KAR 12:180 and 201 KAR 12:250.

RELATES TO: KRS 317A.060

STATUTORY AUTHORITY: KRS 317A.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 requires the board to promulgate administrative regulations governing the operation of any schools and salons of cosmetology, nail technology, and esthetics practices including but not limited to administrative regulations to protect the health and safety of the public. All matters repealed herein are addressed in 201 KAR 12:082, 201 KAR 12:140, and 12:280.

Section 1. The following administrative regulations are hereby repealed:

- (1) 201 KAR 12:085. School Advertising;
- (2) 201 KAR 12:088. Esthetic course of instruction;
- (3) 201 KAR 12:120. School faculty;
- (4) 201 KAR 12:180. Hearing procedures; and
- (5) 201 KAR 12:250. School equipment for esthetics course.

R. KAY SWANNER, Board Chair

APPROVED BY AGENCY: June 8, 2018

FILED WITH LRC: June 12, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2018 at 10:00 a.m. at the Kentucky Board of Cosmetology. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Julie M. Campbell, Board Administrator, 111 St. James Ct. Ste A. Frankfort, Kentucky 40601, phone (502) 564-4262, fax: (502) 564-0481, email julie.campbell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals regulations no longer necessary in light of recent amendments to related administrative regulations. The net effect of the amendments and this repealer will be eleven remaining administrative regulations in place of the currently existing sixteen administrative regulations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to eliminate redundancy and unnecessary regulatory requirements in many of the existing thirty-three administrative regulations. The net effect of the amendments to the remaining administrative regulations and this repealer will be eleven consolidated, single subject administrative regulations that

simplify and facilitate the processes, procedures, and requirements for the areas under the KBC's jurisdiction.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation must be filed in order to remove redundancy and unnecessary regulatory oversight in many of the currently existing administrative regulations promulgated by the KBC.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation repeals redundant and unnecessary regulations in light of amendments to 201 KAR 12:082, 12:140, and 12:280

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable. This administrative regulation is a repealer.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 38,000 various licensees (cosmetology students, cosmetology schools, cosmetology, nail technology, and esthetics salon owners/managers, and individual cosmetologists, nail technicians, and estheticians) affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation repeals existing administrative regulations and does not impose any requirements on those regulated entities identified in question (3). This repealer is part of a comprehensive effort to simplify the existing regulatory framework of the KBC and eliminate redundant and unnecessary regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated cost to licensees because of this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky's regulatory framework for cosmetology students and schools, cosmetology salon owners, and individual cosmetologists, nail technicians, and estheticians will be far simpler, easier to navigate, and more closely aligned with similar licensing frameworks of other states.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional funds are necessary initially to implement this administrative regulation.

(b) On a continuing basis: No additional funds are necessary on an ongoing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current funding will not change because of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No changes or increases in fees will be required as a result of this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are created or increased directly or indirectly by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this administrative regulation apply equally to all

affected entities and persons.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? 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.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. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional funds will be raised.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional funds will be raised.

(c) How much will it cost to administer this program for the first year? No additional cost 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 (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other Explanation: None.

GENERAL GOVERNMENT CABINET
Board of Cosmetology
(New Administrative Regulation)

201 KAR 12:280. Esthetic practices restrictions.

RELATES TO: KRS 317A.130

STATUTORY AUTHORITY: KRS 317A.060

NECESSITY, FUNCTION AND CONFORMITY: KRS 317A.060 requires the board to establish appropriate standards of practice for individuals licensed by the board. This administrative regulation establishes the required restrictions and limitations placed on esthetic practices.

Section 1. Definitions. (1) "Cosmetic resurfacing exfoliating procedures" means the application of cosmetic resurfacing exfoliating substances by a licensed practitioner for the purpose of improving the aesthetic appearance of the skin.

(2) "Immediate supervision" means a licensed physician is physically present in the same room and overseeing the activities of the esthetician at all times.

(3) "Microdermabrasion" means a gentle, progressive, superficial, mechanical exfoliation of the uppermost layers of the stratum corneum using a closed-loop vacuum system.

(4) "Microneedling" means the use of multiple tiny solid needles designed to pierce the skin for the purpose of stimulating collagen production or cellular renewal. Devices used may be in the form of rollers, stamps or electronic "pens". Microneedling is also known as:

(a) Dermal needling;

(b) Collagen Induction Therapy (CIT);

(c) Dermal rolling;

(d) Cosmetic dry needling;

(e) Multitrepannic collagen actuation; or

(f) Percutaneous collagen induction.

Section 2. Supervision of Restricted Practices. An esthetician

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licensed by the board shall not perform any of the activities listed in KRS 317A.130(2) unless under the immediate supervision of a licensed physician.

Section 3. Microdermabrasion. (1) To be approved for use, a microdermabrasion device must:

- (a) Be specifically labeled for cosmetic or esthetic purposes;
- (b) Be a closed-loop vacuum system that uses a tissue retention device; and
- (c) Not result in the removal of the epidermis beyond the stratum corneum from the normal and customary use of the device.

(2) Loose particle microdermabrasion systems are prohibited for use.

Section 4. Acids and Chemical Exfoliations. (1) The use of any acid or acid solution which would exfoliate the skin below the stratum corneum, including those listed below are prohibited unless used under the supervision of a licensed health care practitioner.

(2) The following acids are prohibited unless used under the supervision of a licensed health care practitioner:

- (a) Phenol;
- (b) Bichloroacetic acid;
- (c) Resorcinol;
- (d) Any acid in any concentration level that requires a prescription;
- (e) Modified jessner solution on the face and the tissue immediately adjacent to the jaw line;
- (f) Alpha hydroxy acids with a pH of not less than one (1.0) and at a concentration of fifty (50) percent must include partially neutralized acids, and any acid above the concentration of fifty (50) percent is prohibited;
- (g) Beta hydroxy acids with a concentration of not more than thirty (30) percent;
- (h) Trichloroacetic acid (TCA), in a concentration of not more than fifteen (15) percent, but no manual, mechanical, or acid exfoliation can be used prior to treatment unless under the general supervision of a licensed health care practitioner; and
- (i) Vitamin-based acids.

(3) Limited chemical exfoliation for a basic esthetician does not include the mixing, combining, or layering of skin exfoliation products or services, but does include:

- (a) Alpha hydroxy acids of thirty (30) percent or less, with a pH of not less than three (3.0); and
- (b) Salicylic acid of fifteen (15) percent or less.

(4) A licensee may not apply any exfoliating acid to a client's skin that has undergone microdermabrasion or microneedling within the previous seven (7) days, unless under the general supervision of a licensed physician.

(5) A licensee shall prepare and maintain current documentation of the licensee's cumulative experience in chemical exfoliation, including:

- (a) Courses of instruction;
- (b) Specialized training;
- (c) On-the-job experience; and
- (d) The approximate percentage that chemical exfoliation represents in the licensee's overall business.

(6) A licensee shall provide the documentation required by Subsection (4) to the board upon request.

(7) A licensee shall not use an acid or perform a chemical exfoliation that the licensee is not competent to use or perform through training and experience, and as documented in accordance with Subsection (5).

(8) Only commercially available products utilized in accordance with manufacturers' instructions shall be used for chemical exfoliation purposes.

(9) A patch test shall be administered to each client prior to beginning any chemical exfoliation series.

Section 5. Devices. No mechanical or electrical apparatus that is considered a prescription medical device by the FDA may be used by a licensee, unless such use is under the immediate supervision of a licensed physician and within that licensed

physician's appropriate scope of practice.

Section 6. Disclosure. Before applying a chemical exfoliant or using a microdermabrasion machine, a licensee shall inform a client that:

- (a) The procedure shall only be performed for cosmetic and not medical purposes; and
- (b) The benefits and risks of the all procedures shall be divulged.

Section 7. Prohibited Practices. (1) A licensee shall never use any preparation, product, device, or procedure that pierces or penetrates the skin beyond the stratum germinativum layer, also known as the basal layer of the epidermis.

(2) Dermaplane procedures, dermabrasion procedures, microneedling procedures, blades, knives, and lancets are prohibited except for:

- (a) Advanced extraction of impurities from the skin; and
- (b) Dermaplane procedures for advanced exfoliation under direct supervision of a licensed physician.

(3) A licensee shall not use any procedure in which human tissue is cut or altered by laser energy or ionizing radiation.

R. KAY SWANNER, Board Chair

APPROVED BY AGENCY: June 8, 2018

FILED WITH LRC: June 12, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2018 at 9:00 a.m. at the Kentucky Board of Cosmetology. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Julie M. Campbell, Board Administrator, 111 St. James Ct. Ste A. Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481, email julie.campbell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation outlines restrictions for esthetic practices necessary to maintain public safety.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to eliminate redundancy and correct other regulatory requirements. It also implements recent amendments to KRS Chapter 317A brought about by House Bill 260.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation serves to protect public safety as required by KRS 317A.060.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation replaces amends redundant and unnecessary administrative regulations by placing licensee restrictions in a single, user-friendly administrative regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This 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 clarifies the safe practices of skin care in the industry. It could affect up to 30,000 licensees and the public at large.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, 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 impact those entities identified in question (3) by setting forth restrictions and standards for safety in the scope of practice.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated cost to the public or licensees because of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation clarifies KBC policies on safe practice in the industry.

(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 administrative regulation.

(b) On a continuing basis: No funds are necessary on an ongoing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funds are 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 change or increase in fees is anticipated because of this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are created or increased directly or indirectly by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation 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.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 administrative regulation sets standards and safety policies for licensees. 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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Kentucky Department of Education (New Administrative Regulation)

704 KAR 3:015. Kentucky All STARS for Preschool Programs.

RELATES TO: KRS 199.8943, 157.3175

STATUTORY AUTHORITY: KRS 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 gives the Kentucky Board of Education specific authority to promulgate administrative regulations establishing guidelines for the preschool program. KRS 199.8943 requires the Kentucky Department of Education, in consultation with the Early Childhood Advisory Council, to promulgate administrative regulations that implement a quality-based graduated early childhood rating system for public-funded preschool. This administrative regulation establishes the Kentucky All STARS Program, a quality based graduated early childhood rating system defined by KRS 199.8943, for the state-funded preschool program.

Section 1: Definitions. (1) "Administrative and Leadership Practices" means a domain of standards related to the planning, implementing and evaluating of early childhood program services.

(2) "Classroom and Instructional Quality" means a domain of standards related to developmentally appropriate teaching and learning practices in early childhood program settings.

(3) "Environment assessment" means a rating scale to assess quality in a preschool program setting and consists of the following evaluated items:

(a) Physical environment;

(b) Basic care;

(c) Curriculum;

(d) Interaction;

(e) Schedule and program structure; and

(f) Parent and staff education.

(4) "Expiration date" means the date the quality rating certificate issued by the Department of Education or its designee is no longer valid.

(5) "Family and community engagement" means a domain of standards related to involving parents, families, and communities in the early childhood program.

(6) "Issue date" means the date the quality rating certificate was issued by the Department of Education or its designee.

(7) "Kentucky All STARS Rating System" or "STARS" means the quality based-graduated early childhood rating system in accordance with KRS 199.8943 and the Kentucky All STARS Quality Rating Level requirements set forth in 922 KAR 2:270.

(8) "Preschool" means program services as defined by KRS 157.3175.

(9) "Preschool site" means a location with a school ID code assigned by the Kentucky Department of Education providing program services as defined by KRS 157.3175.

(10) "Renewal year" means the year that a preschool site renews its quality rating certificate with the Department of Education.

Section 2. Preschool Site Participation. (1) A preschool site providing services pursuant to 704 KAR 3:410 and this administrative regulation shall participate in Kentucky All STARS

Rating System:

- (a) At STARS Level 3;
- (b) At STARS Level 4; or
- (c) At STARS Level 5.

Section 3. ALL STARS Preschool Quality-Rating Level Requirements. (1) A preschool site shall undergo an environment assessment conducted by the department or its designee. A preschool site shall achieve a minimum environment assessment score per classroom observed set forth in 922 KAR 2:270 in order to earn STARS Level 4 or 5.

(2) The department or its designee shall determine a preschool site's STARS level using the following four (4) domains:

(a) Family and community engagement, which shall include professional development related to family engagement, implementation of family engagement initiatives, and partnership building with community agencies.

(b) Classroom and instructional quality, which shall include the use of developmental screenings, curriculum, and assessments, as well as participation in an environmental observation.

(c) Staff qualifications and professional development, which shall include the hours of staff training, professional development plans for staff that align with state requirements, and staff credentials.

(d) Administrative and leadership practices, which shall include time for lesson plan development, implementation of a continuous improvement plan, and provision of staff benefits, such as health insurance.

(3) In order to hold a STARS Level 3, 4 or 5 quality rating certificate, a preschool site shall achieve at least the minimum total points in each domain as set forth in 922 KAR 2:270 for each STARS level.

(4) Preschool program sites meeting the requirements set forth in this regulation shall be awarded a STARS level certification renewable every three (3) years pursuant to Sections 4 and 5 of this regulation.

Section 4. Annual Quality Review. (1) During the three (3) year STARS certification period, a preschool site shall verify the site's STARS level annually with the department or its designee.

(2) A preschool site that does not report sustained adherence to the criteria and domains pursuant to Section 3 of this administrative regulation shall undergo a reevaluation of the site's rating as detailed in Section 6 of this regulation.

Section 5. Renewal. (1) The department or its designee shall notify a preschool site at least ninety (90) calendar days in advance of the expiration of the preschool site's STARS certificate.

(2) The department or its designee shall determine a preschool site's STARS level for renewal based on the criteria and domains specified in Section 3 of this administrative regulation.

Section 6. Reevaluation. (1) The department or its designee shall reevaluate a preschool site's STARS certificate if the:

(a) Preschool site's location of preschool services changes;

(b) Preschool site requests a reevaluation within ninety (90) calendar days after receiving certification during its renewal year; or

(c) Preschool site does not report sustained adherence to the domains pursuant to Section 3 of this administrative regulation.

Section 7. Revocation. (1) The department or designee may revoke, non-renew, or take other action regarding award of STARS certification to a preschool site in accordance with KRS 157.3175, 704 KAR 3:410, and 707 KAR Chapter 1.

Section 8. Appeals. (1) If the department or its designee determines that a preschool site does not meet the standards for the STARS level for which the site is certified, a site shall:

(a) Accept a lower rating level; or

(b) File a written request signed by the superintendent, upon approval of the local board of education, for reconsideration with the Commissioner of Education who shall respond in writing within

thirty (30) days. If the preschool site disagrees with the response of the Commissioner of Education, it may request an administrative hearing in accordance with KRS 13B.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

WAYNE D. LEWIS, Ph.D., Commissioner of Education
MILTON SEYMORE, Chair

APPROVED BY AGENCY: June 11, 2018

FILED WITH LRC: June 12, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 23, 2018, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd Allen, Interim General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: Creates administrative regulation 704 KAR 3:015 implementing the requirements of KRS 199.8943 for state-funded preschool program sites to participate in Kentucky's quality-based graduated early childhood rating system. The regulation aligns with KRS 199.8943 requiring administrative regulations governing public preschool's participation in Kentucky All STARS.

(b) The necessity of this administrative regulation: This regulation creates 704 KAR 3:015 ensuring state-funded preschool's participation in All STARS, Kentucky's quality-based graduated early childhood rating system.

(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation conforms to the authority given to the Kentucky Board of Education in KRS 156.060, KRS 156.070 and KRS 199.8943.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation implements a quality-based graduated early childhood rating system for state-funded preschool, provides agency time frames for certifying preschool sites in All STARS, establishes an appellate process under KRS Chapter 13B for preschool sites and provides these sites with the ability to request reevaluation for rating.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statute: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: Those affected by this amendment are: all school districts, sites with state-funded preschool classrooms, Head Start programs blended with state-funded preschool programs, Early Childhood Regional Training Centers (RTCs), and preschool and Head Start staff working in school district preschool sites.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: This regulation ensures state-funded preschool participation in All STARS and aligns preschool and child care minimum point totals for STARS levels 3, 4 and 5 pursuant to 922 KAR 2:270.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation aligns with child care quality requirements and ensures a unified quality-based graduated early childhood system, meaning the quality in a five (5) STAR child care center is comparable to the quality in a five (5) STAR state-funded preschool site.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and districts. N/A

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? There will be no change to local district operations or fiscal impact.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 199.8943, KRS 156.060 and KRS 156.070.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue.

(c) How much will it cost to administer this program for the first year? There will be no additional cost associated with this regulation because administration will be integrated into the existing preschool monitoring system.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost associated with this regulation because administration will be integrated into the existing preschool monitoring system.

Note: If specific dollar estimates cannot be determined, provide

a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): N/A

Expenditures (+/-):N/A

Other Explanation: N/A

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Kentucky Department of Education (New Administrative Regulation)

704 KAR 3:306. Kentucky Academic Standards for Historical and Cultural Influences of the Bible Elective Social Studies Course.

RELATES TO: KRS 156.070, 156.160, 156.162, 158.197, 158.6451, 160.290

STATUTORY AUTHORITY: 156.070, 156.160, 156.162

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451 and 158.6453. KRS 156.162(4) requires the Kentucky Board of Education to include course standards in the program of studies for Kentucky schools. KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education. KRS 156.162 requires the Kentucky Board of Education to promulgate an administrative regulation for course standards for an elective social studies course on the Hebrew Scriptures, Old Testament of the Bible; the New Testament of the Bible; or a combination of the Hebrew Scriptures and the New Testament of the Bible. This administrative regulation incorporates by reference the Kentucky Academic Standards for Historical and Cultural Influences of the Bible Elective Social Studies Course.

Section 1. Schools offering an elective social studies course on the Hebrew Scriptures, Old Testament of the Bible; the New Testament of the Bible; or a combination of the Hebrew Scriptures and the New Testament of the Bible shall meet the minimum content requirements established in the Kentucky Academic Standards for Historical and Cultural Influences of the Bible Elective Social Studies Course.

Section 2. Incorporation by Reference. (1) The "Kentucky Academic Standards for Historical and Cultural Influences of the Bible Elective Social Studies Course", June 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 5th floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

WAYNE D. LEWIS, Ph.D., Commissioner of Education
MILTON SEYMORE, Chairperson

APPROVED BY AGENCY: June 11, 2018

FILED WITH LRC: June 12, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 23, 2018, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to

attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd Allen, Interim General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 156.162 required the Kentucky Department of Education (KDE) to develop course standards for an elective social studies course on the Hebrew Scriptures, Old Testament of the Bible; the New Testament; or a combination of the Hebrew Scriptures and the New Testament of the Bible. This regulation fulfills the requirements of KRS 156.162.

(b) The necessity of this administrative regulation: KRS 156.162 required the Kentucky Department of Education (KDE) to develop course standards for an elective social studies course on the Hebrew Scriptures, Old Testament of the Bible; the New Testament; or a combination of the Hebrew Scriptures and the New Testament of the Bible. This regulation fulfills the requirements of KRS 156.162.

(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation conforms to KRS 156.162 by creating the course standards for an elective social studies course on the Hebrew Scriptures, Old Testament of the Bible; the New Testament; or a combination of the Hebrew Scriptures and the New Testament of the Bible as required by the statute. Also, the administrative regulation conforms to 158.197 by providing course standards if a School-Based Decision Making (SBDM) council wants to offer this elective class for grades nine through twelve.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation conforms to KRS 156.162 by creating the course standards for an elective social studies course on the Hebrew Scriptures, Old Testament of the Bible; the New Testament; or a combination of the Hebrew Scriptures and the New Testament of the Bible as required by the statute. Also, the administrative regulation conforms to 158.197 by providing course standards if a School-Based Decision Making (SBDM) council wants to offer this elective class for grades nine through twelve.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statute: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by this regulation include: all public schools, school districts, school councils, and the KDE as it will be responding to questions related to this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an

amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The standards outlined in 704 KAR 3:306 are standards for Historical and Cultural Influences of the Bible Elective Social Studies Course. No public schools, school districts, or school councils are required to offer this course. Therefore, no action is required on their part unless they offer the elective course. If they do choose to offer the course, they will be required to follow the standards outlined in the document incorporated by reference in 704 KAR 3:306. Any course offering will be expected to follow all applicable laws and federal and state guidelines in maintaining religious neutrality and accommodating the diverse religious views, traditions and perspectives of students in the school and any course offering shall not endorse, favor, promote, disfavor or show hostility toward any particular religion, non-religious faith or religious perspective.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The standards outlined in 704 KAR 3:306 are standards for Historical and Cultural Influences of the Bible Elective Social Studies Course. No public schools, school districts, or school councils are required to offer this course. Therefore, no action is required on their part unless they offer the elective course. The Department does not typically create standards for elective courses, however, since the development of those standards was required by statute, the Department spent approximately \$1,200 as of the date of filing in the development of the standards in addition to staff time. Additional staff time will be needed as the regulation moves through the legislative and implementation process.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The standards outlined in 704 KAR 3:306 are standards for Historical and Cultural Influences of the Bible Elective Social Studies Course. No public schools, school districts, or school councils are required to offer this course. However, if the course is offered, public schools must comply with 704 KAR 3:306. The regulation provides public schools with the standards to be taught in the event the course is offered.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The standards outlined in 704 KAR 3:306 are standards for Historical and Cultural Influences of the Bible Elective Social Studies Course. No public schools, school districts or school councils are required to offer this course.

(a) Initially: The standards outlined in 704 KAR 3:306 are standards for Historical and Cultural Influences of the Bible Elective Social Studies Course. No public schools, school districts, or school councils are required to offer this course. Therefore, no action is required on their part unless they offer the elective course. The Department does not typically create standards for elective courses, however, since the development of those standards was required by statute, the Department spent approximately \$1,200 as of the date of filing in the development of the standards in addition to staff time. Additional staff time will be needed as the regulation moves through the legislative and implementation process.

(b) On a continuing basis: The standards outlined in 704 KAR 3:306 are standards for Historical and Cultural Influences of the Bible Elective Social Studies Course. No public schools, school districts, or school councils are required to offer this course. Additional KDE staff time will be needed as the regulation moves through the legislative and implementation process.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Local district and school funds would be used to implement this elective course if those entities choose to implement. State funds have been used to develop the standards.

(7) Provide an assessment of whether an 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 standards outlined in 704 KAR 3:306 are standards for Historical and Cultural Influences of the Bible Elective Social Studies Course.

No public schools, school districts, or school councils are required to offer this course.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees or directly or indirectly increase fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and local education agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local education agencies and KDE.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.162 required the Kentucky Department of Education (KDE) to develop course standards for an elective social studies course on the Hebrew Scriptures, Old Testament of the Bible; the New Testament; or a combination of the Hebrew Scriptures and the New Testament of the Bible. This regulation fulfills the requirements of KRS 156.162.

(3) Estimate the effect of this administrative regulation on the 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 standards outlined in 704 KAR 3:306 are standards for Historical and Cultural Influences of the Bible Elective Social Studies Course. No public schools, school districts, or school councils are required to offer this course. Therefore, no action is required on their part unless they offer the elective course. The Department does not typically create standards for elective courses, however, since the development of those standards was required by statute, the Department spent approximately \$1,200 as of the date of filing in the development of the standards in addition to staff time. Additional staff time will be needed as the regulation moves through the legislative and implementation process.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue.

(c) How much will it cost to administer this program for the first year? The standards outlined in 704 KAR 3:306 are standards for Historical and Cultural Influences of the Bible Elective Social Studies Course. No public schools, school districts, or school councils are required to offer this course. Therefore, no action is required on their part unless they offer the elective course. The Department does not typically create standards for elective courses, however, since the development of those standards was required by statute, the Department spent approximately \$1,200 as of the date of filing in the development of the standards in addition to staff time. Additional staff time will be needed as the regulation moves through the legislative and implementation process.

(d) How much will it cost to administer this program for subsequent years? The standards outlined in 704 KAR 3:306 are standards for Historical and Cultural Influences of the Bible Elective Social Studies Course. No public schools, school districts, or school councils are required to offer this course. Additional KDE staff time will be needed as the regulation moves through the legislative and implementation process.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): N/A
Expenditures (+/-): NA
Other Explanation: N/A

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(New Administrative Regulation)

804 KAR 5:080. Vintage distilled spirits.

RELATES TO: KRS 241.010(66), 243.232

STATUTORY AUTHORITY: KRS 241.060(1), 243.232(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate administrative regulations governing procedures relative to the matters over which the board has jurisdiction. KRS 243.232(1) authorizes retailers licensed to sell distilled spirits by the drink or package to purchase vintage distilled spirits from unlicensed persons for resale to consumers in accordance with administrative regulations promulgated by the board. This administrative regulation establishes requirements governing the purchase and sale of vintage distilled spirits.

Section 1. Definition. (1) "Vintage distilled spirits seller":

(a) Means a non-licensed person at least twenty-one (21) years of age who is:

1. An administrator, executor, receiver, or other fiduciary who receives and sells vintage distilled spirits in execution of fiduciary capacity;

2. A creditor who receives or takes possession of vintage distilled spirits as security for, or in payment of, debt, in whole or in part;

3. A public officer or court official who levies on vintage distilled spirits under order or process of any court or magistrate to sell same in satisfaction of the order or process; or

4. Any other person not engaged in the business of selling alcoholic beverages who receives and sells vintage distilled spirits packages on an occasional basis in an amount of twenty-four (24) vintage distilled spirits packages or less in the preceding twelve (12) months; and

(b) Does not mean:

1. A person selling alcoholic beverages as part of an approved KRS 243.630 transfer; or

2. A person selling alcoholic beverages as authorized by KRS 243.540.

Section 2. Retailer Purchases of Vintage Distilled Spirits. (1) A licensed retailer authorized to purchase vintage distilled spirits for resale shall purchase all vintage distilled spirits in person at its licensed premises.

(2) At the time of purchase, the licensee shall immediately place a conspicuous sticker, not readily removable, on the bottle or container of any purchased vintage distilled spirits package stating "Vintage Distilled Spirit".

Section 3. Notice. Prior to selling vintage distilled spirits purchased from a vintage distilled spirits seller to a consumer, a licensee shall provide written notice of its purchase of the spirits by mail to the Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, or by email to vintagespirits@ky.gov. The notice shall contain the following information:

(1) The name, address, state license number, and phone number of the licensee purchasing vintage distilled spirits;

(2) The name, address, and phone number of the vintage distilled spirits seller;

(3) The brand name and quantity of each vintage distilled spirits package purchased;

(4) The date of the purchase; and

(5) The number of packages that the licensee has previously purchased from the same vintage distilled spirits seller and the dates of those purchases.

Section 4. Federal Law. This administrative regulation shall not exempt a person from obeying any applicable federal laws.

CHRISTINE TROUT, Commissioner
GAIL RUSSELL, Secretary

APPROVED BY AGENCY: June 14, 2018
FILED WITH LRC: June 14, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, July 25, 2018 at 10:00 a.m. Eastern Time at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing, no later than five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Marc Manley, Executive Advisor, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 782-1045, fax (502) 564-7479, email Marc.Manley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Marc Manley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the purchase and sale of vintage distilled spirits to ensure that KRS 243.232 is administered consistent with other alcoholic beverage laws and Kentucky's three-tier distribution system.

(b) The necessity of this administrative regulation: KRS 243.232 requires licensed retailers authorized to sell distilled spirits to consumers to provide written notice and to comply with administrative regulations promulgated by the Alcoholic Beverage Control Board prior to selling vintage distilled spirits to consumers. This administrative regulation is necessary to govern the purchase and sale of vintage distilled spirits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 243.232 states that no vintage distilled spirits may be resold by licensed retailers unless they comply with the written notice requirements promulgated by the Alcoholic Beverage Control Board. This administrative regulation provides written notice requirements to effectuate KRS 243.232. Since KRS 243.232 does not define "nonlicensed person," the statute could be interpreted to be in conflict with other alcoholic beverage statutes and federal law. This regulation harmonizes KRS 243.232 with other alcoholic beverage statutes and federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will require licensed retailers authorized to sell distilled spirits to provide notice to the Department of Alcoholic Beverage Control ("Department") of all vintage distilled spirits purchases. These notice requirements will allow the Department to adequately regulate vintage distilled spirits purchases and sales to consumers.

(2) If 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, so this does not apply.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation, so this does not apply.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation, so this does not apply.

(d) How the amendment will assist in the effective

administration of the statutes: This is a new administrative regulation, so this does not apply.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects current licensees who sell distilled spirits at retail that desire to purchase vintage distilled spirits for resale to consumers and any non-licensed person in possession of vintage distilled spirits seeking to sell such spirits.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, 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: Retailers choosing to engage in the purchase and resale of vintage distilled spirits must provide a brief written notice to the Department of all vintage distilled spirits purchased before reselling to consumers, and they must label the vintage distilled spirit as being a "Vintage Distilled Spirit" at the time of purchase.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Retailer costs will be minimal, as the only requirements involve purchasing "Vintage Distilled Spirit" labels and postage costs if a retailer chooses not to provide notice by email. Vintage distilled spirits sellers will have no costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Retailers choosing to engage in the sale of vintage distilled spirits will now have clear rules governing distilled spirits that are no longer available on the market. Because of their scarcity, retailers may be able to sell these products at a higher premium price than current distilled spirits inventory. Availability of scarce products may attract more customers to licensed retail businesses.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There are no anticipated initial costs.

(b) On a continuing basis: Because the nature and value of vintage distilled spirits is their rarity and this administrative regulation only creates a notice requirement, it is not anticipated to require any significant resources in the way of employee time for processing and review. No additional employees will be needed. There may be some minimal costs associated with maintaining and retrieving information provided by email and paper notices.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is needed to implement this regulation, and no funding will be raised through fees. Resources needed for implementing this regulation are anticipated to be minimal, and thus funding will be provided under current budget appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No additional fees or funding are necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? No tiering is applied because this regulation applies equally to the regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Department of Alcoholic Beverage Control is the only division of government directly affected by this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 243.232

(3) Estimate the effect of this administrative regulation on the 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? Because the nature and value of vintage distilled spirits is their rarity and this administrative regulation only creates a notice requirement, it is not anticipated to require any significant resources in the way of employee time for processing and review. No additional employees will be needed. There may be some minimal costs associated with maintaining and retrieving information provided by email and paper notices.

(d) How much will it cost to administer this program for subsequent years? Because the nature and value of vintage distilled spirits is their rarity and this administrative regulation only creates a notice requirement, it is not anticipated to require any significant resources in the way of employee time for processing and review. No additional employees will be needed. There may be some minimal costs associated with maintaining and retrieving information provided by email and paper notices.

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 Department staff are anticipated to be able to monitor and process the limited amounts of expected notices from retailers at this time. To the extent that the Department's experience differs from expectations, costs may need to be adjusted in the future.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of May 8, 2018

Call to Order and Roll Call

The June meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, June 12, 2018, at 1:00 p.m. in Room 149 of the Capitol Annex. Representative Hale, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the May 2018 meeting were approved.

Present were:

Members: Senators Ernie Harris, Perry Clark, Alice Forgy Kerr, and Julie Raque-Adams; and Representatives David Hale, Jason Petrie, and Tommy Turner.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Betsy Cupp, Ange Darnell, Emily Harkenrider, Karen Howard, and Carrie Klaber.

Guests: Leanne Diakov, Board of Medical Licensure; Julie Campbell, Board of Cosmetology; Amber Arnett, Steve Beam, Karen Waldrop, Department of Fish and Wildlife Resources; Joe Bilby, Brent Burchett, Meagan Pickett, Clint Quarles, Department of Agriculture; Sean Alteri, Chris Ewing, Tony Hatton, Department of Environmental Protection; Amy Barker, Ashley Short, Department of Corrections; Virginia Moore, Rachel Morgan, Commission for Deaf and Hard of Hearing; Steve Davis, Jamie, Gitzinger, Office of Inspector General; Melissa Banks, Christa Bell, Elizabeth Caywood, Phillip Smith, Department for Community Based Services.

The Administrative Regulation Review Subcommittee met on Tuesday, June 12, 2018, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

BOARDS AND COMMISSIONS: Board of Medical Licensure

201 KAR 9:021. Medical and osteopathic schools approved by the board; denial or withdrawal of approval; application of KRS 311.271; postgraduate training requirements; approved programs; recognition of degrees. Leanne Diakov, general counsel, represented the board.

201 KAR 9:031. Examinations.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Cosmetology

201 KAR 12:082 & E. Education requirements and school administration. Julie Campbell, board administrator, represented the board.

In response to questions by Co-Chair Harris, Ms. Campbell stated that Kentucky's cosmetology schools had great job placement statistics. HB 260 of the 2017 Regular Session of the General Assembly removed the apprentice program, which was a restricted licensure program. The removal of that program significantly enhanced job placement rates. The board was licensing 150 to 300 students per month. Hair braiding was no longer in the jurisdiction of the board.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 5, 18, 21, and 29 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 21 to clarify that the scenario described is for the enrollment correction fee. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 12:260. Fees.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 4 to clarify that a "limited facility permit" shall be for a threading facility, lash extension facility, and makeup facility. Without objection, and with agreement of the agency, the amendments were approved.

TOURISM, ARTS AND HERITAGE: Department of Fish and Wildlife Resources

301 KAR 2:221. Waterfowl seasons and limits. Amber Arnett, counsel; Steve Beam, Wildlife Division Director; and Karen Waldrop, deputy 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 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:222. Waterfowl hunting requirements on public lands.

In response to a question by Senator Kerr, Ms. Waldrop stated that the Sauerheber and Jenny Hole units were part of the Sloughs WMA.

In response to a question by Co-Chair Hale, Ms. Waldrop stated that waterfowl hunting was halted at Barren River, Grayson Lake, Pennyrite Lake, and Rough River Lake due to the conflict between hunting times and peak park visitation times. The hunts were intended to help with nuisance issues but conflicted with times of increased park visitation.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT: Department of Agriculture: Office of Agricultural Marketing: Industrial Hemp

302 KAR 50:050. THC Sampling and testing; post-testing actions. Joe Bilby, general counsel; Brent Burchett, director of plant marketing; and Clint Quarles, staff attorney, represented the department.

In response to questions by Senator Clark, Mr. Burchett stated that hemp crops were tested for a zero and three tenths (0.3) percent THC limit. Plants that exceeded the limit were destroyed. Last year, less than one (1) percent of the hemp crop had been destroyed due to exceeding the THC limit. Exceedance was not deliberate on the part of the grower. Senator Clark stated that the limit was artificial. Mr. Burchett stated that the limit was artificial but internationally recognized and established at the federal level.

ENERGY AND ENVIRONMENT: 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) NOx annual trading program. Sean Alteri, director, and Tony Hatton, commissioner, represented the division.

In response to questions by Co-Chair Harris, Mr. Alteri stated that these administrative regulations referenced the federal requirements without change. Kentucky sources were in compliance with cross-state air pollution requirements; therefore, from a practical standpoint there was no change for regulated utilities. These administrative regulations allowed Kentucky to account for emissions reductions in the State Implementation Plan (SIP). The Utility Information Exchange of Kentucky supported

these administrative regulations during the public comment period.

401 KAR 51:250. Cross-State Air Pollution Rule (CSAPR) NOx 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: Department of Corrections: Office of the Secretary

501 KAR 6:030. Kentucky State Reformatory. Amy Barker, assistant general counsel, and Ashley Short, corrections program administrator, represented the department.

In response to a question by Senator Kerr, Ms. Barker stated that suicide prevention measures included mental health assistance and physical prevention. A person was referred for mental health assistance as needed. If an officer witnessed something concerning about a person's mental health, the person could be referred as a result. There may also be an inmate observer to physically monitor a person. Mental health assistance was available on location, depending on the facility.

EDUCATION AND WORKFORCE DEVELOPMENT: Commission on the Deaf and Hard of Hearing: Telecommunication Devices for the Deaf

735 KAR 1:010. Eligibility requirements, application and certification procedures to receive specialized telecommunications equipment for the deaf, hard of hearing, and speech impaired. Virginia Moore, executive director, and Rachel Morgan, executive staff interpreter, represented the commission.

In response to questions by Co-Chair Harris, Ms. Moore stated that, at first, the commission collected six (6) cents per month per land-line phone. Later, cell phone providers were included, bringing all fees to four (4) cents per month per phone. The commission got two (2) of that four (4) cents per month per phone. The commission and the relay service received approximately \$97,000 per month from the fees. Some states also collected from internet providers. Kentucky was not currently doing that, although some internet providers were contributing voluntarily. The commission may consider making internet provider contributions mandatory in the future. The captioning referenced in these administrative regulations pertained to telephone conversation captioning.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 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.

735 KAR 1:020. Processing system including vendor participation, security, and maintenance and repair for specialized telecommunications equipment.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Interpreter Referral Services

735 KAR 2:010. Definitions for 735 KAR Chapter 2.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

735 KAR 2:020. KCDHH Interpreter Referral Services Program parameters.

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.

735 KAR 2:030. Interpreter qualifications.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 1 to refer to an "assigned" interpreter, instead of a "freelance" interpreter. Without objection, and with agreement of the agency, the amendments were approved.

735 KAR 2:040. Interpreter protocols.

In response to a question by Senator Kerr, Ms. Moore stated that attire protocols were necessary to ensure a dress code that was professional and appropriate for each venue. Ms. Morgan stated that there were dress code standards for visually impaired clientele. For example, wearing blue might be a problem for some clients with certain visual impairments. Typically, an interpreter should wear all black.

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 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

735 KAR 2:050. Processing of requests for services.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 1 to use the term "certified," rather than "freelance," interpreter. Without objection, and with agreement of the agency, the amendments were approved.

735 KAR 2:060. Grievance procedures.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to: (a) use the term "interpreter," rather than "freelance" or "assigned" interpreter; and (b) clarify the burden of proof and types of grievance findings for terminating contractual or employment relationships, or to cease providing services for a state agency; and (2) to amend the RELATES TO paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

HEALTH AND FAMILY SERVICES: Department for Public Health: Office of Inspector General

906 KAR 1:200. Use of civil money penalty funds collected from certified long-term care facilities. Steve Davis, inspector general, and Jamie Gitzinger, executive advisor, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 5 and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Division of Child Care: Day Care

922 KAR 2:090 & E. Child-care center licensure. Christa Bell, director, and Elizabeth Caywood, acting commissioner, represented the division.

In response to a question by Co-Chair Harris, Ms. Bell stated that 922 KAR 2:090 & E and 922 KAR 2:180 & E revised background check standards based on federal requirements. The fingerprint-based background checks included checking systems of the FBI, state criminal repository, national sex offender registry, and child abuse and neglect registry. HB 374 of the 2017 Regular Session of the General Assembly established the authority for more robust background checks. Prior to this, child-care provider staff background checks were only state, not national.

922 KAR 2:100 & E. Certification of Family Child-Care

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Homes.

922 KAR 2:111E. Repeal of 922 KAR 2:110.

Day Care

922 KAR 2:120 & E. Child-care center health and safety standards.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 through 4, 7, 8, and 10 through 13 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 2:171E. Repeal of 922 KAR 2:170 and 922 KAR 2:210.

922 KAR 2:180 & E. Requirements for registered child care providers in the Child Care Assistance Program.

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 through 5, 7, 8, and 10 to comply with the drafting requirements of KRS chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 2:190 & E. Civil penalties.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 2:270 & E. Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes.

In response to a question by Senator Clark, Ms. Bell stated that this program's incentives were based on quality and derived from the Race to the Top grant system. This system established more flexibility and was intended to serve the most vulnerable children in high-quality child-care centers.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 4 and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred or removed from the June 12, 2018, subcommittee agenda:

EDUCATION AND WORKFORCE DEVELOPMENT: 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.

TOURISM, ARTS AND HERITAGE: Department of Fish and Wildlife Resources: Game

301 KAR 2:172. Deer hunting seasons, zones, and requirements.

301 KAR 2:228. Sandhill crane hunting requirements.

JUSTICE AND PUBLIC SAFETY: Department of Juvenile Justice: Child Welfare

505 KAR 1:120. Department of Juvenile Justice Policies and Procedures Manual: Health and Safety Services.

505 KAR 1:140. Department of Juvenile Justice Policies and

Procedures Manual: detention services.

TRANSPORTATION: Department of Vehicle Regulation: Division of Driver Licensing: Administration 601 KAR 2:030 & E. Ignition interlock.

ENERGY AND ENVIRONMENT: Public Service Commission: Utilities

807 KAR 5:022. Gas service.

807 KAR 5:026. Gas service; gathering systems.

PUBLIC PROTECTION: Department of Housing, Buildings and Construction: Division of Building Code Enforcement: Kentucky Building Code

815 KAR 7:110. Criteria for expanded local jurisdiction.

815 KAR 7:120. Kentucky Building Code.

815 KAR 7:125. Kentucky Residential Code.

Division of Heating, Ventilation and Air Conditioning: Heating, Ventilation, and Air Conditioning Licensing Requirements

815 KAR 8:011. Repeal of 815 KAR 8:007 and 815 KAR 8:045.

815 KAR 8:070. Installation permits.

815 KAR 8:080. Inspections and requests.

815 KAR 8:100. Criteria for local jurisdiction HVAC programs.

HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Public Health Protection Safety: Sanitation 902 KAR 10:040. Kentucky youth camps.

Department for Public Health: Office of Inspector General: Division of Healthcare: Health Services and Facilities

902 KAR 20:016. Hospitals; operations and services.

The subcommittee adjourned at 1:40 p.m. The next meeting of the subcommittee is tentatively scheduled for July 10, 2018, at 1 p.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(10), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENERGY
Meeting of June 6, 2017

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources & Energy for its meeting of 06/07/18, having been referred to the Committee on 06/06/18, pursuant to KRS 13A.290(6):

301 KAR 002:049

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the March 14, 2018 meeting, which are hereby incorporated by reference.

EDUCATION ASSESSMENT AND ACCOUNTABILITY REVIEW SUBCOMMITTEE
Meeting of June 19, 2018

The following administrative regulations were available for consideration and placed on the agenda of the Education Assessment and Accountability Review Subcommittee for its meeting of June 19, 2018:

703 KAR 5:191
703 KAR 5:225
703KAR 5:280

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

703 KAR 5:270

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 19, 2018 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE HEALTH AND WELFARE AND FAMILY SERVICES
Meeting of June 20, 2018

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare and Family Services for its meeting of June 20, 2018, having been referred to the Committee on June 6, 2018, pursuant to KRS 13A.290(6):

201 KAR 20:056
201 KAR 20:070
201 KAR 20:110
201 KAR 20:225
201 KAR 20:370
201 KAR 20:411
201 KAR 20:470
201 KAR 22:020 & E
201 KAR 22:040 & E
201 KAR 22:070 & E
921 KAR 2:015 & E

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 20, 2018 meeting, which are hereby incorporated by reference.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

A - 2

The Locator Index lists all administrative regulations published in VOLUME 45 of the *Administrative Register of Kentucky* from July 2018 through June 2019. 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 44 are those administrative regulations that were originally published in VOLUME 44 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the *2018 Kentucky Administrative Regulations Service* was published.

KRS Index

A - 7

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 45 of the *Administrative Register of Kentucky*.

Certifications Index

A - 9

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

A - 10

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments entered since being published in the *2018 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). Because 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

A - 11

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	44 Ky.R. Page No.	Effective Date	Regulation Number	44 Ky.R. Page No.	Effective Date
VOLUME 44					
The administrative regulations listed under VOLUME 43 are those administrative regulations that were originally published in Volume 43 (last year's) issues of the <i>Administrative Register of Kentucky</i> but had not yet gone into effect when the <i>2017 Kentucky Administrative Regulations Service</i> was published.					
SYMBOL KEY:					
* Statement of Consideration not filed by deadline			201 KAR 6:050		
** Withdrawn, not in effect within 1 year of publication			Amended	2554	
*** Withdrawn before being printed in Register			201 KAR 9:021		
‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))			Amended	2361	
IJC Interim Joint Committee			201 KAR 9:031		
(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.			Amended	2363	
			As Amended		See 45 Ky.R.
			201 KAR 9:310		
			Amended	1871	
			201 KAR 9:480	1725	5-4-2018
			As Amended	1970	3-15-2018
			201 KAR 12:010		
			Amended	2556	
			201 KAR 12:030		
			Amended	2557	
			201 KAR 12:082		
			Amended	2364	
			As Amended		See 45 Ky.R.
			201 KAR 12:140		
			Amended	2561	
			201 KAR 12:190		
			Amended	2563	
			201 KAR 12:230		
			Amended	2565	
			201 KAR 12:260		
			Amended	2368	
			As Amended		See 45 Ky.R.
			201 KAR 14:180		
			Amended	2566	
			201 KAR 20:056		
			Amended	2237	
			As Amended	2473	6-20-2018
			201 KAR 20:070		
			Amended	2239	
			As Amended	2475	6-20-2018
			201 KAR 20:110		
			Amended	2241	
			As Amended	2476	6-20-2018
			201 KAR 20:225		
			Amended	2244	
			As Amended	2477	6-20-2018
			201 KAR 20:370		
			Amended	2246	
			As Amended	2478	6-20-2018
			201 KAR 20:411		
			Amended	2247	
			As Amended	2479	6-20-2018
			201 KAR 20:470		
			Amended	2250	
			As Amended	2481	6-20-2018
			201 KAR 22:020		
			Amended	2255	
			As Amended	2486	6-20-2018
			201 KAR 22:040		
			Amended	2257	
			As Amended	2487	6-20-2018
			201 KAR 22:070		
			Amended	2259	
			As Amended	2487	6-20-2018
			201 KAR 25:090		
			Amended	1623	
			201 KAR 34:060		
			Amended	2568	
			201 KAR 41:100		
			Amended	2572	
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.)					
201 KAR 12:082E	2303	4-13-2018			
201 KAR 22:020E	2180	3-14-2018			
Replaced	2486	6-20-2018			
201 KAR 22:040E	2182	3-14-2018			
Replaced	2487	6-20-2018			
201 KAR 22:070E	2184	3-14-2018			
Replaced	2487	6-20-2018			
921 KAR 2:015E	1799	12-28-2017			
Replaced	1899	6-20-2018			
922 KAR 2:090E	1916	2-14-2018			
922 KAR 2:100E	1925	2-14-2018			
922 KAR 2:111E	1936	2-14-2018			
922 KAR 2:120E	1937	2-14-2018			
922 KAR 2:171E(r)	2306	4-13-2018			
922 KAR 2:180E	1946	2-14-2018			
922 KAR 2:190E	1952	2-14-2018			
922 KAR 2:270E	2308	4-13-2018			
ORDINARY ADMINISTRATIVE REGULATIONS:					
13 KAR 3:060	2702				
16 KAR 2:010					
Amended	1584				
Am Comments	2033				
16 KAR 5:030					
Amended	1589				
Am Comments	2039				
101 KAR 1:325					
Amended	2542				
103 KAR 16:360					
Amended	1094				
103 KAR 26:120					
As Amended	1494				
103 KAR 41:120					
Amended	1112				
201 KAR 3:006(r)	2703				
201 KAR 3:045					
Amended	2544				
201 KAR 3:090					
Amended	2546				
201 KAR 3:100	2705				
201 KAR 5:090					
Amended	2548				
201 KAR 5:130					
Amended	2549				
201 KAR 6:020					
Amended	2552				

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date	Regulation Number	43 Ky.R. Page No.	Effective Date
301 KAR 1:130			Amended	2097	
Amended	2574		As Amended	2494	
301 KAR 2:049			501 KAR 16:290		
Amended	2260		Amended	1884	
As Amended	2488	6-7-2018	Am Comments	2337	
301 KAR 2:172			As Amended	2494	
Amended	2370		501 KAR 16:300		
301 KAR 2:176			Amended	1887	
Amended	2576		Am Comments	2339	
301 KAR 2:221			As Amended	2496	
Amended	2374		501 KAR 16:310		
As Amended		See 45 Ky.R.	Amended	1891	
301 KAR 2:222			Am Comments	2343	
Amended	2376		As Amended	2498	
As Amended		See 45 Ky.R.	501 KAR 16:330		
301 KAR 2:228			Amended	1893	
Amended	2380		Am Comments	2345	
302 KAR 16:020			As Amended	2499	
Amended	2265		501 KAR 16:340		
As Amended	2492		Amended	1897	
302 KAR 16:081(r)	2283		Am Comments	2349	
302 KAR 16:091			503 KAR 5:090		
Amended	2267		Amended	2637	
As Amended	2493		505 KAR 1:120		
302 KAR 50:050	1768		Amended	2384	
Amended	2383		505 KAR 1:140		
401 KAR 5:002			Amended	2386	
Amended	2578		600 KAR 4:010		
401 KAR 5:005			Amended	2272	
Amended	2585		As Amended	2501	
401 KAR 5:006			601 KAR 2:030		
Amended	2598		Amended	1651	
401 KAR 5:015			Withdrawn		6-13-2018
Amended	2602		603 KAR 2:015		
401 KAR 5:037			Amended	2640	
Amended	2604		703 KAR 5:191(r)	2157	
401 KAR 5:039(r)	2707		703 KAR 5:225		
401 KAR 5:045			Amended	2101	
Amended	2610		As Amended		See 45 Ky.R.
401 KAR 5:050			703 KAR 5:280	2158	
Amended	2612		Am Comments	2351	
401 KAR 5:052			As Amended		See 45 Ky.R.
Amended	2615		704 KAR 7:090		
401 KAR 5:055			Amended	1658	
Amended	2616		As Amended	2015	
401 KAR 5:060			735 KAR 1:010		
Amended	2620		Amended	2388	
401 KAR 5:065			As Amended		See 45 Ky.R.
Amended	2623		735 KAR 1:020		
401 KAR 5:075			Amended	2391	
Amended	2625		As Amended		See 45 Ky.R.
401 KAR 5:080			735 KAR 2:010		
Amended	2628		Amended	2394	
401 KAR 5:320			As Amended		See 45 Ky.R.
Amended	2631		735 KAR 2:020		
401 KAR 51:240	2284		Amended	2396	
AmComments	2505		As Amended		See 45 Ky.R.
401 KAR 51:250	2286		735 KAR 2:030		
AmComments	2507		Amended	2398	
401 KAR 51:260	2288		As Amended		See 45 Ky.R.
AmComments	2509		735 KAR 2:040		
405 KAR 1:011(r)	2708		Amended	2399	
405 KAR 3:011(r)	2709		As Amended		See 45 Ky.R.
501 KAR 6:030			735 KAR 2:050		
Amended	2269		Amended	2401	
AmComments	2511		As Amended		See 45 Ky.R.
501 KAR 6:070			735 KAR 2:060		
Amended	2635		Amended	2403	
501 KAR 6:170			As Amended		See 45 Ky.R.
Amended	2270		804 KAR 9:051(r)	1774	
501 KAR 6:270			807 KAR 5:022		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date	Regulation Number	43 Ky.R. Page No.	Effective Date
Amended	2405		Amended	2277	
807 KAR 5:026			902 KAR 20:016		
Amended	2436		Amended	1415	
810 KAR 1:111(r)	2711		Am Comments	2054	
810 KAR 8:040	2712		902 KAR 20:058		
811 KAR 1:241(r)	2717		Amended	1714	
811 KAR 2:151(r)	2718		906 KAR 1:200		
815 KAR 7:110			Amended	2454	
Amended	2439		As Amended		See 45 Ky.R.
815 KAR 7:120			910 KAR 2:030		
Amended	2442		Amended	2698	
815 KAR 7:125			910 KAR 2:052(r)	2723	
Amended	2445		921 KAR 2:015		
815 KAR 8:011(r)	2458		Amended	1899	
815 KAR 8:070			922 KAR 2:090		
Amended	2446		Amended	2109	
815 KAR 8:080			AmComments	2513	
Amended	2449		922 KAR 2:100		
815 KAR 8:100			Amended	2118	
Amended	2451		AmComments	2522	
820 KAR 1:001			922 KAR 2:120		
Amended	2646		Amended	2129	
820 KAR 1:005			AmComments	2533	
Amended	2650		As Amended		See 45 Ky.R.
820 KAR 1:011(r)	2720		922 KAR 2:180		
820 KAR 1:025			Amended	2138	
Amended	2654		As Amended		See 45 Ky.R.
820 KAR 1:032			922 KAR 2:190		
Amended	2656		Amended	2144	
820 KAR 1:042			As Amended		See 45 Ky.R.
Amended	2670		922 KAR 2:270	2459	
820 KAR 1:050			As Amended		See 45 Ky.R.
Amended	2678				
820 KAR 1:055					
Amended	2681				
820 KAR 1:057					
Amended	2683				
820 KAR 1:060					
Amended	2690				
820 KAR 1:125					
Amended	2691				
820 KAR 1:130					
Amended	2693				
820 KAR 1:135	2721				
902 KAR 2:055					
Amended	2695				
902 KAR 10:040					

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.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	45 Ky.R. Page No.	Effective Date	Regulation Number	45 Ky.R. Page No.	Effective Date
VOLUME 45					
EMERGENCY ADMINISTRATIVE REGULATIONS			As Amended	22	
(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.)			302 KAR 29:020		
			Amended	150	
			601 KAR 2:030		
			Amended	152	
31 KAR 3:010E	7	5-22-2018	703 KAR 5:225		See 44 Ky.R.
601 KAR 2:030E	9	6-13-2018	As Amended	26	
803 KAR 25:089E	15	6-11-2018	703 KAR 5:280		See 44 Ky.R.
			As Amended	29	

ORDINARY ADMINISTRATIVE REGULATIONS:			704 KAR 3:015	215	
11 KAR 5:145			704 KAR 3:306	217	
Amended	105		735 KAR 1:010		See 44 Ky.R.
11 KAR 15:010			As Amended	34	
Amended	106		735 KAR 1:020		See 44 Ky.R.
11 KAR 15:110	207		As Amended	36	
12 KAR 3:007			735 KAR 2:010		See 44 Ky.R.
Amended	108		As Amended	38	
12 KAR 3:012			735 KAR 2:020		See 44 Ky.R.
Amended	109		As Amended	39	
12 KAR 3:017			735 KAR 2:030		See 44 Ky.R.
Amended	112		As Amended	39	
12 KAR 3:022			735 KAR 2:040		See 44 Ky.R.
Amended	114		As Amended	40	
12 KAR 3:027			735 KAR 2:050		See 44 Ky.R.
Amended	116		As Amended	40	
12 KAR 3:028	208		735 KAR 2:060		See 44 Ky.R.
12 KAR 3:032			As Amended	41	
Amended	118		803 KAR 25:089		
12 KAR 3:037			Amended	158	
Amended	119		804 KAR 5:080	219	
12 KAR 3:039	210		806 KAR 9:360		
12 KAR 3:042			Amended	159	
Amended	120		806 KAR 17:570		
31 KAR 3:010			Amended	161	
Amended	122		807 KAR 5:022		
31 KAR 4:100			AmComments	62	
Amended	124		807 KAR 5:026		
31 KAR 4:120			AmComments	92	
Amended	125		815 KAR 7:120		
101 KAR 2:020			AmComments	96	
Amended	127		815 KAR 7:125		
101 KAR 2:034			AmComments	98	
Amended	139		830 KAR 1:010		
101 KAR 2:076			Amended	180	
Amended	133		902 KAR 10:040		
101 KAR 2:095			AmComments	100	
Amended	135		906 KAR 1:190		
101 KAR 3:045			Amended	181	
Amended	139		906 KAR 1:200		See 44 Ky.R.
101 KAR 3:050			As Amended	42	
Amended	144		910 KAR 1:090		
201 KAR 2:015			Amended	187	
Amended	146		921 KAR 1:380		
201 KAR 9:031		See 44 Ky.R.	Amended	193	
As Amended	17		921 KAR 3:025		
201 KAR 2:082		See 44 Ky.R.	Amended	196	
As Amended	17		921 KAR 3:030		
201 KAR 12:251(r)	212		Amended	200	
201 KAR 12:260		See 44 Ky.R.	921 KAR 3:035		
As Amended	20		Amended	202	
201 KAR 12:280	213		922 KAR 2:120		See 44 Ky.R.
301 KAR 1:115			As Amended	43	
Amended	148		922 KAR 2:180		See 44 Ky.R.
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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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CERTIFICATION LETTER SUMMARIES

The certification process is established in KRS 13A.3104. If the certification letter states the regulation shall be amended, the administrative body shall file an amendment to the regulation within 18 months of the date the certification letter was filed. If the certification letter states that the regulation shall remain in effect without amendment, the last effective date of the regulation is changed to the date the regulations compiler received the letter.

* KRS 13A.010(6) - "Effective" means that an administrative regulation has completed the legislative subcommittee review established by KRS 13A.290, 13A.330, and 13A.331.

Regulation Number	Previous Last Effective Date*	Letter Filed Date	Action
201 KAR 022:001	06-06-2014	06-04-2018	Remains Effective without Amendment
201 KAR 022:010	12-02-1986	06-04-2018	Remains Effective without Amendment
201 KAR 022:035	05-31-2013	06-04-2018	Remains Effective without Amendment
201 KAR 022:045	10-19-2016	06-04-2018	Remains Effective without Amendment
201 KAR 022:052	01-04-2005	06-04-2018	Remains Effective without Amendment
201 KAR 022:053	06-02-2017	06-04-2018	Remains Effective without Amendment
201 KAR 022:130	10-04-2013	06-04-2018	Remains Effective without Amendment
201 KAR 022:135	07-21-2010	06-04-2018	Remains Effective without Amendment
201 KAR 022:140	11-15-2006	06-04-2018	Remains Effective without Amendment
201 KAR 022:150	01-04-2005	06-04-2018	Remains Effective without Amendment
201 KAR 022:160	08-01-2014	06-04-2018	Remains Effective without 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
907 KAR 17:020	06-05-2018		

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