VOLUME 45, NUMBER 2 LEGISLATIVE RESEARCH COMMISSION AUGUST 1, 2018

ADMINISTRATIVE REGISTER OF KENTUCKY

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

MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet on August 14, 2018, at 1:00 p.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - 227

INDEXES & OTHER INFORMATION

Regulation Review Procedure 233
ARRS Minutes 603
Other Committee Reports 608
Locator Index - Effective Dates ..... B – 2
KRS Index ..... B – 8
Certifications ..... B – 13
Technical Amendments ..... B – 16
Subject Index ..... B – 17

EMERGENCIES

Executive Branch Ethics Commission
009 KAR 001:015E. Pre-administrative proceedings. 234
009 KAR 001:030E. Administrative hearings. 235
STATE BOARD OF ELECTIONS
031 KAR 004:100E. Evaluation of precinct election officers. 236
031 KAR 004:120E. Additional and emergency precinct officers. 239
Office of the Attorney General: Office of Consumer Protection
040 KAR 002:245E. Visual aid glasses seller annual registration requirements. 241
Energy and Environment: Office of the Secretary
400 KAR 001:001E. Definitions for 400 KAR Chapter 1..... 243
400 KAR 001:040E. Administrative discovery. 245
400 KAR 001:090E. Administrative hearings practice provisions. 251
400 KAR 001:100E. General administrative hearing practice provisions relating to matters brought under KRS Chapters 146, 149, 151, 223, 224, and 353. 260
400 KAR 001:110E. Administrative hearings relating to matters brought under KRS Chapter 350.310 through 351.375. 265
Kentucky Law Enforcement Council
503 KAR 001:110E. Department of Criminal justice Training basic training graduation requirements; records. 274
Department of Natural Resources: Division of Oil and Gas
805 KAR 001:210E. Comment period for pooling of oil and gas shallow wells. 277
Kentucky HEALTH: Department for Medicaid Services
NOTE: Emergency Regulations in KAR Title 895 filed on 6-29-2018 were withdrawn on 7-2-2018.
895 KAR 001:001E. Definitions for 895 KAR Chapter 001. 279
895 KAR 001:010E. Eligibility for Kentucky HEALTH program. 282
895 KAR 001:015E. Premium payments within the Kentucky HEALTH programs. 285
895 KAR 001:020E. PATH requirement for the Kentucky HEALTH program. 288
895 KAR 001:025E. Beneficiary premiums. 290
895 KAR 001:030E. Establishment and use pf the MyRewards program. 292
895 KAR 001:035E. Covered services within the Kentucky HEALTH program. 295
895 KAR 001:040E. Deductible accounts within the Kentucky HEALTH program. 297
895 KAR 001:045E. Accommodation, modifications, and appeals for beneficiaries participating in the Kentucky HEALTH program. 299
895 KAR 001:050E. Enrollment and reimbursement for providers in the Kentucky HEALTH program. 301
895 KAR 001:055E. Designation or determination of medically frail status or accommodation due to temporary vulnerability in the Kentucky HEALTH program. 303
State Health Plan
900 KAR 005:020E. State Health Plan for facilities and services. 305
Health Services and Facilities
902 KAR 020:008E. License procedures and fee schedule. 307
Health Services and Facilities
902 KAR 020:401E. Repeal of 902 KAR 020:058, 902 KAR 020:145, 902 KAR 020:190, and 902 KAR 020:400. 312
Controlled Substances
902 KAR 055:011E. Repeal of 902 KAR 055:010. 313

Office of Inspector General
906 KAR 001:071E. Repeal of 906 KAR 001:050, 906 KAR 001:060, and 906 KAR 001:070. 315
Department for Medicaid Services
907 KAR 001:642E. Adult group 07-2018 benefit plan and copayments. 316
Department for Community Based Services
922 KAR 001:560E. Putative father registry and operating procedures. 318

AS AMENDED

Education Professional Standards Board
016 KAR 002:010. Kentucky professional and provisional teacher certificates. 321
016 KAR 005:030. Proficiency evaluation. 326
Board of Auctioneers
201 KAR 003:045. Recordkeeping and accounting. 327
201 KAR 003:090. Fees. 327
201 KAR 003:100. Education requirements. 328
Board of Optometric Examiners
201 KAR 005:090. Annual renewal fees. 330
Board of Licensure for Long-term Care Administrators
201 KAR 006:050. Licensure by endorsement. 330
Board of Cosmetology
201 KAR 012:010. Administrator's duties. 330
201 KAR 012:030. Licensing, permits, and examinations. 331
201 KAR 012:140. School equipment. 334
201 KAR 012:190. Complaint and disciplinary process. 335
201 KAR 012:230. Code of ethics. 337
Board of Licensure for Professional Art Therapists
201 KAR 034:060. Qualifying experience under supervision. 337
Board of Licensure for Private Investigators
201 KAR 041:100. Verification of limited employees. 340
Department of Fish and Wildlife Resources
301 KAR 002:228. Sandhill crane hunting requirements. 341
Department of Corrections
501 KAR 06:070. Kentucky Correctional Institution for Women. 342
Department of Housing, Buildings and Construction
Kentucky Building Code
815 KAR 007:110. Criteria for expanded local jurisdiction. 343
Division of Heating, Ventilation and Air Conditioning
815 KAR 008:070. Installation permits. 345
815 KAR 008:080. Inspections and requests. 347
815 KAR 008:100. Criteria for local jurisdiction HVAC programs. 348
Department for Public Health: Communicable Diseases
902 KAR 002:055. Immunization data reporting and exchange. 350
Sanitation
902 KAR 010:040. Kentucky youth camps. 351
Health Services and Facilities
902 KAR 020:016. Hospitals; operations and services. 355

AMENDED AFTER COMMENTS

Department of Juvenile Justice
505 KAR 001:120. Department of Juvenile Justice Policies and Procedures Manual: Health and Safety Services. 368
505 KAR 001:140. Department of Juvenile Justice Policies and Procedures Manual: detention services. 369
Department for Aging and Independent Living
910 KAR 002:030. Accounting provisions for adult guardianship. 371

PROPOSED AMENDMENTS

Executive Branch Ethics Commission
009 KAR 001:015. Pre-administrative proceedings. 376
009 KAR 001:030. Administrative hearings. 377
Agricultural Experiment Station: Commercial Feeds
012 KAR 002:006. Definitions for 12 KAR Chapter 2. 380
012 KAR 002:011. Label format. 381
012 KAR 002:016. Brand and product names. 382
012 KAR 002:017. Product purpose statement. 384
012 KAR 002:018. Guaranteed analysis. 385
012 KAR 002:021. Expression of guarantees. 389
012 KAR 002:026. Ingredients. 391
012 KAR 002:031. Directions for use and precautionary statements. 392
012 KAR 002:036. Non-protein. 394
012 KAR 002:041. Drug and feed additives. 395
012 KAR 002:046. Poisonous or deleterious substances. 396
012 KAR 002:051. Manufacturing conditions. 398
012 KAR 002:056. List of manufacturers. 399
012 KAR 002:061. Registration. 400
012 KAR 002:066. Suitability. 401
Council on Postsecondary Education
013 KAR 002:020. Guidelines for admission to the state-supported postsecondary education institutions. 403
State Board of Elections
031 KAR 004:100. Evaluation of precinct election officers. 408
031 KAR 004:120. Additional and emergency precinct officers. 409
Board of Nursing
201 KAR 020:057. Scope and standards of practice of advanced practice registered nurses. 411
201 KAR 020:490. Licensed practical nurse infusion therapy scope of practice. 415
Board of Physical Therapy
201 KAR 022:020. Eligibility and credentialing procedure. 418
201 KAR 022:040. Procedure for renewal or reinstatement of a credential for a physical therapist or physical therapist assistant. 420
201 KAR 022:170. Physical Therapy Compact Commission. 422
Department of Fish and Wildlife
301 KAR 001:201. Taking of fish by traditional fishing methods. 423
301 KAR 001:410. Taking of fish by nontraditional fishing methods. 428
Energy and Environment: Office of the Secretary
400 KAR 001:001. Definitions for 400 KAR Chapter 1. 431
400 KAR 001:040. Administrative discovery. 433
400 KAR 001:090. Administrative hearings practice provisions. 439
400 KAR 001:100. General administrative hearing practice provisions relating to matters brought under KRS Chapters 146, 149, 151, 223, 224, and 353. 448
400 KAR 001:110. Administrative hearings relating to matters brought under KRS Chapter 350.310 through 351.375. 453
Kentucky Law Enforcement Council
503 KAR 001:110. Department of Criminal justice Training basic training graduation requirements; records. 462
Department of Insurance: Health Insurance Contracts
806 KAR 017:020. Disclosure of other coverage in application. 466
806 KAR 017:300. Provider agreement and risk-sharing agreement filing requirements. 467
806 KAR 017:360. Prompt payment of claims. 470

State Health Plan
900 KAR 005:020. State Health Plan for facilities and services. 472
Department for Public: Health Services and Facilities
902 KAR 020:008. License procedures and fee schedule. 474
902 KAR 020:260. Hospital-owned pain management clinics. 479
902 KAR 020:275. Freestanding or mobile technology. 485
Department for Public Health: Food and Cosmetics
902 KAR 045:160. Kentucky food processing, packaging, storage, and distribution operations. 495
Radiology
902 KAR 100:022. Licensing requirements for land disposal of radioactive waste. 499
902 KAR 100:052. Specific domestic licenses of broad scope for by product material. 508
902 KAR 100:070. Packaging and transportation of radioactive material. 510
902 KAR 100:072. Medical use of byproduct material. 517
902 KAR 100:100. Licenses for industrial radiography and radiation safety requirements for industrial radiographic operations. 542
902 KAR 100:142. Licenses and radiation safety requirements for well logging. 550

NEW ADMINISTRATIVE REGULATION

Office of the Attorney General: Consumer Protection
040 KAR 002:245. Visual aid glasses seller annual registration requirements. 557
Athlete Agent Registry
200 KAR 030:011. Repeal of 200 KAR 030:010, 030:020, 030:030, 030:040, and 030:070. 558
Department of Natural Resources: Division of Oil and Gas
805 KAR 001:210. Comment period for pooling of oil and gas shallow wells. 560
Department of Insurance: Health Insurance Contracts
806 KAR 017:091. Repeal of 806 KAR 017:010, 806 KAR 017:090, 806 KAR 017:130, 806 KAR 017:310, 806 KAR 017:320, 806 KAR 017:330, 806 KAR 017:440, 806 KAR 017:460, 806 KAR 017:500, 806 KAR 017:540, 806 KAR 017:545, 806 KAR 017:555. 561
Athlete Agent Registry
830 KAR 002:001. Definitions. 563
830 KAR 002:010. Registration and fees. 564
830 KAR 002:020. Complaints. 566
Kentucky HEALTH: Department for Medicaid Services
895 KAR 001:001. Definitions for 895 KAR Chapter 001. 567
895 KAR 001:010. Eligibility for Kentucky HEALTH program. 570
895 KAR 001:015. Premium payments within the Kentucky HEALTH programs. 573
895 KAR 001:020. PATH requirement for the Kentucky HEALTH program. 576
895 KAR 001:025. Beneficiary premiums. 579
895 KAR 001:030. Establishment and use pf the MyRewards program. 581
895 KAR 001:035. Covered services within the Kentucky HEALTH program. 583
895 KAR 001:040. Deductible accounts within the Kentucky HEALTH program. 585
895 KAR 001:045. Accommodation, modifications, and appeals for beneficiaries participating in the Kentucky HEALTH program. 587
895 KAR 001:050. Enrollment and reimbursement for providers in the Kentucky HEALTH program. 895
895 KAR 001:055. Designation or determination of medically frail status or accommodation due to temporary vulnerability in the Kentucky HEALTH program. 591
Department for Public Health: Sanitation
902 KAR 010:051. Repeal of 902 KAR 10:050. 593
Health Services and Facilities
902 KAR 020:251. Repeal of 902 KAR 020:250. 595
Hazardous Substances
902 KAR 047:071. Repeal of 902 KAR 047:040, 902 KAR 047:050, 907 KAR 047:060, and 902 KAR 047:070. 596
Radiology
902 KAR 100:018. Repeal of 902 KAR 100:017, 902 KAR 100:060, and 902 KAR 100:090. ...597
Department for Medicaid Services
907 KAR 001:642. Adult group 07-2018 benefit plan and copayments. 598
Department for Community Based Services
922 KAR 001:560. Putative father registry and operating procedures. 600

VOLUME 45, NUMBER 2 – AUGUST 1, 2018

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Title		Chapter	Regulation
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Cabinet, Department, Board, or Agency		Office, Division, Board, or Major Function	Specific Regulation

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Administrative Regulation Review Subcommittee
Meeting Agenda
Tuesday, August 14, 2018 1:00 PM
Annex Room 149

1. Call to Order and Roll Call

2. KENTUCKY HIGHER EDUCATION ASSISTANCE SERVICES

A. Division of Student and Administrative Services

KHEAA Grant Programs

011 KAR 005:145 Proposed

CAP grant award determination procedure

B. Division of Student and Administrative Services

KHEAA Grant Programs

011 KAR 015:010 Proposed

Definitions for 11 KAR Chapter 15

011 KAR 015:110 Proposed

Scholarships for Registered Apprenticeship programs

3. AGRICULTURAL EXPERIMENT STATION

Pet Food

012 KAR 003:007 Proposed

Definitions for 12 KAR Chapter 3

012 KAR 003:012 Proposed

Labeling format and labeling

012 KAR 003:017 Proposed

Brand and product names

012 KAR 003:022 Proposed

Expression of Guarantees

012 KAR 003:027 Proposed

Ingredients

012 KAR 003:028 Proposed

Descriptive terms

012 KAR 003:032 Proposed

Feeding directions

012 KAR 003:037 Proposed

Drugs and pet food additives

012 KAR 003:039 Proposed

Nutritional adequacy

012 KAR 003:042 Proposed

Statements of calorie content

4. STATE BOARD OF ELECTIONS

A. Statewide Voter Registration

031 KAR 003:010 Emergency

Current address of Kentucky registered voters and distribution of voter registration lists

031 KAR 003:010 Proposed

Current address of Kentucky registered voters and distribution of voter registration lists

B. Forms and Procedures

031 KAR 004:100 Proposed

Evaluation of precinct election officers

031 KAR 004:120 Proposed

Additional and emergency precinct officers

5. PERSONNEL

A. Personnel Cabinet

Classified

101 KAR 002:020 Proposed

Job classification plan

101 KAR 002:034 Proposed

Classified compensation administrative regulations

101 KAR 002:076 Proposed

Vacancies, detail to special duty and temporary overlap

101 KAR 002:095 Proposed

Classified service general requirements

B. Personnel Cabinet

Unclassified

101 KAR 003:045 Proposed

Compensation plan and pay incentives for unclassified service

101 KAR 003:050 Proposed

Unclassified service; promotion, transfer, and disciplinary actions

6. BOARDS AND COMMISSIONS

A. Pharmacy

201 KAR 002:015 Proposed Continuing education

B. Cosmetology

201 KAR 012:251 Proposed

Repeal of 201 KAR 12:085, 201 KAR 12:088, 201 KAR 12:120, 201 KAR 12:180, and 201 KAR 12:250

201 KAR 012:280 Propose

Esthetic practices restrictions

C. Podiatry

201 KAR 025:090 Proposed

Prescribing and dispensing controlled substances

7. TOURISM, ARTS AND HERITAGE CABINET

A. Fish

301 KAR 001:115 Proposed

Propagation of aquatic organisms

B. Game

301 KAR 002:172 Proposed

Deer hunting seasons, zones, and requirements

301 KAR 002:176 Proposed

Deer control tags, deer destruction permits, and landowner designees

8. GENERAL GOVERNMENT

Department of Agriculture

A. Structural Pest Control

302 KAR 029:020 Proposed

General provisions for structural pest control

9. ENERGY AND ENVIRONMENT CABINET

~~A. Department of Environmental Protection~~

~~Water Quality~~

~~401 KAR 005:002 Proposed~~

~~Definitions for 401 KAR Chapter 5 (Comments Received, SOC extension due 8-15-2018)~~

~~401 KAR 005:005 Proposed~~

~~Permits to construct, modify, or operate a facility (Comments~~

~~Received, SOC extension due 8-15-2018)~~

~~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 (Comments Received, SOC extension due 8-15-2018)~~

~~401 KAR 005:037 Proposed~~

~~Groundwater protection plans (Comments Received, SOC extension due 8-15-2018)~~

~~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 Propose~~

~~Treatment requirements; compliance; biochemically degradable wastes (Comments Received, SOC extension due 8-15-2018)~~

~~401 KAR 005:050 Proposed~~

~~General provisions of KPDES Permitting Program (Comments~~

~~Received, SOC extension due 8-15-2018)~~

~~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) (Comments Received, SOC extension due 8-15-2018)~~

~~401 KAR 005:055 Proposed~~

~~Scope and applicability of the KPDES Program and pretreatment requirements (Comments Received, SOC extension due 8-15-2018)~~

~~401 KAR 005:060 Proposed~~

~~KPDES application requirements (Comments Received, SOC extension due 8-15-2018)~~

~~401 KAR 005:065 Proposed~~

~~KPDES permit conditions (Comments Received, SOC extension due 8-15-2018)~~

~~401 KAR 005:075 Proposed~~

~~Cabinet review procedures for KPDES permits and permit timetables for 401 KAR Chapter 5 (Comments Received, SOC extension due 8-15-2018)~~

~~401 KAR 005:080 Proposed~~

~~Criteria and standards for the Kentucky Pollutant Discharge~~

~~Elimination System (Comments Received, SOC extension due 8-15-2018)~~

~~401 KAR 005:320 Proposed~~

~~Wastewater Laboratory Certification Program (Comments Received, SOC extension due 8-15-2018)~~

B. Department of Natural Resources

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 (Not Amended After Comments)

C. Department of Natural Resources

Surface Effects of Underground Coal Mining

405 KAR 003:011 Propose

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 (Not Amended After Comments)

10. JUSTICE AND PUBLIC SAFETY

A. Department of Criminal Justice Training

Law Enforcement Foundation Program Fund

503 KAR 005:090 Proposed

Participation: requirements; application; withdrawal

B. Department of Juvenile Justice

Child Welfare

505 KAR 001:120 Proposed

Department of Juvenile Justice Policies and Procedures Manual: health and safety services

505 KAR 001:140 Proposed

Department of Juvenile Justice Policies and Procedures Manual: detention services

11. TRANSPORTATION

~~**A. Department of Vehicle Regulation**~~

~~Administration~~

~~**601 KAR 002:030 Emergency**~~

~~Ignition interlock (Withdrawn by Agency)~~

~~**601 KAR 002:030 Proposed**~~

~~Ignition interlock (Withdrawn by Agency)~~

~~**B. Department of Highways**~~

~~Preconstruction~~

~~**603 KAR 002:015 Proposed**~~

~~Prequalification for construction; certificate of eligibility; and contract claims dispute (Withdrawn by Agency)~~

12. EDUCATION AND WORKFORCE DEVELOPMENT

Department of Education

Office of Instruction

704 KAR 003:015 Proposed

Kentucky All STARS for Preschool Programs

704 KAR 003:306 Proposed

Kentucky Academic Standards for Historical and Cultural Influences of the Bible Elective Social Studies Course

13. LABOR CABINET

Department of Workers' Claims

803 KAR 025:089 Emergency

Workers' Compensation Medical Fee Schedule for Physicians

803 KAR 025:089 Proposed

Workers' Compensation Medical Fee Schedule for Physicians

14. PUBLIC PROTECTION CABINET

A. Department of Alcoholic Beverage Control

Conduct of Business; Employees

804 KAR 005:080 Proposed

Vintage Distilled Spirits

B. Department of Insurance

Agents, Consultants, Solicitors, and Adjusters

806 KAR 009:360 Proposed

Pharmacy benefit manager license

C. Department of Insurance

Health Insurance Contracts

806 KAR 017:570 Proposed

Minimum standards for Medicare supplement insurance policies and certificates

~~D. Department of Charitable Gaming~~

~~820 KAR 001:001 Proposed~~

~~Definitions (Comments Received, SOC extension due 8-15-2018)~~

~~820 KAR 001:005 Proposed~~

~~Charitable gaming licenses and exemptions (Comments Received, SOC extension due 8-15-2018)~~

~~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 (Comments Received, SOC extension due 8-15-2018)~~

~~820 KAR 001:025 Proposed~~

~~Reports (Comments Received, SOC extension due 8-15-2018)~~

~~820 KAR 001:032 Proposed~~

~~Pulltabs (Comments Received, SOC extension due 8-15-2018)~~

~~820 KAR 001:042 Proposed~~

~~Bingo (Comments Received, SOC extension due 8-15-2018)~~

~~820 KAR 001:050 Proposed~~

~~Raffles (Comments Received, SOC extension due 8-15-2018)~~

~~820 KAR 001:055 Proposed~~

~~Charity fundraising event standards (Deferred from July)~~

~~820 KAR 001:057 Proposed~~

~~Recordkeeping (Comments Received, SOC extension due 8-15-2018)~~

~~820 KAR 001:060 Proposed~~

~~Prohibited conduct (Comments Received, SOC extension due 8-15-2018)~~

~~820 KAR 001:125 Proposed~~

~~Gaming inspections (Comments Received, SOC extension due 8-15-2018)~~

~~820 KAR 001:130 Proposed~~

~~Administrative actions (Comments Received, SOC extension due 8-15-2018)~~

~~820 KAR 001:135 Proposed~~

~~Disposal of gaming supplies (Deferred from July)~~

E. Department of Professional Licensing

Secondary Metals Recyclers

830 KAR 001:010 Proposed

Application, certification of registration, and fees

15. HEALTH AND FAMILY SERVICES

A. Office of Inspector General

906 KAR 001:190 Proposed

Kentucky National Background Check Program (NBCP)

B. Department for Aging and Independent Living

Aging Services

910 KAR 001:090 Proposed

Personal care attendant program and assistance services

C. Department for Aging and Independent Living

Guardianship

910 KAR 002:030 Proposed

Accounting Provisions for adult guardianship (Amended After Comments)

910 KAR 002:052 Proposed

Repeal of 910 KAR 2:050

D. Department for Income Support

Family Support

921 KAR 001:380 Proposed

Child Support Enforcement Program application and intergovernmental process

E. Department for Community Based Services

Supplemental Nutrition Assistance Program

921 KAR 003:025 Proposed

Technical requirements

921 KAR 003:030 Proposed

Application process

921 KAR 003:035 Proposed

Certification process

16. 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
9 KAR 1:015E

Nature of the emergency: This emergency administrative regulation is one that must be placed into effect immediately in order to meet the requirements of SB 150, which governs the procedures for administrative hearings. The amendment to the administrative regulation involves the pre-administrative hearing procedures before an administrative hearing is begun. SB 150 will become effective on July 14, 2018. The reasons why an ordinary administrative regulation is not sufficient: An ordinary administrative regulation is not sufficient because it will not be in effect by the time the new amendments to KRS 11A.080(4)(b), KRS 11A.100(1), KRS 13B.020(7), and KRS 13B.090(7) become effective on July 14, 2018. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

HON. MATTHEW BEVIN, Governor
HON. WILLIAM G. FRANCIS, Chair

FINANCE AND ADMINISTRATION CABINET
Executive Branch Ethics Commission
(Emergency Amendment)

9 KAR 1:015E. Preadministrative proceedings.

RELATES TO: KRS 11A.080
STATUTORY AUTHORITY: KRS 11A.110(3)
EFFECTIVE: July 11, 2018
NECESSITY, FUNCTION, AND CONFORMITY: KRS 11A.110(3) provides that the Executive Branch Ethics Commission promulgate administrative regulations to implement KRS Chapter 11A. KRS 11A.080(1) requires the commission to investigate violations of KRS Chapter 11A, upon complaint or its own motion, and establishes procedures for the filing of complaints and commission investigations. This administrative regulation establishes procedures, not established in KRS 11A.080, relating to investigations.

Section 1. Definitions. (1) "Commission" is the Executive Branch Ethics Commission created by KRS 11A.060.
(2) "Complaint" is the "complaint signed under penalty of perjury by any person" as stated in KRS 11A.080(1). A complaint does not include a referral of information to the commission that is provided without being under penalty of perjury.

Section 2. Complaint. (1) A complaint shall state the:
(a) Full name and address of the:
1. Complainant;
2. Complainant's attorney, if an attorney has been retained;
(b) Name of each person alleged to have violated KRS Chapter 11A;
(c) Employment of each alleged violator, if known;
(d) Alleged facts that are the basis of the complaint; and
(e) Statute alleged to have been violated, if known.
(2) The statement that the complaint is signed under penalty of perjury shall appear above the signature of the complainant.
(3) Appearing after the complainant's signature shall appear a line for a Notary Public to sign, the date of Notary Public signature, and the date of expiration of Notary Public commission.
(4) Appearing after the Notary Public's signature, the complainant's attorney, if any retained, shall sign the complaint.
(5) A complaint that does not contain the following shall not be accepted as properly filed with the commission:
(a) The signature of the complainant;
(b) The signature of a valid Notary Public;
(c) The name of a person alleged to have violated KRS Chapter 11A over which the commission maintains jurisdiction; and
(d) Facts that, if true, would indicate a violation of KRS Chapter 11A.
(6) The complaint shall be part of the records of a preliminary investigation pursuant to KRS 11A.080 and shall remain confidential pursuant to KRS 11A.080(2) until such time as final action is taken by the commission pursuant to KRS 11A.100(3).

Section 3[2]. Answer to Complaint. (1) The documents specified in KRS 11A.080(1)(c) shall be sent, by certified mail, return receipt requested, at the last known address, or by personal service to the person alleged to have violated KRS Chapter 11A.
(2) Within twenty (20) days of receiving a copy of the complaint, a person against whom a complaint is filed may[~~shall~~]:
(a) File with the commission a written, signed response to the complaint; and
(b) Mail a copy of the response to the complainant.
(3) The answer, if any, shall be part of the records of the preliminary investigation pursuant to KRS 11A.080 and shall remain confidential pursuant to KRS 11A.080(2) until such time as final action is taken by the commission pursuant to KRS 11A.100(3).

Section 4[~~3~~]. Meeting During Preliminary Investigation. (1) At any time during the course of a preliminary investigation pursuant to KRS 11A.080(1)(a), a[~~The~~] person being investigated may[~~, at any time during the course of the preliminary investigation~~]:
(a) Request a meeting with the commission's attorney and the complainant, if any; and
(b) Have an attorney represent him at this meeting.
(2) The commission's attorney shall use reasonable efforts to schedule a meeting if one has been requested.
(3) Nothing in this section shall be construed to prohibit the commission's attorney,[~~attorney~~] or an investigator acting on behalf of the commission,[~~commission~~] from initiating contact with the person being investigated, or the person's attorney,[~~attorney~~] if he or she has retained counsel.

Section 5[4]. Dismissal of Complaint. (1) The commission may dismiss a complaint if it determines that the facts stated in the complaint, or facts known to the commission upon a preliminary investigation, fail to establish a violation of KRS Chapter 11A.
(2) The commission may dismiss a complaint if the complainant or his or her attorney at any time before the commission takes final action pursuant to KRS 11A.100(3), publicly reveals that the complaint has been filed with the commission or that the commission opened a preliminary investigation based upon the complaint, which may interfere with the preliminary investigation remaining confidential pursuant to the requirements of KRS 11A.080(2).

WILLIAM G. FRANCIS, Chair
APPROVED BY AGENCY: JULY 10, 2018
FILED WITH LRC: July 11, 2018 at 1 p.m.
CONTACT PERSON: Kathryn H. Gabhart, Executive Director, Executive Branch Ethics Commission, 1025 Capital Center Drive, Suite 104, Frankfort, Kentucky 40601, phone (502) 564-7954, fax (502) 696-5939, email Katie.gabhart@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn H. Gabhart
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation provides procedures for filing of complaints under penalty of perjury with the commission, the procedures for the answering to those complaints, and procedures for the conduct of preliminary investigations.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the requirements of KRS 11A.080(1) to the conduct of preliminary investigations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation implements KRS 11A.080.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently provides guidance for the implementation of KRS 11A.080 in relation to preliminary investigations and will continue to do so.

(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 resolves some issues that were presented by the current version of the regulation specifically related to the definition of "under penalty of perjury" and requiring the preliminary investigation to remain confidential as required by KRS 11A.080(2).

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is needed to ensure that individuals desiring to file a complaint are aware of the procedures that they must follow and ensure that the Commission's investigations remain confidential pursuant to KRS 11A.080.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment to the administrative regulation conforms to the provisions established by KRS 11A.080 and KRS 11A.110(3) by providing guidance and directives to those wishing to file complaints with the commission while maintaining the confidentiality of the commission's preliminary investigations.

(d) How the amendment will assist in the effective administration of the statues: This amendment to the administrative regulation will assist in the administration of KRS 11A.080 by providing guidelines to ensure its implementation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals desiring to file complaints with the commission and public servants under the jurisdiction of the commission.

(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: Individuals desiring to file complaints with the commission and public servants will have to ensure that they follow the guidance when in the regulation when filing complaints or submitting answers to those complaints.

(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 have to follow the guidance when filing complaints or submitting answers to those complaints.

(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 known cost associated with this amended administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals desiring to file complaints with the commission and public servants will have guidance and clarity to the provisions of KRS 11A.080 and to ensure the commission's process is successful.

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

(a) Initially: Minimal costs to the Executive Branch Ethics Commission associated with the publication of training materials and conducting education already provided in the Commission's budget.

(b) On a continuing basis: Minimal costs to the Executive Branch Ethics Commission associated with the ongoing publication of training materials and conducting education already provided in the Commission's budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Commission's existing 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: This administrative regulation will not require an increase in any fees or funding.

(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.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all affected individuals.

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 Executive Branch of state government.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 11A.110(3) and 11A.080.

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

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

(c) How much will it cost to administer this program for the first year? $500 for publications and training; funds already included in the Executive Branch Ethics Commission's budget.

(d) How much will it cost to administer this program for subsequent years? $500 for publication and training; funds already included in the Executive Branch Ethics Commission's budget.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation:

STATEMENT OF EMERGENCY
9 KAR 1:030E

Nature of the emergency: This emergency administrative regulation is one that must be placed into effect immediately in order to meet the requirements of SB 150, which governs the procedures for administrative hearings. The amendment to the administrative regulation involves the administrative hearing procedures for the designation of hearing officers and issuance of default judgments. SB 150 will become effective on July 14, 2018. The reasons why an ordinary administrative regulation is not sufficient: An ordinary administrative regulation is not sufficient because it will not be in effect by the time the new amendments to KRS 11A.080(4)(b), KRS 11A.100(1), KRS 13B.020(7), and KRS 13B.090(7) become effective on July 14, 2018. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

HON. MATTHEW BEVIN, Governor
HON. WILLIAM G. FRANCIS, Chair

FINANCE AND ADMINISTRATION CABINET
Executive Branch Ethics Commission
(Emergency Amendment)

9 KAR 1:030E. Administrative proceedings.

RELATES TO: KRS 11A.080, 11A.100
STATUTORY AUTHORITY: KRS 11A.080, 11A.100, 11A.110(3)
EFFECTIVE: July 11, 2018
NECESSITY, FUNCTION, AND CONFORMITY: KRS 11A.080(4)(b) authorizes the commission to initiate an administrative hearing to determine whether there has been a violation of KRS Chapter 11A. This administrative regulation establishes the procedures governing administrative proceedings. KRS 11A.100(1) provides that the commission is exempted from the provisions of KRS 13B.030(2)(b). This administrative regulation provides the procedures for the designation of hearing officers for the commission. KRS 100(1) provides that the commission is exempted from the provisions of KRS 13B.050(1), (2), and (3) when a party fails to file an answer or otherwise participate. The administrative regulation establishes procedures to govern when a party fails to participate in an administrative proceeding. KRS 11A.110(3) provides that the Executive Branch Ethics Commission promulgate administrative regulations to implement KRS Chapter 11A.

Section 1. Definitions. (1) "Commission" is the Executive Branch Ethics Commission established by KRS 11A.060.
(2) "Commission Secretary" means the employee of the commission designated pursuant to KRS 11A.070 to designate hearing officers.
(3) "Executive Director" means the executive director appointed by the commission pursuant to KRS 11A.070.
(4) "Initiating Order" means the document issued by the commission to initiate an administrative proceeding to determine whether there has been a violation as provided by KRS 11A.080(4)(b).

Section 2. Initiating Order. (1) To initiate an administrative proceeding, the commission shall issue an initiating order to the alleged violator, who shall be referred to as the respondent during the course of the administrative proceeding.
(2) The initiating order shall:
(a) Be served on the respondent by certified mail, return receipt requested, or registered mail sent to the last known address of the respondent, or by personal service. Service by certified or registered mail shall be complete upon the date on which the commission receives the return receipt or the returned notice;
(b)[~~(1)~~] Include the information required by KRS 13B.050(3), except for the information required in KRS 13B.050(3)(a) and (b);
(c)[~~(2)~~]State that all material submitted to the commission by the respondent or his attorney shall be addressed to the commission[~~Executive Branch Ethics Commission~~];[~~and~~]
(d) State the deadline for submitting an answer and the ramifications of failing to file an answer as provided in Section 4 of this administrative regulation; and
(e) State that the procedural schedule for the proceedings will be set by a subsequent order after the designation of a hearing officer[~~(3) Establish the procedural schedule for the proceeding or state that it will be set by subsequent order~~].

Section 3[~~2~~]. Answer. (1) The respondent shall file a written answer to the initiating order[~~shall be filed~~] with the commission within twenty (20) days of service of the initiating order.
(2) The answer shall be filed[~~,~~] by the:
(a) Respondent, if he has not retained counsel; or
(b) Respondent's attorney, if he has retained counsel.
(3)[~~(2)~~] The answer shall be signed[~~verified~~] by the respondent or by counsel for respondent.
(4) The respondent may request additional time in which to file an answer. The executive director may grant the respondent an additional twenty (20) days in which to file an answer.
(5) If the respondent requests additional time to file an answer beyond the additional twenty (20) days, the request shall be reviewed by the commission at its next regularly scheduled meeting. The commission may grant additional time to file an answer with good cause shown.

Section 4. Default. (1) If the respondent fails to file a timely answer, then the commission may:
(a) Accept the failure to answer as an admission of the allegations in the Initiating Order;
(b) Find by clear and convincing evidence pursuant to KRS 11A.100(3) that the respondent has engaged in the alleged conduct in violation of KRS Chapter 11A;
(c) Enter a final order of default against the respondent; and
(d) Levy the appropriate possible penalty allowed under KRS 11A.100(3).

Section 5[~~3~~].Counsel. (1) If a respondent has retained counsel, the attorney shall file an entry of appearance with the commission.
(2) If a respondent has retained counsel, notices, correspondence, and orders relating to the administrative proceeding shall thereafter be transmitted to the attorney instead of the respondent.

Section 6. Assignment of a Hearing Officer. (1) If the respondent files a timely answer, then the commission shall designate a hearing officer.
(2) The commission shall designate a roster of hearing officers as provided pursuant to KRS 13B.030(2)(a) and as dictated by the requirements of KRS Chapter 45A.
(3) A person qualified to serve as a hearing officer for the commission shall:
(a) Maintain the qualifications required by KRS 13B.040;
(b) Be an attorney in good standing with the Kentucky Bar Association or otherwise have approval by the Kentucky Bar Association to practice law in the Commonwealth of Kentucky;
(c) Demonstrate knowledge of KRS Chapter 11A by having served as an ethics officer, having previously served as a member or staff of the commission, or attending or participating in trainings offered by the commission on the requirements of KRS Chapter 11A;
(d) Not be a current member or staff of the commission; and
(e) Not be under the jurisdiction of the commission.
(4) Once the roster of hearing officers is established, the Commission Secretary shall randomly assign administrative proceedings initiated by the commission pursuant to KRS 11A.080(4)(b) to a hearing officer from the roster of hearing officers, unless otherwise directed by the commission.

Section 7. Hearing Officer. (1) After the hearing officer is designated by the commission, the hearing officer shall within ten (10) days of the designation send notice to the parties of the date and time of the first telephonic prehearing conference.
(2) The hearing officer shall follow the requirements of KRS Chapter 13B for the conduct of administrative hearings, except as provided in KRS 11A.100 for the burden of proof where the higher standard of proof is required as dictated by KRS 13B.050(7).

Section 8[4]. Settlement. (1) At any time during the proceedings, the commission's counsel may enter into mediation or informal proceedings pursuant to KRS 13B.070 with the respondent[~~after charges have been initiated~~].
(2) An agreed order or settlement reached through this process shall be reviewed by the commission and, upon approval by the commission, shall be signed by the commission and the respondent.
(3) The commission shall not approve a settlement that provides for the confidentiality of:
(a) The existence of the settlement; or
(b) Any of the terms of the settlement.

Section 9[~~5~~].Ex Parte Communications. Once an administrative

proceeding has commenced, the commission, its executive director, commission counsel, the respondent, respondent counsel or other person acting on behalf of the respondent shall not initiate, participate in, or consider ex parte communications concerning the subject matter of a hearing or an issue of fact or law related thereto, except upon notice and opportunity for all parties to participate.

Section 10[~~6~~].Record to be Maintained. (1) The hearing shall be transcribed by a court stenographer or by means of electronic media, such as videotaping.

(2)[~~(a)~~] A transcript or electronic media copy of the testimony taken during the hearing shall:

(a) Be kept by the commission;[~~.~~]

(b) Be[~~Upon request and payment of the appropriate fee, a copy of the transcript or copy of the electronic media recording of the hearing shall be~~] available to the respondent upon request and payment of the appropriate fee; and[~~from the:~~

~~1. Court stenographer; or~~

~~2. Commission, if the stenographer is unable to furnish a copy.~~]

(c) Be[~~A copy of the transcript of the hearing or copy of the electronic media recording of the hearing shall be~~] available to all commission members.

(3)[~~(d)~~] Any documents or exhibits introduced into evidence shall be kept with the transcript or copy of the electronic media recording of the hearing or as ordered by the hearing officer.

WILLIAM G. FRANCIS, Chair

APPROVED BY AGENCY: JULY 10, 2018

FILE WITH LRC: July 11, 2018 at 1 p.m.

CONTACT PERSON: Kathryn H. Gabhart, Executive Director, Executive Branch Ethics Commission, 1025 Capital Center Drive, Suite 104, Frankfort, Kentucky 40601, phone (502) 564-7954, fax (502) 696-5939, email Katie.gabhart@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn H. Gabhart

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides procedures for the conduct of administrative proceedings for matters involving violations of KRS Chapter 11A.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the requirements of KRS 11A.080(4)(b) and KRS 11A.100 for the conduct administrative proceedings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation implements KRS 11A.080(4)(b) and KRS 11A.100(1).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently establishes procedures for administrative hearings.

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

(a) How the amendment will change this existing administrative regulation: This amendment is consistent with the newly established requirements of SB 150 enacted by the 2018 General Assembly and signed by the Governor on April 26, 2018 that will took effect on July 14, 2018.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is needed to ensure that the new language of KRS 11A.100(1), KRS 13B.020(7), and KRS 13B.090(7) enacted by SB 150 is implemented.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment to the administrative regulation conforms to the provisions established by KRS 11A.100(1), KRS 13B.020(7), and KRS 13B.090(7) by providing procedures for the filing of timely answers, orders of default, the assigning of hearing officers, and the conduct of administrative proceedings.

(d) How the amendment will assist in the effective administration of the statues: This amendment to the administrative regulation will assist in the administration of KRS 11A.080(4)(b), KRS 11A.100(1), KRS 13B.020(7), and KRS 13B.090(7) by providing guidelines to ensure its implementation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The staff and members of the Executive Branch Ethics Commission and individuals under the jurisdiction of the commission.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The commission and individuals subject to the jurisdiction of the commission will have to ensure that they follow the procedures established by the regulation.

(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: Individuals under the commission's jurisdiction will have to follow the procedures when filing answers with the commission. The commission will have to follow the procedures when designating hearing officers. The hearing officers will have to follow the procedures in conducting administrative hearings.

(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 known cost associated with this amended administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The commission and individuals subject to the commission's jurisdiction will have a consistent process to follow.

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

(a) Initially: Minimal costs to the Executive Branch Ethics Commission associated with the publication of training materials and conducting education already provided in the Commission's budget.

(b) On a continuing basis: Minimal costs to the Executive Branch Ethics Commission associated with the ongoing publication of training materials and conducting education already provided in the Commission's budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Commission's existing 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: This administrative regulation will not require an increase in any fees or funding.

(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.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all affected individuals.

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 Executive Branch of state government.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 11A.080(4)(b), KRS 11A.100(1), KRS 13B.020(7), and KRS 13B.090(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? The amendment to 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? This administrative regulation will not generate any revenue? The amendment to the administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? $500 for publications and training; funds already included in the Executive Branch Ethics Commission's budget.

(d) How much will it cost to administer this program for subsequent years? $500 for publication and training; funds already included in the Executive Branch Ethics Commission's budget.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation:

STATEMENT OF EMERGENCY
31 KAR 4:100E

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

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

STATE BOARD OF ELECTIONS
(Emergency Amendment)

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

RELATES TO: KRS 117.045

STATUTORY AUTHORITY: KRS 117.045(1)

EFFECTIVE: June 21, 2018

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

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

(1) Determine if the person submitted a signed statement in accordance with KRS 117.045(2);

(2) Determine if the person meets the qualifications set forth in KRS 117.045(9); and

(3) Determine if the person has a history of refusing to follow election procedures or has demonstrated a complete lack of understanding of proper election procedures while serving as a precinct election officer in the past.

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

Section 3. Once the county board of elections has appointed the precinct election officers, the full name, address, phone number, and Social Security number, if available, of each person appointed shall be submitted to the State Board of Elections 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 21, 2018 at noon

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

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

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

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

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

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

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

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

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 117.045(1).

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

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

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

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

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

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

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

STATEMENT OF EMERGENCY
31 KAR 4:120E

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

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

STATE BOARD OF ELECTIONS
(Emergency Amendment)

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

RELATES TO: KRS 117.015, 117.045
STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.045(5) and (6)
EFFECTIVE: June 21, 2018
NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 117. KRS 117.045(6) requires the State Board of Elections to promulgate an administrative regulation establishing conditions under which additional precinct officers may be approved. This administrative regulation establishes the conditions under which additional precinct officers may be approved, and establishes the form of the list of emergency election officer appointments required by KRS 117.045(5).

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

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

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

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

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

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

(2) The county board of elections shall submit these requests to the State Board of Elections at least fourteen (14) days prior to Election Day. Failure of the State Board of Elections to receive request at least fourteen (14) days prior to Election Day is grounds for the State Board of Elections to 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 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) The State Board of Elections may deny the request to appoint emergency precinct officers 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.

(c) In the event the State Board of Elections denies a request for appointment of emergency precinct workers as provided in subsection (b) above, the State Board of Elections 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 of Elections 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 21, 2018 at noon

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

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

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

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

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

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

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

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

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
40 KAR 2:345E

In the 2018 Regular Session the General Assembly amended KRS 367.686(1), effective July 14, 2018, to provide that no person located outside of Kentucky shall ship, mail, deliver, or sell, visual aid glasses to a patient at a Kentucky address unless registered with the Attorney General of the Commonwealth of Kentucky. The bill enacting this change also enacted other changes in KRS 367.680 to 367.690 in relation to visual aid glasses, including a definition for visual aid glasses that includes "eyeglasses, spectacles, or lenses designed or used to correct visual defects", but not including certain optical instruments or devices such as those not intended to correct or enhance vision. (2018 Ky Acts ch. 44.) This emergency administrative regulation establishes the registration requirements with the Attorney General of the Commonwealth of Kentucky for an out of state seller of visual aid glasses as set forth in KRS 367.686(1), including the Visual Aid Glasses Seller Annual Registration, Form G-1, and the required registration fee. This emergency regulation must be placed into effect immediately in order to protect human health, so that persons located outside of Kentucky who sell, ship, mail, deliver, or dispense, prescription visual aid glasses to patients in Kentucky will be able to comply with KRS 367.686(1), effective July 14, 2018, and conduct business legally in Kentucky. An ordinary administrative regulation would not become effective by the July 14, 2018, effective date of the new registration requirement. Without emergency action, Kentucky consumers will be limited in the ability to purchase or obtain prescription optical instruments and devices included in the definition of visual aid glasses from persons located outside of Kentucky. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
ANDY BESHEAR, Attorney General

GENERAL GOVERNMENT CABINET
Kentucky Office of the Attorney General
Office of Consumer Protection
(New Emergency Administrative Regulation)

40 KAR 2:345E. Visual aid glasses seller annual registration requirements.

RELATES TO: KRS 367.680, 367.686, 367.688, 367.689, 367.690

STATUTORY AUTHORITY: KRS 15.180, 367.150(4), 367.686, 367.688, 367.689

EFFECTIVE: July 2, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.180 authorizes the Attorney General to promulgate administrative regulations that will facilitate performing the duties and exercising the authority vested in the Attorney General and the Department of Law. KRS 367.150(4) requires the Department of Law to study the operation of all laws, rules, administrative regulations, orders, and state policies affecting consumers and to recommend administrative regulations in the consumers' interest. KRS 367.689 authorizes the Attorney General to promulgate administrative regulations to carry out the provisions of KRS 367.680 to 367.690, pertaining to visual aid glasses. KRS 367.688 requires the Attorney General to charge a fee for investigation and registration of nonresident dispensers of visual aid glasses. This administrative regulation establishes requirements for annual registration required by KRS 367.686 for a person located outside of Kentucky who ships, mails, delivers, sells, or dispenses visual aid glasses to a patient at a Kentucky address, effective July 14, 2018, and will increase protection of the public health, safety and welfare.

Section 1. Visual Aid Glasses Seller Annual Registration Form. A registrant shall register annually by submitting a complete Visual Aid Glasses Seller Annual Registration, Form G-1, containing all information and the registration fee required by this administrative regulation. The Visual Aid Glasses Seller Annual Registration, Form G-1, shall contain the following:

(1) The legal name of the registrant;

(2) Other names under which the registrant conducts business;

(3) The registrant's contact person including name, title, business address, phone number, and fax number. The contact person's email address may also be provided;

(4) The registrant's principal physical business location, which shall not be a post office box;

(5) The registrant's mailing address;

(6) The location where the registrant keeps or maintains records of its Kentucky customers;

(7) The toll-free phone numbers for questions from customers, optometrists, osteopaths and physicians;

(8) The registrant's fax number;

(9) The registrant's website;

(10) Whether the registrant has been the subject of civil or criminal action by an agency in any state that regulates the sale or dispensing of visual aid glasses, and, if yes, an explanation;

(11) A list of each state in which the registrant is registered or licensed to sell or dispense visual aid glasses;

(12) An annual registration fee of $500 enclosed with each registration in the form of a check made payable to "Kentucky State Treasurer"; and

(13) The signature of the registrant or a person authorized to sign on behalf of the registrant, the printed name and title of the person signing the registration form, and the date of the signature. The signature shall constitute a certification that the statements contained in the registration form are true and correct to the best of the knowledge and belief of the person signing the registration form.

Section 2. The original completed Visual Aid Glasses Seller Annual Registration, Form G-1, and the registration fee, shall be mailed or delivered to the Kentucky Office of the Attorney General, Office of Consumer Protection, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601.

Section 3. The registrant shall notify the Attorney General within thirty (30) days of any material change to information provided in the registrant's Visual Aid Glasses Seller Annual Registration, Form G-1, in writing at the address shown in Section 2 of this administrative regulation.

Section 4. A notice or letter from the Attorney General to a registrant may be sent by first-class regular mail to a last-known address as shown in the registrant's last Visual Aid Glasses Seller Annual Registration, Form G-1, or in the registrant's last notice of material change provided pursuant to Section 3 of this administrative regulation.

Section 5. The Attorney General may charge a fee for investigation of nonresident dispensers of visual aid glasses based on reasonable expenses incurred during the complaint or investigation process, in accordance with KRS 367.688.

Section 6. Incorporation by Reference. (1) "Visual Aid Glasses Seller Annual Registration, Form G-1", 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of the Attorney General, Office of Consumer Protection, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ANDY BESHEAR, Attorney General

APPROVED BY AGENCY: June 29, 2018

FILED WITH LRC: July 2, 2018 at 11 a.m.

CONTACT PERSON: Kevin R. Winstead, Assistant Attorney General, Kentucky Office of the Attorney General, Office of Consumer Protection, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 696-5300, email kevin.winstead@ky.gov, fax (502) 573-8317.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the registration requirements, incorporates the requisite registration form, and sets the annual registration fee for nonresident dispensers of visual aid glasses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for an annual registration and create the registration form for nonresident dispensers of visual aid glasses that are required to register with the Attorney General under KRS 367.686, as amended by House Bill 191 (2018 Ky Acts ch. 44), effective July 14, 2018.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation creates a registration form and a registration fee for nonresident dispensers of visual aid glasses dispensing to Kentucky residents. KRS 367.686 requires registration with the Attorney General, and KRS 367.688 requires the Attorney General to charge a fee for registration and investigation of nonresident dispensers of visual aid glasses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the registration requirements, incorporates the registration form, and sets the requisite annual fee for registration.

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

(a) How the amendment will change this existing administrative regulation: N/A.

(b) The necessity of the amendment to this administrative regulation: N/A.

(c) How the amendment conforms to the content of the authorizing statutes: N/A.

(d) How the amendment will assist in the effective administration of the statutes: N/A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: the office is uncertain of how many nonresident dispensers of visual aid glasses will register, however, the agency estimates that ten (10) to twenty (20) registrations will be received annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation will require nonresident dispensers of visual aid glasses to Kentucky residents to register annually with the Kentucky Office of the Attorney General, complete a registration form, pay a fee for registration, and provide written notice to the Attorney General within thirty (30) days of any material change in the information in the registration form.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): A registration fee of $500 will be charged to cover administrative costs of registration. KRS 367.686 requires the Attorney General to charge a fee for investigation and registration of nonresident dispensers of visual aid glasses.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Nonresident dispensers of visual aid glasses will be registered with the Kentucky Attorney General as required by law. Compliance will also increase protection of the public health, safety and welfare.

(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: There is no funding required 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: A registration fee of $500 will be charged for registration to cover administration costs and a fee may be charged for reasonable expenses incurred during any investigation. KRS 367.686 requires the Attorney General to charge a fee for investigation and registration of nonresident dispensers of visual aid glasses.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulation establishes a registration fee of $500. KRS 367.686 requires the Attorney General to charge a fee for investigation and registration of nonresident dispensers of visual aid glasses.

(9) TIERING: Is tiering applied? Tiering was not applied as the

same criteria apply to all registrants.

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 Office of the Attorney General.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 367.680, 367.681, 367.686, 367.688, 367.689 and 367.690.

(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? A de minimus amount of revenue will be generated from this administrative regulation, estimated at ten (10) to twenty (20) annual registrations at $500 per registration.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? A de minimus amount of revenue will be generated from this administrative regulation, estimated at ten (10) to twenty (20) annual registrations at $500 per registration.

(c) How much will it cost to administer this program for the first year? No additional costs are anticipated.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated.

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

STATEMENT OF EMERGENCY
400 KAR 1:001E

On July 14, 2018 the provisions of House Bill 261 and Senate Bill 249 went into effect removing administrative hearings related to shallow oil and gas wells and explosives and blasting operations from the KRS Chapter 13B administrative hearings process and placing them under the Energy and Environment Cabinet's administrative hearings process. Current Energy and Environment Cabinet regulatory requirements regarding administrative hearings for both shallow oil and gas wells and explosives and blasting operations will not comply with the statutory provisions amended by House Bill 261 and Senate Bill 249. Without further action, the regulated community is in jeopardy of being left with conflicting regulatory and statutory provisions. This emergency administrative regulation is necessary to immediately implement the provisions of House Bill 261 and SB 249 to avoid statutory provisions going into effect that conflict with current regulatory requirements causing confusion and uncertainty among the regulated community. The emergency administrative regulation will be replaced by an ordinary administrative regulation which is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
CHARLES G. SNAVELY, Secretary

ENERGY AND ENVIRONMENT CABINET
Office of the Secretary
(Emergency Amendment)

400 KAR 1:001E. Definitions for 400 KAR Chapter 1.

RELATES TO: KRS 146.200 - 146.360, 146.450, 146.530, 146.990, 149.344, 149.346, 149.348, 151.125, 151.182, 151.184, 151.297, 151.990, Chapters 223, 224, 350.028, 350.0301, 350.0305, 350.032, 350.070, 350.085, 350.090, 350.093, 350.130, 350.255, 350.465, 350.610, 350.990, 351.315, 351.345, 351.350, 353.060, 353.200, 353.590, 353.5901, 353.620, 353.630, 353.640, 353.700, 30 C.F.R. Parts 724, 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

STATUTORY AUTHORITY: KRS 146.270, 146.450, 146.990, 149.344, 149.346, 151.125, 151.182, 151.184, 151.186, 151.297, 223.200, 223.991, 224.10-100, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.40-310, 224.60-120, 350.020, 350.028, 350.0301, 350.0305, 350.255, 350.465, 350.610, 351.315, 351.345, 351.350, 353.700, 30 C.F.R. Parts 724, 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

EFFECTIVE: July 13, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapters 146, 149, 151, 223, 224,[~~and~~] 350, 351, and 353 authorize the cabinet to conduct administrative hearings and authorize the cabinet to promulgate administrative regulations to regulate the administrative hearing process. This administrative regulation establishes definitions for certain essential terms used in 400 KAR Chapter 1.

Section 1. Definitions. (1) "Administrative hearing" means a formal adjudicatory hearing conducted before the cabinet pursuant to KRS Chapters 146, 149, 151, 223, 224,[~~or~~] 350, 351.315 to 351.375, or 353, except for those conducted by the Kentucky Oil and Gas Conservation Commission pursuant to KRS 353.500 to 353.720.

(2) "Cabinet" is defined by KRS 149.330(2), 151.100(2), 223.400(3), 224.1-010(9),[~~and~~] 350.010(10), and 353.510(43).

(3) "Chief hearing officer" means the individual duly qualified and designated by the secretary as the chief hearing officer of the office.

(4) "Day" means calendar day unless otherwise specified to be a working day.

(5) "Final order" means final order of the secretary.

(6) "Hearing officer" means the individual duly qualified and assigned as presiding officer to conduct an administrative hearing and includes the chief hearing officer.

(7) "Individual" means a natural person.

(8) "Initiating document" means a petition for administrative hearing, an administrative complaint, a show cause order or other document that commences an administrative proceeding.

(9) "Interim report" means statements made by a hearing officer in written form that are not intended to be considered by the secretary and that are not subject to judicial review.

(10) "Office" means the office of administrative hearings.

(11) "Party" means:

(a) The named person whose legal rights, duties, privileges, or immunities are being adjudicated in the administrative hearing;

(b) Any other person who is duly granted intervention in the administrative hearing; and

(c) Any agency named as a party to the adjudicatory proceeding or entitled or permitted by law to participate fully in the administrative hearing.

(12) "Person" is defined by KRS 149.330(7), 151.100(15), 223.400(5), 224.1-010(17), [~~and~~] 350.010(9), and 353.510(5).

(13) "Petitioner" means the party filing an initiating document in an action before the office.

(14) "Pleading" means an initiating document, answer, motion, response, supporting memorandum, brief, notice, and any other document authorized to be filed by a hearing officer or by administrative regulation.

(15) "Record" means:

(a) The electronic recording or transcript of a proceeding;

(b) Each hearing officer ruling;

(c) Any pleading;

(d) Documentary and physical evidence received or considered;

(e) A statement of any matter officially noticed;

(f) Each question and offer of proof;

(g) Each objection;

(h) Any legal brief;
(i) A proposed finding and recommended order;
(j) Any exception and response; and
(k) Final order.

(16) "Respondent" means any person against whom a claim is made in any action filed in the office and includes any person so designated in the caption of an initiating document.

(17) "Responsive pleading" means the answer or any document required or authorized by administrative regulation or a hearing officer to be filed in response to a pleading.

(18) "Secretary" is defined by KRS 146.210(7), 151.100(16), 223.400(6), 224.1-010(24), and 350.010(11).

CHARLES G. SNAVELY, Secretary
APPROVED BY AGENCY: July 3, 2018
FILED WITH LRC: July 13, 2018 at noon
CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions for certain terms used in 400 KAR Chapter 1.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish essential terms used in the administrative hearings regulations that relate to the cabinet's administrative hearing process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapters 146, 149, 151, 223, 224, and 350 authorize the cabinet to conduct administrative hearings and authorize the cabinet to promulgate administrative regulations to regulate the administrative hearing process. This regulation defines essential terms found in the regulations implementing those KRS Chapters, specifically 400 KAR Chapter 1.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes essential terms used in the administrative hearings regulations that relate to the cabinet's administrative hearing process found in 400 KAR Chapter 1.

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

(a) How the amendment will change this existing administrative regulation: This amendment is necessary to include appropriate citations to terms defined in KRS 353.510. The amendment also clarifies that the term "administrative hearing" does not include hearings conducted related oil and gas deep wells.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that the terms used in the cabinet's administrative hearings regulations are adequately defined in a clear manner and include all citations applicable to oil and gas shallow wells.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment defines essential terms of the administrative regulations governing the cabinet's administrative hearing process. The administrative hearing process ensures the cabinet can effectively administer the cabinet's programs related to oil and gas shallow wells.

(d) How the amendment will assist in the effective administration of statutes: This amendment will decrease possible conflict and delay by clarifying definitions to more specifically define terms as used by the cabinet through the administrative hearing process. Citations to KRS Chapter 353 have been added to ensure proper understanding of applicable administrative regulations in 400 KAR Chapter 1.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This regulation establishes definitions that apply to all individuals, businesses, organizations, or state and local governments that either initiate or become subject to an administrative proceeding in the cabinet's Office of Administrative Hearings. However, the amendment will only apply to oil and gas operators in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment is a clarifying amendment that adds citations for the oil and gas program that are subject to the cabinet's administrative hearings process due to the passage of SB 249. As a definitions administrative regulation, no requirements or actions are included in the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As a definitions administrative regulation, no requirements or actions are included that are associated with costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a definitions administrative regulation, no requirements or actions are included in the amendment, therefore, no specific benefits will accrue as a result of specific compliance by the entities.

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

(a) Initially: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's current operating budget will be used for the implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering was not used. The definitions found in the administrative regulation will apply equally to all parties of an administrative adjudication in the Cabinet's Office of Administrative Hearings.

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? The cabinet will continue to hold administrative hearings to as needed concerning matters covered by KRS Chapters 146, 149, 151, 223, 224, 350, and 353. State and local government will only be impacted insofar as they are parties of an administrative adjudication with the cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 146.270, 146.450, 146.990, 149.344, 149.346, 151.125, 151.182, 151.184, 151.186, 151.297, 223.200, 223.991, 224.10-100, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.40-310, 224.60-120, 350.020, 350.028, 350.0301, 350.0305, 350.255, 350.465, 350.610, 351.315, 351.345, 351.350, 353.700, 30 C.F.R. Parts 724, 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255.

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

(a) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed administrative regulation will not generate revenue in the first year.

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

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

STATEMENT OF EMERGENCY
400 KAR 1:040E

On July 14, 2018 the provisions of House Bill 261 and Senate Bill 249 went into effect removing administrative hearings related to shallow oil and gas wells and explosives and blasting operations from the KRS Chapter 13B administrative hearings process and placing them under the Energy and Environment Cabinet's administrative hearings process. Current Energy and Environment Cabinet regulatory requirements regarding administrative hearings for both shallow oil and gas wells and explosives and blasting operations will not comply with the statutory provisions amended by House Bill 261 and Senate Bill 249. Without further action, the regulated community is in jeopardy of being left with conflicting regulatory and statutory provisions. This emergency administrative regulation is necessary to immediately implement the provisions of House Bill 261 and SB 249 to avoid statutory provisions going into effect that conflict with current regulatory requirements causing confusion and uncertainty among the regulated community. The emergency administrative regulation will be replaced by an ordinary administrative regulation which is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
CHARLES G. SNAVELY, Secretary

ENERGY AND ENVIRONMENT CABINET
Office of the Secretary
(Emergency Amendment)

400 KAR 1:040E. Administrative discovery.

RELATES TO: 146.200-146.360, 146.990, 151.182, 151.184, 151.297, 151.990, Chapter 223, 224, 350.028, 350.070, 350.085, 350.093, 350.130, 350.465, 350.990, 351.315, 351.345, 351.350, 353.060, 353.200, 353.590, 353.5901, 353.620, 353.630, 353.640, 353.700, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

STATUTORY AUTHORITY: KRS 151.125, 224.10-100, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.40-310, 350.028, 350.255, 350.465, 351.315, 351.345, 351.350, 353.700, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

EFFECTIVE: July 13, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapters 146, 151, 223, 224,[~~and~~] 350, 351, and 353 authorize the cabinet to conduct administrative hearings and investigations concerning a wide variety of matters. This administrative regulation establishes procedures for discovery.

Section 1. General Provisions Governing Discovery. (1) Discovery methods. Parties to administrative hearings may obtain discovery by one (1) or more of the following methods:

(a) Depositions upon oral examination or written questions;

(b) Written interrogatories;

(c) Production of documents or things or, for parties other than the cabinet, permission to enter upon land or other property, for inspection and other purposes; and

(d) Requests for admission. Unless the hearing officer orders otherwise under subsection (3) of this section, the frequency of use of these methods is not limited.

(2) Scope of discovery.

(a) In general. Parties may obtain discovery regarding any matter, not privileged or confidential under KRS 224.10-210, 224.10-212, 353.660, 353.6603 through 353.6606, or under any other privilege recognized by statute or at common law, whether it relates to a claim or defense of the party seeking discovery or to a claim or defense of any other party, which is relevant to the subject matter involved in the administrative hearing, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information sought will be inadmissible at the administrative hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(b) Insurance agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(c) Hearing preparation: materials.

1. Subject to the provisions of paragraph (d) of this subsection, a party may obtain discovery of documents and tangible things otherwise discoverable under subsection (1) of this section and prepared in anticipation of the administrative hearing by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the hearing officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

2. A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for an order of the hearing officer. For purposes of this paragraph, a statement previously made is a written statement signed or otherwise adopted or approved by the person making it, or a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(d) Hearing preparations: experts. Discovery of facts known and opinions held by experts, otherwise discoverable under this administrative regulation and acquired or developed in anticipation of or preparation for the administrative hearing, may be obtained only as follows:

1. A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at the administrative hearing, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. Upon motion, the hearing officer may order further discovery by other means, subject to those restrictions as to scope as the hearing

officer may deem appropriate.

2. A party may discover facts known or opinions held by an expert who has been retained or employed by another party in anticipation of or preparation for an administrative hearing and who is not expected to be called as a witness at the administrative hearing, only upon a showing of exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(3) Protective orders.

(a) Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without administrative action, and for good cause shown, the hearing officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one (1) or more of the following:

1. That the discovery not be had;

2. That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

3. That the discovery may be had only by a method of discovery other than selected by the party seeking discovery;

4. That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

5. That discovery be conducted with no one present except persons designated by the hearing officer;

6. That a deposition after being sealed be opened only by order of the cabinet; or

7. That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.

(b) If the motion for a protective order is denied in whole or in part, the hearing officer may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Section 10(1)(c) of this administrative regulation apply to the award of expenses incurred in relation to the motion.

(4) Sequence and timing of discovery. Unless the hearing officer upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(5) Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement that response to include information thereafter acquired, except as follows:

(a) A party is under a duty seasonably to supplement a response with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, or the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

(b) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which the party knows that the response was incorrect when made, or the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(c) A duty to supplement responses may be imposed by order of the hearing officer, agreement of the parties, or at any time prior to the hearing through new requests for supplementation of prior responses.

Section 2. Persons before Whom Depositions may be Taken. Depositions shall be taken before an examiner; a judge, clerk, commissioner or official reporter of a court; a notary public; or before such other persons and under such other circumstances as shall be authorized by law.

Section 3. Stipulations Regarding Discovery Procedure. Unless the hearing officer orders otherwise, the parties may, by agreement, provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and modify the procedures provided by this administrative regulation for other methods of discovery.

Section 4. Depositions Upon Oral Examination. (1) When depositions may be taken. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. The attendance of witnesses may be compelled by subpoena. The deposition of a person confined in prison may be taken only by leave of a court having appropriate jurisdiction and on such terms as the court prescribes.

(2) General requirements.

(a) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the administrative hearing. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, the matter upon which each person will be examined, and the name or descriptive title and address of the person before whom the deposition is to be taken. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(b) The hearing officer may for cause shown enlarge or shorten the time for taking the deposition.

(c) The hearing officer may upon motion order that the testimony at a deposition be recorded by other than stenographic means, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at the party's own expense.

(d) The notice to a party deponent may be accompanied by a request made in compliance with Section 8 of this administrative regulation for the production of documents and tangible things at the taking of the deposition. The procedure of Section 8(2) of this administrative regulation shall apply to the request.

(e) A party may in the notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one (1) or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This paragraph does not preclude taking a deposition by any other procedure authorized in this administrative regulation.

(3) Examination and cross-examination.

(a) Examination and cross-examination of witnesses may proceed as permitted at the administrative hearing. The person before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the person's direction and in the person's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subsection (2)(c) of this section. If requested by one (1) of the parties, the testimony shall be transcribed at that party's expense.

(b) All objections made at the time of the examination to the qualifications of the person taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the person taking the deposition upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and that party shall transmit them to the officer, who shall

propound them to the witness and record the answers verbatim.

(4) Motion to terminate or limit examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the hearing officer may order the person conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Section 1(3) of this administrative regulation. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the hearing officer. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Section 10(1)(c) of this administrative regulation apply to the award of expenses incurred in relation to the motion.

(5) Submission to witness. Any party to an action may make a written request before the person taking a deposition therein that it be submitted to the witness. In such an event, when the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by the witness. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the person taking the deposition with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness unless the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the person before whom the deposition is taken shall sign it and state on the record the fact of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress the hearing officer holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(6) Certification and filing by person taking deposition.

(a) The person before whom the deposition is taken shall certify on the deposition that the witness was duly sworn by that person and that the deposition is a true record of the testimony given by the witness.

(b) Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that the person producing the materials may substitute copies to be marked for identification, if a fair opportunity is afforded all parties to verify the copies by comparison with the originals, and if the person producing the materials requests their return, the person before whom the deposition is taken shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition pending final disposition of the case.

(c) Upon payment of reasonable charges therefor, not to exceed those fixed by statute, the person taking the deposition shall furnish a copy of the deposition to any party or to the deponent.

(7) Failure to attend or to serve subpoena; expenses.

(a) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the hearing officer may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by the party and the party's attorney in so attending, including reasonable attorney's fees.

(b) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because the party expects the deposition of that witness to be taken, the hearing officer may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by the party and the party's attorney in so attending, including reasonable attorney's fees.

Section 5. Depositions Upon Written Questions. (1) Serving questions; notice.

(a) After service of the summons, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoenas. The deposition of a person confined in prison may be taken only by leave of court of appropriate jurisdiction on such terms as that court prescribes.

(b) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and the name or description title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Section 4(2)(e) of this administrative regulation.

(c) The hearing officer may establish an expeditious schedule for the service of cross, redirect, and recross questions.

(2) The officer before whom the deposition is to be taken to take responses and prepare record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Section 4(3), (5) and (6) of this administrative regulation, to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions which were received. Neither party agent, or attorney shall be present at the examination of the witness.

Section 6. Use of Depositions in Administrative Hearings. (1) Use of depositions. At the administrative hearing any part or all of a deposition so far as admissible may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(b) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Section 4(2)(e) or 5(1)(b) of this administrative regulation to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the hearing officer finds that:

1. The witness is dead;

2. The party offering the deposition has been unable to procure the attendance of the witness by subpoena;

3. The witness is at a greater distance than 100 miles from the place of the administrative hearing or out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition;

4. The witness is the Governor, Secretary, Auditor or Treasurer of the state; or the witness is a judge or clerk of a court; or the witness is a postmaster; or the witness is a president, cashier, teller or clerk of a bank; or the witness is a practicing physician, dentist or lawyer; or the witness is a keeper, officer or guard of a penitentiary;

5. The witness is of unsound mind, having been of sound mind when his deposition was taken;

6. The witness is prevented from attending the trial by illness, infirmity, or imprisonment;

7. The witness is in the military service of the United States or of this state; or

8. The hearing officer finds that such circumstances exist as to make it desirable, in the interest of justice and with due regard to

the importance of presenting the testimony of witnesses orally at the administrative hearing, to allow the deposition to be used.

(d) If only a part of a deposition is offered in evidence by a party, an adverse party may require introduction of any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

(e) Substitution of parties does not affect the right to use depositions previously taken.

(2) Objections to admissibility. Objection may be made at the administrative hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(3) Effect of taking or using depositions. The taking of a deposition or the questioning of a deponent shall not make evidence admissible which is otherwise incompetent or constitute a waiver of objections to its admissibility.

(4) Effect of errors and irregularities.

(a) As to notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(b) As to disqualification of person before whom deposition is to be taken. Objection to taking a deposition because of disqualification of the person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(c) As to taking of deposition.

1. Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one (1) which might have been obviated or removed if presented at that time.

2. Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

3. Objections to the form of written questions are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within three (3) days after service of the last questions authorized.

(d) As to completion and return of deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the person before whom the deposition was taken under this section and Section 5 of this administrative regulation are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

Section 7. Interrogatories to Parties. (1) Availability; procedures for use.

(a) Any party may serve upon any other party written interrogatories to be answered by the party served, or if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may be served upon any party at any time after the commencement of the action. A copy of the interrogatories, answers and all related pleadings shall be served upon all parties.

(b) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within thirty (30) days of service or within such other time as specified by the hearing officer or agreed upon. The party submitting the interrogatories may move for an order under Section 10(1) of this administrative regulation with respect to any objection to or other failure to answer an interrogatory.

(c) Each party may propound a maximum of thirty (30) interrogatories and thirty (30) requests for admission to each other party; for purposes of this section, each subpart of an interrogatory or request shall be counted as a separate interrogatory or request. The following interrogatories shall not be included in the maximum allowed:

1. A request for the names and addresses of persons answering the interrogatories;

2. A request for the names and addresses of the witnesses; and

3. A request as to whether the persons answering are willing to supplement their answers if information subsequently becomes available. Any party may move the hearing officer for permission to propound either interrogatories or requests for admission in excess of the limit of thirty (30).

(2) Scope; use at administrative hearing.

(a) Interrogatories may relate to any matters which may be inquired into under Section 1(2) of this administrative regulation, and the answers may be used to the extent permitted by the rules of evidence.

(b) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the hearing officer may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

(3) Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

Section 8. Production of Documents and Things. (1) Scope. Any party may serve on any other party a request to produce and permit the party making the request, or someone acting on the party's behalf, to:

(a) Inspect and copy any designated documents, including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form; or

(b) Inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Section 1(2) of this administrative regulation and which are in the possession, custody or control of the party upon whom the request is served. However, this subsection shall not be construed so as to limit or impose additional requirements on the cabinet with respect to its authority to enter property or to conduct inspections authorized by law.

(2) Procedure. The request may be served on any party without leave of the hearing officer at any time after service of the summons. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The party upon whom the request is made shall serve written response within thirty (30) days or within such other time as specified by the hearing officer or agreed upon by the parties. The party submitting the request may move for an order under Section 10 of this administrative regulation with respect to any objection to or failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

Section 9. Requests for Admission. (1) A party may serve upon any other party a written request for admission, for purposes of the pending administrative hearing only, of the truth of any matters within the scope of Section 1(2) of this administrative regulation set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. The request may be served at any time after the commencement of the action. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying.

(2) Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty (30) days after service of the request, or within such shorter or longer time as the hearing officer may allow or the parties may agree, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that a reasonable inquiry has been made and that the information known or readily obtainable is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for the hearing may not, on that ground alone, object to the request; the party may deny the matter or set forth reasons why the matter cannot be admitted or denied.

(3) The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the objection is justified, the hearing officer shall order that an answer be served. If the hearing officer determines that an answer does not comply with the requirements of this section, the hearing officer may order either that the matter is admitted or that an amended answer be served. The hearing officer may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference. The provisions of Section 10(3) of this administrative regulation apply to the award of expenses incurred in relation to the motion.

(4) Effect of admission. Any matter admitted under this section is conclusively established unless the hearing officer on motion permits withdrawal or amendment of the admission. The hearing officer may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the hearing officer that withdrawal or amendment will prejudice the party in maintaining the action or defense on the merits. An admission made by a party under this section is for the purpose of the pending administrative hearing only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

Section 10. Failure to Make Discovery: Sanctions. (1) Motion for order compelling discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(a) Motion.

1. If a deponent fails to answer a question propounded or submitted under Section 4 or 5 of this administrative regulation or a corporation or other entity fails to make a designation under Sections 4(2)(e) or 5(1)(b) of this administrative regulation, or a party fails to answer an interrogatory submitted under Section 7 of this administrative regulation, or a party fails to allow examination under Section 8 of this administrative regulation, the discovering party may move for an order compelling an answer or a designation or an order compelling examination in accordance with the request. The motion shall include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without administrative action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

2. If the motion is denied in whole or in part, the hearing officer may make such protective order as the hearing officer would have been empowered to make on a motion made pursuant to Section 1(3) of this administrative regulation.

(b) Evasive or incomplete answer. For the purposes of this section an evasive or incomplete answer is to be treated as a failure to answer.

(c) Award of expenses of motion.

1. If the motion is granted the hearing officer shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the hearing officer finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

2. If the motion is denied, the hearing officer shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the hearing officer finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

3. If the motion is granted in part and denied in part, the hearing officer may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(2) Failure to comply with order.

(a) Sanctions by the hearing officer. If a party or an officer, director, or managing agent of a party or a person designated under Section 4(2)(e) or 5(1)(b) of this administrative regulation to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subsection (1) of this section, the hearing officer may make such orders in regard to the failure as are just, and among others the following:

1. An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

2. An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing designated matters in evidence; and

3. An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

(b) Expenses on failure to obey order. In lieu of any of the foregoing orders or in addition thereto, the hearing officer shall require the party failing to obey the order or the attorney advising the party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the hearing officer finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(3) Expenses on failure to admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Section 9 of this administrative regulation, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the hearing officer for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The hearing officer shall make the order unless it finds that the request was held objectionable pursuant to Section 9(1) of this administrative regulation, or the admission sought was of no substantial importance, or the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or

there was other good reason for the failure to admit.

(4) Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection.

(a) If a party or an officer, director, or managing agent of a party or a person designated under Section 4(2)(e) or 5(1)(b) of this administrative regulation to testify on behalf of a party fails to appear before the officer who is to take his deposition, after being served with a proper notice, or to serve answers or objections to interrogatories submitted under Section 7 of this administrative regulation, after proper service of the interrogatories, or to serve a written response to a request for examination submitted under Section 8 of this administrative regulation, after proper service of the request, the hearing officer on motion may make such orders in regard to the failure as are just, and among others, the hearing officer may take any action authorized under subparagraphs 1, 2, and 3 of subsection (2)(a) of this section. In lieu of any order or in addition thereto, the hearing officer shall require the party failing to act to pay the reasonable expenses, including attorney's fees, caused by the failure unless the hearing officer finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(b) The failure to act described in this section may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided in Section 1(3) of this administrative regulation.

(5) Expenses against the Commonwealth. Expenses and attorney's fees are not to be imposed upon the Commonwealth under this section, except as otherwise provided in 400 KAR 1:110, Section 12.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 3, 2018

FILED WITH LRC: July 13, 2018 at noon

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for administrative hearings discovery procedures.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish information and procedures related to discovery.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapters 146, 151, 223, 224, 350, and 353 authorize the cabinet to conduct administrative hearings and authorize the cabinet to promulgate administrative regulations to regulate the administrative hearing process. This regulation is necessary to establish information and procedures related to discovery.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administrative of the statutes by establishing information and procedures related to discovery.

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

(a) How the amendment will change this existing administrative regulation: This amendment is necessary to insert citations to statutes related to privileged or confidential information that is not subject to the discovery procedures listed in Section 1(2).

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that the discovery procedures covered by this administrative regulation does not affect the confidential protections provided by KRS 353.660, 353.6603 through 353.6606 related to oil and gas shallow wells.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 353.660, 353.6603 through 353.6606 authorizes the division to keep certain information confidential. This amendment provides citations to those statutes that are not subject to discovery during the administrative hearings process.

(d) How the amendment will assist in the effective administration of statutes: The amendment will assist in the effective administration of the statutes by including in the administrative regulation the citations to statutes that include confidential provisions and are not subject to discovery during the administrative hearings process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation applies to all individuals, businesses, organizations, or state and local governments that either initiate or become subject to an administrative proceeding in the cabinet's Office of Administrative Hearings. However, the amendment will only apply to oil and gas operators in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment is a clarifying amendment that adds citations for the oil and gas program that are subject to the cabinet's administrative hearings process due to the passage of SB 249. No additional action is needed from the regulated entity. The confidentiality protections already existed in statute but were inserted into the administrative hearings administrative regulations for completeness.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs tot eh regulated entities associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entity will not receive any additional benefit by compliance with this amendment. The confidentiality protections already exist in the cited statutory citations and therefore are part of the existing protections provided to the regulated entity.

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

(a) Initially: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's current operating budget will be used for the implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering was not used. The protections provided by the statutes listed regarding confidentiality apply equally to all oil and gas operators.

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? State and local government will only be impacted insofar as they are parties of an administrative adjudication with the cabinet.

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

regulation. KRS 151.125, 224.10-100, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.40-310, 350.028, 350.255, 350.465, 351.315, 351.345, 351.350, 353.700, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

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

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

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

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

STATEMENT OF EMERGENCY
400 KAR 1:090E

On July 14, 2018 the provisions of House Bill 261 and Senate Bill 249 went into effect removing administrative hearings related to shallow oil and gas wells and explosives and blasting operations from the KRS Chapter 13B administrative hearings process and placing them under the Energy and Environment Cabinet's administrative hearings process. Current Energy and Environment Cabinet regulatory requirements regarding administrative hearings for both shallow oil and gas wells and explosives and blasting operations will not comply with the statutory provisions amended by House Bill 261 and Senate Bill 249. Without further action, the regulated community is in jeopardy of being left with conflicting regulatory and statutory provisions. This emergency administrative regulation is necessary to immediately implement the provisions of House Bill 261 and SB 249 to avoid statutory provisions going into effect that conflict with current regulatory requirements causing confusion and uncertainty among the regulated community. The emergency administrative regulation will be replaced by an ordinary administrative regulation which is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
CHARLES G. SNAVELY, Secretary

ENERGY AND ENVIRONMENT CABINET
Office of the Secretary
(Emergency Amendment)

400 KAR 1:090E. Administrative hearings practice provisions.

RELATES TO: KRS 146.200-146.360, 146.450, 146.530, 146.990, 149.344, 149.346, 149.348, 151.125, 151.182, 151.184, 151.297, 151.990, Chapters 223, 224, 350.028, 350.029, 350.0301, 350.0305, 350.032, 350.060, 350.070, 350.085, 350.090, 350.093, 350.130, 350.240, 350.255, 350.300, 350.305, 350.465, 350.610, 350.990, 351.315, 351.345, 351.350, 353.060, 353.200, 353.590, 353.5901, 353.620, 353.630, 353.640, 353.700, 30 C.F.R. Parts 724, 730, 731, 732, 733, 735, 917, 39 C.F.R., 30 U.S.C. 1253, 1255

STATUTORY AUTHORITY: KRS 146.270, 146.450, 146.990, 149.344, 149.346, 151.125, 151.182, 151.184, 151.186, 151.297, 223.200, 223.991, 224.10-100, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.40-310, 224.60-120, 350.020, 350.028, 350.029, 350.0301, 350.0305, 350.240, 350.255, 350.300, 350.465, 350.610, 351.315, 351.345, 351.350, 353.700, 30 C.F.R. Parts 724, 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

EFFECTIVE: July 13, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapters 146, 149, 151, 223, 224,[~~and~~] 350, 351, and 353 authorize the cabinet to conduct administrative hearings and authorize the cabinet to promulgate administrative regulations to regulate the administrative hearing process. This administrative regulation establishes procedures for conducting administrative hearings, administrative conferences, mediations, and issuance of final orders in regard to violations and final determinations of the cabinet made pursuant to KRS Chapters 146, 149, 151, 223, 224,[~~and~~] 350, and 353.

Section 1. Applicability. This administrative regulation establishes procedures for conducting an administrative hearing, administrative conference, mediation, and issuance of a final order in regard to a violation and a final determination of the cabinet made pursuant to KRS Chapters 146, 149, 151, 223, 224,[~~and~~] 350, 351.315 to 351.375, and 353, except for those conducted by the Kentucky Oil and Gas Conservation Commission pursuant to KRS 353.500 to 353.720.

Section 2. Assignment of a Case Number and Caption. (1) Assignment of a case number.

(a) If the office receives an initiating document, filed in accordance with Section 3 of this administrative regulation by a person other than the cabinet, the office shall assign a case number to that document.

(b) If the initiating document is filed by the cabinet's Office of General Counsel, the Office of General Counsel shall assign the case number to the document at the time of filing.

(2) Caption requirements. Any person filing an initiating document, or pleading in the office shall state:

(a) The case number in accordance with subsection (1) of this section;

(b) The permit number if it relates to a permit;

(c) The noncompliance number if it relates to a notice of noncompliance and order for remedial measures as defined in 400 KAR 1:110, Section 1;

(d) The cessation order number if it relates to a cessation order as defined in 400 KAR 1:110, Section 1;

(e) The agency interest number, if known;

(f) The petitioner name;

(g) The respondent name; and

(h) Any intervenor name.

(3) Any person filing an initiating document in the office shall state in the caption of the document, the name and address of the person to be served on behalf of each respondent.

(4) Consolidated case caption. A pleading filed in a consolidated case shall list all consolidated case numbers. If a pleading filed in a consolidated case pertains to some, but not all, of the consolidated cases, the party filing the document shall indicate the case to which the document applies.

Section 3. Filing and Retention of a Pleading or Discovery Material. (1) Filing of a pleading.

(a) Any person filing a pleading in the office shall file the original pleading with the office.

(b) A pleading may be initially filed by facsimile or electronic mail pursuant to the requirements in subparagraphs 1. and 2. of this paragraph. A person filing by facsimile or electronic mail shall, after sending the document via facsimile or by electronic mail, file the original of the document with the office.

1. Facsimile.

a. A person filing a pleading in the office may file the pleading

by facsimile at the facsimile number listed for the office.

b. The facsimile pleading shall be stamped filed according to the time and date stamp placed on the facsimile pleading by the office facsimile machine and shall be filed in the record upon retrieval from the office facsimile machine.

c. If the office facsimile machine malfunctions, the facsimile pleading shall be stamped as of the date actually received in the office.

2. Electronic mail.

a. A person filing a pleading in the office may file the pleading by electronic mail at the electronic mail address listed for the office, not the electronic mail address of the assigned hearing officer.

b. The pleading shall be filed as a searchable Portable Document Format (PDF). If the pleading is not electronically mailed in a Portable Document Format, it shall not be accepted by the office.

c. The electronic mail pleading shall be stamped filed according to the time and date placed on the electronic mail pleading as received by the office computer and shall be filed in the record upon retrieval from the office computer.

d. If the office electronic mail server fails, the document shall be stamped as of the date actually received in the office.

(c) The original pleading shall be file stamped on the date actually received by the office. The effective date of filing shall be the earlier date of the receipt in the office of either the facsimile, the electronic mail, or the original.

(d) Filing of discovery material.

1. Except as provided by subparagraph 3 of this paragraph, the following documents shall not be filed with the office unless the hearing officer issues an order otherwise:

a. Interrogatory;

b. Request for production or inspection; and

c. Request for admission.

2. The party responsible for the service of the discovery material shall retain the original and become the custodian. The custodian shall provide access to any party of record during the pendency of the action.

3. If a document listed in paragraph (d)1. of this section is to be used at the administrative hearing or in support of a pleading, then the document shall be filed in the office at the beginning of the administrative hearing or at the time the pleading is filed.

(2) Official record.

(a) Each pleading, book, record, paper, or map received in evidence in an administrative hearing or submitted for the record in a proceeding before the office shall be retained in the official record. The replacement of an original document with an accurate photocopy may be permitted while the case is pending upon terms and conditions as may be ordered by the hearing officer.

(b) If a final order of the secretary has been entered, the hearing officer may, upon request and after notice to each party, authorize the replacement of an original document with an accurate photocopy.

(3) Signature and record address.

(a) Contact information. A person who files a pleading in the record shall sign the document and shall state the person's:

1. Mailing address;

2. Electronic mail address, if available;

3. Facsimile number, if available; and

4. Telephone number.

(b) Change of contact information. If any of the information that is required to be provided in paragraph (a) of this subsection changes, the person shall within fourteen (14) days of the change, file a notice of change of information in the office identifying each case number in which the person has made a filing.

(4) Submission of authority. If a person filing a pleading relies upon a pertinent case decision or other legal authority in the pleading, the person may file with the pleading a copy of the case decision or other legal authority. If the person files a copy of authority, the person shall serve upon each party in the case a copy of the case decision or other legal authority with the pleading.

(5) Format requirements. Each pleading filed with the office shall conform to the requirements established in paragraphs (a) and (b) of this subsection.

(a) Paper size and binding. The pleading shall be on eight and one-half (8 1/2) inches by eleven (11) inches paper stock; and

(b) Type size and style. The document shall be typed in a twelve (12) point font.

(6) Electronic recording and transcript.

(a) An administrative hearing and proceeding before the office shall be electronically recorded.

(b) A digital copy of the electronic recording shall be provided by the office upon request.

(c) The cost of a transcript shall be borne by the requesting party and prepared by a certified court reporter pursuant to a contract between the reporter and the cabinet. The cost of the transcript shall be at the rate established by the contract.

(d) Requirement to file transcript with the office.

1. Any party who obtains a transcript of a proceeding before the office and who cites to, quotes from or otherwise relies upon that transcript in any pleading filed with the office, shall file a complete copy of the transcript in the record in the office, unless a copy of the transcript was previously filed in the record.

2. The transcript shall be filed no later than the date upon which the party first cites to, quotes from or relies upon the transcript in any pleading filed with the office.

3. If the party fails to file the transcript with the office that is cited, quoted, or otherwise relied upon in a pleading, the hearing officer may strike all or part of the pleading that refers to the transcript.

Section 4. Time. (1) Computation.

(a) In computing any period of time prescribed or allowed by order of the hearing officer or administrative regulation, the day of the act, event, or default after which the designated period of time begins to run shall not be included.

(b) The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period shall run until the end of the next day that is not a Saturday, a Sunday, or a legal holiday.

(c) If the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

(d) If a person has the right or is required to perform an act within a period prescribed by order of the hearing officer or administrative regulation after the service of a notice or other pleading upon the party and the notice or pleading is served by mail, three (3) days shall be added to the prescribed period. This provision shall not apply to the service of administrative summons and an initiating document by mail.

(2) Extensions of time.

(a) A motion for an extension of time shall be filed within the time allowed for filing the pleading. The hearing officer, upon cause shown, may order the period extended. If the motion is made after the expiration of the time allowed for filing the pleading, the hearing officer may order the period extended if the failure to act was the result of excusable neglect.

(b) The hearing officer shall not extend the time for filing an initiating document pursuant to the applicable statute of limitations, or if the extension is contrary to any other law or administrative regulation.

Section 5. Administrative Summons and Service of Process. The provisions of this section shall not apply to hearings conducted pursuant to KRS Chapter 353. Information related to administrative summons and service of process for hearings conducted pursuant to KRS Chapter 353 shall be found in Section 24 of this administrative regulation. (1) Upon receipt of an initiating document, the office shall serve a copy of the initiating document upon each party designated on the initiating document to be served along with an administrative summons. The office shall serve the initiating document in accordance with the method designated on the initiating document and subsection (4) this section.

(2) The administrative summons shall:

(a) Notify the respondent that an initiating document has been filed against the respondent and unless a written defense is timely

served, action adverse to the respondent's interest may be taken;

(b) Designate the date, time, and place of the prehearing conference or administrative hearing; and

(c) Include a statement of the legal authority for the administrative hearing and reference to the statutes and administrative regulations involved.

(3) Service shall be made pursuant to one of the methods in subparagraphs (a) through (k) of this subsection.

(a) Individual within the Commonwealth. Service shall be made upon an individual within the Commonwealth, other than an unmarried infant or person of unsound mind, by delivering a copy of the administrative summons and initiating document to the person or, if acceptance is refused, by offering personal delivery to the person, or by delivering a copy of the administrative summons and initiating document to an agent authorized by appointment or by law to receive service of process for the individual.

(b) Unmarried infant or person of unsound mind. Service shall be made upon an unmarried infant or a person of unsound mind by serving the person's resident guardian or committee if there is one (1) known to the initiating party or, if none; by serving either the person's father or mother within this state or, if none, by serving the person within this state having control of the individual. If there are no persons, application shall be made to the appropriate court to appoint a practicing attorney as guardian ad litem who shall be served. If any person directed by this section to be served is also an initiating party, the person who stands first in the order named who is not an initiating party shall be served.

(c) Partnership or unincorporated association. Service shall be made upon a partnership or unincorporated association subject to suit under a common name by serving:

1. A partner or managing agent of the partnership;

2. An officer or managing agent of the association; or

3. An agent authorized by appointment or by law to receive service on its behalf.

(d) Corporation. Service shall be made upon a corporation by serving an officer or managing agent thereof, or any other agent authorized by appointment or by law to receive service on its behalf.

(e) Person issued a permit, registration, or certification from the cabinet. Service shall be made at the address specified in the permit, registration, registration application, certification, or certification application, exploration notice or exploration application pursuant to 405 KAR 8:020 upon:

1. A person issued a permit, registration, or certification by the cabinet;

2. A person specified as an operator in the permit; or

3. The person's named agent for service stated in the permit, registration, registration application, certification, or certification application.

(f) Commonwealth or agency other than the cabinet. Service shall be made upon the Commonwealth or any agency other than the cabinet by serving the attorney general or any assistant attorney general.

(g) Cabinet. Service of a request for an administrative hearing shall be made upon the cabinet by serving the Executive Director of the Office of General Counsel.

(h) County, city, public board, or other administrative body except state agencies.

1. Service shall be made upon a county by serving the county judge or, if the judge is absent from the county, the county attorney.

2. Service shall be made upon a city by serving the chief executive officer of the city or an official attorney of the city.

3. Service on any public board or other administrative body, except state agencies, shall be made by serving a member.

(i) Nonresident. Service may be made upon a nonresident individual who transacts business through an office or agency in this state, or a resident individual who transacts business through an office or agency in any action growing out of or connected with the business of an office or agency, by serving the person in charge.

(j) Out of state individual. Service may be made upon an individual out of this state, other than an unmarried infant, a person of unsound mind or a prisoner, by any method stated in subsection (4) of this section.

(k) Unknown person. In an action against a person whose name is unknown to the initiating party, the person shall be described in the initiating document and administrative summons as unknown party. If the person's name or place of residence is discovered during the action, then the initiating document shall be amended accordingly.

(4) Methods of service. The office shall place a copy of the document to be served in an envelope and address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions provided by the initiating party. The office shall employ one (1) of the methods of service in paragraphs (a) through (c) of this subsection as directed by the petitioner on the initiating document in accordance with Section 2(3) of this administrative regulation.

(a) Certified mail.

1. The office shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested.

2. The office shall enter the fact of mailing in the record and make a similar entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record.

3. The office shall file the return receipt or returned envelope in the record;

(b) Personal service.

1. The office shall cause the envelope to be transferred for service to a person authorized by the secretary or by a statute to deliver it, or to a person authorized to serve an action in a court of law who shall serve the initiating document.

2. The office shall enter the fact of delivery in the record and make a similar entry when the return receipt from the authorized person is received.

3. If the return receipt is returned with an endorsement showing failure of delivery, that fact shall be entered in the record. The return receipt shall be proof of the time and manner of service; or

(c) Other method allowed by law. Any other method of service authorized by statute, administrative regulation, or the civil rules for an action in a circuit court of the Commonwealth of Kentucky shall be supplemental to and shall be accepted as an alternative to any of the methods of service specified in subsections (3) or (4) of this section.

(5) Proof of service. The return receipt shall be proof of acceptance, refusal, inability to deliver, or failure to claim the document. The return receipt shall also be proof of the time, place, and manner of service. Service shall be effective upon:

(a) Acceptance of the summons by any person eighteen (18) years of age or older at the permanent address;

(b) Refusal to accept the summons by any person at the permanent address;

(c) The United States Postal Service's inability to deliver the certified mail containing the summons if properly addressed pursuant to Section (4) of this section;

(d) Failure to claim the certified mail containing the summons prior to its return to the cabinet by the United States Postal Service; or

(e) To the extent the United States postal regulations, 39 C.F.R., allow authorized representatives of local, state, or federal governmental offices to accept and sign for "addressee only" mail, signature by the authorized representative shall constitute service on the addressee.

Section 6. Service of a Pleading and Discovery Material. (1) Service is required. Except as provided in subsections (2) or (5) of this section, a party, including a person filing a motion for intervention, shall serve the following pleadings or other documents upon each party in the proceeding:

(a) Every order required by its terms to be served;

(b) Every pleading subsequent to the original initiating document; and

(c) Every document relating to discovery required to be served

upon a party.

(2) Service requirement for a party in default. If a secretary's order of default has been entered against a party for failure to appear, then that party shall not be required to be served pursuant to subsection (1) of this section. The defaulting party shall only be given notice of a pleading asserting a new or additional claim for relief against the defaulting party by an initiating document and summons issued thereon.

(3) How service is made.

(a) If service is required pursuant to subsection (1) of this section or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the hearing officer.

(b) Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney's or party's last known address. Delivery of a copy shall include:

1. Handing it to the attorney or to the party;

2. Leaving it at the attorney's or party's office with the person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or

3. If the office is closed or the person to be served has no office, leaving it at the attorney's or party's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(c) Service by mail shall be complete upon mailing unless the serving party learns or has reason to know it did not reach the person to be served.

(4) Proof of service.

(a) Proof of the time and manner of service shall be filed in the office before the hearing officer or the party is required to take action.

(b) Proof may be by:

1. Certificate of a member of the bar;

2. Affidavit of the person who served the document; or

3. By any other proof satisfactory to the hearing officer.

(c) The certificate or affidavit shall identify by name the person served.

(5) Service on numerous respondents. If there are numerous respondents, the hearing officer may designate one (1) respondent for the service of each document.

Section 7. Hearing Officer. (1) Functions of a hearing officer. An independent hearing officer shall preside at the administrative hearing, shall keep order, and shall conduct the administrative hearing. The hearing officer shall:

(a) Administer oaths and affirmations;

(b) Issue subpoenas in accordance with Section 8 of this administrative regulation;

(c) Issue appropriate orders relating to discovery in accordance with 400 KAR 1:040;

(d) Rule on procedural requests or similar matters;

(e) Preside over prehearing conferences for settlement or simplification of the issues;

(f) Regulate the course of the administrative hearing;

(g) Rule on offers of proof and receive relevant evidence;

(h) Rule on a motion for summary disposition in accordance with Section 17 of this administrative regulation;

(i) Rule on a motion for directed recommendation in accordance with Section 18 of this administrative regulation;

(j) Issue an order for temporary relief in accordance with 400 KAR 1:110, Section 11 and 400 KAR 1:120, Section 7;

(k) Serve as a mediator in accordance with Section 23 of this administrative regulation;

(l) Take any other action authorized by KRS Chapters 146, 149, 151, 223, 224, 350, 351, 353, and the administrative regulations promulgated pursuant thereto; and

(m) Make or recommend decisions or reports in accordance with KRS Chapters 146, 149, 151, 223, 224, 350, 351, 353, and the administrative regulations promulgated pursuant thereto.

(2) No Authority to Grant Injunctive Relief or a Stay. Notwithstanding the right to grant temporary relief in accordance with 400 KAR 1:110, Section 11 and 400 KAR 1:120, Section 7, a hearing officer shall not have any independent authority to grant injunctive relief or a request for a stay of any statutory, regulatory, or permit requirement.

(3) Ex parte communication.

(a) Except to the extent required for the disposition of an ex parte matter as authorized by law, the hearing officer shall not discuss the merits of an administrative hearing or proceeding with a person identified in subparagraphs 1. through 3. of this paragraph, unless the communication, if oral, is made in the presence of each and every party or their representative, or, if written, is furnished to each party.

1. A party to the proceeding;

2. A person interested in the proceeding; or

3. A representative of a party.

(b) Office personnel involved or who may become involved in the decision making process of an administrative hearing shall not discuss the merits of an administrative hearing or proceeding with a person identified in paragraph (a)1. through 3. of this subsection, unless the communication, if oral, is made in the presence of every other party or their representative, or, if written, is furnished to every party.

(c) The hearing officer and office personnel may discuss the case status or provide advice concerning compliance with a procedural requirement with a person identified in paragraph (a)1. through 3. of this subsection, unless the area of inquiry is in fact an area of controversy in the administrative hearing or proceeding over which the hearing officer is presiding.

(d) An oral communication made in violation of this subsection shall be reduced to writing in a memorandum by the person receiving the communication and shall be included in the record.

(e) A written communication made in violation of this administrative regulation shall be included in the record and a copy of the memorandum or communication shall be provided to each party, who shall be given an opportunity to respond in writing.

(4) Disqualification. The hearing officer shall withdraw from a case if, according to recognized canons of judicial ethics, the hearing officer deems it appropriate. If prior to a decision of the hearing officer, an affidavit of personal bias or disqualification with substantiating facts is filed, and the hearing officer concerned does not withdraw, the secretary shall determine the matter of disqualification.

Section 8. Subpoena. (1) If requested by a party, the hearing officer shall issue a subpoena requiring the attendance of a witness or production of a book, paper, document, or tangible thing designated therein, or both, at an administrative hearing or at the taking of a deposition.

(2) A subpoena shall be issued using OAH 100 or OAH 101.

(3) A subpoena may be served by:

(a) A person who is not less than eighteen (18) years of age; or

(b) Certified mail, return receipt requested.

(4) The original subpoena bearing a certificate of service shall be filed with the office.

(5) The return receipt if signed by the addressee's authorized agent shall constitute proof of service of the subpoena.

Section 9. De Novo Review. An administrative hearing shall be de novo as to all issues of fact and law. A previous final order on the merits shall be binding against each party or any party in privity with the original party to that action in regard to the issues determined by that final order.

Section 10. Right to Counsel, Entry of Appearance, and Notice of Withdrawal. (1) Right to counsel. A party to an administrative hearing may be represented by counsel. The hearing officer shall permit any party to represent his own interests, except a party that is a corporation or limited liability company shall only be represented by an attorney licensed to practice law in the Commonwealth of Kentucky. The failure of the corporation or limited liability company to appear by counsel, without good cause, shall be grounds for default.

(2) Filing of notice of entry of appearance.

(a) An attorney representing a party before the office shall file a

written notice of entry of appearance in each case before the attorney may practice in that case before the office.

(b) The notice of entry of appearance shall set forth the current, complete and correct name, address, telephone number, and facsimile number, if any, and electronic mail address, if any.

(c) An attorney is not required to file a separate notice of entry of appearance if the attorney files a pleading on behalf of attorney's client.

(3) Withdrawal of representation. An attorney of record shall not withdraw from representation in a proceeding before the office without leave of the hearing officer. Leave shall be given unless the hearing officer determines that the withdrawal will result in substantial prejudice or will unduly delay the consideration and resolution of the case.

(4) Filing of notice of change of address. Each party or, if the party is represented, the party's counsel, shall notify the office of any change of address, telephone number, electronic mail address, or facsimile number by filing a notice of change of address in the record within fourteen (14) days of the change.

Section 11. Prehearing Conference. A hearing officer may order a prehearing conference to be held in person or by telephone to:

(1) Simplify and clarify the issue;

(2) Receive a stipulation and admission;

(3) Explore the possibility of agreement to dispose of any issue in dispute; and

(4) Address any motions.

Section 12. Motion Practice. (1) General provisions.

(a) A request for relief, which is not required to be made in a pleading, shall be in the form of a motion and shall indicate in the caption the nature of the motion.

(b) A motion filed with the office shall state precisely the relief requested, and include a citation to the record, the administrative regulations, or the law as appropriate.

(c) A written motion shall comply with the provisions of this section. Failure to comply with this section may be grounds for denying the motion.

(2) Supporting memorandum.

(a) A motion filed with the office, including a motion to dismiss, a motion for summary disposition, a motion to strike, and a motion on the pleadings, shall be accompanied by a memorandum setting forth the grounds for the motion and shall contain a citation to any authority relied upon.

(b) The memorandum shall be no longer than twenty-five (25) pages in length and may be filed in the office without prior leave of a hearing officer.

(3) Response. Any party served with a motion may file a response memorandum opposing the motion, with a citation to any supporting authority.

(a) A response memorandum shall be filed no later than fifteen (15) days of the date of service of a motion.

(b) The time for filing a response memorandum may be extended once, without leave of the hearing officer, for no more than thirty (30) additional days if each party enters into a written agreement that is filed in the office prior to the deadline for filing the initial response.

(c) A response memorandum longer than twenty-five (25) pages in length shall not be filed in the office without approval of a hearing officer.

(d) A response memorandum shall indicate in its caption that it is a response memorandum.

(4) Reply. Any party served with a response memorandum may file a reply memorandum addressing only the matter initially raised in the response.

(a) A reply memorandum shall be filed no later than five (5) days of the date of service of a response memorandum unless a different reply period is ordered by the hearing officer.

(b) The time for filing a reply memorandum may be extended once without leave of the hearing officer for no more than ten (10) additional days if each party enters into a written agreement that is filed in the office prior to the deadline for filing the initial reply.

(c) A reply memorandum longer than ten (10) pages in length shall not be filed in the office without prior leave of a hearing officer.

(d) A reply memorandum shall indicate in its caption that it is a reply memorandum.

(5) Failure to file supporting memorandum. The hearing officer may find or recommend entry of an order against a party failing to file a supporting memorandum in support of a motion, response or reply.

(6) Proposed order.

(a) A party who files a motion or response shall simultaneously tender a proposed order granting the requested relief or denying the motion.

(b) The office shall not accept for filing a motion or response unless accompanied by a tendered proposed order.

(c) The tendered order shall contain a service page listing the current, correct, and complete names and addresses of each party and counsel of record upon whom the office is required to serve the order.

(d) A party may submit a proposed order in electronic form if accompanied by a hard copy.

(7) Hearing on a motion.

(a) Any party making a motion may request that the motion be heard before the hearing officer.

(b) Upon receipt of the request for a hearing on a motion, the hearing officer may schedule a hearing after the time for all responses and replies pursuant to this section has expired, if the hearing officer determines that oral arguments could provide additional information to form the basis of the ruling.

(c) Court reporter. Any party may arrange for a court reporter to record a hearing on a motion, as long as the party bears the costs.

(d) Failure to appear at hearing. A hearing officer may deny a motion for which the movant who requested the hearing fails to appear. A hearing officer may grant a motion for which a movant requests a hearing and the nonmovant fails to appear, upon proof by the movant filed in the record that the motion was served on the nonmoving party.

Section 13. Motion for Continuance of Formal Administrative Hearing. (1) The hearing officer shall not grant a motion for continuance unless good cause is shown.

(2) The hearing officer shall not grant a motion for continuance of an administrative hearing if filed within fifteen (15) days of the scheduled date for the administrative hearing unless compelling cause is shown.

Section 14. Motion for Intervention and Consolidation. (1) Who may file. A person may petition in writing for leave to intervene at any stage of a proceeding. A person shall set forth a statement describing the person's interest and, if required, a showing of why the interest is or may be adversely affected.

(2) Criteria to intervene.

(a) The hearing officer shall grant intervention if the person:

1. Had a statutory right to initiate the proceeding in which the person requests to intervene; or

2. Has an interest that is or may be adversely affected by the outcome of the proceeding.

(b) If the criteria set forth in paragraph (a) of this subsection does not apply, the hearing officer shall consider the following in determining if intervention is appropriate:

1. The nature of the issues;

2. The adequacy of representation of the person's interest which is provided by the existing parties to the proceeding;

3. The ability of the person to present relevant evidence and argument; and

4. The effect of intervention on the cabinet's implementation of its statutory mandate.

(3) Effect of ruling. A person granted leave to intervene in a proceeding may participate in the proceeding as a full party or in a limited capacity. The hearing officer shall determine the extent and terms of the participation, having due regard for the interests of justice and the orderly and prompt conduct of the proceeding.

Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceeding; and

(c) Requiring two (2) or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceeding.

(4) Consolidation. If proceedings involving the same parties or a common question of law or fact are pending before the office, the proceedings shall be subject to consolidation pursuant to a motion by a party or upon the initiative of the hearing officer.

Section 15. Dismissal for Failure to Prosecute. Once per year the office shall determine all cases in which no activity has been taken for one (1) year or more. The hearing officer to whom a case is assigned shall issue an order directing the petitioner to show cause why the case should not be dismissed. If the petitioner does not show good cause why the case should not be dismissed, the hearing officer shall recommend dismissal of the case with prejudice for failure to prosecute.

Section 16. Evidence. (1) Admissibility. Unless specifically excluded by subsection (2) this section, evidence that would otherwise not be admissible under the Kentucky Rules of Evidence may be admitted by the hearing officer, if determined by the hearing officer:

(a) To be necessary to ascertain facts not reasonably susceptible to proof under rules of evidence; and

(b) Is a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs.

(2) The hearing officer shall exclude:

(a) Irrelevant, immaterial, or unduly repetitious evidence from the record;

(b) Evidence designated as confidential by statute; and

(c) Evidence protected pursuant to a privilege recognized by law.

(3) An objection may be made by a party and shall be noted in the record by hearing officer.

(4) The hearing officer may require each party to submit any part of the evidence in written form if:

(a) An administrative hearing will be expedited; and

(b) The interests of each party will not be substantially prejudiced.

(5) Documentary evidence may be received in the form of a copy or excerpt. Upon request of any party, each party shall be given an opportunity to compare the copy with the original.

(6) A party may conduct cross-examination as required for a full and true disclosure of the facts.

(7) The hearing officer may take notice of generally recognized technical or scientific facts within the cabinet's specialized knowledge. The hearing officer shall notify each party of the material noticed either before or during the administrative hearing, or by reference in the report and recommended order. Each party shall be afforded an opportunity to contest the material so noticed by the hearing officer.

(8) The cabinet's experience, technical competence, and specialized knowledge may be utilized by the hearing officer in the evaluation of the evidence.

Section 17. Summary Disposition. At any time after a proceeding has begun, a party may move for a summary disposition of the whole or part of a case, in which event the following procedures shall apply:

(1) The moving party shall verify any allegation of fact with a supporting affidavit, unless the moving party is relying upon:

(a) A deposition,

(b) An answer to an interrogatory,

(c) An admission, or

(d) Any document produced upon request to verify such allegation.

(2) A hearing officer may grant a motion for summary disposition and render a report and recommended order to the secretary under this section if the record shows that:

(a) There is no genuine issue as to any material fact; and

(b) The moving party is entitled to a summary disposition as a matter of law.

(3) If a motion for a summary disposition is not granted for the entire case or for all the relief requested and an evidentiary hearing on some or all of the issues is necessary, the hearing officer shall and upon examination of all relevant documents and evidence, ascertain what material facts are actually and in good faith controverted. The hearing officer shall issue an interim report specifying the facts that appear without substantial controversy and direct further proceedings as deemed appropriate.

Section 18. Directed Recommendation. (1) At the close of the presentation of evidence by a party at an administrative hearing, the opposing party may move the hearing officer for a directed recommendation to the secretary.

(2) The moving party shall state the specific grounds in support of the request for a directed recommendation.

(3) The hearing officer shall consider all of the evidence presented at the administrative hearing by the nonmoving party and shall draw all inferences in favor of the nonmoving party.

(4) If the hearing officer determines that the nonmoving party has failed to meet his burden of proof, the hearing officer shall:

(a) Grant the moving party's motion; and

(b) Recommend that the secretary deny the nonmoving party's request for relief.

(5) A motion for a directed recommendation is not a waiver of an administrative hearing.

(6) A party who moves for a directed recommendation may move forward and offer evidence to the same extent as if the motion had not been made and without having to reserve the right to offer the evidence.

Section 19. Orders to Abate and Alleviate. (1) Notice.

(a) If the secretary issues an order to abate or alleviate pursuant to KRS 224.10-410, the secretary shall file a copy of the order in the office.

(b) Upon filing an order to abate or alleviate, the office shall issue an administrative summons pursuant to Section 5 of this administrative regulation and shall set the time and place for an administrative hearing to be held within ten (10) days from the date the order to abate or alleviate was signed by the secretary.

(2) Response.

(a) The person named in the order to abate or alleviate shall prior to or at the administrative hearing file a response to the order that:

1. Specifically admits or denies the facts alleged in the order;

2. Sets forth other matters to be considered on review; and

3. Sets forth evidence, if any, that the condition or activity does not violate the provisions of KRS 224.10-410.

(b) In lieu of a response, the person named in the order to abate or alleviate may contact the office in writing or by other means and state that an administrative hearing is not needed, and that the person does not desire to contest the order.

(3) Hearing procedure. The administrative hearing shall be held in accordance with this administrative regulation.

(4) Burden of proof. The cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the abate and alleviate order. The person named in the abate and alleviate order shall have the ultimate burden of persuasion that the condition or activity does not violate KRS 224.10-410, or that the condition or activity has been discontinued, abated, or alleviated.

(5) Default. The hearing officer shall promptly prepare a report stating that the hearing has been waived and the order to abate or alleviate stands as issued if:

(a) The person named in the order to abate or alleviate notified the office that an administrative hearing is not needed; or

(b) Upon failure of the person to appear at the administrative hearing.

(6) Effect of the proceeding. The scheduling and holding of an administrative hearing pursuant to this section shall not operate to terminate or stay the order or the affirmative obligation imposed on a person by the order.

Section 20. Report and Recommended Order and Any Exception. (1) Time.

(a) With the exception of paragraph (b) and (c) of this subsection, the hearing officer shall make a report and recommended order to the secretary within thirty (30) days of the close of the record.

(b) In a hearing brought in accordance with 400 KAR 1:110, Section 8, permit determinations, the hearing officer shall make a report and recommended order within twenty (20) days of the close of the record.

(c) If the secretary finds upon written request of the hearing officer that additional time is needed to submit the report and recommended order, the secretary may grant an extension. If granted by the secretary, all parties shall be notified.

(2) Preponderance of the Evidence.

(a) The report and recommended order shall be based on a preponderance of the evidence appearing in the record as a whole and shall contain appropriate findings of fact and conclusions of law.

(b) The report and recommended order may depart from prior interpretations of the law by the cabinet if the hearing officer explicitly and rationally justifies the change of position.

(3) Civil Penalty Determination.

(a)The hearing officer shall recommend the amount of a civil penalty based on the record.

(b) The hearing officer may compute the amount of the penalty to be assessed irrespective of any computation offered by any party.

(c) In actions brought pursuant to 400 KAR 1:110, the hearing officer shall consider the same factors set forth in 400 KAR 1:110, Section 3(2) for consideration in recommending the penalty assessment.

(d) The hearing officer shall state with particularity the reasons, supported by the record, for the penalty recommended in the report and recommended order.

(4) Mailing. The report and recommended order shall be mailed, postage prepaid, to each party and the party's attorney of record.

(5) Exceptions. A party may file an exception and a response to the exception as allowed pursuant to KRS 149.346, 151.184, 224.10-440,[~~and KRS~~] 350.0301, and 353.700. There shall be no further submissions in the record.

(a) Each exception and response shall conform to the format for filing a document in Section 3 of this administrative regulation.

(b) A party filing an exception to a report and recommended order shall tender with the exception a draft recommended order for the secretary.

1. The excepting party's draft recommended order shall set out the relief the party requests in its exception.

2. The draft recommended order shall contain a service page listing the current, correct, and complete name and address of each party and counsel of record upon whom the office shall be required to serve the order.

3. A party may submit a draft recommended order in electronic form if accompanied by a hard copy.

(c) Good cause exception. The secretary may exempt a party from compliance with paragraphs (a) and (b) of this subsection upon a showing of good cause or undue hardship.

Section 21. Secretary's Order. (1) The secretary shall consider the hearing officer's report and recommended order, any exception filed, and response to any exception if permitted by statute, and decide the case within the time period required by statute.

(2) The secretary may:

(a) Remand the matter to the hearing officer;

(b) Adopt the report and recommended order of the hearing officer as a final order;

(c) Adopt part of the report and recommended order of the hearing officer and issue a final order; or

(d) Reject the report and recommended order of the hearing officer and issue a final order.

(3) The final order of the secretary shall be mailed postage prepaid to each party and the party's attorney of record.

(4) A final order of the secretary shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the secretary and the facts and law upon which the decision is based.

(5) The final order may depart from prior interpretations of the law by the cabinet if the secretary explicitly and rationally justifies the change of position.

Section 22. Agreed Order. An agreed order that resolves any claim or part of a claim in a case pending in the office shall be tendered to the hearing officer for acknowledgment by signature before being presented to the secretary.

Section 23. Mediation. (1) Referral to mediation.

(a) At any time prior to the conclusion of the final prehearing conference, a hearing officer may issue an order referring all or any part of any case to nonbinding mediation.

(b) A case shall not be referred for mediation if the cabinet advises the hearing officer that mediation would require a deviation from a statutory or regulatory requirement.

(2) Mediator.

(a) A case may be referred to any hearing officer employed by the office or a mediator approved by the chief hearing officer.

(b) The mediator shall notify the hearing officer in writing when a case is not accepted for mediation.

(c) Disqualification of a mediator.

1. Any party may move the hearing officer to enter an order disqualifying the mediator for good cause. Employment by the cabinet shall not constitute good cause for the disqualification.

2. If the hearing officer rules that a mediator is disqualified from mediating the case, the hearing officer shall enter an order referring the matter to another mediator.

3. Nothing in this provision shall preclude a mediator from disqualifying himself or refusing any assignment.

4. Unless the hearing officer orders otherwise, the time for mediation shall be tolled during any periods in which a motion to disqualify is pending.

(3) Statements not admissible. Statements or admissions made for the purpose of mediation shall not be:

(a) Subject to disclosure through discovery;

(b) Admitted in evidence at an administrative hearing; or

(c) Used by the hearing officer in making any report and recommended order.

(4) Proceeding not stayed. Unless otherwise ordered by the hearing officer or agreed to in writing by the parties, the mediation shall not operate as a stay of discovery or other prehearing proceeding.

(5) Mediation conference.

(a) Mediation status conference. In the mediation referral order, the hearing officer shall schedule a mediation status conference to be held within thirty (30) days from the entry of the mediation referral order unless otherwise agreed to in writing by the parties.

(b) Scheduling a Mediation Conference.

1. The mediator shall schedule a mediation conference within thirty (30) days of the mediation status conference unless otherwise agreed to by the parties.

2. The mediator may schedule as many conferences as are necessary to complete the process of mediation.

(c) Purpose of the mediation conference. The conference shall be conducted by the mediator to consider the possibility of settlement, the simplification of each issue, and any other matter that the mediator and each party determines may aid in the handling or the disposition of the proceeding.

(d) Appearance at mediation conference.

1. Each party or a representative of the party, having authority to negotiate on behalf of that party, shall attend the mediation.

2. Counsel may also be present.

(e) Production of a document and witness. The mediator may request that a party bring a document or witness, including an expert witness, to the mediation conference, but shall not have authority to order production.

(f) The mediation conference shall continue until:

1. A settlement is reached;

2. Any party is unwilling to proceed further; or

3. The mediator determines that further efforts would be of no avail.

(6) Reporting to the hearing officer.

(a) After the conclusion of the first mediation conference, any party may move the hearing officer to remove the case from mediation and to set the case for a prehearing conference or an administrative hearing.

(b) If any party is unwilling to proceed further or if the mediator determines that further efforts would be of no avail, then the mediator shall file a report to the hearing officer that the mediation process has ended. The report shall state the lack of an agreement and shall not make other comment or recommendation.

(c) If a case is settled prior to or during mediation, an attorney for one (1) of the parties shall:

1. Full Settlement.

a. Within ten (10) days of the conclusion of mediation, file with the office a joint statement that all issues have been resolved; and

b. Promptly prepare and submit to the hearing officer an agreed order reflecting the terms of the settlement in accordance with Section 22 of this administrative regulation.

2. Partial settlement.

a. If some but not all of the issues in the case are settled during mediation or if an agreement is reached to limit discovery or on any other matter, the attorney for one (1) party shall, within ten (10) days of the conclusion of mediation, file with the office a joint statement listing the issues that have been resolved and the issues that remain for an administrative hearing.

b. The hearing officer shall then return the matter to the active docket and promptly schedule a prehearing conference or an administrative hearing.

(7) This section shall not apply to mediations conducted pursuant to KRS 353.5901.

Section 24. Administrative Summons and Service of Process for Hearings Pursuant to KRS 353. (1) Upon receipt of an initiating document, the office shall serve a copy of the initiating document upon each party designated on the initiating document to be served along with an administrative summons. The office shall serve the initiating document in accordance with the method designated on the initiating document and subsection (4) this section.

(2) The administrative summons shall:

(a) Notify the respondent that an initiating document has been filed against the respondent and unless a written defense is timely served, action adverse to the respondent's interest may be taken;

(b) Designate the date, time, and place of the prehearing conference or administrative hearing; and

(c) Include a statement of the legal authority for the administrative hearing and reference to the statutes and administrative regulations involved.

(3) Service shall be made pursuant to one of the methods in subparagraphs (a) through (k) of this subsection and subsection (4).

(a) Individual within the Commonwealth. Service shall be made upon an individual within the Commonwealth, other than an unmarried infant or person of unsound mind, by mailing a copy of the administrative summons to the last known address of record with the Division of Oil and Gas.

(b) Unmarried infant or person of unsound mind. Service shall be made upon an unmarried infant or a person of unsound mind by serving the person's resident guardian or committee if there is one (1) known to the initiating party or, if none; by serving either the person's father or mother within this state or, if none, by serving the person within this state having control of the individual. If there are no persons, application shall be made to the appropriate court to appoint a practicing attorney as guardian ad litem who shall be served. If any person directed by this section to be served is also an initiating party, the person who stands first in the order named who is not an initiating party shall be served.

(c) Partnership or unincorporated association. Service shall be made upon a partnership or unincorporated association subject to suit under a common name by serving:

1. A partner or managing agent of the partnership;

2. An officer or managing agent of the association; or

3. An agent authorized by appointment or by law to receive service on its behalf.

(d) Corporation. Service shall be made upon a corporation by serving an officer or managing agent thereof, or any other agent authorized by appointment or by law to receive service on its behalf.

(e) Person issued a permit, license, or authorization from the cabinet. Service shall be made at the address specified in the permit application, license, or request for authorization upon:

1. A person issued a permit, license, or authorization by the cabinet;

2. A person specified as an operator in the permit application, license, or request for authorization; or

3. The person's named agent for service stated in the permit application, license, or request for authorization.

(f) Commonwealth or agency other than the cabinet. Service shall be made upon the Commonwealth or any agency other than the cabinet by serving the attorney general or any assistant attorney general.

(g) Cabinet. Service of a request for an administrative hearing shall be made upon the cabinet by serving the Executive Director of the Office of Legal Services.

(h) County, city, public board, or other administrative body except state agencies.

1. Service shall be made upon a county by serving the county judge or, if the judge is absent from the county, the county attorney.

2. Service shall be made upon a city by serving the chief executive officer of the city or an official attorney of the city.

3. Service on any public board or other administrative body, except state agencies, shall be made by serving a member.

(i) Nonresident. Service may be made upon a nonresident individual who transacts business through an office or agency in this state, or a resident individual who transacts business through an office or agency in any action growing out of or connected with the business of an office or agency, by serving the person in charge or the authorized agent.

(j) Out of state individual. Service may be made upon an individual out of this state, other than an unmarried infant, a person of unsound mind or a prisoner, by the method stated in subsection (4) of this section.

(k) Unknown person. In an action against a person whose name is unknown to the initiating party, the person shall be described in the initiating document and administrative summons as unknown party. If the person's name or place of residence is discovered during the action, then the initiating document shall be amended accordingly. Any party to the action that was required to give notice to any unknown or nonlocatable owner pursuant to KRS 353, shall provide proof to the office that it gave notice consistent with the requirements of KRS 353.510(45).

(4) Method of service. The office shall place a copy of the document to be served in an envelope and address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions provided by the initiating party. The office shall employ certified mail as the method of service in accordance with Section 2(3) of this administrative regulation.

(a) The office shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested.

(b) The office shall enter the fact of mailing in the record and make a similar entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record.

(c) The office shall file the return receipt or returned envelope

in the record;

(5) Proof of service. The return receipt shall be proof of acceptance, refusal, inability to deliver, or failure to claim the document. The return receipt shall also be proof of the time, place, and manner of service. The date of delivery shall be the earlier of the date shown on the certified mail return receipt or the date thirty (30) days after the date shown on the postal service proof of mailing. Service shall be effective upon:

(a) Acceptance of the summons by any person eighteen (18) years of age or older at the permanent address;

(b) Refusal to accept the summons by any person at the permanent address;

(c) The United States Postal Service's inability to deliver the certified mail containing the summons if properly addressed pursuant to Section (4) of this section;

(d) Failure to claim the certified mail containing the summons prior to its return to the cabinet by the United States Postal Service; or

(e) To the extent the United States postal regulations, 39 C.F.R., allow authorized representatives of local, state, or federal governmental offices to accept and sign for "addressee only" mail, signature by the authorized representative shall constitute service on the addressee.

Section 25. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Subpoena", OAH 100, November 2016; and

(b) "Subpoena Duces Tecum", OAH 101, November 2016.

(2) This material may be inspected, copied, or obtained, at the Office of Administrative Hearings, 211 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

(3) This material may also be obtained on the office Web site at www.oah.ky.gov.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 3, 2018

FILED WITH LRC: July 13, 2018 at noon

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the administrative hearing practice provisions for the cabinet.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish administrative hearing practice provisions that relate to the cabinet's administrative hearing process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapters 146, 149, 151, 223, 224, and 350 authorize the cabinet to conduct administrative hearings and authorize the cabinet to promulgate administrative regulations to regulate the administrative hearing process. This regulation establishes procedures for conducting administrative hearings, administrative conferences, mediations and issuance of final orders in regard to violations and final determinations for the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statues by providing consistent provisions relating to the conduct of administrative hearings, administrative conferences, mediations and issuance of final orders in regard to violations and final determinations of the cabinet.

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

(a) How the amendment will change this existing administrative regulation: These amendments were primarily made to incorporate oil and gas administrative hearings into the administrative regulation in response to SB 249 from the 2018 Legislative Session. The amendment added a new Section 24 that relates to summons and service provisions for oil and gas shallow wells.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clearly implement the requirements of SB 249 from the 2018 Legislative Session.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides for summons and service provisions related to administrative hearings for oil and gas shallow well operators. The amendment also includes citations and conforming changes to allow hearings related to oil and gas shallow wells to be administered under the Office of Administrative Hearings procedures.

(d) How the amendment will assist in the effective administration of statutes: This amendment will decrease conflict and possible delays between the amendments to the authorizing statutes made by SB 249 from the 2018 Legislative Session and the current hearings process for oil and gas shallow wells.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This regulation establishes practice provisions that apply to all individuals, businesses, organizations, or state and local governments that either initiate or become subject to an administrative proceeding in the cabinet's Office of Administrative Hearings.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will be required to comply with slightly different summons and service provisions if they are oil and gas shallow well operators.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cabinet doesn't anticipate any additional costs associated with complying with the amendments to this administrative regulation. However, there might be a slight cost saving and expedited hearings process due to the removal of oil and gas shallow well hearings from the current method of KRS 13B administrative hearings into the less cumbersome Office of Administrative Hearings process.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will benefit from an effective, fair, and timely administrative hearing practice provisions.

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

(a) Initially: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's current operating budget will be used for the implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes, tiering was used. Generally, the provisions in this administrative regulation will apply equally to all parties of an administrative adjudication in the Cabinet's Office of Administrative Hearings. However, tiering was used to determine how service shall be made to different types of legal entities.

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? The cabinet will continue to hold administrative hearings to as needed concerning matters covered by KRS Chapters 146, 149, 151, 223, 224, 350, and 353. State and local government will only be impacted insofar as they are parties of an administrative adjudication with the cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 146.270, 146.450, 146.990, 149.344, 149.346, 151.125, 151.182, 151.184, 151.186, 151.297, 223.200, 223.991, 224.10-100, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.40-310, 224.60-120, 350.020, 350.028, 350.029, 350.0301, 350.0305, 350.240, 350.255, 350.300, 350.465, 350.610, 351.315, 351.345, 351.350, 353.700, 30 C.F.R. Parts 724, 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255.

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

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

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

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

STATEMENT OF EMERGENCY
400 KAR 1:100E

On July 14, 2018 the provisions of Senate Bill 249 went into effect removing administrative hearings related to shallow oil and gas wells from the KRS Chapter 13B administrative hearings process and placing them under the Energy and Environment Cabinet's administrative hearings process. Current Energy and Environment Cabinet regulatory requirements regarding administrative hearings for shallow oil and gas wells will not comply with the statutory provisions amended by Senate Bill 249. Without further action, the regulated community is in jeopardy of being left with conflicting regulatory and statutory provisions. This emergency administrative regulation is necessary to immediately implement the provisions of SB 249 to avoid statutory provisions going into effect that conflict with current regulatory requirements causing confusion and uncertainty among the regulated community. The emergency administrative regulation will be replaced by an ordinary administrative regulation which is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
CHARLES G. SNAVELY, Secretary

ENERGY AND ENVIRONMENT CABINET
Office of the Secretary
(Emergency Amendment)

400 KAR 1:100E. General administrative hearing practice provisions relating to matters brought under KRS Chapters 146, 149, 151, 223,[~~and~~] 224, and 353.

RELATES TO: KRS 146.200 - 146.360, 146.990, 149.344, 149.346, 149.348, 151.182, 151.184, 151.297, 151.990, Chapters 223, 224, 353

STATUTORY AUTHORITY: KRS 146.270, 149.344, 149.346, 151.125, 151.182, 151.184, 151.186, 151.297, 224.10-100, 224.10-410, 224.10-420, 224.10-440, 224.40-310, 353.660, 353.6603, 353.6604, 353.6605, 353.6606

EFFECTIVE: July 13, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 146 relating to wild rivers, KRS Chapter 149 relating to timber harvesting, KRS Chapter 151 relating to water resources, KRS Chapter 223 relating to water plant operators and water well drillers,[~~and~~] KRS Chapter 224 relating generally to environmental protection, and KRS Chapter 353 related to oil and gas development authorize the cabinet to conduct administrative hearings and promulgate administrative regulations. This administrative regulation establishes procedures for conducting administrative hearings.

Section 1. Applicability. (1) This administrative regulation shall govern:

(a) The conduct by the cabinet of all administrative hearings authorized by KRS Chapter 146 relating to wild rivers, KRS Chapter 149 relating to timber harvesting, KRS Chapter 151 relating to water resources, KRS Chapter 223 relating to water plant operators and water well drillers, and KRS Chapter 224 relating generally to environmental protection, including those matters initiated by a petition for hearing filed on or before August 4, 2017; and[~~.~~]

(b) The conduct by the cabinet of all administrative hearings authorized by KRS Chapter 353 relating to oil and gas development, except for those conducted by the Kentucky Oil and Gas Conservation Commission pursuant to KRS 353.500 to 353.720.

(2) This administrative regulation governs an administrative hearing, an order, and a final determination of the cabinet.

Section 2. Location of Administrative Hearing. An administrative hearing shall be held in Frankfort at the location designated by the hearing officer unless an alternative location is agreed to by each party or authorized by KRS 224.40-310(5)(e) or KRS Chapter 353.

Section 3. Administrative Hearing Initiated by the Cabinet. (1) Criteria for filing. The cabinet may initiate an administrative hearing and may seek a remedy identified in subsection (2) of this section if:

(a) The cabinet has reason to believe that a violation of:

1. KRS Chapters 146, 149, 151, 223, 224, 353;

2. KAR Titles 400, 401, 402, 805 Chapter 1;

3. An administrative regulation, a permit, registration, or certification condition has occurred or is occurring; or

(b) The cabinet has reason to believe a remedy should be sought or an order should be entered against any person to protect the environment or the health and safety of the public.

(2) Remedies. In an administrative hearing initiated by the cabinet, the cabinet may seek one (1) or a combination of the following:

(a) Permit revocation, termination, denial, modification, or suspension;

(b) Bond and other financial assurance forfeiture;

(c) Civil penalty;

(d) A determination, if expressly authorized by statute, that a person shall not be eligible to receive another permit or conduct future activity;

(e) Cost recovery if expressly authorized by statute; or

(f) Any other relief to which the cabinet may be entitled by KRS Chapters 146, 149, 151, 223, 224, 353, KAR Titles 400, 401,[~~and~~] 402, and 805 KAR Chapter 1.

(3) Procedure for an administrative hearing initiated by the cabinet.

(a) The cabinet shall initiate an administrative hearing by filing an administrative complaint with the office incorporating the following for each claim for relief:

1. A statement of facts entitling the cabinet to administrative relief;

2. A request for specific relief; and

3. A copy of any notice or order upon which relief is sought.

(b) Answer or responsive pleading.

1. The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the administrative complaint.

2. The answer shall contain:

a.(i) A statement specifically admitting or denying the facts stated in the administrative complaint or amended administrative complaint; or

(ii) If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

b. Any defense to each claim for relief; and

c. Any other matter to be considered on review.

3. Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of the defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in a responsive pleading.

4. An allegation in a pleading to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

5. An allegation in a pleading to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(c) Amendment.

1. An administrative complaint may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

2. The respondent shall have ten (10) days from the filing of an amended administrative complaint or the time remaining for filing an answer to the original complaint, whichever is longer, to file an answer or responsive pleading to the amended administrative complaint.

3. If the hearing officer grants a motion to amend the administrative complaint, the hearing officer shall set the time for an answer to be filed in the order granting the motion.

(4) Burden of proof.

(a) The cabinet shall bear the ultimate burden of persuasion.

(b) A respondent shall have the burden of persuasion to establish an affirmative defense.

(c) A respondent claiming an exemption shall have the burden of persuasion to establish qualification for the exemption.

(5) Default.

(a) If the person against whom the administrative complaint is filed fails to timely comply with a prehearing order of a hearing officer, the hearing officer may, on his own initiative or upon motion, issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why a report and recommended order adverse to the person shall not be referred to the secretary.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

(c) If the person against whom the administrative complaint is filed fails to appear at an administrative hearing, the person shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

Section 4. Review of a Cabinet Order and Final Determination. (1) Who may file. A person who considers himself aggrieved by an order or final determination of the cabinet may file a petition for review of the order or final determination. The petition for review shall be filed pursuant to this section. This section also applies to a petition for review of a draft permit for construction or expansion of a waste disposal facility, made pursuant to KRS 224.40-310(6), if the expansion results in substantial additional capacity.

(2) Time for filing.

(a) A person filing a petition for review under this section shall file in the office a petition within thirty (30) days after the person has had actual notice of the order or final determination complained of, or could reasonably have had notice.

(b) The hearing officer shall not grant an extension of time for filing a petition for review.

(c) If the hearing officer, upon motion or his own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall dismiss a petition that is not filed in accordance with subsection (2)(a) of this section stating that the person waived his right to an administrative hearing.

(3) Content of the petition. The petition for review shall contain:

(a) A statement of the facts entitling the person requesting review to administrative relief;

(b) An explanation of each specific alleged error in the cabinet's determination;

(c) A request for specific relief;

(d) If the petition challenges an order or final determination on a permit, the name of the permittee and the permit number; and

(e) If the petition challenges an order or final determination other than a permit, a copy of the order or final determination sought to be reviewed.

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or

b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of the defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in an answer or responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent shall have ten (10) days from the filing of an amended petition or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend the petition, the hearing officer shall set the time for an answer to be filed in the order granting the motion.

(6) Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's order or final determination pending completion of administrative review.

(7) Burden of proof.

(a) The petitioner shall bear the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the requested relief.

(b) A responding party shall have the burden of persuasion to establish an affirmative defense.

(c) A responding party claiming an exemption shall have the burden of persuasion to establish qualification for the exemption.

(8) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer may, at his discretion or upon motion, issue an order to show cause why the petitioner should not be deemed to have waived the right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order dismissing the petition since the petitioner waived the right to an administrative hearing.

(c) If the petitioner fails to appear at an administrative hearing, the petitioner shall be deemed to have waived his right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order dismissing the petition since the petitioner waived the right to an administrative hearing.

Section 5. Procedure for an Order for Remedy under KRS 151.297. (1) Notice.

(a) If the secretary issues an order for remedy pursuant to KRS 151.297, the secretary shall file a copy of the order for remedy in the office.

(b) Upon the filing of an order for remedy, the office shall issue an administrative summons pursuant to 400 KAR 1:090, Section 5 and shall set the time and place for an administrative hearing. The office may schedule the administrative hearing within five (5) working days from the date the order for remedy was signed by the secretary.

(2) Response.

(a) Unless paragraph (b) of this subsection applies, the person named in the order for remedy prior to or at the administrative hearing shall file a response to the order that:

1. Specifically admits or denies the facts alleged in the order;

2. Sets forth other matters to be considered on review; and

3. Sets forth evidence, if any, that the condition or activity does not violate the provisions of KRS 151.297.

(b) In lieu of a response, the person named in the order for remedy may contact the office in writing or by other means and state that an administrative hearing is not needed, and that the person does not desire to contest the order.

(3) Hearing procedure. The administrative hearing shall be held in accordance with 400 KAR 1:090.

(4) Burden of proof. The cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the order for remedy. The person named in the order for remedy shall have the ultimate burden of persuasion that the condition or activity does not violate KRS 151.297, or that the condition or activity has been discontinued, abated or alleviated.

(5) Default. The hearing officer shall prepare a report stating that the hearing was waived and the order for remedy stands as issued if:

(a) The person named in the order for remedy notified the office that an administrative hearing is not needed; or

(b) The person failed to appear at the administrative hearing.

(6) Effect of the proceeding. The scheduling and holding of an administrative hearing pursuant to this section shall not operate to terminate or stay the order for remedy or the affirmative obligations imposed on a person by the order.

Section 6. Judicial Review, Effect, and a Subsequent Proceeding. (1) Judicial review. Judicial review may be taken from a final order of the secretary to the appropriate circuit court of competent jurisdiction in accordance with KRS 151.186,[~~or~~] 224.10-470, 353.700, as applicable.

(2) Effect of final order pending judicial review. The commencement of a proceeding for judicial review of a final order of the secretary shall not operate as a stay of a final order, unless specifically ordered by a court of competent jurisdiction.

(3) Remand from a court. If a matter is remanded from a court for a further proceeding, and to the extent the court's directive and time limitations will permit, each party shall file with the office a report recommending the procedure to be followed in order to comply with the court's order. The hearing officer shall review each report and enter a special order governing the handling of the matter remanded for a further proceeding.

Section 7. Requirement to File Written Direct Testimony and Its Use in an Administrative Proceeding Subject to KRS 224.10-440. In proceedings subject to KRS 224.10-440:

(1) In addition to the provisions of 400 KAR 1:090, Section 16(4), pertaining to the admission of written testimony, the hearing officer may require the filing of the written testimony of a witness as if on direct examination, which shall be prepared and filed in the record in advance of the formal administrative hearing.

(2) The hearing officer may require written testimony to be supplemented by additional evidence.

(3) Written testimony shall be accompanied by an affidavit of the witness verifying that the written direct testimony is a true and accurate record of the witness' testimony as if given orally, and that the answers to the questions propounded to the witness are true.

(4) Any witness whose written testimony is prefiled shall appear at the formal administrative hearing unless all parties agree to waive the appearance of the witness.

(5) At the formal administrative hearing, the witness shall again verify that the written direct testimony is a true and accurate record of the witness' testimony as if given orally and that the answers to the questions propounded to the witness are true and the witness shall be available for cross examination.

(6) If a witness fails to verify his written direct testimony or is not available for cross examination at the formal administrative hearing, the written testimony of that witness shall be excluded from the record, unless each party agrees otherwise.

(7) Written testimony shall be set forth in a "question and answer" format.

(8) If written testimony, that is based upon a separate document or writing is submitted into the record, that document or writing shall be authenticated and entered into the record as an accompanying exhibit to the written testimony.

(9) Each party shall have a reasonable opportunity prior to the formal administrative hearing to:

(a) Object to all or portions of any written testimony and any accompanying exhibit; and

(b) Obtain a ruling on objections to written testimony or exhibits prior to their introduction at the administrative hearing.

(10) Written testimony and accompanying exhibits shall be subject to the same standards of authentication and admissibility as all other testimony and exhibits offered in an administrative hearing.

Section 8. Administrative Proceedings Subject to KRS 224.10-440. (1) Waiver.

(a) In proceedings subject to KRS 224.10-440, if each party agrees to waive the deadline of KRS 224.10-440(3), a waiver agreement executed by each party or the party's counsel shall be filed in the office.

(b) Waiver of the KRS 224.10-440(3) deadlines shall not be subject to revocation by a party without consent of all parties and the approval of the hearing officer.

(2) Motion for extension of time.

(a) A party or hearing officer seeking an extension of the deadline for completion of the administrative hearing process set forth in KRS 224.10-440(3) shall file in the office a motion for extension that includes a proposed date certain by which the report and recommended order shall be completed.

(b) The motion for extension shall be filed forty-five (45) days prior to the deadline for the hearing officer to transmit the report and recommended order to the secretary, unless good cause is shown for not filing the motion prior to forty-five (45) days before the deadline.

(c) A party or hearing officer objecting to the extension shall file

any response in opposition to the motion within seven (7) calendar days from receipt of the motion. The mail rule provisions set forth in 400 KAR 1:090, Section 4(1)(d) shall not be applicable in calculating the deadline for filing the response.

(d) Upon expiration of the time period for a motion and a response to the motion, the office shall tender the motion and any response to the secretary or the secretary's designee.

(e) The secretary or the secretary's designee shall rule on the motion within ten (10) days from expiration of the time period for filing an objection to any motion for extension.

Section 9. Confidentiality in Administrative Hearings Subject to KRS Chapter 353. In all proceedings conducted pursuant to KRS Chapter 353, the hearing officer may, upon motion by any party, order that evidence be filed in the record under seal. The hearing officer shall grant the motion only if the moving party makes a sufficient demonstration that the offered evidence qualifies for protection pursuant to KRS 353.660 or KRS 353.6603 to KRS 353.6606. (1) Disclosure of sealed evidence by any party to nonparties, including requests made pursuant to KRS 61.872, shall be prohibited. With the exception of the party which originally offered sealed material into evidence, any other party that causes the intentional disclosure of sealed evidence to nonparties may be subject to an action filed by the nondisclosing party in Franklin Circuit Court seeking recovery of reasonable expenses, including attorney's fees, caused by the disclosure.

(2) Upon request, any party to the proceeding may inspect the sealed evidence during the regular office hours of the office. The evidence shall not be removed from the premises and the duplication or transmittal of sealed materials is prohibited. Such inspections shall be at all times supervised and limited to authorized party representatives, legal counsel, and retained expert witnesses who have been previously identified in administrative filings by the party. The office shall keep a log of all persons who inspect such records, including a photocopy of the inspecting person's driver's license or other government issued identification card. If the record has been submitted on appeal, the reviewing party shall make appropriate arrangements with the court.

(3) The hearing officer shall later unseal the evidence when the applicable confidentiality period allowed under KRS 353.660 has expired, or if the evidence is determined to be a trade secret, it shall be unsealed pursuant to KRS 353.6604(3).

(4) Nothing in this section shall prevent the hearing officer, Secretary, Commission, or reviewing court from considering the entire record of a case before it, though sealed evidence must be viewed in camera and may not be unsealed unless:

(a) the confidentiality period has ended; or

(b) a court of law determines the application of KRS 353.660 or KRS 353.6603 to KRS 353.6606 to the evidence was erroneous.

(5) Testimony pertaining to evidence under seal shall be closed to the public and subject to the same confidentiality period as the evidence being discussed. The record of closed testimony shall be put under seal and kept separate from the public record until the confidentiality period expires.

(6) To the extent the hearing officer bases their findings and conclusions on sealed evidence, the hearing officer's report and recommended order shall sufficiently describe the nature of the evidence without disclosing confidential or proprietary information.

Section 10. Review of a Cabinet Determination Pursuant to KRS 353.060. (1) Who may file. An owner or coal operator who determines the proposed location of well will endanger the present or future use or operation of the workable coal bed. The petition for review shall be filed pursuant to this section.

(2) Time for filing.

(a) A person filing a petition for review under this section shall file in the office a petition within fifteen (15) days from the receipt of the plat by him and by the Department for Natural Resources for the proposed location of the well.

(b) The hearing officer shall not grant an extension of time for filing a petition for review.

(c) If the hearing officer, upon motion or his own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall dismiss a petition that is not filed in accordance with subsection (2)(a) of this section stating that the person waived his right to an administrative hearing.

(3) Content of the petition. The petition for review shall contain the specific objections to the proposed location of the well.

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(5) Determination by the hearing officer.

(a) At the hearing, the well operator and the coal operator or owner, in person or by a representative, shall consider the objections and either agree upon the location as proposed or change it so as to satisfy any or all objections and meet the approval of the department. Any new location thus selected and agreed upon shall be indicated on a plat in accordance with KRS 353.050 and thereupon the department shall issue to the well operator a drilling permit approving the location and authorizing the well operator to drill at the location.

(b) If the coal operator and well operator, or the owner and the well operator, are unable to agree, the hearing officer shall make a recommendation to the secretary, in view of the purposes and intent of KRS 353 and in compliance therewith, to fix a location on the tract as near the proposed location as possible.

(6) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer may, at his discretion or upon motion, issue an order to show cause why the petitioner should not be deemed to have waived the right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order dismissing the petition since the petitioner waived the right to an administrative hearing.

(c) If the petitioner fails to appear at an administrative hearing, the petitioner shall be deemed to have waived his right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order dismissing the petition since the petitioner waived the right to an administrative hearing.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 3, 2018

FILED WITH LRC: July 13, 2018 at noon

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation governs the conduct by the cabinet of all administrative hearings authorized by KRS Chapter 146 relating to wild rivers, KRS Chapter 149 relating to timber harvesting, KRS Chapter 151 relating to water resources, KRS Chapter 223 relating to water plant operators and water well drillers, and KRS Chapter 224 relating generally to environmental protection. This administrative regulation governs administrative hearings authorized by those chapters on violations of those chapters and administrative regulations promulgated pursuant thereto, and on orders and final determinations of the cabinet made under those chapters and the administrative regulations promulgated pursuant thereto.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish administrative hearing practice provisions that relate to the cabinet's administrative hearing process specifically involving matters brought under KRS Chapters 146, 149, 151, 223, and 224.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 146 relating to wild rivers,

KRS Chapter 149 relating to timber harvesting, KRS Chapter 151 relating to water resources, KRS Chapter 223 relating to water plant operators and water well drillers, and KRS Chapter 224 relating generally to environmental protection authorize the cabinet to conduct administrative hearings and promulgate administrative regulations. This administrative regulation establishes procedures for conducting administrative hearings.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statues by providing consistent provisions relating to the conduct of administrative hearings specifically involving matters brought under KRS Chapters 146, 149, 151, 223, and 224.

(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 provides for the confidentiality of information related to oil and gas shallow wells as well as providing information on the process for coal objection hearings during oil and gas development.

(b) The necessity of the amendment to this administrative regulation: this amendment is necessary to provide the regulated community information related to confidentiality of information related to oil and gas shallow wells as well as providing information on the process for coal objection hearings during oil and gas development. These amendments were made to comply with the provisions of SB 249 from the 2018 Legislative Session.

(c) How the amendment conforms to the content of the authorizing statutes: SB 249 from the 2018 Legislative Session amended various statutes in KRS Chapter 353 related to shallow well administrative hearings. These amendments are necessary to implement that statutory provisions of SB 249 and ensure those changes match regulatory requirements.

(d) How the amendment will assist in the effective administration of statutes: The amendment will assist in the administration of the statutes by making the necessary changes to the Office of Administrative Hearings process in order to implement the statutory changes introduced by the passage of SB 249 from the 2018 Legislative Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This regulation establishes practice provisions that apply to all individuals, businesses, organizations, or state and local governments that either initiate or become subject to an administrative proceeding in the cabinet's Office of Administrative Hearings specifically involving matters brought under KRS Chapters 146, 149, 151, 223, 224, and 353.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will have to comply with the requirements for procedural processes included in the administrative hearing process included in the regulation, such as, location of the hearing, procedures for review of cabinet orders and final determination, use of written direct testimony, and waiver of time deadlines or motion for extensions. The regulated entity will be required to conform to a new more efficient administrative hearings process instead of the current KRS 13B administrative hearings 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 additional costs to the regulated entity associated with the amendments to this administrative regulation. However, there might be a slight cost saving and expedited hearings process due to the removal of oil and gas shallow well hearings from the current method of KRS 13B administrative hearings into the less cumbersome Office of Administrative Hearings process.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will benefit from effective, fair, and timely administrative hearing practice provisions.

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

(a) Initially: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's current operating budget will be used for the implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering was not used. The provisions in this administrative regulation will apply equally to all parties of an administrative adjudication in the Cabinet's Office of Administrative Hearings.

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? The cabinet will continue to hold administrative hearings to as needed that specifically involve matters brought under KRS Chapters 146, 149, 151, 223, 224, and 353. State and local government will only be impacted insofar as they are parties of an administrative adjudication with the cabinet.

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

KRS 146.270, 149.344, 149.346, 151.125, 151.182, 151.184, 151.186, 151.297, 224.10-100, 224.10-410, 224.10-420, 224.10-440, 224.40-310, 353.660, 353.6603, 353.6604, 353.6605, 353.6606

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

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

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

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

STATEMENT OF EMERGENCY
400 KAR 1:110E

On July 14, 2018 the provisions of House Bill 261 went into effect removing administrative hearings related to explosives and blasting operations from the KRS Chapter 13B administrative hearings process and placing them under the Energy and Environment Cabinet's administrative hearings process. Current Energy and Environment Cabinet regulatory requirements regarding administrative hearings for explosives and blasting operations will not comply with the statutory provisions amended by House Bill 261. Without further action, the regulated community is in jeopardy of being left with conflicting regulatory and statutory provisions. This emergency administrative regulation is necessary to immediately implement the provisions of House Bill 261 to avoid statutory provisions going into effect that conflict with current regulatory requirements causing confusion and uncertainty among the regulated community. The emergency administrative regulation will be replaced by an ordinary administrative regulation which is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
CHARLES G. SNAVELY, Secretary

ENERGY AND ENVIRONMENT CABINET
Office of the Secretary
(Emergency Amendment)

400 KAR 1:110E. Administrative hearings[~~and assessment conferences~~] relating to matters brought under KRS Chapter 350 or KRS Chapter 351.310 through 351.375[~~relating to surface coal mining and reclamation operations, and coal exploration operations~~].

RELATES TO: KRS 224.10-410, 350.010, 350.028, 350.0301, 350.070, 350.090, 350.093, 350.130, 350.255, 350.465, 350.990, 351.315, 351.345, 351.350, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.0301, 350.255, 350.465, 350.610, 351.315, 351.345, 351.350, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

EFFECTIVE: July 13, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations and coal exploration operations. KRS Chapter 351 authorizes the cabinet to promulgate rules and regulations pertaining to explosives and blasting operations. This administrative regulation sets forth hearing, conference, notice, penalty assessment, and other procedural and due process provisions for the permanent regulatory program under KRS 350, and the hearing procedures pursuant to KRS 351.

Section 1. Definitions. (1) "Applicant" is defined by 405 KAR 7:001.

(2) "Application" is defined by 405 KAR 7:001. (3) "Cessation order" is defined by 405 KAR 7:001.

(4) "Coal" is defined by 405 KAR 7:001.

(5) "Coal exploration" is defined by 405 KAR 7:001.

(6) "Department" is defined by 405 KAR 7:001 and KRS 351.310.

(7) "Knowingly" is defined by 405 KAR 7:001.

(8) "Notice of noncompliance and order for remedial measures" is defined by 405 KAR 7:001.

(9) "Operations" is defined in KRS 350.010(6).

(10) "Operator" is defined in KRS 350.010(8).

(11) "Order for cessation and immediate compliance" is defined by 405 KAR 7:001.

(12) "Performance bond" is defined by 405 KAR 7:001.

(13) "Permit" is defined by 405 KAR 7:001.

(14) "Permit area" is defined by 405 KAR 7:001.

(15) "Permittee" is defined in KRS 350.010(21).

(16) "Reclamation" is defined in KRS 350.010(12).

(17) "Secretary" is defined in KRS 350.010(11).

(18) "Significant, imminent environmental harm" is defined by 405 KAR 7:001.

(19) "SMCRA" is defined by 405 KAR 7:001.

(20) "Surface coal mining and reclamation operations" is defined by KRS 350.010(1).

(21) "Transfer, assignment, or sale of permit rights" is defined by 405 KAR 7:001.

(22) "Willfully" and "willful violation" is defined by 405 KAR 7:001.

Section 2. Applicability. This administrative regulation shall govern:

(a) The conduct by the cabinet of all administrative hearings and conferences arising under KRS Chapter 350 relating to surface coal mining and reclamation operations and coal exploration operations, including those matters initiated by a petition for hearing filed on or before August 4, 2017.

(b) The conduct by the cabinet of all administrative hearings authorized by KRS Chapter 351 relating to explosives and blasting operations.

Section 3. Proposed Penalty Assessment and Request for Assessment Conference and Administrative Hearing. (1) Notification. The cabinet shall notify a person issued a notice of noncompliance and order for remedial measures or a cessation order in writing of the cabinet's proposed penalty assessment. The proposed penalty assessment shall be made by authorized personnel of the department.

(2) Criteria. The department, in determining the amount of the proposed penalty assessment, shall give consideration to:

(a) History of previous violations of the permittee or operator at the particular surface coal mining and reclamation operation;

(b) The seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public;

(c) Whether or not the permittee, operator, or person was negligent; and

(d) The demonstrated good faith of the permittee, operator, or person in attempting to achieve rapid compliance after notification of the violation, except that good faith consideration shall not be applicable to any violation determined not to be correctable.

(3) Service method; time.

(a) The department shall serve the notice of proposed penalty assessment along with copies of applicable worksheets, to the person to whom the notice or order was issued within fifteen (15) working days after issuance of the final notice of inspection of noncompliance or final notice of inspection of cessation order.

(b) The department shall serve the notice of proposed penalty assessment by utilizing one (1) of the following:

1. Service methods authorized in 400 KAR 1:090, Section 5(3) and (4); or

2. By electronic mail pursuant to KRS 350.130.

(c) Service shall be deemed effective pursuant to 400 KAR 1:090, Section 5(5) or upon delivery of the notice of proposed penalty assessment with copies of worksheets to the recipient's inbox by electronic mail as electronically communicated to the department by an electronic registered receipt.

(d) Failure to serve the proposed penalty assessment within fifteen (15) working days after issuance of the final notice of inspection of noncompliance or final notice of inspection of cessation order shall not be grounds for dismissal of all or part of the assessment unless:

1. The person against whom the proposed penalty has been assessed proves actual and substantial prejudice as a result of the delay; and

2. The person makes a timely written objection to the delay on or before the last date to request an assessment conference under subsection (4)(b) of this section.

(4) Options of person issued notice of proposed penalty assessment.

(a) Waiver of rights to challenge proposed penalty assessment if no petition was filed challenging the fact of the violation.

1. The person shall notify the department that the person elects not to contest the proposed penalty assessment.

2. If the person did not file a timely petition requesting an administrative hearing as to the fact of the violation pursuant to section 7 of this administrative regulation, then the secretary shall issue a final order finding that:

a. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment;

b. The fact of the violation is deemed admitted; and

c. The proposed penalty is due and payable within thirty (30) days after the entry of the final order.

(b) Waiver of rights to challenge penalty assessment and the person filed a petition challenging the fact of the violation.

1. The person shall notify the department that the person elects not to contest the proposed penalty assessment.

2. If the person filed a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that:

a. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment; and

b. The proposed penalty is due and payable within thirty (30) days of the mailing of a final order affirming the fact of the violation.

(c) Request for an assessment conference. The person shall request in writing an assessment conference:

1. Within thirty (30) days of receipt of the notice of proposed penalty assessment; or

2. Within thirty (30) days from the date the notice of proposed penalty assessment is returned to the department as undeliverable, unclaimed or refused; or

(d) Petition for administrative hearing.

1. The person shall contest the proposed penalty assessment or the fact of the violation by submitting a petition for an administrative hearing in accordance with Section 6 or 7 of this administrative regulation, or contest both by filing a petition for an administrative hearing in accordance with section 6 and 7.

2. The fact of the violation shall not be contested if it has been adjudicated by a final order of the secretary pursuant to an administrative hearing commenced under Section 7 of this administrative regulation.

(5) Failure to Request a Penalty Assessment Conference. If a person issued a proposed penalty assessment fails to request in writing an assessment conference in a timely manner as set forth in subsection (4)(c) of this section or has not filed a timely petition in accordance with Section 6 of this administrative regulation, then the cabinet shall consider the failure to request an assessment conference a waiver of the person's right to a conference. The secretary shall enter a final order pursuant to paragraphs (a) or (b) of this subsection.

(a) If the person did not file a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment;

2. The fact of the violation is deemed admitted; and

3. The proposed penalty is due and payable within thirty (30) days after the entry of the final order.

(b) If the person filed a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment; and

2. The proposed penalty is due and payable within thirty (30) days of the mailing of a final order affirming the fact of the violation.

Section 4. Procedures for Assessment Conference. (1) Date and location of conference; failure to timely schedule; substantial prejudice.

(a) If an assessment conference is requested, the cabinet shall schedule the assessment conference within sixty (60) days after the cabinet's receipt of the request, unless all parties agree otherwise.

(b) An assessment conference shall be held in the department's regional office of the mine site subject to the proposed penalty assessment unless the parties agree otherwise.

1. If all the parties or their counsel request to participate by telephone or other electronic means, then the conference officer may hold the assessment conference telephonically or by any other electronic means agreed to by the parties.

2. Any person who attends the assessment conference in person at the department's regional office shall have access to the telephonic conference line or the electronic means utilized during the assessment conference.

(c) Failure by the cabinet to timely schedule an assessment conference shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed makes a timely objection on or before the date of the assessment conference and proves actual and substantial prejudice as a result of the delay.

(d) The scheduling of the assessment conference shall not operate as a stay of any notice of noncompliance and order for remedial measures or cessation order.

(2) Service; public participation.

(a) The cabinet shall serve notice of the assessment conference pursuant to 400 KAR 1:090, Section 5.

(b) The cabinet shall also send a copy of the notice of the assessment conference to any person who filed a report that led to the issuance of the notice of noncompliance and order for remedial measures or cessation order being contested.

(c) The cabinet shall post notice of the assessment conference at the department's regional office of the mine site subject to the proposed penalty assessment at least five (5) days before the assessment conference.

(d) Any person shall have the right to attend and participate in the assessment conference.

(3) Conference officer; requirements for administrative hearings not applicable. The office shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by the requirements for administrative hearings in 401 KAR 1:090 or by the provisions of 400 KAR 1:040.

(4) Report of conference officer. The conference officer shall consider all relevant information pertaining to the proposed penalty assessment. Within thirty (30) days after the assessment conference is held, the conference officer shall issue a report recommending to the secretary to either affirm, raise, lower, or dismiss the proposed penalty assessment.

(5) Service of report; documentation. The conference officer's report shall be served by mail, postage prepaid, and shall include a worksheet if the penalty has been raised or lowered. The reasons underlying the conference officer's report shall be fully documented.

(6) Failure to attend; report to issue. If the person requesting an assessment conference fails to attend the scheduled assessment conference, the assessment officer shall within thirty (30) days of the date of the scheduled assessment conference issue a report to the secretary recommending that the proposed penalty assessment be affirmed.

(7) Statements not to be introduced at an administrative hearing. In any administrative hearing commenced under Sections 6 or 7 of this administrative regulation, no evidence as to statements made by a party at an assessment conference shall be introduced by another party as evidence or to impeach a witness.

(8) Challenge to conference officer's report.

(a) Any person issued a proposed penalty assessment may file a petition requesting an administrative hearing to contest the

conference officer's recommended penalty pursuant to the requirements of Section 6 of this administrative regulation.

(b) The cabinet may file a petition to request under Section 5 of this administrative regulation an administrative hearing to contest the conference officer's recommended penalty.

(9) Failure to timely file a petition challenging the conference report. If a person issued a proposed penalty assessment fails to timely file a petition in accordance with Section 6 of this administrative regulation challenging the conference report, the secretary shall issue a final order pursuant to paragraphs (a) or (b) of this subsection.

(a) If the person also did not file a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of the administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment;

2. The fact of the violation is deemed admitted; and

3. The proposed penalty is due and payable within thirty (30) days after the entry of the final order.

(b) If the person filed a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of the administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment; and

2. The proposed penalty is due and payable within thirty (30) days of the mailing of a final order affirming the fact of the violation.

Section 5. Administrative Hearing Initiated by the Cabinet. (1) Criteria for filing.

(a) The cabinet may initiate an administrative hearing if:

1. The cabinet has reason to believe that a violation of KRS Chapter 350; 405 KAR Chapters 7 through 24 has occurred or is occurring;

2. A violation of a permit condition has occurred or is occurring;

3. A permittee, operator, or person has failed to:

a. Pay a civil penalty assessed by the cabinet;

b. Undertake remedial measures mandated by an order of the cabinet; or

c. Abate violations the permittee, operator, or person was determined to have committed by an order of the cabinet;

4. The provisions of KRS 350.990(9) apply;

5. The cabinet has reason to believe additional remedies should be sought or an order should be entered against a person to protect the environment or the health and safety of the public; [~~or~~]

6. The criteria of 405 KAR 10:050, Section 3(2) or (3) apply;

7. The cabinet has determined that revocation of a license under KRS 351.345 is warranted; or

8. An explosive user or seller notified the cabinet pursuant to KRS 351.350 that they intend to challenge a citation issued under KRS 351.315 to 351.375.

(b) The cabinet may initiate an administrative hearing to contest a conference officer's recommended penalty and seek any combination of the relief set forth in subsection (2) of this section.

(c) The cabinet shall initiate an administrative hearing and shall seek revocation of the permit and forfeiture of the bond or suspension of the permit pursuant to KRS Chapter 350 if:

1. The permittee, operator, or person has willfully failed to comply with a cessation order; or

2. The criteria of 405 KAR 10:050, Section 3(1) apply.

(2) Remedies.

(a) In an administrative hearing pursuant to KRS Chapter 350 initiated by the cabinet or in a counter claim filed in response to a petition filed in accordance with Section 6, 7, 8, or 9, the cabinet may seek one (1) or a combination of the following:

1.[~~(a)~~] Permit suspension or revocation;

2.[~~(b)~~] Bond forfeiture;

3.[~~(c)~~] Civil penalty;

4.[~~(d)~~] A determination, pursuant to KRS 350.060, 350.085, and 350.130, that a person shall not be eligible to receive another permit or conduct future operations;

5.[~~(e)~~] A determination, pursuant to KRS 350.990(9), that any director, officer, or agent of a corporation willfully and knowingly authorized, ordered, or carried out a violation or failed or refused to comply with any final order; or

6.[~~(f)~~] Any other relief to which the cabinet may be entitled by KRS Chapter 350.

(b) In an administrative hearing pursuant to KRS Chapter 351 initiated by the cabinet, the cabinet may seek one (1) or a combination of the following:

1. Revocation of license or permit pursuant to KRS 351.345 or KRS 351.315; or

2. Civil penalty pursuant to KRS 351.350;

3. Any other relief to which the cabinet may be entitled by KRS 351.315 to 351.375.

(3) Procedure for an administrative hearing initiated by the cabinet.

(a) Filing of administrative complaint. The cabinet shall initiate an administrative hearing by filing an administrative complaint with the office incorporating the following for each claim for relief:

1. A statement of facts entitling the cabinet to administrative relief;

2. A request for specific relief;

3. A copy of any notice, order, citation, or determination upon which relief is sought; and

4. In a bond forfeiture action, the cabinet shall attach documentation to the petition that the cabinet contacted the bonding company or financial institution providing the bond, to determine if it wanted the right to perform the measures necessary to secure bond release in accordance with KRS 350.130.

(b) Answer or responsive pleading.

1. The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the administrative complaint.

2. The answer shall contain:

a.(i) A statement specifically admitting or denying the alleged facts stated in the administrative complaint or amended administrative complaint; or

(ii) If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

b. Any defense to each claim for relief; and

c. Any other matter to be considered on review.

3. Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of the defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in a responsive pleading.

4. An allegation in a pleading to which an answer or responsive pleading is not required or permitted shall be taken as denied or avoided.

5. An allegation in a pleading to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(c) Amendment.

1. An administrative complaint may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

2. The respondent shall have ten (10) days from the filing of an amended administrative complaint or the time remaining for filing an answer to the original complaint, whichever is longer, to file an answer or responsive pleading to the amended administrative complaint.

3. If the hearing officer grants a motion to amend the administrative complaint, the hearing officer shall set the time for an answer to be filed in the order granting the motion.

(4) Burden of proof.

(a) The cabinet shall have the ultimate burden of persuasion.

(b) A respondent shall have the burden of persuasion to

establish an affirmative defense.

(c) A respondent claiming an exemption shall have the burden of persuasion to establish the qualification for the exemption.

(5) Default.

(a) If the person against whom the administrative complaint is filed fails to timely comply with a prehearing order of a hearing officer, the hearing officer may on his own initiative or upon motion, issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why a report and recommended order adverse to the person shall not be referred to the secretary.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

(c) If the person against whom the administrative complaint is filed fails to appear at an administrative hearing, the person shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

Section 6. Administrative Hearing for Review of Proposed Assessment. (1) Who may file. Any person issued a proposed penalty assessment may file with the office a petition for an administrative hearing to review the penalty.

(2) Filing petition; waiver.

(a) A person filing a petition for review of a proposed penalty assessment who did not make a request for a Penalty Assessment Conference pursuant to section 4 of this administrative regulation shall file the petition in the office within thirty (30) days of:

1. Receipt of the proposed penalty assessment; or

2. The return receipt date in the department of the notice of proposed penalty assessment, if the proposed penalty assessment is returned undeliverable, unclaimed or refused.

(b) If the person made a timely request for an assessment conference pursuant to Section 4 of this administrative regulation, the person shall file a petition for review in the office within thirty (30) days of:

1. Receipt of the conference officer's report; or

2. The return receipt date in the office of the conference officer’s report, if the conference officer’s report is returned undeliverable, unclaimed, or refused;

(c) The hearing officer shall not grant an extension of time for filing a petition for review of a proposed penalty assessment.

(d) If the hearing officer, upon motion or his own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall enter an order in accordance with Section 4(9)(a) or (b) of this administrative regulation.

(3) Content of the petition. The petition shall include:

(a) A short and plain statement indicating the reasons why the amount of the penalty is being contested;

(b) If the amount of penalty is being contested based upon a misapplication of the penalty formula, a statement indicating how the penalty formula contained in 405 KAR 7:095 was misapplied, along with a proposed penalty utilizing the penalty formula; and

(c) Identification by reference to the number for the notice of noncompliance and order for remedial measures or cessation order number.

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or

b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of such defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in an answer or responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent shall have ten (10) days from the filing of an amended petition or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend a petition, the hearing officer shall set the time for an answer to be filed shall be set forth in the order granting the motion.

(6) Burden of proof. The cabinet shall have the burden of going forward to establish a prima facie case as to the amount of the penalty assessment and the ultimate burden of persuasion as to the amount of the penalty assessment.

(7) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer, may at his discretion or upon motion, issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with Section 4(9)(a) or (b) of this administrative regulation.

(c) If the person against whom the proposed penalty is assessed fails to appear at an administrative hearing, the person shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with Section 4(9)(a) or (b) of this administrative regulation.

(8) Hearing officer report; contents. If an administrative hearing is conducted, the hearing officer shall incorporate in his report and recommended order concerning a civil penalty, findings of fact on each of the four (4) criteria set forth in 405 KAR 7:095, Section 3 and conclusions of law.

Section 7. Administrative Review of a Notice of Noncompliance and Order for Remedial Measures and a Cessation Order. (1) Who may file. A person who considers himself aggrieved by the issuance of a notice of noncompliance and order for remedial measures or cessation order by the cabinet pursuant to the provisions of KRS Chapter 350 or administrative regulations may file a petition for review with the office.

(2) Time for filing.

(a) A person filing a petition for review under this section shall file in the office a petition within:

1. Thirty (30) days of the receipt of a notice of noncompliance and order for remedial measures or cessation order;

2. Thirty (30) days of receipt of notice of modification, vacation, or termination of the notice of noncompliance and order for remedial measures or cessation order; or

3. Thirty (30) days of the return receipt date in the department of the notice of noncompliance and order for remedial measures or cessation order if the notice of noncompliance and order for remedial measures or cessation order is returned as undeliverable, unclaimed or refused.

(b) The hearing officer shall not grant an extension of time for filing a petition for review.

(c) If the hearing officer, upon motion or his own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report

recommending dismissal of the petition. The secretary shall dismiss a petition that is not filed in accordance with subsection (2)(a) of this section finding the person waived his right to an administrative hearing and affirming the notice of noncompliance and order for remedial measures or cessation order.

(3) Content of the petition. A person filing a petition for review shall incorporate in the petition regarding each claim for relief:

(a) A statement of facts entitling that person to administrative relief;

(b) A request for specific relief;

(c) An explanation of each specific alleged error in the cabinet's determination;

(d) A copy of the notice of noncompliance and order for remedial measures or cessation order sought to be reviewed; and

(e) A statement as to whether or not the person waives the opportunity for an evidentiary hearing;

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or

b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of the defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert those defenses in an answer or responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent shall have ten (10) days from the filing of a petition amended as a matter of right or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend a petition, the time for an answer to be filed shall be set forth in the order granting the motion.

(6) Requirement to file subsequent notice of noncompliance and order for remedial measures or cessation order.

(a) Within ten (10) days of receipt, a petitioner shall file a copy of any subsequent notice of noncompliance and order for remedial measures or cessation order which modifies, vacates, or terminates the notice of noncompliance and order for remedial measures or cessation order sought to be reviewed.

(b) Within ten (10) days of receipt, a petitioner shall file a copy of any subsequent cessation order for failure to timely abate the violation which is the subject to the notice sought to be reviewed.

(c) If a petitioner desires to challenge a subsequent notice of noncompliance and order for remedial measures or cessation order, the petitioner must file:

1. A separate petition for review in accordance with this section; or

2. A motion to amend a pending petition with the amended petition attached in accordance with this section and within the time requirements of subsection (2).

(d) A petition for review of a related notice of noncompliance and order for remedial measures or cessation order is subject to consolidation.

(7) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer may, at his discretion or upon motion, shall issue an order to show cause why the petitioner should not be deemed to have waived his right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order affirming the notice of noncompliance and order for remedial measures or cessation order and dismissing the petition.

(c) If the petitioner fails to appear at an administrative hearing, the person shall be deemed to have waived his right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order affirming the notice of noncompliance and order for remedial measures or cessation order and dismissing the petition.

(8) Burden of proof. In review of a notice of noncompliance and order for remedial measures or cessation order or the modification, vacation, or termination thereof under this section, the cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the notice of noncompliance and order for remedial measures or cessation order, or modification, vacation, or termination thereof. The ultimate burden of persuasion shall rest with the petitioner.

Section 8. Request for Review of Permit Determinations Pursuant to KRS Chapter 350. (1) Who may file. The permit applicant, permittee, or person having an interest which is or may be adversely affected by a permit determination of the cabinet may file a petition for review of the following:

(a) Application for a new permit;

(b) Application for a permit revision and amendment, permit renewal, and the transfer, assignment, or sale of rights granted under permit;

(c) Permit revision and amendment ordered by the cabinet, except challenges of permit revision ordered as a remedial measure in a notice of noncompliance shall be reviewed in an administrative hearing pursuant to Section 7 of this administrative regulation; and

(d) Application for a coal exploration permit.

(2) Time to file; waiver.

(a) The permit applicant, permittee, or person having an interest that is or may be adversely affected by a permit determination of the cabinet shall file a petition for review with the office within thirty (30) days from the date the permit applicant, permittee, or person had actual notice of the determination or could reasonably have had notice.

(b) If the hearing officer, upon motion or his own initiative, finds that the permit applicant, permittee, or person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall enter an order stating that the permit applicant, permittee, or person waived his right to an administrative hearing.

(3) Content of the petition. The petition for review shall include:

(a) A clear statement of the facts entitling the person requesting review to administrative relief;

(b) An explanation of each specific alleged error in the cabinet's decision, including reference to the statutory and regulatory provisions allegedly violated;

(c) A request for specific relief; and

(d) A statement whether or not the person requests or waives the opportunity for an evidentiary hearing.

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or

b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative

defense in a required answer or responsive pleading may constitute a waiver of such defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in an answer or a responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent shall have ten (10) days from the filing of an amended petition or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend a petition, the hearing officer shall set the time for an answer to be filed in the order granting the motion.

(6) Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's determination pending completion of administrative review.

(7) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer may, at his discretion or upon motion, issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived his right to an administrative hearing and dismissing the petition.

(c) If the person requesting the administrative hearing fails to appear at a hearing, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived his right to an administrative hearing and dismissing the petition.

(8) Burden of proof.

(a) Petition to review application for a new permit.

1. If the permit applicant is seeking review, he shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that:

a. The permit application complies with the requirements of KRS Chapter 350 and administrative regulations; or

b. The permit terms or conditions are improper.

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that:

a. The permit application fails to comply with the requirements of KRS Chapter 350 or the administrative regulations; or

b. The cabinet should have imposed certain terms or conditions on the permit that were not imposed.

(b) Petition to review the approval or disapproval of an application for a permit renewal.

1. A party opposing the renewal of a permit shall have the burden of going forward to establish a prima facie case; and

2. The ultimate burden of persuasion that the permit renewal application should be disapproved or that the cabinet should have imposed certain terms or conditions on the renewal permit that were not imposed.

(c) Petition to review the approval or disapproval of an application for a permit revision or amendment, or an application for the transfer, assignment, or sale of rights granted under permit.

1. If the permit applicant is seeking review, the permit applicant shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application complies with the requirements of KRS Chapter 350 and administrative regulations.

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails to comply with the requirements of KRS Chapter 350 or the administrative regulations.

(d) Petition to review a permit revision or amendment ordered by the cabinet.

1.The cabinet shall have the burden of going forward to establish a prima facie case that the permit should be revised or amended; and

2. The permittee shall have the ultimate burden of persuasion that the revision or amendment is not appropriate.

(e) Petition to review a decision on an application for a coal exploration permit.

1. If the permit applicant is seeking review, he shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application complies with the requirements of KRS Chapter 350 and administrative regulations.

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails to comply with the requirements of KRS Chapter 350 or the administrative regulations.

Section 9. Review of a Cabinet Determination. (1) Who may file. A person who considers himself aggrieved by a determination of the cabinet <u>made under KRS Chapter 350</u> for which an administrative hearing is not specifically provided in any other section of this administrative regulation may file a petition for review of the determination pursuant to this section.

(2) Time to file; waiver.

(a) A person filing a petition for review under this section shall file in the office a petition within thirty (30) days after the person has had actual notice of the determination complained of, or could reasonably have had notice.

(b) The hearing officer shall not grant an extension of time for filing a petition for review pursuant to this section.

(c) If the hearing officer, upon motion or his own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall enter an order stating that the person waived his right to an administrative hearing.

(3) Content of the petition. The petition for review shall contain:

(a) A statement of the facts entitling the person to administrative relief;

(b) An explanation of each specific alleged error in the cabinet's determination;

(c) A copy of the written determination to be reviewed if applicable; and

(d) A request for specific relief.

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or other responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or

b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of such defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in an answer or responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent shall have ten (10) days from the filing of an amended petition or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend a petition, the hearing officer shall set the time for an answer to be filed in the order granting the motion.

(6) Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's determination pending completion of administrative review.

(7) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer may, at his discretion or upon motion, issue an order to show cause why that person should not be deemed to have waived his right to an administrative hearing and why his petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived his right to an administrative hearing and dismissing the petition.

(c) If the petitioner fails to appear at an administrative hearing, the petitioner shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order finding that he has waived his right to an administrative hearing and dismissing the petition.

(8) Burden of proof. The petitioner shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the requested relief.

Section 10. Proceeding for the Suspension or Revocation of a Permit Pursuant to KRS Chapter 350 Because of a Pattern of Violations. (1) Initiation of the proceeding.

(a) A proceeding on a show cause order issued by the cabinet pursuant to KRS 350.028(4), 350.465(3)(f), and 405 KAR 12:020, Section 8, shall be initiated by the filing of a copy of the show cause order by the cabinet with the office at the same time the order is issued to the permittee.

(b) A show cause order shall set forth:

1. A list of the unwarranted or willful violations that contribute to a pattern of violations;

2. A copy of each order or notice that contains the violations listed as contributing to a pattern of violations;

3. The basis for determining the existence of a pattern of violations; and

4. A recommendation whether or not the permit should be suspended or revoked, including the length and terms of a suspension.

(2) Answer. The permittee shall have thirty (30) days from service of the show cause order within which to file an answer with the office, which shall state:

(a) The reasons in detail why a pattern of violations, as established in 405 KAR 12:020, Section 8, does not exist or has not existed including all reasons for contesting:

1. The fact of the violations alleged by the cabinet as constituting a pattern of violations;

2. The willfulness of the violations; or

3. Whether or not the violations were caused by the unwarranted failure of the permittee;

(b) Mitigating factors the permittee believes exist in determining the terms of the revocation or the length and terms of the suspension;

(c) Other alleged relevant facts; and

(d) Whether or not an evidentiary hearing on the show cause order is desired.

(3) Burden of proof. In a show cause proceeding, the cabinet shall have the burden of going forward to establish a prima facie case for suspension or revocation of the permit. The ultimate burden of persuasion that the permit should not be suspended or revoked shall rest with the permittee.

(4) Determination by the hearing officer.

(a) Upon a determination by the hearing officer pursuant to 405 KAR 12:020, Section 8, that a pattern of violations exists or has existed, the hearing officer shall recommend the permit either be suspended or revoked and the permittee be directed to complete necessary remedial measures and reclamation operations. In making the recommendation, the hearing officer need not find that all the violations listed in the show cause order occurred, but only that sufficient violations occurred to establish a pattern.

(b) If the permit is suspended, the hearing officer may recommend preconditions to be satisfied prior to the suspension being lifted.

(5) Default. If the permittee fails to timely file an answer or appear at the administrative hearing, the permittee shall be deemed to have waived his right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order containing the following:

(a) That each violation listed in the show cause order occurred;

(b) That the violations were caused by the permittee's unwarranted failure or were willfully caused;

(c) That a pattern of violations exists; and

(d) That the permit shall be suspended or revoked in accordance with the recommendation contained in the show cause order.

Section 11. Temporary Relief. (1) Temporary Relief Available. Pending the completion of the investigation and hearing provided for in this administrative regulation, a hearing officer may, subject to review by the secretary, grant temporary relief from a:

(a) Notice of noncompliance and order for remedial measures or a cessation order issued pursuant to KRS Chapter 350 or administrative regulations;[~~or~~]

(b) A permit or bond release decision of the cabinet; or[~~.~~]

(c) Any action taken by the cabinet pursuant to KRS Chapter 351.

(2) Temporary Relief Not Available. A hearing officer shall not grant temporary relief for:

(a) The issuance of a permit if the cabinet made a determination to deny a permit in whole or in part; or

(b) The release of a bond if the cabinet made a determination to deny a bond release request.

(3) A hearing officer shall grant or deny temporary relief from a cessation order issued pursuant to KRS 350.130(1) or (4), or from a bond release decision within five (5) working days of receipt by the office of a temporary relief request, unless waived by the petitioner.

(4) Contents of the Petition. A person shall file a written petition for relief with the office. The petition shall contain:

(a) The permit number, the name of the permittee, the date and number of the notice of noncompliance and order for remedial measures or cessation order from which relief is requested, if applicable, and the name and telephone number of the petitioner;

(b) A detailed statement setting forth reasons why such relief should be granted;

(c) Facts supporting a substantial likelihood that the person requesting the relief will prevail on the merits of the final determination of the proceeding;

(d) A statement that the relief sought will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources;

(e) If the petition relates to a cessation order issued pursuant to KRS 350.130(1) or (4) or a decision to release a bond, a statement of whether or not the person waives the requirement for the hearing officer to grant or deny the request for temporary relief within five (5) working days of receipt of the petition by the office; and

(f) A statement of the specific relief requested.

(5) Hearing process.

(a) In addition to the service requirements of 400 KAR 1:090, Section 5, the petitioner shall serve other parties with a copy of the petition simultaneously with the filing of the petition in the office. If service is accomplished by mail, the petitioner shall inform the other parties by telephone at the time of mailing that a petition is

being filed in the office and the contents of the petition.

(b) The representative of the cabinet and any other party may indicate their objection to the application by communicating the objection to the hearing officer and the petitioner by telephone. Ex parte communication as to the merits of the proceeding shall not be conducted with the hearing officer. The representative of cabinet and any other party may simultaneously reduce their objections to writing. Written objections shall be immediately filed with the office and immediately served upon the petitioner.

(c) Scheduling a hearing.

1. Upon receipt of communication that there is an objection to the petition, the hearing officer shall immediately order a location, time, and date for the administrative hearing by communicating the information to the cabinet, any other party, and the petitioner by telephone.

2. The hearing officer shall reduce the communication to writing in the form of a memorandum to the file.

3. The administrative hearing on the request for temporary relief shall be held in the locality of the permit area, or at any other location acceptable to the cabinet, the petitioner, and any other person named in the action.

4. If the petitioner did not waive the requirement for the hearing officer to grant or deny temporary relief within five (5) working days of the office's receipt of the petition for temporary relief as set forth in subsections (3) and (4)(e) of this section, the hearing officer shall schedule the administrative hearing within (5) five days of the office's receipt of the petition for temporary relief.

(d) If an evidentiary hearing is held the hearing officer may require the parties to submit proposed findings of fact and conclusions of law to be considered at the evidentiary hearing, which may be orally supplemented on the record at the hearing.

(e) If at any time, the petitioner requests a delay or acts in a manner so as to frustrate the expeditious nature of the proceeding or fails to supply the information required by the hearing officer, the action shall constitute a waiver of the five (5) day requirement in subsection (3) of this section.

(6) Standard of review. A hearing officer may grant temporary relief if:

(a) The person requesting relief shows that there is substantial likelihood that the findings on the merits in an administrative hearing conducted by the cabinet will be favorable to the person; and

(b) The relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(7) Timing of hearing officer's determination.

(a) A hearing officer shall grant or deny relief expeditiously.

(b) If the petitioner did not waive the requirement for a hearing officer to grant or deny the request for temporary relief within five (5) days of the office's receipt of the petition as required in subsections (3) and (4)(e) of this section, the hearing officer shall either:

1. Orally rule on the request for temporary relief at the conclusion of the hearing stating the reasons for the decision and issue a written decision stating the reasons for the finding within three (3) working days; or

2. Within twenty-four (24) hours of completion of the administrative hearing issue a written decision stating the reasons for the finding.

(c) If the petitioner waived the requirement for a hearing officer to grant or deny the request for temporary relief within five (5) days of the office's receipt of the petition in accordance with subsections (3) and (4)(e) of this section, or the petitioner did not request temporary relief from a cessation order or a bond release hearing, then hearing officer shall either:

1. Orally rule on the request for temporary relief at the conclusion of the hearing stating the reasons for the decision and issue a written decision stating the reasons for the finding within twenty (20) working days; or

2. Within fifteen (15) days of completion of the administrative hearing issue a written decision stating the reasons for the finding.

Section 12. Petition for Recovery of Costs and Expenses. (1) Who may file and time to file.

(a) A person may file a petition for an award of costs and expenses, including attorneys' fees reasonably incurred, as a result of the person's participation in a proceeding held pursuant to this administrative regulation <u>for an action brought pursuant to KRS Chapter 350</u> that results in an order of the secretary.

(b) A person shall file, with the cabinet within forty-five (45) days of the date of entry of the final order, a petition for an award of costs and expenses, including attorneys' fees.

(c) Failure of a person to timely file the petition shall constitute a waiver of the person's right to an award.

(2) Content of the petition. A person shall include in the petition filed under this section the name of the party from whom costs and expenses are sought and the following:

(a) An affidavit setting forth in detail all costs and expenses including attorneys' fees reasonably incurred for, or in connection with, the person's participation in the proceeding;

(b) Receipts or other evidence of the costs and expenses; and

(c) If attorneys' fees are claimed, evidence concerning:

1. The hours expended on the case;

2.The customary commercial rate of payment for the services in the area; and

3. The experience, reputation, and ability of the individual or individuals performing the services.

(3) Answer.

(a) The respondent shall file with the office within thirty (30) days from service of the petition an answer or other responsive pleading.

(b) The answer shall contain:

1.a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or

b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of such defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in a responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(4) Criteria for awarding of costs.

(a) Appropriate costs and expenses including attorneys' fees may be awarded to a person from the permittee, if:

1. The person initiated an administrative proceeding reviewing an enforcement action, and a Secretary's Order was issued finding that, on or after May 18, 1982:

a. A notice of noncompliance and order for remedial measures or a cessation order was properly issued for violations of KRS Chapter 350, KAR Title 405 or a permit condition; or

b. An imminent hazard existed; or

2. The person participated in an administrative proceeding reviewing an enforcement action, and a Secretary's Order was issued finding that, on or after May 18, 1982:

a. A notice of noncompliance and order for remedial measures or a cessation order was properly issued for violations of KRS Chapter 350, KAR Title 405, or a permit condition; or

b. An imminent hazard existed; and

c. The hearing officer finds and the secretary concurs that the person made a substantial contribution to the full and fair determination of the issues.

(b) Appropriate costs and expenses including attorneys' fees may be awarded to a person other than a permittee or his representative from the cabinet, if:

1. The person initiated or participated in any proceeding under KRS Chapter 350; and

2. The hearing officer finds and the secretary concurs that the person made a substantial contribution to a full and fair determination of the issues.

(c) Appropriate costs and expenses including attorneys' fees

may be awarded to a permittee from the cabinet if the permittee demonstrates that the cabinet initiated an administrative hearing or issued a notice of noncompliance and order for remedial measures or a cessation order:

1. In bad faith; and

2. For the purpose of harassing or embarrassing the permittee.

(d) Appropriate costs and expenses including attorneys' fees may be awarded to a permittee from a person if the permittee demonstrates that the person initiated an administrative hearing under this administrative regulation or participated in an administrative hearing or conference:

1. In bad faith; and

2. For the purpose of harassing or embarrassing the permittee.

(e) Appropriate costs and expenses including attorneys' fees may be awarded to the cabinet from a person if the cabinet demonstrates that:

1. A person applied for review pursuant to this administrative regulation in bad faith and for the purpose of harassing or embarrassing the cabinet or the Commonwealth; or

2. A party participated in an administrative hearing or conference in bad faith and for the purpose of harassing or embarrassing the cabinet or the Commonwealth.

(5) An award under this section may include reimbursement for costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred.

Section 13. Location of an Administrative Hearing. (1) An administrative hearing conducted in accordance with this administrative regulation shall be held at the location designated by the hearing officer unless a written request for a hearing at or close to the mine site is submitted with the initiating document or an answer.

(2) The department's regional office for the mine site shall be deemed reasonably close, unless a closer location is requested by a party to the case and agreed to by the hearing officer.

(3) An administrative hearing pursuant to KRS Chapter 351.315 to 351.375 shall be held in Frankfort at the location designated by the hearing officer.

Section 14. Judicial Review, Effect, and Subsequent Proceeding. (1) Judicial review. Judicial review may be taken from a final order of the secretary to the appropriate circuit court of competent jurisdiction in accordance with KRS 350.032 or 350.0305 as applicable.

(2) Effect of final order pending judicial review. The commencement of a proceeding for judicial review of a final order of the secretary shall not operate as a stay of a final order, unless specifically ordered by the court of competent jurisdiction.

(3) Remand from a court.

(a) If a matter is remanded from a court for a further proceeding, and to the extent the court's directive and time limitations will permit, each party shall be allowed an opportunity to submit to the hearing officer, a report recommending a procedure to be followed in order to comply with the court's order.

(b) The hearing officer shall review each report and enter a special order governing the handling of the matter remanded to it for further proceedings by a court.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 3, 2018

FILED WITH LRC: July 13, 2018 at noon

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth hearing, conference, notice, penalty assessment, and other procedural and due process provisions for the surface coal mining permanent regulatory program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish hearing, conference, notice, penalty assessment, and other procedural and due process provisions for the surface coal mining permanent regulatory program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 authorizes the cabinet to conduct administrative hearings. This administrative regulation sets forth hearing, conference, notice, penalty assessment, and other procedural and due process provisions for the surface coal mining permanent regulatory program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth hearing, conference, notice, penalty assessment, and other procedural and due process provisions for the surface coal mining permanent regulatory program and is authorized by KRS Chapter 350.

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

(a) How the amendment will change this existing administrative regulation: This amendment is necessary to include appropriate citations to KRS Chapter 351 related to explosives and blasting hearings. HB 261 from the 2018 Legislative Session moved explosives and blasting hearings from the KRS Chapter 13B process to the Office of Administrative Hearings process.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that provisions of HB 261 from the 2018 Legislative Session are incorporated into the cabinet's administrative hearings process.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes to ensure that provisions of HB 261 from the 2018 Legislative Session are incorporated into the cabinet's administrative hearings process.

(d) How the amendment will assist in the effective administration of statutes: This amendment ensure that provisions of HB 261 from the 2018 Legislative Session are incorporated into the cabinet's administrative hearings process as authorized in the amendments to KRS Chapter 351 as it relates to explosives and blasting.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This regulation establishes practice provisions that apply to all individuals, businesses, organizations, or state and local governments that either initiate or become subject to an administrative proceeding in the cabinet's Office of Administrative Hearings specifically involving matters brought under KRS Chapters 350 and 351.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will have to comply with the requirements for procedural processes included in the administrative hearing process included in the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to the regulated entity associated with the amendments to this administrative regulation. However, there might be a slight cost saving and expedited hearings process due to the removal of explosives and blasting hearings from the current method of KRS Chapter 13B administrative hearings into the less cumbersome Office of Administrative Hearings process.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will benefit from effective, fair, and timely administrative hearing practice provisions.

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

(a) Initially: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The cabinet will not incur any

additional costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's current operating budget will be used for the implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering was not used. The provisions in this administrative regulation will apply equally to all parties of an administrative adjudication in the Cabinet's Office of Administrative Hearings.

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 will continue to hold administrative hearings to as needed concerning matters covered by KRS Chapters 350 and 351. State and local government will only be impacted insofar as they are parties of an administrative adjudication with the cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 350.020, 350.028, 350.0301, 350.255, 350.465, 350.610, 351.315, 351.345, 351.350, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

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

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

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

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

STATEMENT OF EMERGENCY
503 KAR 1:110E

An emergency administrative regulation, pursuant to KRS 13A.190(1)(a), is necessary in order to change the training hours to complete basic training for the next basic training class of police officers. The duration of training will be changed to 800 hours effective July 1, 2018. An ordinary administrative regulation will not go into effect by July 1, 2018. It is necessary for the training hours to be changed by this date in order to address a backlog of classes for new police officers with the next training class. It is a public safety issue to have properly trained local police for effective local law enforcement. The change in hours will assist with the training backlog.

This administrative regulation will be replaced by an ordinary administrative regulation that is being filed with the emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation. No emergency administrative regulation governing the same subject matter has been filed within the previous nine (9) months.

HON. MATTHEW G. BEVIN, Governor of Kentucky
KEITH CAIN, Chair of the Kentucky Law Enforcement Council

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(Emergency Amendment)

503 KAR 1:110E. Department of Criminal Justice Training basic training: graduation requirements; records.

RELATES TO: KRS 15.330(1)(c), (f), 15.386(1), 15.404(1), 15.440(1)(d)

STATUTORY AUTHORITY: KRS 15.330(1)(c), (f), (h), 15.334(4), 15.440(1)(d)

EFFECTIVE: June 27, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(f) and (h) authorize the Kentucky Law Enforcement Council to approve law enforcement officers as having met the requirements for completion of law enforcement training and to promulgate administrative regulations to implement that requirement. This administrative regulation establishes requirements for graduation from the Department of Criminal Justice Training basic training course required for peace officer certification and participation in the Kentucky Law Enforcement Foundation Program Fund and for maintenance of basic training records.

Section 1. Basic Training Graduation Requirements. To graduate from the department's basic training course, a recruit shall:

(1) Successfully complete a minimum of 800[~~888~~] hours of training, based upon the curriculum approved by the Kentucky Law Enforcement Council (KLEC) in accordance with KRS 15.330 and 503 KAR 1:090;

(2) Attain a minimum passing score on all assessments as outlined in the current KLEC-approved curriculum; and

(3) Successfully complete all other assignments, exercises, and projects included in the course. After-hours assignments may be required, and shall be successfully completed in order to pass the training segment for which they were assigned.

Section 2. Physical Training Requirements. A recruit who is required to complete basic training in order to fulfill the peace officer certification provisions established in KRS 15.380 to 15.404 shall meet the physical training entry and graduation requirements established in this section. (1) Physical training entry requirements.

(a) Within five (5) days from the first date of the basic training course, the recruit shall be tested in the following events, in the order listed, as instructed and evaluated by qualified department instructors:

1. Bench press;
2. Sit-ups;
3. 300 meter run;
4. Push-ups; and
5. One and five-tenths (1.5) mile run.

(b) A recruit shall pass the physical training entry requirements if he or she achieves a score of fifty (50) points or more, based upon the following scoring of the physical training events listed in paragraph (a) of this subsection:

1. Bench Press, based upon a percentage of the recruit's body weight:

a. 9 points - Recruit shall bench press at least fifty-five and three-tenths (55.3) percent of body weight;

b. 9.5 points - Recruit shall bench press at least fifty-nine and seven-tenths (59.7) percent of body weight;

c. 10 points - Recruit shall bench press at least sixty-four (64) percent of body weight;

d. 10.5 points - Recruit shall bench press at least sixty-eight and five-tenths (68.5) percent of body weight; and

e. 11 points - Recruit shall bench press at least seventy-three (73) percent or more of body weight;

2. Sit-ups:

a. 9 points - Recruit shall complete at least thirteen (13) repetitions in one (1) minute;

b. 9.5 points - Recruit shall complete at least sixteen (16) repetitions in one (1) minute;

c. 10 points - Recruit shall complete at least eighteen (18) repetitions in one (1) minute; and

d. 11 points - Recruit shall complete nineteen (19) repetitions or more in one (1) minute;

3. 300 meter run:

a. 9 points - Recruit shall complete in sixty-eight (68) seconds or less;

b. 9.5 points - Recruit shall complete in sixty-seven (67) seconds or less;

c. 10 points - Recruit shall complete in sixty-five (65) seconds; and

d. 11 points - Recruit shall complete in less than sixty-five (65) seconds;

4. Push-ups:

a. 9 points - Recruit shall complete at least fourteen (14) repetitions in two (2) minutes;

b. 9.5 points - Recruit shall complete at least seventeen (17) repetitions in two (2) minutes;

c. 10 points - Recruit shall complete at least twenty (20) repetitions in two (2) minutes;

d. 10.5 points - Recruit shall complete at least twenty-three (23) repetitions in two (2) minutes; and

e. 11 points - Recruit shall complete twenty-five (25) repetitions or more in two (2) minutes; and

5. One and five-tenths (1.5) mile run:

a. 9 points - Recruit shall complete in 1,076 seconds (17:56) or less;

b. 9.5 points - Recruit shall complete in 1,054 seconds (17:34) or less;

c. 10 points - Recruit shall complete in 1,032 seconds (17:12) or less;

d. 10.5 points - Recruit shall complete in 1,004 seconds (16:44) or less; and

e. 11 points - Recruit shall complete in 975 seconds (16:15) or less.

(c) A recruit shall:

1. Not be awarded more than eleven (11) points or less than nine (9) points in any one (1) of the five (5) physical ability events; and

2. Be deemed to have failed the physical ability test if he or she fails to achieve at least:

a. A total score of fifty (50) points; or

b. Nine (9) points on any one (1) physical training event.

(d) Retest.

1. A recruit that fails to meet the lowest performance level in a test event, thus earning a zero point value for that event, shall be granted a retest opportunity in that event without having to retest in the other events for which a point value was obtained, except that a retest shall not be granted unless the maximum value of eleven (11) points would allow the applicant to meet the required overall fifty (50) point minimum.

2. A recruit that obtains a point value for each event, but does not obtain an overall score of fifty (50), shall be retested on the physical training entry test again, in its entirety.

3. A retest shall not occur any sooner than forty-eight (48) hours or any later than seventy-two (72) hours from the date of the initial test attempt.

4. All failed events shall be retested on the same date.

5. If the recruit passes all previously failed events on the date of the retest, the recruit shall have met the physical training entry requirements.

6. If the recruit does not pass all previously failed events on the date of the retest, the recruit shall be unqualified to participate in the department's basic training course for which he is currently enrolled, and may reapply to participate in a future department basic training course. The recruit shall receive no credit for the part of the basic training course which he has completed.

(2) Physical training graduation requirements.

(a) In order to graduate, the recruit shall successfully complete each of the following physical ability requirements within five (5) days of graduation from law enforcement basic training, which, except for the entry test score requirements in subsection (1)(b) of this administrative regulation, shall be administered in the same order and in conformity with the KLEC Physical Fitness Testing Protocols, incorporated by reference in 503 KAR 1:140:

1. Bench press. One (1) repetition of maximum (RM) bench press equal to seventy-three (73) percent of the recruit's body weight;

2. Sit-ups. Eighteen (18) sit-ups in one (1) minute;

3. 300 meter run in sixty-five (65) seconds;

4. Push-ups. Twenty-five (25) push-ups; and

5. One and five-tenths (1.5) mile run in sixteen (16) minutes, fifteen (15) seconds.

(b) If a recruit passes all events when participating in the physical training graduation test, the recruit shall have met the physical training graduation requirements.

(c) Retest. If a recruit fails to pass all events when participating in the physical training graduation test:

1. The recruit shall retest in the failed events no earlier than forty-eight (48) hours after the date of the graduation test, but not later than the last scheduled date of the basic training course;

2. All failed events shall be retested on the same date;

3. If the recruit passes all previously failed events on the date of the retest, the recruit shall have met the physical training graduation requirements; and

4. If the recruit does not pass all previously failed events on the date of the retest, the recruit shall fail basic training.

(3) A physical training midpoint test shall be administered to the recruits at the midpoint of the basic training course for purposes of reporting their progress to their respective law enforcement agencies.

Section 3. Removal and Repetition of Basic Training. (1) Failure of training.

(a) A recruit that is removed from basic training due to a training segment failure pursuant to Section 5 of this administrative regulation shall:

1. Be removed from the basic training class;

2. Reenter basic training in a subsequent class that has the first available vacancy;

3. Start the training at the beginning of the training segment that the recruit did not successfully complete; and

4. Pay all applicable fees for the repeated basic training course in accordance with 503 KAR 3:030.

(b) Upon the recruit's return, the recruit shall attend and participate at the beginning of the segment failed.

1. In accordance with 503 KAR 3:030, Section 6(2), the recruit's hiring agency shall prepay to the department the full tuition, room, and board costs of repeating the training segment which was failed. The hiring agency may recover these costs of repeating the training segment from its recruit; and

2. If the training segment is successfully completed, the recruit shall continue with the remainder of the basic training course.

(c) A recruit who is permitted to return to basic training in accordance with this section and is removed due to failure a second time shall:

1. Be required to repeat basic training in its entirety; and

2. Pay all costs of repeating the entire basic training course in accordance with 503 KAR 3:030.

(2) Failure of the physical training graduation requirements. A recruit who fails the physical training graduation requirement in Section 2(2) of this administrative regulation:

(a) Shall not graduate with the recruit's basic training class;

(b) Shall be permitted to retest with the very next basic training class; and

(c) Upon successful completion, may graduate with that class.

(3) A recruit who is permitted to return to basic training in accordance with this section and is removed due to failure a second time shall:

(a) Be required to repeat basic training in its entirety; and

(b) Pay all costs of repeating the entire basic training course in accordance with 503 KAR 3:030.

Section 4. Basic Training Curriculum. (1) The basic training curriculum shall consist of training segments and topics listed in the current KLEC-approved curriculum. Each training segment shall at a minimum include one (1) or more of the topics listed in subsection (2) of this section. All topics listed in subsection (2) of this section shall be covered to qualify for graduation.

(2) Basic Training Topics.

(a) Legal subjects;

(b) Physical training;

(c) Defensive tactics;

(d) Patrol;

(e) Vehicle operations;

(f) Firearms;

(g) Criminal investigation;

(h) D.U.I./Field sobriety testing;

(i) Breath testing; or

(j) Practical evaluation/testing.

Section 5. Assessments. (1) Scheduled assessments shall be administered to recruits at the completion of each segment of basic training identified in the law enforcement basic training curriculum that is currently approved by the Kentucky Law Enforcement Council. Each segment shall include at a minimum one (1) or more of the topics listed in Section 4 of this administrative regulation.

(2) A recruit shall be permitted one (1) reassessment per assessment failed during basic training, but shall not exceed a total of five (5) reassessments during basic training.

(3) A recruit who fails an assessment shall not be reassessed:

(a) Earlier than forty-eight (48) hours from the original examination; or

(b) Later than:

1. Five (5) days after the original examination. A recruit may submit a written request to the training director or his designee for an additional five (5) days in which to take the reassessment; and

2. The last scheduled day of the basic training course.

(4) A recruit shall fail basic training if the recruit:

(a) Fails a reassessment in accordance with subsection (2) of this section; or

(b) Fails any six (6) assessments during basic training.

(5) A recruit is deemed to have failed a segment if a recruit fails any reassessment that is contained within a designated segment.

Section 6. Absence. (1) A recruit may have excused absences from the course with approval of the director of the certified school or his designee.

(2) An excused absence from the course which causes a recruit to miss any of the required hours of basic training shall be made up through an additional training assignment.

Section 7. Circumstances Preventing Completion of Basic Training. (1) If a recruit is prevented from completing the basic training course due to extenuating circumstances beyond the control of the recruit, including injury, illness, personal tragedy, or agency emergency, he shall be permitted to complete the unfinished areas of the course within 180 days immediately following the termination of the extenuating circumstance, if the:

(a) Extenuating circumstance preventing completion of basic training does not last for a period longer than one (1) year; and

(b) Failure to complete is not caused by a preexisting physical injury or preexisting physiological condition.

(2) If a recruit is prevented from completing the basic training course due to being called for active duty in the Kentucky National Guard or other branches of the United States Armed Forces, the recruit shall be permitted to complete the unfinished of the course within 180 days immediately following his or her return from active duty service.

Section 8. Termination of Employment while Enrolled. If, while enrolled in the basic training course, a recruit's employment as a police officer is terminated by dismissal, and the recruit is unable to complete the course, the recruit shall complete the remaining training within one (1) year of reemployment as an officer. The recruit shall repeat basic training in its entirety if:

(1) The break in employment exceeds one (1) year; or

(2) The termination of employment is a result, directly or indirectly, of disciplinary action taken by the department against the recruit while enrolled in the basic training course.

Section 9. Maintenance of Records. (1) At the conclusion of each basic training course, the department shall forward a final roster indicating the pass or fail status of each recruit to the council.

(2) All training records required for fund purposes shall be retained by the department, but a copy of pertinent facts shall be sent to the fund administrator upon written request.

(3) All training records shall be:

(a) Available to the council, the secretary, and the fund administrator for inspection or other appropriate purposes; and

(b) Maintained in accordance with applicable provisions of KRS Chapter 171.

KEITH CAIN, Chair

APPROVED BY AGENCY: May 10, 2018

FILED WITH LRC: June 27, 2018 at 2 p.m.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegsContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides graduation requirements for law enforcement officers attending basic training at the Department of Criminal Justice Training (DOCJT), and provides the Department of Criminal Justice Training's record keeping requirements for basic training classes.

(b) The necessity of this administrative regulation: KRS 15.404 requires that all peace officers employed or appointed after December 1, 1998, complete a basic training course, as established by KRS 15.440, at a school certified or recognized by the Kentucky Law Enforcement Council, within one year of appointment or employment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15.334 authorizes the Kentucky Law Enforcement Council (KLEC) to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.404 and prescribe qualifications for attendance and conditions for expulsion from law enforcement training schools. KRS 15.440(1)(d) allows the KLEC to set the number of hours for basic training by regulation. The amendment changes the number of hours required for basic academy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The amendment will modify the minimum number of training hours, as provided in KRS 440 (1)(d), to allow for an eight-hundred (800) hour basic training academy. This will allow the Department of Criminal Justice Training to meet the increasing demand for basic training courses, which must be completed within one year of an officer's hiring or appointment.

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

(a) How the amendment will change this existing administrative

regulation: The amendment modifies the minimum number of hours for basic training courses via the mechanism for that modification which is set forth in KRS 15.440(1)(d)(2).

(b) The necessity of the amendment to this administrative regulation: The amendment will modify the minimum number of training hours, as provided in KRS 440 (1)(d), to allow for an eight-hundred (800) hour basic training academy. This will allow the Department of Criminal Justice Training to meet the increasing demand for basic training courses, which must be completed within one year of an officer's hiring or appointment.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require completion of basic training within the one year window, and provide the method by which the number or hours for basic training may be set.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will modify the minimum number of training hours, as provided in KRS 440 (1)(d), to allow for an eight-hundred (800) hour basic training academy. This will allow the Department of Criminal Justice Training to meet the increasing demand for basic training courses, which must be completed within one year of an officer's hiring or appointment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All law enforcement agencies that employ certified peace officers in the Commonwealth will have the benefit of quicker completion of basic training for new hires or appointments. In addition, the individual department's down time and per diem costs for officers attending basic training will be decreased.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: DOCJT has to have approval of the 800 hour curricula.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs to the Department of Criminal Justice Training will be similar to current costs for basic training courses, as the number of hours will minimally affect administrative costs. Costs for law enforcement agencies will be lower, as they will have decreased down time for officers in training, which should result in a lessened need for overtime pay, and lower per diem pay for officers attending training.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Department of Criminal Justice Training will be able to meet the demand for basic training classes in a timely manner, without sacrificing the quality of training. There is currently a large backlog of applicants for basic training. Costs for law enforcement agencies will be lower, as they will have decreased down time for officers in training, which should result in a lessened need for overtime pay, and lower per diem pay for officers attending training.

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

(a) Initially: Costs to the Department of Criminal Justice Training will be similar to current costs for providing basic training courses, as the number of hours will minimally affect administrative and staff costs. A cost decrease to the Department of Criminal Justice Training is possible, but is not currently known.

(b) On a continuing basis: Costs to the Department of Criminal Justice Training will be similar to current costs for providing basic training courses, as the number of hours will minimally affect administrative and staff costs. A cost decrease to the Department of Criminal Justice Training is possible, but is not currently known.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The current source of funds from the Kentucky Law Enforcement Foundation Program Fund will be the ongoing source of funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established.

(9) TIERING: Is tiering applied? Tiering is not applicable as training funds are statutorily provided through KLEFPF. The law enforcement officers eligible for the training by statute and budget bill receive the same benefits of this training.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Law enforcement agencies and the Department of Criminal Justice Training (DOCJT) will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.330, 15.404, 15.440.

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

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

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

(c) How much will it cost to administer this program for the first year? Costs for DOCJT are anticipated to be similar to current costs for providing basic training courses, as the number of hours will minimally affect administrative and staff costs. A cost decrease to DOCJT is possible, but is not currently known. Costs for law enforcement agencies will be lower, as they will have decreased down time for officers in training, which should result in a lessened need for overtime pay, and lower per diem pay for officers attending training.

(d) How much will it cost to administer this program for subsequent years? Costs for DOCJT are anticipated to continue to be similar to current costs for providing basic training courses, as the number of hours will minimally affect administrative and staff costs. A cost decrease to DOCJT is possible, but is not currently known. Costs for law enforcement agencies will be lower, as they will have decreased down time for officers in training, which should result in a lessened need for overtime pay, and lower per diem pay for officers attending training.

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
805 KAR 1:210E

On July 14, 2018 the provisions of Senate Bill 249 went into effect removing administrative hearings related to shallow oil and gas wells from the KRS Chapter 13B administrative hearings process and placing them under the Energy and Environment Cabinet's administrative hearings process. Current Energy and Environment Cabinet regulatory requirements regarding administrative hearings for shallow oil and gas wells will not comply with the statutory provisions amended by Senate Bill 249. Without further action, the regulated community is in jeopardy of being left

with conflicting regulatory and statutory provisions. This emergency administrative regulation is necessary to immediately implement the provisions of SB 249 to avoid statutory provisions going into effect that conflict with current regulatory requirements causing confusion and uncertainty among the regulated community. The emergency administrative regulation will be replaced by an ordinary administrative regulation which is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
CHARLES G. SNAVELY, Secretary

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Oil and Gas
(New Emergency Administrative Regulation)

805 KAR 1:210E. Comment Period for Pooling of Oil and Gas Shallow Wells.

RELATES TO: KRS 353.510, 353.630, 353.640.
STATUTORY AUTHORITY: KRS 353.630.
EFFECTIVE: July 13, 2018
NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.630 requires an applicant for pooling of oil and gas interests for shallow wells to provide notice to all persons reasonably known to have an oil or gas interest in any tract or portion thereof proposed to be pooled, and to unknown or nonlocatable owners and requires the department to consider written comments before rendering a final decision on shallow well pooling. This administrative regulation establishes the requirements related to comment periods on shallow well pooling proposals.

Section 1. Opportunity for comment period. Any person having an oil or gas interest in any tract or portion thereof proposed to be pooled, including an unknown or nonlocatable owner, may submit written comments to the cabinet on a proposal for shallow well pooling. The comment period shall commence on the date of notice as defined by KRS 353.510(45). The division shall consider all written comments before rendering its final decision on the shallow well pooling proposal.

CHARLES G. SNAVELY, Secretary
APPROVED BY AGENCY: July 3, 2018
FILED WITH LRC: July 13, 2018 at noon
CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the requirements related to comment periods on shallow well pooling proposals.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify that interested parties can submit comments on oil and gas pooling hearings before the cabinet renders its final decision.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.630 requires an applicant for pooling of oil and gas interests for shallow wells to provide notice to parties that may have an interest in the pooling. This administrative regulation provides a method for providing comments that conforms with the time frame in KRS 353.510(45).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the comment period for individuals that may have an interest in the pooling of shallow oil and gas wells.
(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 statutes: NA.
(d) How the amendment will assist in the effective administration of statutes: NA.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation establishes a comment period for pooling of oil and gas shallow wells. The number of individuals impacted will depend on the area to be pooled.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will comply with this administrative regulation and the timeframes established on KRS 353.510(45).
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to the regulated entity to comply with this administrative regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will benefit from the ability to provide comments on oil and gas pooling prior to the cabinet's final decision.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: The cabinet will not incur any additional costs for the implementation of this administrative regulation.
(b) On a continuing basis: The cabinet will not incur any additional costs for the implementation of this administrative regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's current operating budget will be used for the implementation of this administrative regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding is necessary to implement this amendment.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? No, tiering was not used. All individuals interested in providing comment on oil and gas shallow well pooling are provided that opportunity.

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 not only the cabinet but any local governments that would like to offer comment on a proposed pooling of oil and gas shallow well.
2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 353.630.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

The proposed administrative regulation will not generate revenue in the first year.

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

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

COMPILER'S NOTE: This emergency administrative regulation was effective upon filing on June 29, 2018; however, it was withdrawn by the agency on July 2, 2018. The ordinary administrative regulation is continuing through the regulatory review process and is printed in this *Register* on page 567.

STATEMENT OF EMERGENCY
895 KAR 1:001E

This emergency administrative regulation is being promulgated to adopt definitions for the Kentucky HEALTH program. The Kentucky HEALTH program is an innovative approach to improve the health and well-being of certain low-income Kentucky adults and their families. The new Kentucky HEALTH program incorporates new healthcare concepts and models and the definitions contained in this administrative regulation will provide clarity and precision as the Department for Medicaid Services, Medicaid managed care organizations, and enrolled providers implement the Kentucky HEALTH program pursuant to an approved 1115 federal waiver. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. and 3. to prevent a loss of federal funds and to meet a deadline for promulgation established by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
ADAM M. MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Emergency Administrative Regulation)

895 KAR 1:001E. Definitions for 895 KAR Chapter 1.

RELATES TO: KRS 205.520, 205.8451, 20 C.F.R. Part 418, 42 C.F.R. Parts 435, 438, 440, 29 U.S.C. 701, 42 U.S.C. 1315, 1395dd, 1396a, 1396d, 9902, 12101, 18001

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

EFFECTIVE: June 29, 2018

EMERGENCY WITHDRAWN: July 2, 2018

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes definitions for 895 KAR Chapter 1.

Section 1. Definitions. (1) "ACA" means the Patient Protection and Affordable Care Act, 42 U.S.C. 18001 et seq.

(2) "ACA expansion adult" means a Kentucky HEALTH beneficiary who meets the requirements established by 42 C.F.R. 435.119.

(3) "Active months" means the number of months in which a Kentucky HEALTH beneficiary is not disenrolled or in a suspension status during a benefit period.

(4) "Alternative benefit plan" or "ABP" means the benefit package developed by the department and approved by the Centers for Medicare and Medicaid Services in accordance with 42 C.F.R. Part 440, Subpart C (440.300-440.395 and provided to ACA expansion adults.

(5) "Applicant" means an individual for which coverage under Kentucky HEALTH is requested.

(6) "Beneficiary" means an individual who is enrolled in one of the following eligibility groups and subject to Kentucky HEALTH provisions under KAR Title 895:

(a) ACA expansion adult;

(b) Parent and caretaker relative;

(c) Transitional medical assistance;

(d) Pregnant women; or

(e) Former foster youth.

(7) "Benefit year" means the time period:

(a) January 1 through December 31 of each calendar year; or

(b) From the date of enrollment in Kentucky HEALTH through December 31 of that same calendar year.

(8) "Community engagement activities" means department approved activities to support community engagement and employment of Kentucky HEALTH beneficiaries, including:

(a) Employment;

(b) Education;

(c) Job skills training;

(d) Community service; or

(e) Substance use disorder treatment.

(9) "Conditionally eligible beneficiary" means an ACA expansion adult or a parent and caretaker relative who:

(a) Has been determined to meet all Kentucky HEALTH eligibility criteria;

(b) Has not made an initial premium payment; and

(c) Is not currently eligible to receive Kentucky HEALTH benefits.

(10) "Copay plan" means the cost sharing plan whereby beneficiaries:

(a) Are charged a copayment according to the schedule of copays established in 907 KAR 1:604 and the Kentucky Medicaid state plan for every Kentucky HEALTH covered benefit received; and

(b) Do not have access to a MyRewards account.

(11) "Debt" means any unpaid premium amounts that MCOs may collect from a beneficiary, and which is neither a condition of eligibility nor required to cure a non-payment penalty.

(12) "Declared disaster" means a flood, storm, earthquake, catastrophic event, declared emergency by the governor, or any other event or series of events designated by the governor as a disaster or natural disaster.

(13) "Deductible account" means a state-funded account that:

(a) Functions as an administrative tracking mechanism designed to expose beneficiaries to healthcare costs.:

(b) Tracks the first $1,000 of non-preventive care services received within a benefit year by a beneficiary; and

(c) Includes a monthly statement sent to the beneficiary.

(14) "Dental services" means services:

(a)1. That are purchased by a beneficiary from an enrolled Medicaid provider via a MyRewards account; and

2. Include cleanings, fillings, and root canal therapy; and

(b) That do not include medical dental services including but not limited to the removal of benign and malignant lesions, removal of foreign bodies, wound suturing, or anesthesia related to medical dental services, which shall continue to be reimbursed pursuant to KAR Title 907.

(15) "Department" means the Department for Medicaid Services or its designee.

(16) "Domestic violence" has the same meaning as in KRS 403.720.

(17) "Early and Periodic Screening, Diagnostic, and Treatment Services" or "EPSDT" means those services defined in 42 U.S.C. 1396d(r).

(18) "Emergency medical condition" means a medical condition as established by 42 U.S.C. 1395dd.

(19) "Emergency services" means covered services that are needed to evaluate or stabilize an emergency medical condition.

(20) "Fast-track payment" means an advance premium dollar amount calculated by the department that an applicant may opt to pay to expedite coverage to the first day of the month in which the payment is made, which may be as early as the first day of the month of application.

(21) "Federal poverty level" or "FPL" means the poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

(22) "Former foster youth" means a beneficiary who:

(a) Is at least nineteen (19) years of age, but no more than twenty-six (26) years of age; and

(b) Was in foster care under the responsibility of the state or a Tribe within Kentucky or another state; and

(c) Was enrolled in Medicaid on the date of attaining age eighteen (18) or a higher age as elected by the state.

(23) "Full-time employment" means employment that is at least 120 hours per calendar month.

(24) "Healthy behavior activity" means an activity that is:

(a) Documented by a beneficiary;

(b) Reported as designated by the department;

(c) Approved by the department; and

(d) When completed allows for a beneficiary to accrue a balance in the beneficiary's MyRewards account.

(25) "Household" means the composition and family size of a household as established by 42 C.F.R. 435.603(f).

(26) "Household income" means the application of the MAGI of every individual included in the individual's household as set forth at 42 C.F.R. 435.603.

(27) "Institutionalized" means:

(a) Residing in:

1. A nursing facility;

2. An intermediate care facility for an individual with an intellectual disability; or

3. A medical institution;

(b) Receiving hospice services; or

(c) Receiving 1915(c) home and community based services.

(28) "KCHIP" means the Commonwealth's Children's Health Insurance Program.

(29) "Kentucky HEALTH" means the commonwealth's Section 1115 waiver demonstration program approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services as authorized by 42 U.S.C. 1315.

(30) "Life-changing event" means the marriage of a beneficiary living in the household, a birth, a death of a member of the household, the end of a marriage of a beneficiary in the household through divorce or annulment, or other type of major life-changing event as defined by 20 C.F.R. 1205.

(31) "Managed care organization" or "MCO" means an entity for which the department has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

(32) "Medically frail" means a determination has been made that an ACA expansion adult, parent and caretaker relative or TMA beneficiary, in accordance with both 42 C.F.R. 440.315(f) and department developed criteria, has a:

(a) Disabling mental disorder;

(b) Serious mental illness;

(c) Chronic substance use disorder;

(d) Chronic homelessness;

(e) Serious and complex medical condition; or

(f) Physical, intellectual or developmental disability that significantly impairs the beneficiary's ability to perform one (1) or more activities of daily living as defined by KRS 194A.700.

(33) "Medically necessary" means a covered service that is determined to be needed in accordance with 907 KAR 3:130.

(34) "Modified Adjusted Gross Income" or "MAGI" means MAGI-based income as calculated in accordance with 42 C.F.R. 435.603(e).

(35) "MyRewards account" or "MRA" means the account available to beneficiaries that can be utilized to purchase department approved services not covered by a beneficiary's benefit package and otherwise permitted in the special terms and conditions to be covered by the account.

(36) "Nonemergency medical transportation" or "NEMT" means transportation services provided pursuant to 907 KAR 3:066 that are unrelated to an emergency medical condition.

(37) "Non-payment penalty" means the six (6) month non-eligibility penalty period applied to beneficiaries to whom cost sharing requirements apply but who fail to make timely premium payments.

(38) "Parent and caretaker relative" means a beneficiary who meets the requirements established by 42 C.F.R. 435.110.

(39) "Past due premiums" means the total amount that:

(a) A beneficiary is required to pay to either avoid a non-payment penalty or to end a non-payment penalty prior to the expiration of the six (6) month penalty period; and

(b) Does not include debt.

(40) "PATH" means the community engagement component of Kentucky HEALTH and stands for "Partnering to Advance Training and Health".

(41) "PATH requirement" means the requirement that a beneficiary complete eighty (80) hours of community engagement activities each month to maintain eligibility in the Kentucky HEALTH program, unless the beneficiary meets an exceptions established in 895 KAR 1:020.

(42) "Pregnant women" means beneficiaries who meet the requirements established by 42 C.F.R. 435.116.

(43) "Premium assistance" means the Kentucky HEALTH benefit plan that:

(a) Subsidizes an individual's employer sponsored insurance plan minus their Kentucky HEALTH premium amount; and

(b) A beneficiary is required to participate in if the beneficiary is

1. Enrolled in Kentucky HEALTH for more than twelve (12) months;

2. Has been continuously employed by their employer for twelve (12) months, and

3. Has access to employer sponsored insurance.

(44) "Premium plan" means the cost sharing plan whereby beneficiaries make required monthly premium payments.

(45) "Protected disability" means a legally defined disability protected pursuant to 42 U.S.C. 12101, 29 U.S.C. 701 et. seq., or 42 U.S.C. 18116.

(46) "Provider" is defined by KRS 205.8451(7).

(47) "Random control group" means beneficiaries who are otherwise eligible for Kentucky HEALTH but are allocated, at random, to a control group through which they do not have the requirements of Kentucky HEALTH applied.

(48) "Re-entry course" means an education class designated by the department to enable a beneficiary in a suspension status or penalty period to meet the education requirement for early re-entry into Kentucky HEALTH or early reactivation of a MyRewards account.

(49) "Special terms and conditions" or "STCs" means the agreement between the Centers for Medicare and Medicaid Services and the commonwealth regarding the rules and requirements that govern the operation of Kentucky HEALTH.

(50) "State" or "Commonwealth" means the Commonwealth of Kentucky.

(51) "Transitional medical assistance" or "TMA" means a

beneficiary who meets the requirements established by 42 U.S.C. 1396r.

(52) "Vision services":

(a)1. Means services purchased by a beneficiary via a MyRewards account from an enrolled Medicaid provider; and

2. Includes routine or preventative eye exams; and

(b) Does not include medical vision services including the removal of benign and malignant lesions or tumors, removal of foreign bodies, wound suturing, and anesthesia related to medical vision services.

JILL R. HUNTER, Acting Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 27, 2018

FILED WITH LRC: June 29, 2018 at 9 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 502-564-7091, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions for administrative regulations located in Chapter 1 of Title 895 of the Kentucky Administrative Regulations. Chapter 1 establishes and implements the Kentucky HEALTH program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the definitions for administrative regulations located in Chapter 1 of Title 895.

(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 definitions for administrative regulations located in 895 KAR chapter 1.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing definitions for administrative regulations located in 895 KAR Chapter 1.

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

(a) How the amendment will change this existing administrative regulation: 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 beneficiaries, businesses, organizations, or state and local government affected by this administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers services to individuals eligible for the Kentucky HEALTH program, any enrolled provider that delivers services to individuals eligible for the Kentucky HEALTH program, and any beneficiary whose eligibility for Medicaid will be governed by the Kentucky HEALTH program. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation establishes definitions for the Kentucky HEALTH program. Beneficiaries will benefit due to the clarity of terms being defined in this administrative regulation

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund 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: Neither an increase in fees or funding is necessary to implement this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation neither establishes or increases any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the definitions are standard throughout the Kentucky HEALTH program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

(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? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

(d) How much will it cost to administer this program for subsequent years? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

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:

COMPILER'S NOTE: This emergency administrative regulation was effective upon filing on June 29, 2018; however, it was withdrawn by the agency on July 2, 2018. The ordinary administrative regulation is continuing through the regulatory review process and is printed in this *Register* on page 570.

STATEMENT OF EMERGENCY
895 KAR 1:010E

This emergency administrative regulation is being promulgated to establish which beneficiaries are eligible for the Kentucky HEALTH program and to establish an appeals process, appeals requirements, and change of MCO and cost-sharing requirements. The Kentucky HEALTH program is an innovative approach to improve the health and well-being of certain low-income Kentucky adults and their families and is being implemented pursuant to an approved 1115 federal waiver. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. and 3. to prevent a loss of federal funds and to meet a deadline for promulgation established by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
ADAM M. MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Emergency Administrative Regulation)

895 KAR 1:010E. Eligibility for Kentucky HEALTH program.

RELATES TO: KRS 205.520, 42 C.F.R. 435.916, 438.56, 457.343, 42 U.S.C. 1315, 1396a

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

EFFECTIVE: June 29, 2018

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes the eligibility requirements for Kentucky HEALTH.

Section 1. Eligibility Groups. (1) Except for a beneficiary assigned to the random control group pursuant to 895 KAR 1:045, Section 2, a beneficiary that meets the eligibility standards established in this section and who is therefore eligible for participation in the Kentucky HEALTH program shall only receive services from the Medicaid program as established in KAR Title 895.

(2) An individual shall be eligible for participation in Kentucky HEALTH if the individual:

(a) Is a resident of Kentucky;

(b) Is not enrolled in, or, for an ACA expansion adult, eligible for, enrollment in the federal Medicare Program;

(c) Is not enrolled in a 1915(c) waiver, institutionalized, or receiving hospice services; and

(d) Is eligible under any of the following Medicaid assistance categories:

1. Parent and caretaker relative;
2. Transitional medical assistance;
3. Former foster youth;
4. Pregnant women; or
5. ACA expansion adult.

Section 2. Presumptive Eligibility Period. (1) During the presumptive eligibility period as established in 907 KAR 20:050, a beneficiary who is eligible under the ACA expansion adult group shall receive benefits:

(a) As established in the Kentucky HEALTH alternative benefit plan approved by the Centers for Medicare and Medicaid Services; and

(b) In accordance with KAR 1:035.

(2) A Kentucky HEALTH beneficiary in a suspension period or a non-eligibility period shall not be eligible for presumptive eligibility as established in 907 KAR 20:050.

Section 3. Transition to Kentucky HEALTH. (1) An individual shall be enrolled in Kentucky HEALTH on the first day of the month of the Kentucky HEALTH eligibility determination if the individual:

(a) Is determined to be presumptively eligible pursuant to 907 KAR 20:050; and

(b) Subsequently applies for Kentucky HEALTH and is determined eligible for Kentucky HEALTH.

(2) A Kentucky HEALTH beneficiary transitioning to Kentucky HEALTH from a presumptive eligibility period who is required to pay premiums in accordance with 895 KAR 1:015 shall:

(a) Be enrolled in the copay plan and

(b) Have sixty (60) days from the date of the invoice from the MCO to make a payment and avoid a non-payment penalty.

Section 4. Requirements Relating to Annual Recertification. (1)(a) The annual eligibility recertification process operated by the department shall be:

1. Consistent with 42 C.F.R. 435.916 for the renewal of Medicaid eligibility; and
2. If applicable, consistent with 42 C.F.R. 457.343 for the renewal of CHIP eligibility.

(b) For a beneficiary receiving premium assistance and who is covered by a parent or caretaker's employer-sponsored insurance, including children enrolled in either Medicaid or CHIP, the annual recertification shall be aligned with the parent or caretaker's employer sponsored insurance open enrollment period.

(2) A beneficiary shall comply with all requirements of the recertification process, including the requirement of providing the state with all necessary information or documentation to complete the process.

(3) Following a recertification process in which all requirements were not met, a beneficiary shall be:

(a) Disenrolled from Kentucky HEALTH; and

(b) Granted an additional ninety (90) day reconsideration period in which to submit recertification paperwork to be reenrolled in Kentucky HEALTH. Reenrollment shall be effective the first day of the month in which the recertification requirements were completed, unless the individual was subject to a suspension during the recertification process.

(4)(a) Except as provided by paragraph (b) of this subsection, an individual who has failed to submit all required recertification information and documentation upon the expiration of the ninety (90) day reconsideration period established in subsection (3) of this section shall be subject to a non-eligibility period of six (6) months.

(b) A beneficiary shall be exempt from paragraph (a) of this subsection if the beneficiary is:

1. A pregnant woman;
2. Former foster youth; or
3. Determined to be medically frail, or temporarily vulnerable.

(5) An individual subject to the non-eligibility period shall have the opportunity to re-enter Kentucky HEALTH prior to the expiration of the six (6) month penalty period by completing the early re-entry requirements established in 895 KAR 1:020.

(6)(a) A beneficiary who is subject to the non-eligibility penalty period under this section may request a good cause exemption by providing verification of any of the following:

1. The individual was hospitalized, otherwise incapacitated, or has a protected disability, and, as a result, was unable to provide information necessary to complete the recertification during the recertification reporting period;
2. The individual has a protected disability, and the individual

requested but was not provided reasonable modifications needed to complete the recertification process;

3. The individual has a protected disability and there were no reasonable modifications that would have enabled the individual to complete the recertification process;

4. A member of the individual's immediate family who was living in the home with the individual who failed to report the change in circumstances during the reporting period as required by Section 4 of this administrative regulation:

a. Was institutionalized; or

b. Died;

5. A member of the individual's immediate family who was living in the home with the individual who failed to complete the recertification process has a protected disability, and caretaking or other disability-related responsibilities resulted in the individual's inability to complete recertification;

6. The individual either obtained or lost private insurance coverage during the recertification reporting period;

7. The individual was evicted from a home or experienced homelessness during the recertification reporting period;

8. The individual was a victim of domestic violence during the recertification reporting period; or

9. The individual was the victim of a declared disaster that occurred during the recertification reporting period.

(b) If a good cause exemption is granted, the beneficiary:

1. May re-enroll prior to the expiration of the non-eligibility penalty period; and

2. Shall not be required to complete the early re-entry requirements established by 895 KAR 1:020.

Section 5. Requirements for a Beneficiary to Report a Change in Circumstance. (1) A beneficiary shall report any change in circumstance that would affect eligibility under any MAGI or non-MAGI requirements within thirty (30) days of the change in circumstance.

(2) A beneficiary with a change in circumstance affecting eligibility shall be disenrolled:

(a) If the department determines the individual ineligible for all other bases of Medicaid eligibility; and

(b) After the department reviews the individual for eligibility for other insurance affordability programs in accordance with 42 C.F.R. 435.916(f).

(3)(a) Except as provided by paragraph (b) of this subsection, a beneficiary who failed to report a change within the time frames required by subsection (1) of this section and that failure resulted in the beneficiary receiving a benefit for which the beneficiary was not eligible shall be disenrolled and subject to a non-eligibility period of six (6) months,

(b) A beneficiary shall be exempt from paragraph (a) of this subsection if the beneficiary is:

1. A pregnant woman;

2. A former foster youth; or

3. Determined to be medically frail or temporarily vulnerable.

(4) A beneficiary who is subject to a non-eligibility period under this section shall have the opportunity to re-enter Kentucky HEALTH prior to the expiration of the six (6) month penalty period by completing the early re-entry requirements set forth at 895 KAR 1:020.

(5)(a) A beneficiary who is subject to disenrollment and a non-eligibility penalty period under this section may request a good cause exemption by providing verification of any good cause exemption established in Section 4(6) of this administrative regulation.

Section 6. Kentucky HEALTH Initial Eligibility Appeals – Premium Payment Required. (1) If an applicant was determined ineligible for Kentucky HEALTH but subsequently receives a favorable decision on appeal under this chapter, and is a beneficiary of any group set forth in 895 KAR 1:015 for which premium payments are required as a condition of eligibility, upon resolution of the appeal, the beneficiary shall be:

(a) Enrolled in Kentucky HEALTH; and

(b) Required to make a premium payment within sixty (60) days of the date of initial invoice from the MCO.

(2) In accordance with subsection (1)(b) of this section, an individual who does not make the required premium payment within sixty (60) days of the date of invoice shall be subject to the non-payment penalty provisions established in 895 KAR 1:015.

Section 7. Continued Payment to Retain Benefits Pending Appeal. (1) If a beneficiary is required to make premium payments, the beneficiary shall continue to make any monthly premium payments that become due during an appeal within sixty (60) days of the MCO's date of invoice in order to continue Kentucky HEALTH benefits.

(2) A beneficiary's premium payments submitted during the appeal process shall be subject to the following requirements:

(a) If the issue being appealed is recalculation of the beneficiary's required premium amount, the recalculated premium amount shall remain in effect as established in 895 KAR 1:015 while the appeal is pending; and

(b) If the recalculated premium determination is overturned on appeal, excess premium amounts paid, if any, shall be credited to the beneficiary's premium payment in the next administratively feasible month.

(3) A beneficiary shall receive continued benefits pending the outcome of an administrative hearing if the beneficiary requests in writing that plan benefits be maintained pending the administrative appeal and the action is not a result of the beneficiary's nonpayment of required premiums.

Section 8. Changing MCOs. (1) Except as provided in subsections (2) or (3) of this section, a beneficiary shall remain enrolled with the same MCO during the beneficiary's benefit year.

(2) A beneficiary may change MCO upon request and without cause, only in the following circumstances:

(a) If the change is requested prior to the earlier of:

1. The date the beneficiary makes an initial fast-track payment or premium payment; or

2. The date the beneficiary has enrolled in Kentucky HEALTH after the sixty (60) day initial payment period has expired;

(b) The beneficiary is a pregnant woman or a former foster youth, in which case the beneficiary shall be allowed to change MCOs without cause for ninety (90) days after enrollment in Kentucky HEALTH; or

(c) During the beneficiary's annual open enrollment opportunity for the following benefit year.

(3) A beneficiary shall remain enrolled with the same MCO during the beneficiary's benefit year and may change MCOs upon request, for cause, as established in 907 KAR 17:010 and as provided for at 42 C.F.R. 438.56(c)(1).

Section 9. MCO Requirements when a Beneficiary Changes MCO. (1) Each MCO shall ensure that a beneficiary transferring from another MCO does not experience an interruption in care.

(2) For a beneficiary transitioning to a new MCO, the MCO from which the beneficiary is transferring shall refund any balance of the beneficiary's premium within thirty (30) days of the last date of the beneficiary's participation with the MCO.

(3) The MCO from which the beneficiary is transferring shall provide the beneficiary's deductible account balance to the new MCO.

Section 10. Cost Share Requirements and Limitations. (1) An MCO shall not charge, collect, or impose cost sharing, including premiums, copayments, or coinsurance, for any covered service to a beneficiary who is pregnant.

(2) An MCO shall not charge, collect, or impose, and shall require that any network providers do not charge, collect, or impose cost sharing, including premiums, copayments, or coinsurance, to a beneficiary for covered services, except for the following:

(a) Copayments as set forth in the Kentucky Medicaid state plan for a beneficiary enrolled in the copay plan; and

(b) Premiums as established in 895 KAR 1:015.

(3) An MCO may attempt to collect any debt but shall not:

(a) Report the premium amount owed to a credit reporting

agency;

(b) Place a lien on the beneficiary's or disenrolled individual's home;

(c) Refer the case to a debt collector;

(d) File a lawsuit; or

(e) Seek a court order to seize a portion of the beneficiary or disenrolled individual's earnings.

Section 11. Federal approval and federal financial participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

JILL R. HUNTER, Acting Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 27, 2018

FILED WITH LRC: June 29, 2018 at 9 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 502-564-7091, Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes which individuals are eligible for the Kentucky HEALTH program, establishes a presumptive eligibility period for Kentucky HEALTH beneficiaries, annual recertification requirements, requirements for reporting a change in circumstances, an appeals process and additional appeals requirements for a beneficiary, and change of MCO and cost-sharing requirements

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish eligibility requirements and processes for the Kentucky HEALTH program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing eligibility requirements that allow for full receipt of federal funds and full participation in the Medicaid Program for Kentucky HEALTH beneficiaries.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing a clear eligibility process for Kentucky HEALTH beneficiaries, providers, MCOs, and the department.

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

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

(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 government affected by this administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, any enrolled provider that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, and any beneficiary whose eligibility for Medicaid will be governed by the Kentucky HEALTH program. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

(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: Beneficiaries will need to verify if they are eligible for participation in Kentucky HEALTH, recertify annually, report changes in circumstances that impact eligibility, and continue payments of premiums.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs experienced by beneficiaries will vary depending on income level, compliance with premium payment requirements, certification and documentation requirements, and PATH requirement, and the beneficiary's eligibility status.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Beneficiaries who meet eligibility requirements will be able to receive healthcare benefits via participation in the Kentucky HEALTH program as established in Title 895 KAR.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund 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: Neither an increase in fees or funding is necessary to implement this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation neither establishes or increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied in that pregnant women, former foster youth, and individuals who are determined to be medically frail or temporarily vulnerable are exempted from a non-eligibility period and pregnant women are not subject to cost sharing requirements for covered services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1315; 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560 KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1315 establishes the 1115 waiver authority. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

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 establishes a premium and potential co-pay requirement for certain beneficiaries that fail to comply with the premium requirement.

5. Justification for the imposition of the stricter standard, or

additional or different responsibilities or requirements. A federal demonstration waiver has been approved pursuant to 42 U.S.C. 1315 and on an ongoing basis it shall determine and establish how Medicaid services are provided to Medicaid members who are eligible pursuant to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

(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? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

(d) How much will it cost to administer this program for subsequent years? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

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:

COMPILER'S NOTE: This emergency administrative regulation was effective upon filing on June 29, 2018; however, it was withdrawn by the agency on July 2, 2018. The ordinary administrative regulation is continuing through the regulatory review process and is printed in this *Register* on page 573.

STATEMENT OF EMERGENCY
895 KAR 1:015E

This emergency administrative regulation is being promulgated to establish requirements for premium payments and processes to be followed by beneficiaries and MCOs participating in the Kentucky HEALTH program. The Kentucky HEALTH program is an innovative approach to improve the health and well-being of certain low-income Kentucky adults and their families and is being implemented pursuant to an approved 1115 federal waiver. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. and 3. to prevent a loss of federal funds and to meet a deadline for promulgation established by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
ADAM M. MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Emergency Administrative Regulation)

895 KAR 1:015E. Premium payments within the Kentucky HEALTH program.

RELATES TO: KRS 205.520, 42 C.F.R. 447.56(f), 42 U.S.C. 1315

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

EFFECTIVE: June 29, 2018

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes premium payment requirements and processes for beneficiaries and MCOs participating in the Kentucky HEALTH program.

Section 1. Required Premium Payments. (1) Notwithstanding any provision of Title 907 KAR to the contrary, including 907 KAR 1:604, any premium payments or copay plan requirements established pursuant to this administrative regulation are mandatory for beneficiaries and shall be remitted as established pursuant to Section 3 of this administrative regulation.

(2) A beneficiary that makes monthly premium payments shall:

(a) Not incur any other cost sharing for their healthcare coverage; and

(b) Have access to a MyRewards account.

(2)(a) Except as provided in Section 2 of this administrative regulation, a beneficiary with income above 100 percent FPL shall make required monthly premium payments to retain eligibility for Kentucky HEALTH.

(b) A beneficiary with income that is less than 100 percent FPL shall be exempt from the requirement to make a premium payment as a condition of Kentucky HEALTH eligibility.

(3)(a) Except as provided by paragraph (b) of this subsection, a beneficiary, regardless of FPL, shall make premium payments as a condition to access the beneficiary's MyRewards account.

(b) A beneficiary that is eligible for Kentucky HEALTH on the basis of being a pregnant woman shall be exempt from the requirement to make premium payments as a condition of accessing the beneficiary's MyRewards account.

Section 2. Premium Amount, Calculations, and Changes. (1)(a) Each household's monthly premium amount shall be an amount determined by the department and made available pursuant to a formula and a chart posted prominently on the department's Web site.

(b) If the adults within a household are members of different MCOs, a separate premium shall be charged to each adult member.

(2) A beneficiary's monthly premium shall not exceed four (4) percent of the aggregate household income, except that a beneficiary subject to the premium payment requirement shall be required to contribute a one (1) dollar monthly premium, at minimum, to access the beneficiary's MyRewards account.

(3)(a) In accordance with 42 C.F.R. 447.56(f), a household's combined premium and cost sharing requirements shall not exceed five (5) percent of the aggregate household income within a calendar quarter.

(b) Each beneficiary who is a member of a household that reaches the five (5) percent maximum cost sharing in a calendar

quarter shall have their monthly premium reduced to one (1) dollar for the remainder of the calendar quarter to avoid non-payment penalties as established in Section 4 of this administrative regulation.

(4) After twenty-four (24) months of enrollment in Kentucky HEALTH, the monthly premium amount paid by a beneficiary whose income is above 100 percent of the FPL shall increase.

(5) The department shall notify each beneficiary of that beneficiary's premium payment requirements upon determination of eligibility for Kentucky HEALTH.

(6) As directed by the department, an MCO shall aggregate, accurately track, and forward all premium payments remitted by or on behalf of its members who are:

(a) Beneficiaries with a cost-sharing requirement; and

(b) Who are eligible on the basis of the MAGI.

(7) The department:

(a) Shall evaluate premium rates and amounts annually; and

(b) May change published rates on an annual basis.

(8) The department, or an MCO on behalf of the department, shall notify each beneficiary of any Kentucky HEALTH premium changes at least sixty (60) days prior to the effective date of the change.

(9) The department shall determine necessary adjustments to a beneficiary's premium amount in the following circumstances:

(a) At the beneficiary's annual recertification; or

(b) If made aware that the beneficiary's household income, household composition, or other eligibility factor has changed during the eligibility period.

(10) If an adjustment is necessary pursuant to subsection (9) of this section, the new premium payment amount shall be effective the first day of the next administratively feasible month following the calculation of the new premium amount.

Section 3. Entities Allowed to Make Premium Payment. (1) A monthly premium payment may be made by:

(a) A beneficiary; or

(b) Any third party on the beneficiary's behalf, except any MCO.

(2)(a) A third-party payment submitted pursuant to this section shall be used for a beneficiary's premium obligations only.

(b) Any payment in excess of the required premium obligation for the remainder of the beneficiary's benefit year shall be refunded to the source of the payment.

(3) A provider or a provider-related entity making a premium payment on a beneficiary's behalf shall have criteria for providing premium payment assistance that does not distinguish between beneficiaries based on whether or not they receive or will receive services from the contributing provider or class of providers.

(4) A provider shall not include the cost of a payment established pursuant to this administrative regulation in the cost of care for purposes of Medicare and Medicaid cost reporting.

(5) A payment made pursuant to this section shall not be included as part of a Medicaid shortfall or uncompensated care.

Section 4. Non-payment Penalties. (1) A conditionally eligible beneficiary who fails to make the first premium payment within sixty (60) days from the date of the first invoice shall be subject to the penalties established in this subsection.

(a) A beneficiary with a household income above 100 percent of the FPL shall:

1. Not be enrolled in Kentucky HEALTH; and

2. Reapply for Kentucky HEALTH coverage, if the beneficiary elects to attempt to reenroll.

(b) A beneficiary with a household income at or below 100 percent of the FPL shall be:

1. Enrolled in Kentucky HEALTH in a copay plan; and

2. Subject to the non-payment penalty provisions established in subsection (2)(b) of this section.

(2) A beneficiary who fails to make an ongoing premium payment within sixty (60) days from the date of the premium invoice or who voluntarily withdraws from Kentucky HEALTH to avoid making a premium payment or incurring debt as a result of non-payment shall be subject to the penalties established in this subsection.

(a) If the beneficiary's household income is above 100 percent of the FPL, the beneficiary shall:

1. Be disenrolled from Kentucky HEALTH;

2. Not be able to reenroll in Kentucky HEALTH for a period of six (6) months, unless the beneficiary completes all requirements for early re-entry as established in 895 KAR 1:020;

3. Receive a one (1)-time balance deduction from the beneficiary's MyRewards account as established in 895 KAR 1:030; and

4. Have a suspension of the beneficiary's MyRewards account until the beneficiary is re-enrolled in Kentucky HEALTH, unless the beneficiary meets the requirements for re-entry or reactivation of MyRewards account as established in 895 KAR 1:030.

(b) A beneficiary with a household income at or below 100 percent of the FPL, in accordance with subsection(1)(b) of this section, shall:

1.a. Be enrolled in the copay plan; and

b. Make copays for all covered services equal to the copays established in the Kentucky Medicaid state plan in Title 907 KAR;

2. Receive a one (1)-time balance deduction from the beneficiary's MyRewards account as established in 895 KAR 1:030; and

3. Have a suspension of the beneficiary's MyRewards account, until either of the following occurs:

a. The beneficiary completes the requirements for re-entry or reactivation of a MyRewards account as set forth at 895 KAR 1:030 to reactivate the beneficiary's MyRewards account prior to the expiration of the six (6) month penalty period, or

b. After the expiration of the six (6) month penalty period, the beneficiary makes one (1) premium payment to reactivate coverage in the premium plan.

(c) A beneficiary in a penalty period shall be permitted to end or avoid the non-payment penalty prior to the expiration of the six (6) month penalty period without completing the early re-entry requirements established in 895 KAR 1:020 by providing verification of any of the following:

1. The beneficiary was hospitalized, otherwise incapacitated, or has a protected disability, and, as a result, was unable to make a premium payment during the sixty (60) day payment period;

2. a. The beneficiary has a protected disability; and

b. The beneficiary requested but was not provided reasonable modifications needed to make a premium payment;

3.a. The beneficiary has a protected disability; and

b. There were no reasonable modifications that would have enabled the beneficiary to make a premium payment;

4. A member of the beneficiary's immediate family who was living in the home with the beneficiary who failed to make a premium payment:

a. Was institutionalized during the reporting period; or

b. Died during the reporting period;

5.a. A member of the beneficiary's immediate family who was living in the home with the beneficiary who failed to make a premium payment has a protected disability; and

b. Caretaking or other responsibilities related to the disability resulted in the beneficiary's inability to make the premium payment;

6. The beneficiary either obtained or lost private insurance coverage during the reporting period;

7. The beneficiary was evicted from a home or experienced homelessness during the sixty (60) day payment period;

8. The beneficiary was a victim of domestic violence during the sixty (60) day payment period; or

9. The beneficiary was the victim of a declared disaster that occurred during the sixty (60) day payment period.

Section 5. Groups with Premium Payment as Optional. (1) A beneficiary in the following eligibility groups shall have the option to make monthly premium payments to access a MyRewards account as established in 895 KAR 1:030:

(a) A beneficiary who is a former foster youth; or

(b) A beneficiary who is medically frail or temporarily vulnerable.

(2)(a) A beneficiary who, under this section or section 1 of this administrative regulation, has the option of making premium payments shall not be subject to

1. Disenrollment for non-payment; or

2. Copayments for services.

(b) A beneficiary who, under this section or Section 1 of this administrative regulation, has the option of making premium payments who fails to make an ongoing premium payment within sixty (60) days from the date of the premium invoice shall have the beneficiary's MyRewards account suspended for six (6) months, with the option to reactivate the MyRewards account prior to the expiration of the six (6) month penalty period by taking a re-entry course.

Section 6. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

JILL R. HUNTER, Acting Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 27, 2018

FILED WITH LRC: June 29, 2018 at 9 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 502-564-7091, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes premium payment requirements and processes to be followed by beneficiaries and MCOs participating in the Kentucky HEALTH program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to outline premium payment requirements and processes for beneficiaries and MCOs participating in the Kentucky HEALTH program pursuant to an approved federal 1115 waiver.

(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 premium payment requirements that will allow for full participation in the Kentucky HEALTH program by beneficiaries and MCOs pursuant to an approved federal 1115 waiver.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing clear premium payment requirements for beneficiaries and MCOs.

(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 beneficiaries, businesses, organizations, or state and local government affected by this administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, any enrolled provider that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, and any beneficiary whose eligibility for Medicaid will be governed by the Kentucky HEALTH program. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

(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: Beneficiaries will need to follow the premium payment requirements and submit premium payments as outlined 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): Beneficiaries will pay a varying premium payment based on income relative to the FPL.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Beneficiaries who meet premium payment requirements will be able to receive healthcare benefits via participation in the Kentucky HEALTH program as outlined in Title 895 KAR.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund 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: Neither an increase in fees or funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation neither establishes or increases any fees.

(9) Tiering: Is tiering applied? Tiering was applied to beneficiaries who make more than 100% FPL and less than 100% FPL in relation to a requirement to make a premium as a condition of eligibility. In addition, pregnant women are not required to make a premium payment. Former foster youth and individuals who are medically frail or otherwise temporarily vulnerable will have an option to make premium payments to access a MyRewards account.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1315; 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560 KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1315 establishes the 1115 waiver authority. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

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 establishes a premium and potential co-pay requirement and other penalties for certain beneficiaries that fail to comply with the premium requirement.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A federal demonstration waiver has been approved pursuant to 42 U.S.C. 1315 and on an ongoing basis it shall determine and establish how Medicaid services are provided to Medicaid members who are eligible pursuant to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

(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? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

(d) How much will it cost to administer this program for subsequent years? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

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:

COMPILER'S NOTE: This emergency administrative regulation was effective upon filing on June 29, 2018; however, it was withdrawn by the agency on July 2, 2018. The ordinary administrative regulation is continuing through the regulatory review process and is printed in this *Register* on page 576.

STATEMENT OF EMERGENCY
895 KAR 1:020E

This emergency administrative regulation is being promulgated to establish requirements for premium payments and processes to be followed by beneficiaries and MCOs participating in the Kentucky HEALTH program. The Kentucky HEALTH program is an innovative approach to improve the health and well-being of certain low-income Kentucky adults and their families and is being implemented pursuant to an approved 1115 federal waiver. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. and 3. to prevent a loss of federal funds and to meet a deadline for promulgation established by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
ADAM M. MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Emergency Administrative Regulation)

895 KAR 1:020E. PATH requirement for the Kentucky HEALTH program.

RELATES TO: KRS 205.520, 42 U.S.C. 1315

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

EFFECTIVE: June 29, 2018

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes the Partnering to Advance Training and Health (PATH) requirements for the Kentucky HEALTH program.

Section 1. Beneficiaries Required to Meet the PATH Requirement. (1) A beneficiary shall complete the monthly PATH requirement if the beneficiary is:

(a) At least nineteen (19) years of age and less than sixty-five (65) years of age;

(b) Eligible under one (1) of the following Medicaid assistance categories:

1. ACA Expansion Adult;

2. Parent and Caretaker Relative; or

3. Transitional Medical Assistance; and

(c) Not exempt from the PATH requirement pursuant to Section 4 of this administrative regulation.

(2) A beneficiary required to meet the PATH requirement shall not receive the suspension required by Section 3 of this administrative regulation if a good cause exemption is granted. A good cause exemption shall be granted if:

(a) The beneficiary:

1. Has a protected disability; and

2. Was unable to meet the PATH requirement for the month in which the good cause exemption is sought for reasons related to that disability;

(b) The beneficiary:

1. Has an immediate family member living in the beneficiary's home with a protected disability; and

2. Was unable to meet the PATH requirement for the month in which the good cause exemption is sought for reasons related to the disability of that family member;

(c) During the month in which the good cause exemption is sought, the beneficiary or an immediate family member who was living in the home with the beneficiary experienced:

1. An inpatient hospitalization or a serious medical event involving treatment at a hospital; or

2. A serious illness;

(d) The beneficiary experienced the birth or death of a family member living with the beneficiary during the month in which the good cause exemption is sought;

(e) The beneficiary experienced severe inclement weather, such as a snowstorm, an ice storm, a warned winter storm, or other warned weather event, which includes a declared disaster, during the month in which the good cause exemption is sought; or

(f) During the month in which the good cause exemption is sought, the beneficiary experienced:

1. A family emergency; or
2. A life-changing event.

Section 2. PATH Requirement Timeframe, Qualifying Activities, and Deemed Compliance. (1)(a) A beneficiary shall be given a three (3) month notice period before being subject to the PATH requirement if the beneficiary:
1. Was not required to meet the PATH requirement within the previous five (5) years; and
2. Does not qualify for an exemption established in Section 4 of this administrative regulation.
(b) A beneficiary shall be required to meet the PATH requirement effective on:
1. The first day of the month following enrollment in Kentucky HEALTH; or
2. The first day of the month following expiration of the three (3) month notice period required by paragraph (a) of this subsection.
(2) A beneficiary who is required to meet the PATH requirement shall be deemed to satisfy the PATH requirement with no additional PATH reporting obligations if the beneficiary:
(a) 1. Is enrolled in the Supplemental Nutrition Assistance Program (SNAP); and
2. Meets, or is exempt from meeting, the requirements of the SNAP employment initiative;
(b) 1. Is enrolled in Temporary Assistance for Needy Families (TANF); and
2. Meets, or is exempt from meeting, the requirements of the TANF employment initiative;
(c) Is enrolled in the Kentucky Medicaid Premium Assistance program; or
(d) Is employed full time.
(3) Except as provided by subsection (2) of this section, a beneficiary who is subject to the PATH requirement shall use the Web site www.citizenconnect.ky.gov to:
(a) Report and track community engagement activities;
(b) Document completion of a re-entry course; and
(c) Request an exemption pursuant to Section 1(2) or 4 of this administrative regulation.

Section 3. Failure to Meet PATH Requirement. (1) In the month immediately following the month in which a beneficiary fails to meet the PATH requirement, the beneficiary shall have the opportunity to avoid a suspension from eligibility for Kentucky HEALTH for failing to comply with the PATH requirement by:
(a) Being current on required hours for the current month; and
(b) Either:
1. Making up all deficit PATH hours not completed in the prior month; or
2. Completing a re-entry course.
(2)(a) Except as provided by paragraph (a) of this subsection, failure to comply with the PATH requirement shall result in a beneficiary receiving a suspension from the Kentucky HEALTH program. The suspension shall:
1. Not end until the beneficiary completes the requirements in paragraph (b) of this subsection or until the beneficiary successfully recertifies for Kentucky HEALTH eligibility for the next benefit year; and
2. Begin on the first day of the second month immediately following the month in which the beneficiary failed to meet the PATH requirement.
(b) A beneficiary shall be able to reactivate eligibility on the first day of the month following completion of either:
1. Eighty (80) hours of community engagement activities within a thirty (30) day time period; or
2. A re-entry course.
(3) A beneficiary who received a suspension from Kentucky HEALTH benefits for failure to comply with the PATH requirement over the twelve (12) month period between benefit year certification dates shall:
(a) Be terminated from Kentucky HEALTH; and
(b) Submit a new application to receive Kentucky HEALTH benefits, following a delay of no less than one (1) month.

Section 4. PATH Exempt Groups. (1) A beneficiary shall be exempt from the PATH requirement if the beneficiary is:
(a) A former foster youth;
(b) A pregnant woman;
(c) Medically frail or temporarily vulnerable;
(d) A full-time student;
(e) Diagnosed with a serious chronic medical condition, validated by a medical professional pursuant to department guidance and review that would prevent the beneficiary from complying; or
(f) A primary caregiver of:
1. A minor dependent child under age nineteen (19) or
2. A dependent adult who is disabled.
(2) The exemption authorized by subsection (1)(f) of this section shall be limited to one (1) exemption per household.

Section 5. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:
(1) Receipt of federal financial participation for the coverage; and
(2) Centers for Medicare and Medicaid Services' approval for the coverage.

JILL R. HUNTER, Acting Commissioner
ADAM M. MEIER, Secretary
APPROVED BY AGENCY: June 27, 2018
FILED WITH LRC: June 29, 2018 at 9 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 502-564-7091, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the PATH requirement, establishes penalties for failure to comply with the PATH requirement, and clarifies which beneficiaries are exempt from the PATH requirement.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish and implement the requirements and processes for beneficiaries subject to the PATH requirement that will allow for those beneficiaries to fully participate in the Kentucky HEALTH program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing requirements and processes relating to the PATH requirement that will allow for full participation in the Kentucky HEALTH program by a beneficiary.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing clear PATH requirements for a beneficiary to follow in order to fully participate in the Kentucky HEALTH program.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This 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 a beneficiaries, businesses, organizations, or state and local government affected by this

administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, any enrolled provider that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, and any beneficiary whose eligibility for Medicaid will be governed by the Kentucky HEALTH program. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

(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: Beneficiaries will need to meet the PATH requirement and submit information as outlined 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): Regulated entities should experience no additional costs as a result of compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Beneficiaries who meet the PATH requirement will be able to receive healthcare benefits via participation in the Kentucky HEALTH program as outlined in Title 895 KAR.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund 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: Neither an increase in fees or funding is necessary to implement this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation neither establishes or increases any fees.

(9) Tiering: Is tiering applied? Tiering was applied in that former foster youth, pregnant women, individuals who are medically frail or temporarily vulnerable, full-time students, beneficiaries diagnosed with an acute medical condition that prevents compliance, or primary caregivers of a minor dependent child or a dependent adult are exempted from the PATH requirement.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1315; 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560 KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1315 establishes the 1115 waiver authority. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

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 establishes a PATH and potential co-pay requirement for certain beneficiaries that fail to comply with the PATH requirement. This administrative additionally establishes a potential suspension if a PATH requirement is not met.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A federal demonstration waiver has been approved pursuant to 42 U.S.C. 1315 and on an ongoing basis it shall determine and establish how Medicaid services are provided to Medicaid members who are eligible pursuant to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

(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? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

(d) How much will it cost to administer this program for subsequent years? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

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:

COMPILER'S NOTE: This emergency administrative regulation was effective upon filing on June 29, 2018; however, it was withdrawn by the agency on July 2, 2018. The ordinary administrative regulation is continuing through the regulatory review process and is printed in this *Register* on page 579.

STATEMENT OF EMERGENCY
895 KAR 1:025E

This emergency administrative regulation is being promulgated to establish requirements for beneficiaries submitting premium payments as a condition of their full participation in the Kentucky HEALTH program. The Kentucky HEALTH program is an innovative approach to improve the health and well-being of certain low-income Kentucky adults and their families and is being implemented pursuant to an approved 1115 federal waiver. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. and 3. to prevent a loss of federal funds and to meet a deadline for promulgation established by federal law. This

emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
ADAM M. MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Emergency Administrative Regulation)

895 KAR 1:025E. Beneficiary Premiums.

RELATES TO: KRS 205.520, 42 U.S.C. 1315
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)
EFFECTIVE: June 29, 2018
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes requirements for Kentucky HEALTH beneficiaries relating to premium payments.

Section 1. Required Premium Payments. (1) Except as otherwise provided in this administrative regulation and 895 KAR 1:015, a beneficiary shall make monthly premium payments as required by 895 KAR 1:015.
(2)(a) A conditionally eligible beneficiary who is not otherwise exempt from premium payments shall make a first premium payment prior to the start of coverage.
(b) A conditionally eligible beneficiary shall have sixty (60) days from the date of the first invoice from the MCO to make the first premium payment.
(c) The beneficiary's coverage shall become effective the first day of the month in which the initial premium payment is received by the MCO.
(d) If a conditionally eligible beneficiary fails to make the first premium payment within the initial sixty (60) day payment window, the beneficiary shall be subject to the non-payment penalty provisions established at 895 KAR 1:010 and 895 KAR 1:015.
(3)(a) At the time of application, an applicant shall be given the option to make a one-time fast-track payment in order to expedite eligibility if the applicant is subsequently determined eligible for coverage.
(b) If an applicant makes a fast-track payment and is determined eligible for coverage, the effective date shall be the first day of the month in which the fast-track payment was made.
(c) A fast-track payment shall meet the requirements established in this paragraph.
1. The fast-track payment amount shall not exceed the highest monthly premium that could be required of that household.
2. The payment shall be fully refundable if:
a. The applicant is determined to be not eligible for Kentucky HEALTH; or
b. The applicant:
(i) Is determined to be a beneficiary for whom premiums are optional; and
(ii) Requests a refund within sixty (60) days of enrollment in Kentucky HEALTH;
(d) If the option to make a fast-track payment is selected on the application, the beneficiary shall not change MCOs except for cause, as set forth at 895 KAR 1:010, prior to their annual open enrollment opportunity.
(e) If the beneficiary's monthly premium payment is subsequently calculated upon eligibility determination to be less than the fast-track payment, the excess fast-track payment shall be credited until the full amount of the fast-track payment is exhausted against:
1. The first monthly premium due; and
2. Any additional premiums due.
(f) If the beneficiary's monthly premium payment is subsequently calculated upon eligibility determination to be more than the fast-track payment, the beneficiary shall remain liable for any balance remaining between the premium amount and fast-track amount.

Section 2. Effective Date for Premium Payments. (1) A beneficiary in either of the following eligibility groups shall have an effective date of coverage as established in the Kentucky Medicaid state plan and consistent with 42 C.F.R. 435.915:
(a) Former Foster Youth; or
(b) Pregnant Women.
(2) After approval, each beneficiary known to be medically frail at the time of application for Kentucky HEALTH shall have coverage effective the first day of the month in which the beneficiary applied for coverage.
(3) A beneficiary determined eligible through the presumptive eligibility process established in 907 KAR 20:050 shall have an effective date of coverage as established in 895 KAR 1:010.

Section 3. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:
(1) Receipt of federal financial participation for the coverage; and
(2) Centers for Medicare and Medicaid Services' approval for the coverage.

JILL R. HUNTER, Acting Commissioner
ADAM M. MEIER, Secretary
APPROVED BY AGENCY: June 27, 2018
FILED WITH LRC: June 29, 2018 at 9 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 502-564-7091, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes requirements for beneficiaries relating to premium payments.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish general rights and responsibilities relating to individual beneficiaries who will be submitting premium payments as a condition of their full participation in the Kentucky HEALTH program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing premium payment requirements for beneficiaries that will allow for these beneficiaries to fully participate in the Kentucky HEALTH program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing clear premium payment requirements for individual beneficiaries.
(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 government affected by this administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, any enrolled provider that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, and any beneficiary whose eligibility for Medicaid will be governed by the Kentucky HEALTH program. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

(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: Beneficiaries will need to follow the premium payment requirements and submit premium payments as outlined 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): Beneficiaries will pay a varying premium payment based on income relative to the FPL.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Beneficiaries who meet premium payment requirements will be able to receive healthcare benefits via participation in the Kentucky HEALTH program as outlined in Title 895 KAR.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund 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: Neither an increase in fees or funding is necessary to implement this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation neither establishes or increases any fees.

(9) Tiering: Is tiering applied? Tiering was applied as differing effective dates of coverage are established for former foster youth, pregnant women, and individuals who are determined to be medically frail or temporarily vulnerable.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1315; 42 U.S.C. 1396n(b), and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560 KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1315 establishes the 1115 waiver authority. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

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 establishes effective dates for premiums.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A federal demonstration waiver has been approved pursuant to 42 U.S.C. 1315 and on an ongoing basis it shall determine and establish how Medicaid services are provided to Medicaid members who are eligible pursuant to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

(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? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

(d) How much will it cost to administer this program for subsequent years? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

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:

Compiler's Note: This emergency administrative regulation was effective upon filing on June 29, 2018; however, it was withdrawn by the agency on July 2, 2018. The ordinary administrative regulation is continuing through the regulatory review process and is printed in this *Register* on page 581.

STATEMENT OF EMERGENCY
895 KAR 1:030E

This emergency administrative regulation is being promulgated to establish the MyRewards account and requirements relating to the MyRewards program including requirements for accruals, deductions, account payout, early re-entry and re-activation following a suspension and general account re-entry and reactivation. The Kentucky HEALTH program is an innovative approach to improve the health and well-being of certain low-income Kentucky adults and their families and is being implemented pursuant to an approved 1115 federal waiver. This

emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. and 3. to prevent a loss of federal funds and to meet a deadline for promulgation established by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
ADAM M. MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Emergency Administrative Regulation)

895 KAR 1:030E. Establishment and use of the MyRewards program.

RELATES TO: KRS 205.520, 42 C.F.R. 489.24, 42 U.S.C. 1315
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)
EFFECTIVE: June 29, 2018
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes the MyRewards account requirements for the Kentucky HEALTH program.

Section 1. Purpose of MyRewards Account. (1) The MyRewards account shall be a Kentucky HEALTH incentive in which a beneficiary with an active account may use it to access items and services pursuant to subsection (2) of this section that are not covered in the beneficiary's benefit package, as established in 895 KAR 1:035.
(2) Except as provided by subsections (3) and (4) of this section, items and services available through the MyRewards account shall include:
(a) Vision services; and
(b) Dental services.
(3) The department shall:
1. Review additional items and services for availability to users of a MyRewards account; and
2. Prominently post any approved items or services to its Web site.
(4) Services available in subsection (2) of this section through the beneficiary's MyRewards account shall be limited in scope to services that would be covered under the Kentucky Medicaid state plan if the beneficiary was not receiving the Kentucky HEALTH alternative benefit plan benefit package.

Section 2. Requirements for Maintaining an Active MyRewards Account. (1)(a) To maintain an active MyRewards account, a beneficiary shall make monthly premium payments.
(b) The requirement to make a monthly premium payment to maintain an active MyRewards account shall include each beneficiary who is:
1. A former foster youth;
2. An individual determined to be medically frail or temporarily vulnerable; or
3. A beneficiary who has met the five (5) percent cost sharing limit established in 895 KAR 1:015.
(c) The requirement to make a monthly premium payment to maintain an active MyRewards account shall not apply to a beneficiary who is a pregnant woman.
(2) Only a beneficiary with an active, non-suspended MyRewards account shall be able to utilize the account to access services established in Section 1 of this administrative regulation.

Section 3. Accruals Within a MyRewards Account. (1)(a) A MyRewards account shall not be subject to any annual limit.
(b) A beneficiary shall continuously accrue balances for completion of activities listed in subsection (2) of this section if:
1. The account remains active; and
2. The beneficiary is not otherwise suspended or disenrolled.
(2) A beneficiary shall have the opportunity to accrue balances in the MyRewards account in the following circumstances:
(a) If the beneficiary completes a healthy behavior activity;
(b) If an individual in the household accesses preventive services, except that preventive services for children shall be accrued differently for the child and the household;
(c) At the end of a benefit year in which a beneficiary did not make any non-emergent visits to an emergency department;
(d) If the beneficiary completes and reports department approved community engagement activities in excess of the hours required of the beneficiary pursuant to the PATH requirement established in 895 KAR 1:020; or
(e) If the beneficiary completes a department approved education course.
(3) A beneficiary who has a suspended MyRewards account shall accrue balances for completion of an activity listed in subsection (2) of this section if the MyRewards account is unsuspended within sixty (60) calendar days of completing the approved activity.
(4) A beneficiary may accrue funds in the MyRewards account through deductible account rollover as established in 895 KAR 1:040.

Section 4. Deductions. A beneficiary with an active MyRewards account shall have the account balance reduced, up to a maximum negative balance of $150 for:
(1) Failure to make a required premium payment within sixty (60) days of the date of invoice, resulting in a non-payment penalty as established in 895 KAR 1:015; or
(2) A non-emergent use of the emergency department. Non-emergent use of the emergency department shall exist if:
(a) The beneficiary did not need emergency services;
(b) A medical screening conducted pursuant to 42 C.F.R. 489.24 was completed by the emergency department, and
(c) The beneficiary failed to contact the nurse hotline operated by the MCO with which the beneficiary is enrolled within twenty-four (24) hours prior to utilizing the emergency department.

Section 5. Payout of Account. (1) A former beneficiary who disenrolls from Kentucky HEALTH by obtaining commercial insurance and who remains commercially insured for a minimum of eighteen (18) months may apply to receive a payout of up to half of that beneficiary's remaining MyRewards account balance up to $500, subject to the following requirements:
(a) The former beneficiary shall provide attestation of commercial insurance; and
(b) The former beneficiary shall be without any type of Medicaid assistance in the commonwealth for at least eighteen (18) consecutive months following the date of disenrollment from Kentucky HEALTH.
(2) A MyRewards account shall be closed after the payout requested by a former beneficiary under this section.

Section 6. Establishment of Early Reentry or Early Reactivation Opportunity. (1) A beneficiary who is subject to a six (6) month penalty period under 895 KAR 1:010 or 895 KAR 1:015 shall be given the opportunity to re-enter Kentucky HEALTH or reactivate the beneficiary's MyRewards account, as applicable, prior to the expiration of the six (6) month penalty period.
(2) The opportunity to re-enter Kentucky HEALTH or reactivate the beneficiary's MyRewards account, as applicable, prior to the expiration of the six (6) month penalty period shall only be available to an individual one (1) time per benefit year per penalty reason type.

Section 7. Requirements for Re-entry. A beneficiary seeking to re-enter Kentucky HEALTH or reactivate the beneficiary's MyRewards account set forth in this administrative regulation, as applicable, prior to the expiration of the six (6)-month penalty period shall:

(1) Complete a re-entry course;

(2) Pay any premium payment required for the first month of coverage to restart benefits; and

(3) Pay any past due premiums owed for each month in which the individual received healthcare coverage through Kentucky HEALTH during the sixty (60) day payment period prior to the effective date of the applicable six (6) month penalty period.

Section 8. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

JILL R. HUNTER, Acting Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 27, 2018

FILED WITH LRC: June 29, 2018 at 9 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 502-564-7091, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the MyRewards account requirements, including for accruals, deductions, account payout, early re-entry and re-activation following a suspension, and general account re-entry and reactivation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish and implement the MyRewards program and account for individual beneficiaries that are participating in the Kentucky HEALTH program or who otherwise elect to utilize a MyRewards program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing requirements and processes relating to the MyRewards program, which will enhance and allow for full participation in the Kentucky HEALTH program by individual beneficiaries and those who otherwise elect to utilize a MyRewards program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the MyRewards program and its requirements and processes, which will allow for individual beneficiaries and those who otherwise elect to participate in the MyRewards program to fully participate in the Kentucky HEALTH program pursuant to an approved federal 1115 waiver.

(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 government affected by this administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, any enrolled provider that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, and any beneficiary whose eligibility for Medicaid will be governed by the Kentucky HEALTH program. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

(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: Beneficiaries will need to comply with any relevant premium payment, PATH requirement, or any cost sharing limits to participate in the MyRewards program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Beneficiaries should experience no additional costs as a result of compliance with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, beneficiaries will be able to use a MyRewards account for purchase of items and services such as vision services, dental services, and additional state approved services. Qualifying beneficiaries may also eventually receive a MyRewards account payout if certain conditions are met.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund 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: Neither an increase in fees or funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation neither establishes or increases any fees.

(9) Tiering: Is tiering applied? Tiering was only applied in the sense that a beneficiary who is a pregnant woman is not required to make a monthly premium payment to maintain an active MyRewards account.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1315; 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560 KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1315 establishes the 1115 waiver authority. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A federal demonstration waiver has been approved pursuant to 42 U.S.C. 1315 and on an ongoing basis it shall determine and establish how Medicaid services are provided to Medicaid members who are eligible pursuant to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

(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? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

(d) How much will it cost to administer this program for subsequent years? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

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:

COMPILER'S NOTE: This emergency administrative regulation was effective upon filing on June 29, 2018; however, it was withdrawn by the agency on July 2, 2018. The ordinary administrative regulation is continuing through the regulatory review process and is printed in this *Register* on page 583.

STATEMENT OF EMERGENCY
895 KAR 1:035E

This emergency administrative regulation is being promulgated to establish the covered benefits that shall be available to beneficiaries participating in the Kentucky HEALTH program. The Kentucky HEALTH program is an innovative approach to improve the health and well-being of certain low-income Kentucky adults and their families and is being implemented pursuant to an approved 1115 federal waiver. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. and 3. to prevent a loss of federal funds and to meet a deadline for promulgation established by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
ADAM M. MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Emergency Administrative Regulation)

895 KAR 1:035E. Covered services within the Kentucky HEALTH program.

RELATES TO: KRS 205.520, 205.622, 369.101 - 369.120, 42 C.F.R. parts 447, 489, 42 U.S.C. 1396a

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

EFFECTIVE: June 29, 2018

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1115(b), the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes the covered benefits that shall be afforded to beneficiaries participating in the Kentucky HEALTH program.

Section 1. Alternative Benefit Plan (ABP). (1)(a) An ACA expansion adult not eligible under paragraph (b) of this section shall receive benefits:

1. As established in the Kentucky HEALTH alternative benefit plan approved by the Centers for Medicare and Medicaid Services; and

2. In accordance with the essential health benefit requirements under 42 C.F.R. 440.347 for alternative benefit plans.

(b) An ACA expansion adult shall receive benefits in accordance with the Kentucky Medicaid state plan, as established by KAR Title 907, if the ACA expansion adult:

1. Is pregnant;

2. Is a former foster youth; or

3. Is determined to be, or otherwise deemed, medically frail or temporarily vulnerable pursuant to 895 KAR 1:055.

(2) The Kentucky HEALTH ABP shall include covered services in each of the following categories:

(a) Ambulatory patient services;

(b) Emergency services;

(c) Hospitalization;

(d) Maternity services;

(e) Mental health and substance abuse services;

(f) Prescription drugs;

(g) Rehabilitative and habilitative services and devices;

(h) Laboratory services;

(i) Preventive care services;

(j) Early and periodic screening, diagnostic, and treatment services for beneficiaries nineteen (19) and twenty (20) years of age; and

(k) Any other services approved by the Centers for Medicare and Medicaid Services in the Kentucky HEALTH alternative benefit plan.

(3) The following services shall not be covered under the Kentucky HEALTH alternative benefit plan:

(a) Services that are not medically necessary;

(b) Dental services;

(c) Vision services;

(d) Nonemergency medical transportation; and

(e) Any other services not approved by the Centers for Medicare and Medicaid Services in the alternative benefit plan.

Section 2. State Plan Benefits. (1) A beneficiary in one (1) of the following groups shall receive covered services as established by the Kentucky Medicaid state plan, subject to the coverage

criteria, limitations, and procedures specified in the Kentucky Medicaid state plan, as established by KAR Title 907 and this title:

(a) Parents and caretaker relatives;

(b) Transitional medical assistance;

(c) Pregnant women;

(d) Former foster youth; and

(e) Medically frail, or temporarily vulnerable.

(2) The following services shall not be covered for beneficiaries under this section:

(a) Services that are not medically necessary;

(b) Nonemergency medical transportation for methadone treatment services, except for the following groups:

1. Pregnant women;

2. Former foster youth; or

3. Nineteen (19) and twenty (20) year-olds in accordance with EPSDT requirements; and

(c) Any other services not covered by the Kentucky Medicaid state plan.

Section 3. Coverage of Preventive Care Services. (1) For a beneficiary with a deductible account as established in 895 KAR 1:040, any preventive care service shall not be tracked against a beneficiary's deductible.

(2) Preventive care service shall include:

(a) The preventive services assigned a grade of A or B by the United States Preventive Services Task Force (USPSTF);

(b) The approved adult vaccines, including their administration, recommended by the Advisory Committee on Immunization Practices;

(c) Preventive care and screening recommended by the Health Resources and Services Administration Bright Future Program Project; or

(d) Preventive services recommended by the Institute of Medicine.

Section 4. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

JILL R. HUNTER, Acting Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 27, 2018

FILED WITH LRC: June 29, 2018 at 9 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 502-564-7091, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the covered benefits that will be provided to beneficiaries participating in the Kentucky HEALTH program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish those covered benefits that beneficiaries participating in the Kentucky HEALTH program shall receive.

(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 covered benefits that will apply to beneficiaries participating in the Kentucky HEALTH program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the covered benefits that will apply to the beneficiaries participating in the Kentucky HEALTH program pursuant to an approved federal 1115(b) waiver.

(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 government affected by this administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, any enrolled provider that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, and any beneficiary whose eligibility for Medicaid will be governed by the Kentucky HEALTH program. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will have to ensure that the benefits offered pursuant to the Kentucky HEALTH program are consistent with this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated entities should experience no additional costs as a result of compliance with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the covered benefits established in federal law shall be provided to qualifying beneficiaries.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund 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: Neither an increase in fees or funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation neither establishes or increases any fees.

(9) Tiering: Is tiering applied? Tiering was applied ACA expansion adults receive the Kentucky HEALTH Alternative Benefit Plan. While parents and caretaker relatives, transitional medical assistance, pregnant women, former foster youth, and individuals who are medically frail or temporarily vulnerable receive services established under the Kentucky Medicaid state plan. In addition, nonemergency medical transportation for methadone treatment is only available to pregnant women, former foster youth, and 19-20 year olds in accordance with EPSDT requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1315; 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560 KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1315 establishes the 1115 waiver authority. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

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 establishes an alternative benefit plan to the Kentucky Medicaid state plan for certain ACA expansion adults.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A federal demonstration waiver has been approved pursuant to 42 U.S.C. 1315 and on an ongoing basis it shall determine and establish how Medicaid services are provided to Medicaid members who are eligible pursuant to 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? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

(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? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

(d) How much will it cost to administer this program for subsequent years? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

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:

COMPILER'S NOTE: This emergency administrative regulation was effective upon filing on June 29, 2018; however, it was withdrawn by the agency on July 2, 2018. The ordinary administrative regulation is continuing through the regulatory review process and is printed in this *Register* on page 585.

STATEMENT OF EMERGENCY
895 KAR 1:040E

This emergency administrative regulation is being promulgated to establish and govern the use of deductible accounts for adult beneficiaries participating in the Kentucky HEALTH program. The Kentucky HEALTH program is an innovative approach to improve the health and well-being of certain low-income Kentucky adults and their families and is being implemented pursuant to an approved 1115 federal waiver. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. and 3. to prevent a loss of federal funds and to meet a deadline for promulgation established by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
ADAM M. MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Emergency Administrative Regulation)

895 KAR 1:040E. Deductible accounts within the Kentucky HEALTH program.

RELATES TO: KRS 205.520, 42 U.S.C. 1315

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

EFFECTIVE: June 29, 2018

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes requirements for the use of deductible accounts for adult Kentucky HEALTH beneficiaries.

Section 1. Establishment of Deductible Account. (1) An adult beneficiary shall begin each benefit year with a deductible account with a dollar value equivalent to $1,000 as a mechanism to track the first $1,000 of non-preventive covered services utilized by the beneficiary in the benefit year.

(2) This section shall not apply to an adult beneficiary who is a pregnant woman.

(3) As necessary, the department shall:

(a) Freeze deductible accounts to accommodate adult beneficiaries who become pregnant; or

(b) Pro-rate deductible accounts to accommodate an adult beneficiary who enrolls in Kentucky HEALTH for a partial benefit year.

Section 2. Purpose and Use of Deductible Account. (1) The deductible account shall cover the Kentucky HEALTH deductible, which shall be applicable to all non-preventive care services.

(2) Preventive care services as established in 895 KAR 1:045 shall not be:

(a) Subject to the $1,000 Kentucky HEALTH deductible; and

(b) Deducted from the deductible account.

Section 3. Continued Access to Service and Monthly Statement. (1) An adult beneficiary who receives more than $1,000 worth of non-preventive services in the benefit year shall retain access to all covered services despite having exhausted the deductible account.

(2) Each adult beneficiary shall receive a monthly deductible account statement, which shall include:

(a) The cost of non-preventive care services that the adult beneficiary has utilized during the statement period; and

(b) The deductible account balance that the adult beneficiary has remaining.

Section 4. Deductible Account Balance Transfer and Calculation. (1) An adult beneficiary with funds remaining in a deductible account at the end of the benefit year may transfer up to fifty (50) percent of the remaining deductible account balance to the beneficiary's MyRewards account established in 895 KAR 1:030.

(2) For a beneficiary who was not an active member of Kentucky HEALTH for the entire benefit year, the deductible account balance that is eligible to be transferred to an adult beneficiary's MyRewards account shall be calculated on a prorated basis based on the beneficiary's active months during the benefit year.

Section 5. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

JILL R. HUNTER, Acting Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 27, 2018

FILED WITH LRC: June 29, 2018 at 9 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 502-564-7091, Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the use of deductible accounts for Kentucky HEALTH beneficiaries.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish and implement requirements and processes for individual beneficiaries to track how they utilize services via a deductible account for non-preventive covered services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing requirements and processes relating to the use of deductible accounts to allow for individual beneficiaries to track their use of non-preventive covered services to allow for beneficiaries to more fully participate in the Kentucky HEALTH program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the requirements and procedures for the use of deductible accounts, which will allow individual beneficiaries to track and receive data relating to their use of non-preventive covered services and more fully participate in the Kentucky HEALTH program.

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

(a) How the amendment will change this existing administrative regulation: This 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 government affected by this administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, any enrolled provider that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, and any beneficiary whose eligibility for Medicaid will be governed by the Kentucky HEALTH program. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

(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: Beneficiaries will track and send a monthly deductible account statement to beneficiaries. Beneficiaries may transfer 50% of amounts remaining in a deductible account to the beneficiary's MyRewards account at the end of the benefit year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Beneficiaries should experience no additional costs as a result of compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, beneficiaries will be able to track use of their deductible account in order to better understand the use of healthcare funds and potentially transfer the amount remaining in the deductible account to the beneficiary's MyRewards account.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund 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: Neither an increase in fees or funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation neither establishes or increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied in the sense that deductible accounts are used only by adult beneficiaries, and pregnant women are not required to utilize a deductible account.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1315; 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560 KRS 205.520(3) states, "Further, it is the policy of the

Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1315 establishes the 1115 waiver authority. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A federal demonstration waiver has been approved pursuant to 42 U.S.C. 1315 and on an ongoing basis it shall determine and establish how Medicaid services are provided to Medicaid members who are eligible pursuant to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

(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? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

(d) How much will it cost to administer this program for subsequent years? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

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:

COMPILER'S NOTE: This emergency administrative regulation was effective upon filing on June 29, 2018; however, it was withdrawn by the agency on July 2, 2018. The ordinary administrative regulation is continuing through the regulatory review process and is printed in this *Register* on page 587.

STATEMENT OF EMERGENCY
895 KAR 1:045E

This emergency administrative regulation is being promulgated to establish a requirement for reasonable modifications and accommodations for Kentucky HEALTH beneficiaries, a random control group, and establishes an eligibility and covered services appeals process. The Kentucky HEALTH program is an innovative approach to improve the health and well-being of certain low-income Kentucky adults and their families and is being implemented pursuant to an approved 1115 federal waiver. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. and 3. to prevent a loss of federal funds and to meet a deadline for promulgation established by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
ADAM M. MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Emergency Administrative Regulation)

895 KAR 1:045E. Accommodations, modifications, and appeals for beneficiaries participating in the Kentucky HEALTH program.

RELATES TO: KRS 205.520, 42 U.S.C. 1315

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

EFFECTIVE: June 29, 2018

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes a requirement for reasonable modifications and accommodations for Kentucky HEALTH beneficiaries, a random control group, and an eligibility and covered services appeals process.

Section 1. Reasonable Accommodations. (1) The department shall provide reasonable accommodations or modifications, in accordance with subsection (2) of this section, to Kentucky HEALTH requirements and processes as necessary to support and assist each beneficiary with a protected disability or disabilities to meet the requirements of this title.

(2) Reasonable accommodations and modifications shall include the following actions if requested by a beneficiary with a protected disability or disabilities:

(a) An exemption or exemptions from PATH participation if a beneficiary is unable to participate for reasons related to a protected disability;

(b) A modification in the number of hours of PATH participation required if a beneficiary is unable to participate for the required number of hours;

(c) Provision of support services necessary to comply with requirements, if compliance is possible with supports;

(d) Assistance with demonstrating eligibility for a good cause exemption to the Kentucky HEALTH requirements, in accordance with 895 KAR 1:020, Section 1;

(e) Assistance with appealing a suspension for failure to meet requirements;

(f) Assistance with complying with any documentation requirements of Kentucky HEALTH, including for community engagement activities; or

(g) Assistance with understanding notices and program rules related to Kentucky HEALTH requirements.

Section 2. Random Control Group. (1) Except as otherwise

provided in this section, all policies, requirements, procedures, and timeframes established for Kentucky Medicaid in Title 907 KAR shall apply to the Kentucky HEALTH random control group.

(2) An individual assigned to the Kentucky HEALTH random control group shall not be:

(a) Subject to the requirements for Kentucky HEALTH eligibility established in 895 KAR 1:010; or

(b) Eligible for coverage prior to the first day of the month of application.

Section 3. Eligibility Appeals. An appeal by an applicant, conditionally eligible beneficiary, or beneficiary regarding an eligibility determination shall be governed by KRS Chapter 13B and 907 KAR 1:560.

Section 4. Covered Services Appeals and Hearings. Except as otherwise provided in Title 895 KAR, a beneficiary appeal regarding a benefit determination by a managed care organization shall be governed by KRS Chapter 13B and 907 KAR 17:010.

Section 5. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

JILL R. HUNTER, Acting Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 27, 2018

FILED WITH LRC: June 29, 2018 at 9 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 502-564-7091, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a requirement for reasonable modifications and accommodations for Kentucky HEALTH beneficiaries, a random control group, and establishes an eligibility and covered services appeals process.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish certain rights and responsibilities for beneficiaries receiving services pursuant to the Kentucky HEALTH program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing rights, responsibilities, and additional processes for the benefit of individuals receiving services pursuant to the Kentucky HEALTH program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing rights, responsibilities, and processes for the benefit of individuals and for the efficient administration of the Kentucky HEALTH program.

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

(a) How the amendment will change this existing administrative regulation: This 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 government affected by this administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, any enrolled provider that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, and any beneficiary whose eligibility for Medicaid will be governed by the Kentucky HEALTH program. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The department commits to provide certain reasonable accommodations and modifications to beneficiaries with a protected disability including exemption from PATH requirements, modification in hours of PATH requirements, provision of support services, assistance with demonstration of eligibility for good cause exemptions, assistance with appealing of suspensions, assistance with compliance with documentation requirements, and assistance with understanding notices and program rules. The department will also establish a random control group, and an eligibility and covered services appeals process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Beneficiaries should experience no additional costs as a result of compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, beneficiaries will experience a program that has incorporated reasonable accommodations and modifications for beneficiaries with a protected disability, and an eligibility and covered services appeals process.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund 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: Neither an increase in fees or funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation neither establishes or increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied in that a random control group that is not subject to the Kentucky HEALTH requirements is established and is used for data tracking purposes.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1315; 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560 KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may

be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1315 establishes the 1115 waiver authority. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

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 establish 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. A federal demonstration waiver has been approved pursuant to 42 U.S.C. 1315 and on an ongoing basis it shall determine and establish how Medicaid services are provided to Medicaid members who are eligible pursuant to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

(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? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

(d) How much will it cost to administer this program for subsequent years? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

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:

COMPILER'S NOTE: This emergency administrative regulation was effective upon filing on June 29, 2018; however, it was withdrawn by the agency on July 2, 2018. The ordinary administrative regulation is continuing through the regulatory review process and is printed in this *Register* on page 589.

STATEMENT OF EMERGENCY
895 KAR 1:050E

This emergency administrative regulation is being promulgated to establish the enrollment and reimbursement requirements for providers that provide covered and non-covered services to beneficiaries participating in the Kentucky HEALTH program. The Kentucky HEALTH program is an innovative approach to improve the health and well-being of certain low-income Kentucky adults and their families and is being implemented pursuant to an approved 1115 federal waiver. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. and 3. to prevent a loss of federal funds and to meet a deadline for promulgation established by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
ADAM M. MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Emergency Administrative Regulation)

895 KAR 1:050E. Enrollment and reimbursement for providers in the Kentucky HEALTH program.

RELATES TO: KRS 205.520, 42 U.S.C. 1315

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

EFFECTIVE: June 29, 2018

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes the enrollment and reimbursement requirements for providers that provide covered and non-covered services to beneficiaries participating in the Kentucky HEALTH program.

Section 1. Provider Enrollment Requirements. (1) A provider shall be automatically eligible for Kentucky HEALTH provider participation if the provider is currently enrolled as a Medicaid provider or as a provider with an MCO to provide Medicaid services to Kentucky Medicaid recipients.

(2) To enroll as a provider under Title 895 KAR, the provider shall comply with all Medicaid enrollment procedures and requirements established in Title 907 KAR.

Section 2. Provider Reimbursement. (1) A provider shall be reimbursed at the reimbursement rate established by the MCO for the MCO covered services.

(2) A provider shall be reimbursed for services covered by 895 KAR 1:030 Section 1, through the beneficiary's MyRewards account on a fee-for-service basis. A claim for services covered by the MyRewards account shall not be submitted to the beneficiary's MCO.

(3) A provider shall not receive reimbursement under title 895 KAR for services provided to an individual if:

(a) The individual is not eligible for participation in the Kentucky HEALTH program pursuant to 895 KAR 1:010; or

(b) The individual is suspended or otherwise not enrolled in Kentucky HEALTH on the date the service is provided.

Section 3. Non-covered Services Reimbursed via MyRewards Account. (1) A provider who seeks to receive reimbursement for an otherwise non-covered service that is reimbursable via a beneficiary's MyRewards account established by 895 KAR 1:030 shall be at risk for the cost of the service provided, if:

(a)1. The provider fails to place a hold on funds in the account;

and

2. Funds are not available at the time services are billed;

(b) The beneficiary's MyRewards account was inactive or suspended at the time the service was rendered; or

(c) The hold on the funds placed by the provider subsequently expired due to the provider's failure to submit a claim within thirty (30) days of the date of service.

(2) A provider may bill a beneficiary with an inactive or suspended MyRewards account for services not covered by the beneficiary's benefit plan as established in 895 KAR 1:030 or 895 KAR 1:025 if the services are for:

(a) Vision; or

(b) Dental.

Section 4. MCO Payment. (1)(a) Except as provided in paragraph (b) of this subsection, a provider shall:

1. Accept MCO reimbursement as payment in full for services rendered; and

2. Not collect from a beneficiary any portion of the provider's charge for a covered service that is not reimbursed by the MCO.

(b) A provider shall collect the copays required by the Kentucky Medicaid state plan, for beneficiaries in the copay plan.

(2) A provider may seek beneficiary reimbursement for non-covered services, including services received by the beneficiary during a suspension or other penalty period, if the following four (4) conditions are met:

(a) The provider has an established policy for billing all patients for services not covered by a third party and does not bill only Medicaid or Kentucky HEALTH patients;

(b) The patient is advised prior to receiving a non-covered service that Kentucky HEALTH will not pay for the service;

(c) The patient agrees to be personally responsible for the payment; and

(d) The agreement is made in writing between the provider and the patient, detailing both the service and the amount to be paid by the patient.

Section 5. Third Party Liability. A provider shall comply with KRS 205.622.

Section 6. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which a beneficiary has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each beneficiary using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the beneficiary has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 7. Auditing Authority. The department or MCO in which a beneficiary is enrolled shall have the authority to audit any:

(1) Claim;

(2) Health record; or

(3) Documentation associated with any claim or health record, including any activity related to a beneficiary's use of a MyRewards account.

Section 8. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

JILL R. HUNTER, Acting Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 27, 2018

FILED WITH LRC: June 29, 2018 at 9 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 502-564-7091, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the enrollment and reimbursement requirements for providers that provide covered and non-covered services to beneficiaries participating in the Kentucky HEALTH program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements for providers that will provide covered and non-covered services to the beneficiaries participating in the Kentucky HEALTH program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the requirements and processes by which providers will be able to provide covered and non-covered services to Kentucky HEALTH beneficiaries.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing processes and requirements by which providers will be able to provide covered and non-covered services to Kentucky HEALTH beneficiaries.

(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 government affected by this administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, any enrolled provider that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, and any beneficiary whose eligibility for Medicaid will be governed by the Kentucky HEALTH program. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

(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: Providers will need to follow existing enrollment procedures and requirements in Title 907 KAR. For non-covered services, a provider may bill a MyRewards account

via established procedures. Additional procedures outlining the step that must occur before a provider can establish additional beneficiary liability shall also be followed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs experienced.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, providers will attain the ability to receive reimbursement for covered and certain non-covered services provided to beneficiaries in the Kentucky HEALTH program.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund 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: Neither an increase in fees or funding is necessary to implement this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation neither establishes or increases any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the requirements established herein apply to all regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1315; 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560 KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1315 establishes the 1115 waiver authority. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Different responsibilities established include establishing how providers accept payment for non-covered services by a MyRewards account.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A federal demonstration waiver has been approved pursuant to 42 U.S.C. 1315 and on an ongoing basis it shall determine and establish how Medicaid services are provided to Medicaid members who are eligible pursuant to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

(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? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

(d) How much will it cost to administer this program for subsequent years? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

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:

COMPILER'S NOTE: This emergency administrative regulation was effective upon filing on June 29, 2018; however, it was withdrawn by the agency on July 2, 2018. The ordinary administrative regulation is continuing through the regulatory review process and is printed in this *Register* on page 591.

STATEMENT OF EMERGENCY
895 KAR 1:055E

This emergency administrative regulation is being promulgated to establish which Kentucky HEALTH beneficiaries who shall qualify as medically frail at the time of application and establish a time frame, screening, and verification process for determination of medically frail or temporarily vulnerable status of other Kentucky HEALTH beneficiaries by an MCO. The Kentucky HEALTH program is an innovative approach to improve the health and well-being of certain low-income Kentucky adults and their families and is being implemented pursuant to an approved 1115 federal waiver. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. and 3. to prevent a loss of federal funds and to meet a deadline for promulgation established by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
ADAM M. MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Emergency Administrative Regulation)

895 KAR 1:055E. Designation or determination of medically frail status or accommodation due to temporary vulnerability in the Kentucky HEALTH program.

RELATES TO: KRS 205.520, 42 C.F.R. part 447, 42 U.S.C. 1315

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

EFFECTIVE: June 29, 2018

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes those beneficiaries who shall qualify as medically frail or temporarily vulnerable and establishes the requirements for determination of that status.

Section 1. Designation as Medically Frail at Time of Application. A beneficiary shall be designated as medically frail at the time of application if the beneficiary is:

(1) A beneficiary with HIV or AIDS as identified by the Ryan White Program;

(2) Receiving retirement, survivors, disability insurance (RSDI) income based on disability; or

(3) Chronically homeless.

Section 2. Medically Frail Screenings. (1) A beneficiary who is not designated as medically frail at the time of application shall be reviewed for medically frail status at any of the following times:

(a) Upon beneficiary request;

(b) During the benefit year if documentation demonstrates that the beneficiary may have a medically frail condition; or

(c) If claims history or provider documentation demonstrates that the beneficiary may no longer have a medically frail condition.

(2) A medically frail beneficiary shall be reviewed at least annually by the managed care organization to determine if the beneficiary is eligible for continued designation as medically frail.

(3) In order to verify a beneficiary's medically frail condition, the managed care organization shall consider:

(a) The beneficiary's medical records;

(b) The beneficiary's medical claim data;

(c) Any other information relevant to the beneficiary's health condition; or

(d) Physician attestation of medically frail status.

Section 3. Accommodation due to Temporary Vulnerability. (1) A beneficiary shall be designated as temporarily vulnerable by the department if the beneficiary is:

(a) A refugee, as defined by KRS 186.010(13)(c), during the first twelve (12) months after the refugee entered the United States; or

(b) A victim of domestic violence.

(2) An individual who is designated as temporarily vulnerable shall:

(a) Pay premiums for access to a MyRewards account; and

(b) Be exempt from the following Kentucky HEALTH requirements:

1. Payment of premiums for medical services;

2. Copays for medical services;

3. Completion of the PATH requirement during the entire period of temporary vulnerability.

Section 4. Auditing Authority. The department or MCO in which a beneficiary is enrolled shall have the authority to audit any:

(1) Claim;

(2) Health record; or

(3) Documentation associated with any claim or health record, including any activity related to a beneficiary's use of a MyRewards account.

Section 5. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 6. Appeal Rights. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563 and 895 KAR 1:045.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010 and 895 KAR 1:045.

JILL R. HUNTER, Acting Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 27, 2018

FILED WITH LRC: June 29, 2018 at 9 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 502-564-7091, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes those beneficiaries of the Kentucky HEALTH program who shall qualify as medically frail or temporarily vulnerable and establishes the requirements for determination of that status.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish certain beneficiaries of the Kentucky HEALTH program as medically frail or temporarily vulnerable, and therefore not subject to certain PATH requirements, and establish a process by which other beneficiaries may be screened and verified to be medically frail or temporarily vulnerable, and therefore not subject to certain PATH requirements, by an MCO.

(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 which beneficiaries are automatically deemed to be medically frail, and how other beneficiaries may be deemed medically frail or temporarily vulnerable by an MCO, which will assist with the effective implementation of the Kentucky HEALTH program pursuant to an approved federal 1115 waiver.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing certain beneficiaries as medically frail, and establishing a screening process for other beneficiaries who may qualify as medically frail or temporarily vulnerable. A process for designation of medically frail or temporarily vulnerable status will assist with the effective implementation of the Kentucky HEALTH program pursuant to an approved federal 1115 waiver.

(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 government affected by this administrative regulation: The Department for Medicaid Services,

any contracted Medicaid managed care organization that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, any enrolled provider that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, and any beneficiary whose eligibility for Medicaid will be governed by the Kentucky HEALTH program. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

(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 need to claim, verify, or submit to screening to determine medically frail or temporarily vulnerable status. MCOs will need to establish processes to determine which beneficiaries are medically frail or temporarily vulnerable.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs experienced.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, beneficiaries may claim or qualify as medically frail or temporarily vulnerable and thus may be exempt from PATH requirements.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund 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: Neither an increase in fees or funding is necessary to implement this administrative regulation.

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

(9) Tiering: Is tiering applied? Tiering is applied in the sense that certain beneficiaries are automatically designated as medically frail and all other beneficiaries who are determined medically frail or temporarily vulnerable are determined to be medically frail or temporarily vulnerable via screenings and documentation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1315; 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560 KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1315 establishes the 1115 waiver authority. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Different responsibilities established include a closer analysis of which beneficiaries are designated or determined to be medically frail or temporarily vulnerable.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A federal demonstration waiver has been approved pursuant to 42 U.S.C. 1315 and on an ongoing basis it shall determine and establish how Medicaid services are provided to Medicaid members who are eligible pursuant to 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? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

(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? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

(d) How much will it cost to administer this program for subsequent years? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

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
900 KAR 5:020E

This emergency administrative regulation is being promulgated in accordance with the passage of Senate Bill 123 from the 2018 Session of the General Assembly (2018 Ky. Acts ch. 113). Senate Bill 123, as amended, prohibits certificate of need applications to establish nursing facility beds in a freestanding facility or as part of an existing facility under a pilot program for post-acute transitional care unless the long term care bed calculation demonstrates a need for additional long term care beds in the county. This action must be taken on an emergency basis in accordance with KRS 13A.190(1)(a)3. to meet a deadline established by state law. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to the emergency administrative regulation. The ordinary administrative regulation includes additional revisions to the formal review criteria for certificate of need applications.

MATTHEW G. BEVIN, Governor
ADAM M. MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Certificate of Need
(Emergency Amendment)

900 KAR 5:020E. State Health Plan for facilities and services.

RELATES TO: KRS 216B.010-216B.130
STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), 216B.040(2)(a)2.a.
EFFECTIVE: July 13, 2018
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The 2017-2019 State Health Plan shall be used to:
(1) Review a certificate of need application pursuant to KRS 216B.040; and
(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(29)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference. (1) The "2018 Update to the 2017-2019 State Health Plan", July 2018[~~November 2017~~], is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, Division of Certificate of Need[~~Health Policy~~], 275 East Main Street, 5E-A[~~4WE~~], Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVE DAVIS, Inspector General
ADAM M. MEIER, Secretary
APPROVED BY AGENCY: July 13, 2018
FILED WITH LRC: July 13, 2018 at 11 a.m.
CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Molly Nicol Lewis, Office of Inspector General, molly.lewis@ky.gov, 502-564-9592; and Laura Begin
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative establishes the 2018 Update to the 2017-2019 State Health Plan.
(b) The necessity of this administrative regulation: KRS 216B.040(2)(a)2.a. requires the cabinet to promulgate an administrative regulation to establish and update the State Health Plan.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This emergency administrative regulation conforms to the content of KRS 13A.100, 194A.030, 194A.050(1), 216B.010, 216B.015(28), and 216B.040(2)(a)2.a. because the cabinet is authorized to promulgate and update the State Health Plan in its administration of the certificate of need program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by updating the 2017-2019 State Health 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: This amendment will change the existing regulation by removing from the 2017-2019 State Health Plan the review criteria applicable for the post-acute care transitional care pilot program.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform to Senate Bill 123 from the 2018 Session of the General Assembly.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to Senate Bill 123 by removing the post-acute care transitional care pilot program from the State Health Plan review criteria for long term care because Senate Bill 123 prohibits the pilot program and requires a stricter review criteria of post-acute transitional care programs than what is currently included in the State Health Plan.
(d) How the amendment will assist in the effective administration of the statutes: This amendment to an existing administrative regulation will allow the regulation to be consistent with Senate Bill 123.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment may impact one hospital, Norton Hospitals Inc., which has a pending certificate of need application proposing to establish a post-acute care transitional care pilot program. Norton's application was filed on or about March 28, 2018 and went on public notice May 17, 2018. On May 30, 2018, Norton requested deferral of its application citing SB 123 as prohibiting the application's ability to move forward.
(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 but the application will be precluded from meeting the State Health Plan review criteria removed in this revision. Thus, the applicant elected to defer its application to the next batching cycle in hopes of a subsequent amendment establishing criteria that the applicant is able to satisfy.
(b) In complying with this emergency administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred to comply with this emergency administrative regulation. However, Norton Hospitals Inc. will lose the $25,000 filing fee if its application is not reviewable or not approvable.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Norton Hospitals Inc. will not accrue benefits from this emergency administrative regulation.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: This emergency administrative regulation imposes no costs on the administrative body.
(b) On a continuing basis: This emergency administrative regulation imposes no costs on the administrative body.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement this emergency administrative regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fee or funding increase is necessary to implement this emergency administrative regulation.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This emergency administrative regulation does not establish or increase any fees.
(9) TIERING: Is tiering applied? Tiering is applicable to this emergency administrative regulation because the State Health Plan establishes different review criteria for various health services and services. For example, the review criteria for an application to establish an acute care hospital is different than the review criteria for an application to add long term care beds. Some review criteria also differ based on the location of the facility, quality of the equipment or population of the proposed service area.

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 emergency administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General and Norton Hospitals, Inc., the sole certificate of need applicant, as of this date, proposing to establish a establish a post-acute care transitional care pilot program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.100, 194A.030, 194A.050(1), 216B.010, 216B.015(28), 216B.040(2)(a)2.a.and Senate Bill 123 from the 2018 General Assembly.

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 emergency administrative regulation will not generate any additional revenue.

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

(c) How much will it cost to administer this program for the first year? This emergency administrative regulation imposes no costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This emergency administrative regulation imposes no costs on the administrative body.

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

Revenues (+/-):

Expenditures (+/-):

STATEMENT OF EMERGENCY
902 KAR 20:008E

This emergency administrative regulation is being promulgated in accordance with 2018 Ky. Acts ch. 143 (HB 444). This is being filed as an emergency administrative regulation to revise the fee schedule and licensure applications by removing the outpatient levels of care exempted from licensure by KRS 216B.020(2)(c) and (3) as well as repealed by 902 KAR 20:401E and 906 KAR 1:071E, filed concurrently with this emergency administrative regulation. This action must be taken on an emergency basis in accordance with KRS 13A.190(1)(a) to meet a deadline established by state law. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation because the ordinary administrative regulation will contain additional updates to the fee schedule that align with the ordinary amendment of 902 KAR 20:260 and 902 KAR 20:275, and the ordinary repeal of 902 KAR 20:250.

MATTHEW G. BEVIN, Governor
ADAM M. MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Emergency Amendment)

902 KAR 20:008E. License procedures and fee schedule.

RELATES TO: KRS 216.2925, 216.530, 216B.010, 216B.015, 216B.020(2)(c) and (3), 216B.040, 216B.042, 216B.045-216B.055, 216B.075, 216B.105-216B.131, 216B.185, 216B.990

STATUTORY AUTHORITY: KRS 216.530(1), 216B.042(1)(a)

EFFECTIVE: July 13, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042(1)(a) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function and establish reasonable application fees for licenses. This administrative regulation establishes the fee schedule and requirements for obtaining a license to operate a health facility and establishes the procedure for obtaining a variance.

Section 1. Definitions. (1) "Adverse action" means action taken by the Cabinet for Health and Family Services, Office of Inspector General to deny, suspend, or revoke a health facility's license to operate.

(2) "Cabinet" is defined by KRS 216B.015(6).

(3) "Deemed hospital" means a hospital that has had its accreditation accepted by the Office of Inspector General pursuant to KRS 216B.185(1) as evidence that the hospital demonstrates compliance with the licensure requirements of KRS Chapter 216B.

(4) "Health facility" is defined by KRS 216B.015(13).

(5) "Health services" is defined by KRS 216B.015(14).

(6) "Inspector General" means the Inspector General of the Cabinet for Health and Family Services or designee.

(7) "Significant financial interest" means lawful ownership of a health facility or health service, whether by share, contribution, or otherwise in an amount equal to or greater than twenty-five (25) percent of total ownership of the health facility or health service.

(8) "Variance" means the written approval of the Inspector General authorizing a health facility to depart from a required facility specification, upon meeting the conditions established in Sections 4 and 5 of this administrative regulation.

Section 2. Licenses. (1) Any person or entity, in order to lawfully operate a health facility or health service, shall first obtain a provisional license.

(2) A license required by KRS 216B.105(1), including a provisional license, shall be conspicuously posted in a public area of the health facility.

(3) An applicant for provisional licensure or annual renewal of licensure as a health facility shall complete and submit to the Office of the Inspector General the appropriate application as follows:

(a) Application for License to Operate a Health Facility or Health Service;

(b) Application for License to Operate a Chemical Dependency Treatment Service, Group Home, Psychiatric Residential Treatment Facility, or Residential Hospice Facility;

(c) Application for License to Operate a Hospital;

(d) Application for License to Operate a Home Health Agency, Non-residential Hospice, or Private Duty Nursing Agency;

(e) Application for License to Operate a Renal Dialysis Facility, Mobile Health Service, Special Health Clinic, or Specialized Medical Technological Service;

(f) Application for License to Operate a Long Term Care Facility; or

(g) Application for License to Operate a Family Care Home.

(4) Provisional License. Upon receipt of an application for a license and appropriate licensure fee as established in Section 3 of this administrative regulation, the Office of Inspector General shall:

(a) Review the application for completeness, including documentation related to:

1. Ownership;

2. Personnel;

3. Operations and administrative policies;

4. The type of services to be provided applicable to the license requested; and

5. if appropriate, plans and specifications for construction or renovation; and

(b) Return the application and accompanying licensure fee if:

1. An individual having a significant financial interest in the health facility or health service has, within the seven (7) year

period prior to the application date, had significant financial interest in a facility or service that was licensed or certified by the cabinet, and the license or certificate to operate was denied, suspended, revoked, or voluntarily relinquished as the result of an investigation or adverse action that placed patients, residents, or clients at risk of death or serious harm; or

2. The cabinet finds that the applicant misrepresented or submitted false information on the application.

(5) If an application is determined complete and no statutory or regulatory deficiencies are identified, the Office of Inspector General shall issue a provisional license to remain in effect until:

(a) Completion of the on-site inspection established in subsection (7) of this section; and

(b) Verification of compliance with each statute and administrative regulation applicable to the license requested.

(6)(a) Upon receipt of a provisional license, the licensee shall begin providing health services as designated on the licensure application.

(b) If a provisional licensee does not begin providing services within ten (10) business days after receipt of the provisional license, the licensee shall provide written notification to the cabinet of the following:

1. The reason the licensee has not yet begun providing services; and

2. The anticipated date the licensee will begin operating.

(c) The licensee shall notify the cabinet within three (3) business days after the licensee begins providing services.

(7)(a) Within three (3) months from the effective date of a provisional license, the Office of Inspector General shall conduct an unannounced, on-site inspection of the health facility or health service to verify compliance with each statute and administrative regulation applicable to the license requested.

(b) If the Office of Inspector General identifies a statutory or regulatory violation or multiple violations during the provisional licensure period, the health facility or health service shall be subject to the correction process established in subsection (13) of this section.

(8) A provisional license shall expire on the date the Office of Inspector General grants approval of or denies a license following the inspection described in subsection (7) of this section.

(9) If a provisional licensee receives notice from the Office of Inspector General that a license is denied, the licensee shall cease providing services immediately.

(10) Written notice denying a license shall explain the reason for the denial, including:

(a) Substantial failure, as described by KRS 216B.105(2), to comply with the provisions of KRS Chapter 216B or any administrative regulation applicable to the regular license;

(b) Substandard care that places patients, residents, or clients at risk of death or serious harm; or

(c) Denial of access to the Office of Inspector General as described in subsection (12) of this section.

(11) The effective date of the license shall be backdated to the issuance date of the provisional license and be subject to annual renewal within one (1) year from the effective date.

(12) Licensure inspections.

(a) Except for a health facility subject to KRS 216.530, a licensure inspection may be unannounced.

(b)1. A representative of the Office of Inspector General shall have access to the health facility pursuant to KRS 216B.042(2).

2. An applicant for licensure or a current licensee shall not deny access to a representative of the Office of Inspector General, after proper identification, to make an inspection for determining compliance with the requirements of each applicable administrative regulation for which the health facility or health service is licensed under 902 KAR Chapter 20 or 906 KAR Chapter 1.

3.a. Denial of access, including any effort to delay, interfere with, or obstruct an effort by a representative of the Office of Inspector General to enter the health facility or health service, or deny access to records relevant to the inspection, unless deemed confidential by 42 U.S.C. 299b-22(a), shall result in disciplinary action, including denial, revocation, modification, or suspension of the facility's license.

b. Denial, revocation, modification, or suspension of a health facility's or health service's license shall be subject to appeal pursuant to KRS 216B.105.

(c) An inspection of a health facility or health service licensed under 902 KAR Chapter 20 or 906 KAR Chapter 1 shall comply as follows:

1. The inspection shall be made at any time during the licensee's hours of operation;

2. The inspection shall be limited to ensure compliance with the standards set forth in 902 KAR Chapter 20, 906 KAR Chapter 1, KRS Chapter 216, or KRS Chapter 216B; and

3. The inspection of a health facility or health service based on a complaint or a follow-up visit shall not limit the scope of the inspection to the basis of the complaint or the implementation of a plan of correction.

(13) Violations.

(a) The Office of Inspector General shall notify a health facility or health service in writing of a regulatory violation identified during an inspection.

(b) The health facility shall submit to the Office of Inspector General, within ten (10) days of the notice, a written plan for the correction of the regulatory violation.

1. The plan shall be signed by the health facility's or health service's administrator, the licensee, or a person designated by the licensee and shall specify:

a. The date by which the violation shall be corrected;

b. The specific measures utilized to correct the violation; and

c. The specific measures utilized to ensure the violation will not recur.

2. The Office of Inspector General shall review the plan and notify the health facility or health service in writing of the decision to:

a. Accept the plan;

b. Not accept the plan; or

c. Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 216B.105(2).

3. The notice specified in subparagraph 2.b. of this paragraph shall:

a. State the specific reasons the plan is unacceptable; and

b. Require an amended plan of correction within ten (10) days of receipt of the notice.

4. The Office of Inspector General shall review the amended plan of correction and notify the health facility or health service in writing of the decision to:

a. Accept the plan;

b. Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 216B.105(2); or

c. Require the health facility or health service to submit an acceptable plan of correction.

5. A health facility or health service that fails to submit an acceptable amended plan of correction may be notified that the license will be denied, suspended, or revoked in accordance with KRS 216B.105(2).

(14) A license shall:

(a) Expire one (1) year from the effective date, unless otherwise expressly provided in the license certificate; and

(b) Be renewed in the form of a validation letter if the licensee:

1. Submits a completed licensure application;

2. Pays the prescribed fee;

3. Has no pending adverse action; and

4. Unless exempted, has responded to requests from the cabinet for:

a. Annual utilization surveys; and

b. Requests for information regarding health services provided.

(15) Except for a Level I psychiatric residential treatment facility licensed pursuant to the exception established in 902 KAR 20:320, Section 3(2), more than one (1) license shall not be issued or renewed for a particular licensure category at a specific location.

(16) Written notice shall be filed with the Office of Inspector General within thirty (30) calendar days of the effective date of a change of ownership. A change of ownership for a license shall:

(a) Be deemed to occur if more than twenty-five (25) percent of an existing health facility or health service or capital stock or voting

rights of a corporation is purchased, leased, or otherwise acquired by one (1) or more persons or legal entity from another; and

(b) Not require the issuance of a provisional license.

(17) The licensee shall fully disclose to the cabinet the name, mailing address, email address, and phone number, or a change in the name, mailing address, email address, or phone number of:

(a) Each person or legal entity having an ownership interest in the health facility or health service; and

(b)1. Each officer or director if organized as a corporation; or

2. Each partner if organized as a partnership.

(18) An individual, shareholder, or legal entity shall not acquire a significant financial interest in any licensed health facility or health service if that individual, shareholder, or legal entity previously held a significant financial interest in a licensed facility that had its license or certificate to operate denied, suspended, revoked, or voluntarily relinquished as the result of an investigation or adverse action that placed patients, residents, or clients at risk of death or serious harm within the preceding seven (7) years.

(19) An unannounced inspection shall be conducted:

(a) In response to a relevant complaint or allegation; and

(b) According to procedures established in subsection (12) of this section.

(20) A licensee that does not have a pending adverse action but fails to submit a completed licensure application annually shall cease operating the health facility unless:

(a) The items required under subsection (14)(b) of this section have been tendered; and

(b) The Office of Inspector General has provided the health facility or health service with a notice granting temporary authority to operate pending submission of the application.

(21) Credentialing and Re-credentialing. A licensed health facility that is required by KRS 216B.155(2) to assess the credentials of health care professionals applying for privileges shall use Form KAPER-1, Part B, incorporated by reference in 806 KAR 17:480.

(22) Licensure exemptions.

(a) A facility shall be exempt from licensure if it meets the criteria established by KRS 216B.020(2) or (3).

(b) A federally certified rural health clinic or a federally qualified health center that provides services to patients with behavioral health or psychiatric conditions, including substance use disorders, shall:

1. Be exempt from licensure in accordance with KRS 216B.020(2) and (3); and

2. Not be subject to licensure in a separate category under 902 KAR Chapter 20 or 908 KAR Chapter 1.

Section 3. Fee Schedule. (1)(a) Fees for review of plans and specifications for construction or renovation of health facilities shall be as follows:

License Type	Rate
(a) Hospitals plans and specifications review	$.10 per sq. ft.
(initial through final)	$200 minimum
(b) All other health facilities plans and specifications review	$.10 per sq. ft.
(initial through final)	$200 minimum

(b) A request for review of plans and specifications shall be submitted on the Program Review Fee – Worksheet Health Facility Identification form, accompanied by payment described in paragraph (a) of this subsection.

(2) Initial and Annual fees. The initial and annual licensure fee for health facilities and services shall be as follows:

License Type	Rate
(a) Freestanding birth center	$500
(b) Alzheimer's nursing home	For Alzheimer's nursing facilities with 50 beds or less, $750 + $25 per bed; For Alzheimer's nursing facilities with 51 or more beds, $1,000 + $25 per bed
(c) Ambulatory surgical center	$750
(d) Chemical dependency treatment service	$1,000 + $25 per bed
(e) Community mental health center	$1,500
(f) Day health care	$170
(g) Family care home	$42
(h) Group home for individuals with an intellectual or developmental disability	$100
[~~(i) Health maintenance organization~~]	[~~$12 per 100 patients~~]
(i) [~~(j)~~] Home health agency	$500
(j) [~~(k)~~] Hospice	$500
(k) [~~(l)~~] Hospital	
1. Deemed hospital	For deemed hospitals with 25 beds or less, $750 + $25 per bed; For deemed hospitals with 26 or more beds, $1,000 + $25 per bed
2. Non-deemed hospital	For non-deemed hospitals with 25 beds or less, $750 + $25 per bed; For non-deemed hospitals with 26 or more beds, $1,000 + $25 per bed
(l) [~~(m)~~] Intermediate care facility	For intermediate care facilities with 50 beds or less, $750 + $25 per bed; For intermediate care facilities with 51 or more beds, $1,000 + $25 per bed
(m) [~~(n)~~] ICF/IID facility	For ICFs/IID with 50 beds or less, $750 + $25 per bed; For ICFs/IID with 51 or more beds, $1,000 + $25 per bed
[~~(o) Network~~]	[~~$500~~]
(n) [~~(p)~~] Nursing facility	For nursing facilities with 50 beds or less, $750 + $25 per bed; For nursing facilities with 51 or more beds, $1,000 + $25 per bed
(o) [~~(q)~~] Nursing home	For nursing homes with 50 beds or less, $750 + $25 per bed; For nursing homes with 51 or more beds, $1,000 + $25 per bed
(p) [~~(r)~~] Ambulatory care clinic	$500
(q) [~~(s)~~] Personal care home	$100 + $5 per bed
[~~(t) Primary care center~~]	[~~$500 + $50 per extension~~]
(r) [~~(u)~~] Psychiatric hospital	
1. Deemed hospital	For deemed psychiatric hospitals with 25 beds or less, $750 + $25 per bed; For deemed psychiatric hospitals with 26 or more beds, $1,000 + $25 per bed
2. Non-deemed hospital	For non-deemed psychiatric hospitals with 25 beds or less, $750 + $25 per bed; For non-deemed psychiatric hospitals with 26 or more beds, $1,000 + $25 per bed
(s) [~~(v)~~] Psychiatric residential treatment facility	$500
[~~(w) Rehabilitation agency~~]	[~~$300~~]
(t) [~~(x)~~] Renal dialysis facility	$35 per station + $350 per facility

[~~(y) Rural health clinic~~]	[~~$500~~]
(u) [~~(z)~~] Special health clinic	$500
(v) [~~(aa)~~] Specialized medical technology service	$500
(w) [~~(bb)~~] Mobile health service	$500
(x) [~~(cc)~~] Comprehensive physical rehabilitation hospital	
1. Deemed hospital	For deemed hospitals with 25 beds or less, $750 + $25 per bed; For deemed hospitals with 26 or more beds, $1,000 + $25 per bed
2. Non-deemed	For non-deemed hospitals with 25 beds or less, $750 + $25 per bed; For non-deemed hospitals with 26 or more beds, $1,000 + $25 per bed
(y) [~~(dd)~~] Critical access hospital	$750 + $25 per bed
(z) [~~(ee)~~] Private duty nursing agency	$500
(aa) [~~(ff)~~] Residential hospice facility	$500
(bb) [~~(gg)~~] Prescribed Pediatric Extended Care Facility	$500
(cc) [~~(hh)~~] Outpatient health care center	$500

(3) Change in status of a licensed health facility.

(a) Name change or change of facility administrator. If a health facility changes the name of the facility as set forth on its license or the facility administrator changes, the licensee shall notify the Office of Inspector General of the facility's new name or new administrator within ten (10) calendar days of the effective date of the name change or administrator change.

(b) Change of location.

1. If a health facility or one (1) of its extensions or satellites changes location and certificate of need approval is not required prior to relocation, the licensee shall notify the Office of Inspector General of the new location within ten (10) calendar days of the effective date of the change.

2. The Office of Inspector General shall conduct an on-site inspection for a change of location if the facility is one (1) of the following levels of care:

a. Freestanding birth center;
b. Alzheimer's nursing home;
c. Ambulatory surgical center;
d. Chemical dependency treatment service;
e. Group home;
f. Non-deemed hospital;
g. Intermediate care facility;
h. Intermediate care facility for individuals with an intellectual or developmental disability (ICF/IID);
i. Nursing facility;
j. Nursing home;
k. Personal care home;
l. Psychiatric residential treatment facility;
m. Renal dialysis facility;
n. Residential hospice facility;
o. Outpatient health care clinic; or
p. Abortion facility.

(4)(a) Failure to renew a license by the annual renewal date shall result in a late penalty equal to twenty (20) percent of the renewal fee or twenty-five (25) dollars, whichever amount is greater.

(b) Continual failure to submit a completed and accurate renewal application or fee by the date specified by the cabinet may result in an enforcement action.

Section 4. Existing Facilities With Waivers. (1) The Inspector General shall deem an existing health facility to be in compliance with a facility specification requirement, even though the health facility does not meet fully the applicable requirement, if:

(a) The Inspector General has previously granted, to the health facility, a waiver for the requirement;
(b) The health facility is licensed by the cabinet;
(c) The health facility is in good standing; and
(d) The waived requirement does not adversely affect the health, safety, or welfare of a resident or patient.

(2) If the Inspector General determines that the waived requirement has adversely affected patient or resident health, safety or welfare, then:

(a) The Inspector General shall notify the health facility of the findings and the need to comply with the applicable administrative regulations; and
(b) The health facility shall submit a written plan to ensure compliance, pursuant to Section 2(13)(b) of this administrative regulation.

Section 5. Variances. (1) The Inspector General may grant a health facility a variance from a facility specification requirement if the facility establishes that the variance will:

(a) Improve the health, safety, or welfare of a resident or patient; or
(b) Promote the same degree of health, safety, or welfare of a resident or patient as would prevail without the variance.

(2) A health facility shall submit a request for a variance, in writing, to the Office of Inspector General. The request shall include:

(a) All pertinent information about the facility;
(b) The specific provision of the administrative regulation affected;
(c) The specific reason for the request; and
(d) Evidence in support of the request.

(3) The Inspector General shall review and approve or deny the request for variance. The Inspector General may request additional information from the health facility as is necessary to render a decision. A variance may be granted with or without a stipulation or restriction.

(4) The Inspector General shall revoke a variance previously granted if the Inspector General determines the variance has not:

(a) Improved the health, safety, or welfare of a patient or resident; or
(b) Promoted the same degree of health, safety, or welfare of a patient or resident that would prevail without the variance.

1. The Inspector General shall notify the health facility of a decision to revoke a variance and the need to comply with the applicable regulatory requirement.

2. The health facility shall submit a written plan to ensure compliance, pursuant to Section 2(13)(b) of this administrative regulation.

Section 6. Variance Hearings. (1)(a) A health facility dissatisfied with a decision to deny, modify, or revoke a variance or a request for a variance may file a written request for a hearing with the Secretary of the Cabinet for Health and Family Services.

(b) The request shall be received by the secretary within twenty (20) days of the date the health facility receives notice of the decision to deny, modify, or revoke the variance or request for a variance.

(2) An administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 7. Adverse Action Procedures. (1) A health facility or health service that has received a preliminary order to close or other notice of adverse action:

(a) Shall receive a duplicate license from the Office of Inspector General indicating that the health facility or health service has an adverse action pending;
(b) Shall post the duplicate license in place of the original license;
(c) Shall be subject to periodic inspections by the inspecting

agency to investigate complaints and ensure patient safety; and

(d) May continue to operate under duplicate license pending completion of the adverse action process, if patients and residents are not subjected to risk of death or serious harm.

(2) Until all appeals pursuant to KRS 216B.105 of the pending adverse action have been exhausted, the health facility or health service shall not have its:

(a) License renewed; or

(b) Duplicate license replaced.

Section 8. Denial and Revocation. (1) The cabinet shall deny or revoke a license if it finds that:

(a) In accordance with KRS 216B.105(2), there has been a substantial failure by the health facility or health service to comply with the provisions of:

1. KRS Chapter 216B; or

2. The administrative regulations applicable to the health facility's or health service's license;

(b) The health facility or health service fails to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by Section 2(13) of this administrative regulation;

(c) The health facility or health service fails to comply with the annual renewal process described by Section 2(14) of this administrative regulation; or

(d) The health facility or health service denies access to the Office of Inspector General pursuant to Section 2(12)(b) of this administrative regulation.

(2) The denial or revocation of a health facility's or health service's license shall be issued pursuant to KRS 216B.105(2).

(3) Notice of the denial or revocation shall set forth the particular reasons for the action.

(4) In accordance with KRS 216B.105(2), the denial or revocation shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee, within the thirty (30) day period, files a request in writing for a hearing with the cabinet.

(5) Pursuant to KRS 216B.050, the cabinet may compel obedience to its lawful orders.

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

(a) Form OIG 001, "Application for License to Operate a Health Facility or Health Service", July 2018[~~February 2017~~];

(b) Form OIG 002, "Application for License to Operate a Chemical Dependency Treatment Service, Group Home, Psychiatric Residential Treatment Facility, or Residential Hospice Facility", January 2017;

(c) Form OIG 003, "Application for License to Operate a Hospital", January 2017;

(d) Form OIG 004, "Application for License to Operate a Home Health Agency, Non-Residential Hospice, or Private Duty Nursing Agency", January 2017;

(e) Form OIG 005, "Application for License to Operate a Renal Dialysis Facility, Mobile Health Service, Special Health Clinic, or Specialized Medical Technological Service", January 2017;

(f) Form OIG 006, "Application for License to Operate a Long Term Care Facility", January 2017;

(g) Form OIG 007, "Application for License to Operate a Family Care Home", January 2017; and

(h) Form OIG PR-1, "Program Review Fee – Worksheet Health Facility Identification Form", June 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the 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: July 6, 2018

FILED WITH LRC: July 13, 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-A, Frankfort, KY 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 the requirements for obtaining a license to operate a health facility, the fees for initial and annual licensure, the procedure for obtaining a variance from a facility specification requirement, and the process for adverse actions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042(1) which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for proper administration of the licensure function.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042(1) by establishing the requirements for obtaining a license to operate a health facility.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for obtaining a license to operate a health facility, the fee for initial and annual licensure, the procedure for obtaining a variance from a facility specification requirement, and the process for adverse actions.

(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 fee schedule and licensure applications by removing the following categories, repealed by HB 444 from the 2018 Session of the General Assembly: health maintenance organizations, networks, primary care centers, rehabilitation agencies, and rural health clinics. This amendment clarifies that federally certified rural health clinics and federally qualified health centers that provide services to patients with behavioral health or psychiatric conditions, including substance use disorder, shall be exempt from licensure in accordance with KRS 216B.020(2) and (3), and not be required to obtain licensure in a separate category under 902 KAR Chapter 20 or 908 KAR Chapter 1. This amendment also establishes a late penalty equal to twenty (20) percent of the renewal fee or twenty-five (25) dollars, whichever is greater, for failure to renew a license by the annual renewal date.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to align with the changes from HB 444.

(c) How the amendment conforms to the content of the authorizing statutes: This is amendment conforms to the changes established by HB 444.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by aligning with the changes from HB 444.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment removes the licensure fees for health maintenance organizations, networks, primary care centers, rehabilitation agencies, and rural health clinics as these health facilities are no longer subject to licensure as a result of the passage of HB 444.

(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): No additional costs will be incurred to comply with this administrative regulation. However, this amendment establishes a late penalty for failure to renew a license timely.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In accordance with HB 444, health maintenance organization, networks, primary care centers, rural health clinics, and rehabilitation agencies are no longer subject to licensure by the Office of Inspector General or the fees imposed by this administrative regulation.

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

(a) Initially: This administrative regulation imposes no additional costs on the administrative body.

(b) On a continuing basis: This administrative regulation imposes no additional costs on the administrative body on an ongoing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of the licensure function is from federal and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No 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: The administrative regulation establishes a late penalty for failure to renew a license timely.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities that elect to be 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 removes the licensure fee for health maintenance organizations, networks, primary care centers, rehabilitation agencies, and rural health clinics as these health facilities are no longer subject to licensure as a result of the passage of HB 444. This administrative regulation also impacts the Cabinet for Health and Family Services, Office of Inspector General.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.020(2)(c) and (3), 216B.042

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate additional revenue for the Office of Inspector General unless a late penalty is imposed for failure to renew a license timely.

(b) How 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 additional revenue during subsequent years unless a late penalty is imposed for failure to renew a license timely.

(c) How much will it cost to administer this program for the first year? This administrative regulation imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation imposes no additional costs on the administrative body during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: 902 KAR 20:008E, License procedures and fee schedule.

STATEMENT OF EMERGENCY
902 KAR 20:401E

This emergency administrative regulation is being promulgated in accordance with 2018 Ky. Acts ch. 143 (HB 444). This emergency administrative regulation repeals 902 KAR 20:058, 902 KAR 20:145, 902 KAR 20:190, and 902 KAR 20:400 in accordance with the exemption criteria established by KRS 216B.020(2)(c) and (3). This action must be taken on an emergency basis in accordance with KRS 13A.190(1)(a) to meet a deadline established by state law. This emergency administrative regulation will not be replaced by an ordinary administrative regulation because once the repeals are effective, the administrative regulations cannot be repealed a second time.

MATTHEW G. BEVIN, Governor
ADAM M. MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Emergency Repealer)

902 KAR 20:401E. Repeal of 902 KAR 20:058, 902 KAR 20:145, 902 KAR 20:190, and 902 KAR 20:400.

RELATES TO: KRS 216B.176, 216B.177

STATUTORY AUTHORITY: KRS 216B.020(2)(c), (3)

NECESSITY, FUNCTION, AND CONFORMITY: 2018 Ky. Acts ch. 143 (HB 444) amended KRS 216B.020(2)(c) and (3) to exempt primary care centers, rural health clinics, rehabilitation agencies, and retail-based health clinics from licensure under KRS Chapter 216B. Therefore, this emergency administration regulation repeals 902 KAR 20:058, 902 KAR 20:145, 902 KAR 20:190, and 902 KAR 20:400 in accordance with the exemption criteria of KRS 216B.020(2)(c) and (3).

Section 1. The following administrative regulations are hereby repealed:

(1) 902 KAR 20:058, Operation and services; primary care center;

(2) 902 KAR 20:145, Operations and services; rural health clinics;

(3) 902 KAR 20:190, Rehabilitation agency services; and

(4) 902 KAR 20:400, Limited services clinics.

STEVEN D. DAVIS, Inspector General
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 6, 2018

FILED WITH LRC: July 13, 2018 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 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 August 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, Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Brammer-Barnes, e-mail: stephanie.brammer@ky.gov, or Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation repeals 902 KAR 20:058, 902 KAR 20:145, 902 KAR 20:190, and 902 KAR 20:400.

(b) The necessity of this administrative regulation: This emergency administrative regulation repeals 902 KAR 20:058, 902 KAR 20:145, 902 KAR 20:190, and 902 KAR 20:400 in accordance with HB 444.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This emergency administrative regulation conforms to the content of KRS 13A.310 by repealing administrative regulations in accordance with HB 444.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation assists in the effective administration of the statutes by repealing 902 KAR 20:058, 902 KAR 20:145, 902 KAR 20:190, and 902 KAR 20:400.

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment to an existing administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of 902 KAR 20:058, 902 KAR 20:145, 902 KAR 20:190, and 902 KAR 20:400 removes the licensure requirement for primary care centers, rural health clinics, rehabilitation agencies, and limited services clinics.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: 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): No additional costs will be incurred to comply with this emergency repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In accordance with this emergency repealer and HB 444, primary care centers, rural health clinics, rehabilitation agencies, and limited services clinics will no longer be subject to licensure by the Office of Inspector General.

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

(a) Initially: This emergency repealer imposes no costs on the administrative body.

(b) On a continuing basis: This emergency repealer imposes no costs on the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement this emergency repealer.

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

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

(9) TIERING: Is tiering applied? (explain why or why not) Tiering is not applicable as this emergency administrative regulation repeals 902 KAR 20:058, 902 KAR 20:145, 902 KAR 20:190, and 902 KAR 20:400.

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 repeal of 902 KAR 20:058, 902 KAR 20:145, 902 KAR 20:190, and 902 KAR 20:400 removes the licensure requirement for primary care centers, rural health clinics, rehabilitation agencies, and limited services clinics. This emergency repealer also impacts the Cabinet for Health and Family Services, Office of Inspector General.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310(3)(a), HB 444

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 emergency repealer will not generate any additional revenue.

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

(c) How much will it cost to administer this program for the first year? This emergency repealer imposes no costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This emergency repealer imposes no costs on the administrative body.

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
902 KAR 55:011E

This emergency administrative regulation is being promulgated in accordance with 2018 Ky. Acts ch. 112, sec. 19 (SB 96). SB 96 repealed KRS 218A.150 and 218A.160, therefore this emergency administrative regulation repeals 902 KAR 55:010 accordingly. This action must be taken on an emergency basis in accordance with KRS 13A.190(1)(a) to meet a deadline that is established by state law. This emergency administrative regulation will not be replaced by an ordinary administrative regulation because once the repeal is effective, the administrative regulation cannot be repealed a second time.

MATTHEW G. BEVIN, Governor
ADAM M. MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Audits and Investigations
(Emergency Repealer)

902 KAR 55:011E. Repeal of 902 KAR 55:010.

RELATES TO: KRS 218A.160, 315.036, 315.191, 315.402, 315.406

STATUTORY AUTHORITY: KRS 218A.150

EFFECTIVE: July 13, 2018

NECESSITY, FUNCTION, AND CONFORMITY: 2018 Ky. Acts ch. 112, sec. 19 (SB 96) repealed KRS 218A.150 and 218A.160, which previously required the Cabinet for Health and Family Services to issue a license to manufacturers and wholesalers of controlled substances. The repeal of KRS 218A.150 and 218A.160 eliminates duplicative oversight responsibilities as the Kentucky Board of Pharmacy is responsible for the regulation of drug manufacturers and wholesalers in accordance with KRS 315.036, 315.191, 315.402, and 315.406, and 201 KAR 2:320, Permit requirements for manufacturers, and 201 KAR 2:105, Licensing and drug distribution requirements for wholesale distributors. Therefore, this emergency administrative regulation repeals 902 KAR 55:010 in accordance with SB 96.

Section 1. 902 KAR 55:010, Licensing of manufacturers and wholesalers, is hereby repealed.

STEVEN D. DAVIS, Inspector General
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 6, 2018

FILED WITH LRC: July 13, 2018

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 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 August 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: 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 emergency administrative regulation repeals 902 KAR 55:010.

(b) The necessity of this administrative regulation: This emergency administrative regulation repeals 902 KAR 55:010 in accordance with the passage of SB 96 from the 2018 Session of the General Assembly.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This emergency administrative regulation conforms to the content of KRS 13A.310 by repealing 902 KAR 55:010 which is no longer necessary as a result of the repeal of KRS 218A.150 and 218A.160.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: As part of the cabinet's effort to repeal obsolete and unnecessary regulations, this emergency administrative regulation assists in the effective administration of the statutes by repealing 902 KAR 55:010.

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment to an existing administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of 902 KAR 55:010 removes the Office of Inspector General's licensure requirement for manufacturers and wholesalers of controlled substances. Such entities remain subject to regulation by the Kentucky Board of Pharmacy.

(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): No additional costs will be incurred to comply with this emergency administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This emergency administrative regulation repeals 902 KAR 55:010.

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

(a) Initially: This emergency repealer imposes no costs on the administrative body.

(b) On a continuing basis: This emergency repealer imposes no costs on the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement this emergency repealer.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as this emergency administrative regulation repeals 902 KAR 55:010.

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 repeal of 902 KAR 55:010 impacts manufacturers and wholesalers of controlled substances. This emergency administrative regulation also impacts the Cabinet for Health and Family Services, Office of Inspector General.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310(3)(a), SB 96

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 emergency 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 emergency 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? This emergency administrative regulation imposes no costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This emergency administrative regulation imposes no costs on the administrative body.

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
906 KAR 1:071E

This emergency administrative regulation is being promulgated in accordance with 2018 Ky. Acts ch. 143 (HB 444). HB 444 repealed KRS 216.860, 216.865, 216.900 – 216.915, and 216.930. Therefore, this emergency administrative regulation repeals 906 KAR 1:050, 906 KAR 1:060, and 906 KAR 1:070 accordingly. This action must be taken on an emergency basis in accordance with KRS 13A.190(1)(a) to meet a deadline established by state law. This emergency administrative regulation will not be replaced by an ordinary administrative regulation because once the repeals are effective, the administrative regulations cannot be repealed a second time.

MATTHEW G. BEVIN, Governor
ADAM M. MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Emergency Repealer)

906 KAR 1:071E. Repeal of 906 KAR 1:050, 906 KAR 1:060, and 906 KAR 1:070.

RELATES TO: KRS 216.860, 216.865, 216.900 – 216.915, 216.930

STATUTORY AUTHORITY: KRS 216B.020(2)(c), (3)

EFFECTIVE: July 13, 2018

NECESSITY, FUNCTION, AND CONFORMITY: 2018 Ky. Acts ch. 143 (HB 444) repealed KRS 216.860, 216.865, 216.900 – 216.915, and 216.930 which previously required the Cabinet for Health and Family Services to issue a license to nursing pools and networks. This emergency administrative regulation repeals 906 KAR 1:050, 906 KAR 1:060, and 906 KAR 1:070 in accordance with the repeal of the above referenced statutes.

Section 1. The following administrative regulations are hereby repealed:

(1) 906 KAR 1:050, Nursing pools;

(2) 906 KAR 1:060, Nursing pool hearings; and

(3) 906 KAR 1:070, Networks.

STEVEN D. DAVIS, Inspector General
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 6, 2018

FILED WITH LRC: July 13, 2018 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 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 August 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: 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 emergency administrative regulation repeals 906 KAR 1:050, 906 KAR 1:060, and 906 KAR 1:070.

(b) The necessity of this administrative regulation: This emergency administrative regulation repeals 906 KAR 1:050, 906 KAR 1:060, and 906 KAR 1:070 in accordance with the passage of HB 444 from the 2018 Session of the General Assembly.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This emergency administrative regulation conforms to the content of KRS 13A.310 by repealing administrative regulations in accordance with HB 444.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation assists in the effective administration of the statutes by repealing 906 KAR 1:050, 906 KAR 1:060, and 906 KAR 1:070.

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment to an existing administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of 906 KAR 1:050, 906 KAR 1:060, and 906 KAR 1:070 removes the licensure requirement for nursing pools and networks.

(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): No additional costs will be incurred to comply with this emergency repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In accordance with this emergency repealer and HB 444, nursing pools and networks will no longer be subject to licensure by the Office of Inspector General.

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

(a) Initially: This emergency repealer imposes no costs on the administrative body.

(b) On a continuing basis: This emergency repealer imposes no costs on the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement this emergency repealer.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as this emergency administrative regulation repeals 906 KAR 1:050, 906 KAR 1:060, and 906 KAR 1:070.

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 repeal of 906 KAR 1:050, 906 KAR 1:060, and 906 KAR 1:070 removes the licensure requirement for nursing pools and networks. This emergency repealer also impacts the Cabinet for Health and Family Services, Office of Inspector General.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310(3)(a), HB 444 from the 2018 Session of the General Assembly

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 emergency repealer will not generate any additional revenue.

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

(c) How much will it cost to administer this program for the first year? This emergency repealer imposes no costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This emergency repealer imposes no costs on the administrative body.

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
907 KAR 1:642E

This emergency administrative regulation is being promulgated to implement an approved state plan amendment that aligns the benefit plan offered to ACA expansion adults with federal requirements and clarifying that ACA expansion adults are required to remit copayments. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. and 3. to prevent a loss of federal funds and to meet a deadline for promulgation established by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
ADAM M. MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Emergency Administrative Regulation)

907 KAR 1:642E. Adult group 07-2018 benefit plan and copayments.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a, 42 C.F.R. 435.119, 440

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

EFFECTIVE: July 2, 2018

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, a state plan amendment has been approved that aligns the benefit plan offered to Kentucky Medicaid Affordable Care Act (ACA) expansion adults with the benefits required to be offered to Medicaid recipients underneath the Affordable Care Act and federal law. This administrative regulation implements the state plan amendment, by aligning the benefit plan offered to ACA expansion adults with federal requirements and clarifying that ACA expansion adults are required to remit copayments.

Section 1. Definitions. (1) "Adult group 07-2018 adult" means a Medicaid member who meets the requirements established by 42 C.F.R. 435.119 and who was previously eligible and designated as an ACA expansion adult within Title 907 KAR.

(2) "Alternative benefit plan" or "ABP" means the benefit package:

(a) Developed by the department and approved by the Centers for Medicare and Medicaid Services in accordance with 42 C.F.R. Part 440, Subpart C (440.300-440.395); and

(b) Provided to Adult group 07-2018 in accordance with Medicaid Alternative Benefit Plan KY-18-0001, April 20, 2018 with supplementary approval on May 9, 2018.

(3) "Preventive dental services" means services:

(a)1. Performed by an enrolled Medicaid provider; and

2. That include cleanings, fillings, and root canal therapy and other services that are preventive in nature; and

(b) That do not include medical dental services that are not preventive in nature including the removal of benign and malignant lesions, removal of foreign bodies, wound suturing, or anesthesia related to the provision of medical dental services.

(4) "Preventive vision services" means services:

(a)1. Performed by an enrolled Medicaid provider; and

2. That include routine or preventative eye exams and other services that are preventive in nature; and

(b) Does not include medical vision services that are not

preventive in nature including the removal of benign and malignant lesions or tumors, removal of foreign bodies, wound suturing, and anesthesia related to the provision of medical vision services.

Section 2. Alternative Benefit Plan (ABP). (1)(a) An adult group 07-2018 adult not eligible under paragraph (b) of this subsection shall receive benefits:

1. As established in the alternative benefit plan approved by the Centers for Medicare and Medicaid Services; and

2. In accordance with the essential health benefit requirements under 42 C.F.R. 440.347 for alternative benefit plans.

(b) An adult group 07-2018 adult shall receive benefits in accordance with the Kentucky Medicaid state plan, as established by Title 907 KAR, if the adult group 07-2018 adult:

1. Is pregnant; or

2. Is a former foster youth.

(2) The ABP established pursuant to this administrative regulation shall include covered services in each of the following categories:

(a) Ambulatory patient services;

(b) Emergency services;

(c) Hospitalization;

(d) Maternity services;

(e) Mental health and substance abuse services;

(f) Prescription drugs;

(g) Rehabilitative and habilitative services and devices;

(h) Laboratory services;

(i) Preventive care services;

(j) Early and periodic screening, diagnostic, and treatment services for beneficiaries nineteen (19) and twenty (20) years of age; and

(k) Any other services approved by the Centers for Medicare and Medicaid Services in the alternative benefit plan.

(3) The following services shall not be covered under the alternative benefit plan:

(a) Services that are not medically necessary;

(b) Preventive dental services;

(c) Preventive vision services;

(d) Nonemergency medical transportation as established pursuant to 907 KAR 3:066; and

(e) Any other services not approved by the Centers for Medicare and Medicaid Services in the alternative benefit plan.

Section 3. Copayments by adult group 07-2018. (1) Notwithstanding any provision of Title 907 KAR to the contrary, including 907 KAR 1:604, any copay plan requirements established pursuant to this administrative regulation shall be mandatory for each Medicaid member in the adult group 07-2018 and shall be remitted as established pursuant to subsection (2) of this section.

(2)(a) An adult group 07-2018 adult participating in the Kentucky Medicaid state plan in Title 907 KAR shall make co-pays for all covered services equal to the copays established in the Kentucky Medicaid state plan.

(b) Any co-payment requirements established pursuant to 907 KAR 1:604 shall not be waived by an MCO or provider for the adult group 07-2018 and shall be collected by either the MCO or the provider and remitted as directed by the department.

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

(1) "Medicaid Alternative Benefit Plan KY-18-0001, April 20, 2018 with supplementary approval on May 9, 2018", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the:

(a) Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. through 4:30 p.m.; or

(b) Website address of http://www.chfs.ky.gov/dms/incorporated.htm.

JILL R. HUNTER, Acting Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 2, 2018

FILED WITH LRC: July 2, 2018 at 3 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 502-564-7091, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation implements a state plan amendment, by aligning the benefit plan offered to ACA expansion adults within the Adult Group 07-2018 with federal requirements and clarifying that ACA expansion adults are required to remit copayments.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement a state plan amendment in order to align the benefit plan offered to ACA expansion adults within Adult Group 07-2018 with federal requirements and clarifying that ACA expansion adults are required to remit copayments.

(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 implementing a state plan amendment in order to align the benefit plan offered to ACA expansion adults within Adult Group 07-2018 with federal requirements and clarifying that ACA expansion adults are required to remit copayments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by implementing a state plan amendment and aligning a benefit plan to ACA expansion adults with federal requirements.

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

(a) How the amendment will change this existing administrative regulation: This 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 beneficiaries, businesses, organizations, or state and local government affected by this administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers services to individuals eligible as an Adult Group 07-2018 adult, any enrolled provider that delivers services to individuals eligible as an Adult Group 07-2018 adult, and any beneficiary whose eligibility for Medicaid will be governed by the Adult Group 07-2018 designation. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

(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: Eligible adults will need to submit copayments to access services in the benefit plan established pursuant to 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): Eligible adults will pay the copayments established in 907 KAR 1:604.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Eligible adults will be able to access Medicaid benefits.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund 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: Neither an increase in fees or funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation neither establishes or increases any fees.

(9) Tiering: Is tiering applied? Tiering was applied in the sense that the requirements established pursuant to this administrative regulation apply only to adults within the Adult Group 07-2018. Tiering was further applied in that pregnant women and former foster youth are exempted from the requirements of this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 440

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560 KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

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 establish standards that are stricter than required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Requirements are established in response to a completed state plan amendment that aligns the benefit plan offered to the Adult Group 07-2018 with federal law.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

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

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

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

(c) How much will it cost to administer this program for the first year? The department anticipates no additional costs in the implementation of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The department anticipates no additional costs in the implementation of this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
922 KAR 1:560E

This emergency administrative regulation is necessary in accordance with KRS 13A.190(1)(a)3. to establish the putative father registry by the effective date of 2018 Ky. Acts ch. 159. An ordinary administrative regulation would not allow the agency sufficient time to establish a putative father registry by July 14, 2018, the effective date of 2018 Ky. Acts ch. 159, and avoid interruption to adoption proceedings. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
ADAM M. MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(New Emergency Administrative Regulation)

922 KAR 1:560E. Putative father registry and operating procedures.

RELATES TO: KRS 194A.060, 199.011, 199.480, 199.505 199.990, 620.020(11), 625.065

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472, 199.503(3)

EFFECTIVE: July 13, 2018

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 the responsibilities vested in the cabinet. KRS 199.472(1) requires the cabinet to promulgate administrative regulations that establish criteria to be followed for the adoption of children. 2018 Ky. Acts ch. 159, Section 28(3), codified as KRS 199.503(3), requires that the cabinet establish a putative father registry and promulgate administrative regulations to administer the registry. This administrative regulation establishes the putative father registry and operating procedures.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(3).

(2) "Child-placing agency" is defined by KRS 199.011(6).

(3) "Department" is defined by KRS 199.011(7).

(4) "Putative father" is defined by KRS 199.503(2).

(5) "Reasonable efforts" is defined by KRS 620.020(11).

Section 2. Registry Standards. (1) The cabinet shall establish and maintain a putative father registry in accordance with KRS 199.503, KRS 199.505 and KRS 199.990.

(2) Information received and recorded by the cabinet shall be kept confidential in accordance with KRS 194A.060 and KRS 199.503(11).

Section 3. Submission of Registration. (1) A putative father shall request registration on the putative father registry by completing the DPP-1304, Putative Father Registration Form.

(2) A putative father shall submit a DPP-1304 to the cabinet by:

(a) Mail to the Department for Community Based Services, attention: Putative Father Registry, 275 East Main Street, mail-stop 3C-E, Frankfort, Kentucky 40621;

(b) Electronic submission through the online registration system located on the department's website once the online function is available; or

(c) Electronic mail to putativefather@ky.gov.

(3) A putative father shall provide the following information on the DPP-1304 prior to the cabinet accepting and processing a registration request:

(a) The putative father's full name;

(b) The putative father's date of birth;

(c) The putative father's place of birth;

(d) The putative father's place of residence;

(e) An address where the putative father may be served with notice of a petition for termination of parental rights or adoption;

(f) The first and last name of the birth mother;

(g) The birth mother's date of birth, if known;

(h) The birth mother's place of birth, if known;

(i) The birth mother's place of residence, if known;

(j) The birth mother's mailing address, if known;

(k) The child's name, if known;

(l) The child's date of birth, if known; and

(m) The child's place of birth, if known.

(3) A putative father shall sign the DPP-1304 verifying that the information in his registration is accurate subject to penalty in accordance with KRS 199.990.

(4) A putative father who is registered shall submit an amended DPP-1304 each time information about the father changes in accordance with KRS 199.503(4)(b)2.

(5) The cabinet shall not accept and shall attempt to return a DPP-1304 that:

(a) Does not contain the information required by subsection (2) of this section; or

(b) Is not accepted in accordance with subsection (7) of this section.

(6) The cabinet shall:

(a) Accept a DPP-1304 that contains information required by subsection (2) of this section and is submitted within the timeframe specified in subsection (7) of this section; and

(b) Provide the putative father with a copy of his registration, including:

1. A registration number; and

2. The date the registration was processed and made effective by the cabinet.

(7) The cabinet shall not accept a registration request that is electronically submitted, electronically mailed, or postmarked more than thirty (30) days after the birth of the child subject to the registration in accordance with KRS 199.480(1)(b)2. and KRS 625.065(1)(b).

Section 4. Search of the Putative Father Registry. (1) An individual or entity authorized by KRS 199.503(8) or KRS 199.505, to receive a certified copy of a putative father's registration shall:

(a) Complete the DPP-1305, Putative Father Registry Search Request;

(b) Include a copy of the birth mother's consent or adoption petition with the form; and

(c) Submit the DPP-1305 to the cabinet by means specified in Section 3(2)(a) through (c) of this administration regulation.

(2) Unless the entity requesting a certified copy of a putative father's registration is a court, a DPP-1305 shall include a twenty-five (25) dollar fee in accordance with KRS 199.503(10), paid by:

(a) Certified or cashier's check or money order made payable to the Kentucky State Treasurer if the DPP-1305 is mailed to the cabinet;

(b) A prepaid account established with the cabinet; or

(c) Credit or debit card through the online registration system once the function becomes available.

(3) Upon submission of a completed DPP-1305 in accordance with this section, KRS 199.503 and KRS 199.505, the cabinet shall issue a DPP-1302, Kentucky Putative Father Registry Affidavit of Diligent Search.

(4) The cabinet may request at any time a search of the putative father registry to establish:

(a) Reasonable efforts in a child protective services case in accordance with 922 KAR 1:330; or

(b) Permanency services in accordance with 922 KAR 1:140.

(5) Pursuant to KRS 199.505, a search of the putative father registry shall not be required for a public agency adoption in accordance with 922 KAR 1:100.

Section 5. Registration Revocation. (1) A putative father registrant may revoke his registration at any time using the DPP-1304.

(2) The cabinet shall revoke a registration that is found to have been filed with error or false information.

(3) The cabinet shall provide notice of:

(a) Revocation of a registration; and

(b) Appeal rights in accordance with 922 KAR 1:320 if the revocation is performed by the cabinet in accordance with subsection (2) of this section.

Section 6. Notice by a Mother. (1) A mother may notify the cabinet of a potential putative father by completing, at a minimum, Part 1 of the DPP-1303, Birth Mother Notification of Putative Father, and submitting it to the cabinet through means specified in Section 3(2)(a) through (c) of this administrative regulation.

(2) Upon receipt of a completed DPP-1303, the cabinet shall provide the putative father with information regarding the putative father registry by:

(a) Mail to his mailing address; or

(b) Delivery to his place of residence.

(3) The cabinet shall take no action on a DPP-1303 that is received after a putative father's ability to register has expired in accordance with Section 3(7) of this administrative regulation.

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

(a) "DPP-1302, Kentucky Putative Father Registry Affidavit of Diligent Search", 7/18;

(b) "DPP-1303, Birth Mother Notification of Putative Father", 7/18;

(c) "DPP-1304, Putative Father Registration Form", 7/18; and

(d) "DPP-1305, Putative Father Registry Search Request", 7/18.

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

ERIC T. CLARK, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 5, 2018

FILED WITH LRC: July 13, 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-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 and Christa Bell, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov and Christa.Bell@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the putative father registry and operating procedures as authorized by 2018 Ky. Acts ch. 159 (House Bill 1 from the 2018 Regular Session).

(b) The necessity of this administrative regulation: This

administrative regulation is necessary to establish the putative father registry and operating procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of the putative father registry and operating procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes through its establishment of the putative father registry and operating procedures.

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

(a) How the amendment will change this existing administrative regulation: 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 is anticipated to impact entities specified in KRS 199.503.

(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: Putative fathers will have the ability to register with the cabinet thereby protecting their rights. The registry will aid in the identification of putative fathers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to putative fathers to register. Authorized entities or individuals, other than a court, will be required to pay a twenty-five (25) dollar fee for a search of the registry.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Putative fathers will have another safeguard for their paternal rights to a child. The registry will add an additional means to identify a putative father in private adoption proceedings.

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

(a) Initially: The cabinet projects that staffing and technology costs for the registry will be approximately $700,000 for the first year.

(b) On a continuing basis: The cabinet projects the staffing and technology costs to maintain the registry will be approximately $350,000 in subsequent years.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A fee was authorized in KRS 199.503 to offset costs of the registry. State General Fund dollars will support any additional agency costs above and beyond the collection of fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The cabinet anticipates establishing, operating, and maintaining the registry within appropriations.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes a fee for a search of the putative father registry in accordance with KRS 199.503(10).

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation will be implemented 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, namely the Department for Community Based Services, and the courts will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.472, 199.503, 199.505

(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? KRS 199.503(10) establishes a fee for putative father registry searches; however, the cabinet is unable to project at this time the revenue that may be generated from said fee.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? KRS 199.503(10) establishes a fee for putative father registry searches; however, the cabinet is unable to project at this time the revenue that may be generated from said fee.

(c) How much will it cost to administer this program for the first year? The cabinet projects that staffing and technology costs for the registry will be approximately $700,000 for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet projects the staffing and technology costs to maintain the registry will be approximately $350,000 in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(As Amended at ARRS, July 10, 2018)

16 KAR 2:010. Kentucky professional and provisional teacher certificates[~~teaching certificates~~].

RELATES TO: KRS[~~158.6451, 160.380,~~] 161.020, 161.028(1), 161.030

STATUTORY AUTHORITY: KRS 161.028(1)(a),[~~(b),~~](f), 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(a) ***authorizes[~~requires~~]*** the Education Professional Standards Board (EPSB) to establish the standards for obtaining and maintaining a teaching certificate. KRS 161.028(1)(b) ***authorizes[~~requires~~]*** the board to set standards for programs for the preparation of teachers and other professional school personnel. KRS 161.028(1)(f) ***authorizes[~~requires~~]*** the board to issue and renew any certificate. This administrative regulation establishes the Kentucky certification to be issued for teaching positions.

Section 1. Definitions. (1) "Approved program of preparation" means a program which has been approved by the[~~Education Professional Standards~~] board pursuant to[~~under~~] 16 KAR 5:010 for a specific certification[~~or which has been approved for certification by the state education agency of another state~~].

(2)["~~Assessments" means the tests of knowledge and skills authorized by KRS 161.030 and established in 16 KAR 6:010.~~

~~(3)~~] "Base certificate" means a professional certificate that allows a teacher[~~stand-alone license~~] to teach[~~which encompasses authorization to teach~~] introductory and interdisciplinary courses in related fields.

(3)[~~(4) "Beginning teacher internship" means one (1) year of supervision, assistance, and assessment required by KRS 161.030 and established in 16 KAR 7:010.~~

~~(5)~~] "Certificate endorsement" means an addition to a base or restricted base certificate, which is limited in scope[~~and awarded on the basis of completion of an endorsement program or a combination of educational requirements, assessments, and experience as outlined in Section 5 of this administrative regulation~~].

(4)[~~(6)~~] "Certificate extension" means an additional base or restricted base certificate in a content area or grade range.

(5) "Major" means an academic area of concentration consisting of at least thirty (30) hours of coursework.

(6) "Restricted base certificate" means a certificate that allows a teacher to teach in a specific limited content area.[~~(7) "Kentucky teacher standards" means the standards established in 16 KAR 1:010 that identify what a Kentucky teacher shall know and be able to do.~~

~~(8) "Major" means an academic area of concentration consisting of at least thirty (30) hours of coursework.~~

~~(9) "Professional teaching certificate" means the document issued to:~~

~~(a) An individual upon successful completion of the beginning teacher internship; or~~

~~(b) An applicant for whom the testing and internship requirement is waived under KRS 161.030 based on preparation and experience completed outside Kentucky.~~

~~(10) "Provisional teaching certificate" means the document issued to an individual for the duration of the beginning teacher internship program.~~

~~(11)"Restricted base certificate" means a stand-alone license to teach in a specific subject area of certification which is the only subject area that can be taught under this limited certificate.~~]

(7)~~(6)~~[~~(12)~~] "Statement of eligibility" means a candidate has met the requirements necessary to receive a provisional certificate[~~the document issued to an applicant upon completion of an approved program of preparation and successful completion of the assessments~~].

Section 2. Types of Certificates Issued. (1) Provisional certificate;

(a) Conditional certificate;

(b) Provisional internship certificate - one (1) year certificate;

(c) Temporary provisional certificate;

(d) Probationary provisional certificate;

(e) Proficiency provisional certificate;

(f) Occupation-based career and technical education provisional certificate;

(g) One (1) year provisional alternative certificate;

(h) Adjunct certificate;

(i) Emergency certificate;

(j) Temporary certificate for Instructional Leadership:

1. In-state; and

2. Out-of-state;

(k) Temporary certificate; and

(l) Provisional certificate for "other school professionals".

(2) Professional certificate.

(a) Initial certificate - four (4) year certificate;

(b) Initial certificate - five (5) year certificate;

(c) Renewal certificate - five (5) year certificate;

(d) Occupation-based career and technical education professional certificate; and

(e) Professional certificate for "other school professionals".

(3) Junior Reserve Officer Training Corps (JROTC) Certificate.

(4) Additional Certification:

(a) Certificate extension; and

(b) Certificate endorsement.

(5) Substitute teaching certificate.

(a) Certified substitute certificate; and

(b) Emergency substitute certificate.

(6) All other existing certificates shall remain valid and the terms for renewal shall be determined by the laws and regulations in effect at the time the certificate was issued pursuant to KRS 161.020.

Section 3. Certificate Issuance. (1) Prior to the issuance of a certificate or statement of eligibility, the applicant shall disclose certain background information as ***established [~~outlined~~]*** in Section **8[~~7~~]** of this administrative regulation. If the applicant answers "yes" to any of the questions ***established [~~set forth~~]*** in Section **8[~~7~~]**(1)(a)-(f) ***of this administrative regulation***, the EPSB may still issue a certificate or statement of eligibility for that applicant, but the board shall retain final authority to deny a request for certification or statement of eligibility if the board so chooses.

(2) The EPSB shall issue a statement of eligibility to a teacher candidate who:

(a) Has successfully completed a traditional initial preparation program that resulted in the issuance of a bachelor's degree or higher with either:

1. A cumulative grade point average of 2.75 on a 4.0 scale; or

2. A grade point average of 3.0 on a 4.0 scale on the last thirty (30) hours of credit completed, including undergraduate and graduate coursework.

3. Grade point average (GPA) shall be calculated by beginning with the most recent course completed and proceeding backward for two (2) semesters in the order the grades fall on the transcript to accumulate the last thirty (30) hours completed for determining the GPA.

4. If it is necessary to go back further than two (2) semesters, then the courses in the third semester shall be chosen based on

the highest grades earned during that third semester;

(b) Earns a passing score on all assessments required for the certification sought as ***established [~~set forth~~]*** in 16 KAR Chapter 6.

(3) All certificates issued shall either be a base or restricted base certificate ***as established*** in ***[~~accordance with~~]*** Section 4 of this administrative regulation.

(4) Provisional Certificates.

(a) Conditional Certificate.

1. The EPSB may issue a conditional certificate to a teacher candidate unable to earn a passing score on all assessments required for the certification sought pursuant to KRS 161.030(3)(b), if the teacher candidate meets the requirements of 16 KAR 2:180.

2. A teacher candidate with only a conditional certificate is not eligible to participate in the Kentucky Teacher Internship Program (KTIP).

(b) Provisional Internship Certificate. The EPSB shall issue a provisional internship certificate to a teacher candidate who has completed a traditional preparation program upon confirmation of employment in an assignment for the grade level and content area identified on an unexpired statement of eligibility for the duration of the KTIP.

(c) Temporary Provisional Certificate.

1. The EPSB shall issue a temporary provisional certificate ***pursuant to [~~in accordance with~~]*** KRS 161.048 with a grade level and content area recommended by the institution that will be valid for employment in the area of certification sought.

2. The certificate shall be issued at the appropriate rank ***pursuant to [~~in accordance with~~]*** the requirements established in 16 KAR 8:020.

3. Prior to issuance of the certificate, ***pursuant to [~~in accordance with~~] 16 KAR Chapter [~~chapter~~]*** 9 ***[~~of this title the~~]***:

a. ***The teacher [~~Teacher~~]*** candidate shall submit to the EPSB an official transcript from each college or university attended; and

b. The institution shall submit to the EPSB a mentoring collaboration agreement with the district if the teacher candidate is seeking certification through the enrollment of a university-based alternative certification program.

4. The EPSB shall renew the temporary provisional certificate yearly upon the recommendation of the institution. The institution shall base its recommendation pursuant to KRS 161.048 and ***16 KAR Chapter [~~chapter~~]*** 9 ***[~~of this title~~]***.

5. A teacher candidate shall be eligible for KTIP upon completion of all program requirements and after successfully passing all applicable assessments ***pursuant to [~~in accordance with~~]*** 16 KAR 6:010.

(d) Probationary Provisional Certificate.

1. A probationary provisional certificate shall be initiated by the school district to fill an area of need.

2. The EPSB shall issue a probationary provisional certificate ***pursuant to [~~in accordance with~~]*** 16 KAR 2:110, 16 KAR 2:130, 16 KAR 2:140, 16 KAR 2:150, 16 KAR 2:160, 16 KAR 2:170, 16 KAR 2:200, 16 KAR 3:030, or 16 KAR 3:040.

(e) Proficiency Provisional Certificate.

1. The EPSB shall issue a proficiency provisional certificate in accordance with a grade level and content area recommended by the university that will be valid for employment in the area of certification sought.

2. The certificate shall be issued at the appropriate rank ***pursuant to [~~in accordance with~~]*** the requirements established in 16 KAR 8:020.

3. Prior to issuance of the certificate, ***pursuant to [~~in accordance with~~]*** 16 KAR 5:030 the:

a. Teacher candidate shall submit to the EPSB an official transcript from each college or university attended; and

b. College or university shall submit to the EPSB an educator learning plan (ELP); and

c. Candidate shall have a written offer of employment in the content area in which certification is being sought.

4. The EPSB shall renew the proficiency provisional certificate yearly upon the recommendation of the college or university. The college or university shall base its recommendation on the ELP ***pursuant to [~~in accordance with~~]*** 16 KAR 5:030.

(f) Occupation-based Career and Technical Education Provisional Certificate. The EPSB shall issue an occupation-based career and technical education provisional certificate following the completion of the appropriate requirements ***established [~~set forth~~]*** in 16 KAR 2:020.

(g) One (1) year Provisional Alternative Certificate. The EPSB shall issue a one (1) year provisional alternative certificate to a teacher candidate who is enrolled in a local school district training program following the completion of the appropriate requirements ***established [~~set forth~~]*** in 16 KAR 9:050, 16 KAR 9:060, and 16 KAR 9:070.

(h) Adjunct Certificate. The EPSB shall issue an adjunct instructor certificate following completion of the appropriate requirements ***established [~~set forth~~]*** in 16 KAR 9:020.

(i) Emergency Certificate. The EPSB shall issue an emergency certificate ***pursuant to [~~in accordance with~~]***16 KAR 2:120.

(j) Temporary Certificate for Instructional Leadership.

1. In-state. The EPSB shall issue a temporary certificate for instructional leadership pursuant to KRS 161.027(6) and 16 KAR 6:030, Section 8.

2. Out-of-state. The EPSB shall issue a temporary certificate for institutional leadership pursuant to KRS 161.027(6).

(k) Temporary Certificate.

1. The EPSB shall issue a temporary certificate to out-of-state teachers with less than two (2) years of experience pursuant to KRS 161.030(3)(c).

2. A temporary certificate may be issued for a period up to six (6) months, not to exceed the end of the semester in which the temporary certificate is ***issued [~~issues~~]***, during which the teacher must successfully pass all required assessments pursuant to 16 KAR 6:010.

(l) Provisional Certificate for "Other School Professionals". The EPSB shall issue a provisional certificate for "other school professionals" ***pursuant to [~~in accordance with~~]***16 KAR 2:060, 16 KAR 2:080, 16 KAR 2:090, or 16 KAR 3:060.

(5) Professional Certificates.

(a) Initial Four (4) Year Certificate. The EPSB shall issue an initial four (4) year certificate to a teacher candidate who has successfully completed KTIP while holding a provisional internship certificate issued by the EPSB unless otherwise waived ***pursuant to [~~under~~]*** KRS 161.030 based on preparation and experience completed outside of Kentucky.

(b) Initial Five (5) Year Certificate.

1. The EPSB shall issue an initial five (5) year certificate to a teacher candidate who has successfully completed KTIP while holding a temporary provisional certificate issued by the EPSB; or

2. To a teacher candidate based on preparation and experience completed outside of Kentucky pursuant to KRS 161.030.

(c) Renewal Five (5) Year Certificate.

1. The first five (5) year renewal shall require:

a. Completion of a minimum of fifteen (15) semester hours of graduate credit applicable to the fifth-year approved program of preparation established in 16 KAR 8:020 by September 1 of the year of expiration of the certificate; or

b. Completion of the required components of the continuing education option for initial certificate renewal as established in 16 KAR 8:030.

2. The second five (5) year renewal shall require:

a. Completion of the fifth-year approved program of preparation established in 16 KAR 8:020 by September 1 of the year of expiration of the certificate; or

b. Successful completion of the continuing education option as established in 16 KAR 8:030.

3. Each subsequent five (5) year renewal shall require completion of the renewal requirements established in 16 KAR 4:060.

(d) Occupation-based Career and Technical Education Professional Certificate. The EPSB shall issue an occupation-based career and technical education professional certificate ***pursuant to [~~in accordance with~~]***16 KAR 2:020.

(e) Professional certificate for "Other School Professionals". The EPSB shall issue a professional certificate for other school

professionals ***pursuant to [~~in accordance with~~]***16 KAR 2:060, 16 KAR 2:070, 16 KAR 2:090, or 16 KAR 3:060.

(6) Junior Reserve Officer Training Corps (JROTC) Certificate. The EPSB shall issue a JROTC certificate ***pursuant to [~~in accordance with~~]***16 KAR 2:100***.[~~(7) Certificate Extensions and Endorsements.~~***

~~(a) A certificate extension may be issued to a certified teacher for any base or restricted base certificate offered in Section 4(1) through (4) of this administrative regulation and shall require:~~

~~1. An unexpired base or restricted base certificate, including a statement of eligibility;~~

~~2. Successful completion of the applicable assessments; and~~

~~3. Recommendation from an approved preparation program upon the demonstration of competency in the relevant teaching methodology verified via coursework, field experience, portfolio, or proficiency evaluation.~~

~~(b) A certificate endorsement may be issued for any area listed in Section 4(5) of this administrative regulation and shall require:~~

~~1. An unexpired base or restricted base certificate, including statement of eligibility;~~

~~2. Successful completion of the applicable assessments; and~~

~~3. Recommendation from an approved program of preparation upon the demonstration of competency in the relevant teaching methodology verified via coursework, field experience, portfolio, or proficiency evaluation.~~

(7)[~~(8)~~] Substitute Certificates. The EPSB shall issue a certified substitute teaching certificate or an emergency substitute certificate ***pursuant to [~~in accordance with~~]***16 KAR 2:030 and 16 KAR 2:120 Section 2. [~~Certificate Issuance. (1)(a) Until December 31, 2014, a statement of eligibility for a provisional teaching certificate shall be issued to an applicant who has submitted a completed TC-1 application form and has successfully completed:~~

~~1.a. At least a bachelor's degree with:~~

~~(i) A cumulative grade point average of 2.50 on a 4.0 scale; or~~

~~(ii) A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework; or~~

~~b. As required by Section 4(2)(g)6 of this administrative regulation, a master's degree with:~~

~~(i) A cumulative grade point average of 2.50 on a 4.0 scale; or~~

~~(ii) A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework;~~

~~2. An approved program of preparation; and~~

~~3. The assessments corresponding to the certificate identified in Section 4 of this administrative regulation for which application is being made.~~

~~(b) Beginning January 1, 2015, a statement of eligibility for a provisional teaching certificate shall be issued to an applicant who has submitted a completed CA-1 application form and has successfully completed:~~

~~1.a. At least a bachelor's degree with:~~

~~(i) A cumulative grade point average of 2.50 on a 4.0 scale; or~~

~~(ii) A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework; or~~

~~b. As required by Section 4(2)(g)6 of this administrative regulation, a master's degree with:~~

~~(i) A cumulative grade point average of 2.50 on a 4.0 scale; or~~

~~(ii) A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework;~~

~~2. An approved program of preparation;~~

~~3. The assessments corresponding to the certificate identified in Section 4 of this administrative regulation for which application is being made; and~~

~~4. A national and state criminal background check performed in accordance with KRS 160.380(5) within twelve (12) months prior to the date of application.~~

~~(2) Upon confirmation of employment in an assignment for the grade level and specialization identified on a valid statement of eligibility, a Provisional Teaching Certificate shall be issued for the duration of the beginning teacher internship established under KRS 161.030.~~

~~(3) Upon successful completion of the internship, a Professional Teaching Certificate shall be issued, valid for a four (4) year period.~~

~~Section 3. Professional Teaching Certificate Renewal. (1) The renewal shall require completion of a fifth-year approved program of preparation which is consistent with:~~

~~(a) The Kentucky teacher standards established in 16 KAR 1:010; or~~

~~(b) The standards adopted by the Education Professional Standards Board for a particular professional education specialty and established in an applicable administrative regulation in KAR Title 16.~~

~~(2) The first five (5) year renewal shall require:~~

~~(a) Completion of a minimum of fifteen (15) semester hours of graduate credit applicable to the fifth-year approved program of preparation established in 16 KAR 8:020 by September 1 of the year of expiration of the certificate; or~~

~~(b) Completion of the required components of the continuing education option for initial certificate renewal as established in 16 KAR 8:030.~~

~~(3) The second five (5) year renewal shall require:~~

~~(a) Completion of the fifth-year approved program of preparation established in 16 KAR 8:020 by September 1 of the year of expiration of the certificate; or~~

~~(b) Successful completion of the continuing education option as established in 16 KAR 8:030.~~

~~(4) Each subsequent five (5) year renewal shall require completion of the renewal requirements established in 16 KAR 4:060.~~]

Section 4. Grade Levels and Specializations. (1) Preparation for a teaching certificate shall be based on:

(a) The Kentucky teacher standards established in 16 KAR 1:010;

(b) The accreditation and program approval standards established in 16 KAR 5:010, including the content standards of the relevant national specialty program associations; and

(c) The goals for the schools of the Commonwealth ***established*** ***[~~specified~~]*** in KRS 158.6451 and the student academic expectations established in 703 KAR 4:060.

(2) A base certificate shall be issued specifying one (1) or more of the following grade levels[~~level~~] and specialization authorizations:

(a) Interdisciplinary early childhood education[~~,~~] birth to primary, ***as*** established in 16 KAR 2:040; and

(b) Elementary school: primary through grade 5 to include preparation in the academic disciplines taught in the elementary school.

1. The elementary certificate shall be valid for teaching grade 6 if grade 6 is taught in a self-contained classroom or in a school organization in which grade 6 is housed with grade 5 in the same building.

2. A candidate for the elementary certificate may simultaneously prepare for certification for teaching exceptional children.

(c) 1. Middle school option 1: grades 5 through 9 with the equivalent of one (1) major to be selected from:

a. English and communications;

b. Mathematics;

c. Science; or

d. Social studies; or

2. Middle school option 2: grades 5 through 9 with two (2) middle school teaching fields to be selected from:

a. English and communications;

b. Mathematics;

c. Science; or

d. Social studies;

(d) Secondary school shall be valid for teaching students in:

grades 8 through 12 with one (1) or more of the following majors:
1. English;
2. Mathematics;
3. Social studies;
4. Biology;
5. Chemistry;
6. Physics; or
7. Earth science;

(e) Grades 5 through 12 with one (1) or more of the following majors:
1. Agriculture;
2. Business and marketing education;
3. Family and consumer science;
4. Industrial education; or
5. Engineering and technology;

(f) All grade levels with one (1) or more of the following specialties:
1. Art;
2. A foreign language;
3. Health;
4. Physical education;
5. Integrated music;
6. Vocal music;
7. Instrumental music; or
8. School media librarian; or

(g) Grades primary through 12 for teaching exceptional children and for collaborating with teachers to design and deliver programs for preprimary children, for one (1) or more of the following disabilities:
1. Learning and behavior disorders;
2. Moderate and severe disabilities;
3. Hearing impaired;
4. Hearing impaired with sign proficiency;
5. Visually impaired;
6. Communication disorders, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, which shall require a master's degree in communication or speech language pathology, ***pursuant to*** ***[~~in accordance with~~]***16 KAR 2:050, Section 2; or
7. Communication disorders - SLPA only, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, which shall require a baccalaureate degree in communication or speech language pathology, ***pursuant to*** ***[~~in accordance with~~]***16 KAR 2:050, Section 3.

(3)(a) The grades 5 through 9 mathematics certificate issued under subsection (2)(c)1.b. or 2.b. of this section shall be valid for teaching Algebra I grades 10 and 11.

(b) A candidate who chooses to simultaneously prepare for teaching in the middle school and for an additional base or restricted base certificate issued under subsection (2) or (4) of this section, including certification for teaching exceptional children, shall be required to complete one (1) middle school teaching field ***as*** established in subsection (2)(c) of this section.

(4) A restricted base certificate shall be issued specifying one (1) or more of the following grade level and specialization authorizations:
(a) Psychology, grades 8 ***through*** ***[-]***12;
(b) Sociology, grades 8 through 12;
(c) Journalism, grades 8 through 12;
(d) Speech ***or*** ***[/]***media communications, grades 8 ***through*** ***[-]***12;
(e) Theater, primary through grade 12;
(f) Dance, primary through grade 12;
(g) Computer information systems, primary through grade 12; or
(h) English as a second language, primary through grade 12.

(5) An endorsement to a certificate identified in subsection (2) or (3) of this section shall be issued specifying one (1) or more of the following grade level and specialization authorizations:
(a) Computer science, grades 8 ***through*** ***[-]***12;
(b) English as a second language, primary through grade 12;
(c) Gifted education, primary through grade 12;
(d) Driver education, grades 8 ***through*** ***[-]***12;
(e) Literacy specialist, primary through grade 12;
(f) Reading, primary through grade 12;
(g) Instructional computer technology, primary through grade 12;
(h) Teacher Leader, all grades;
(i) Other instructional services - school safety, primary through grade 12;
(j) Other instructional services - environmental education, primary through grade 12;
(k) Other instructional services - elementary mathematics specialist, primary through grade 5; or
(l) Learning and behavior disorders, grades 8 through 12. This endorsement shall be issued:
1. Following completion of the requirements of Section 5(2) of this administrative regulation; and
2. Only to candidates with preparation and certification for a base or restricted base certificate for the secondary grades 8 ***through*** ***[-]***12; or
(m) American Sign Language, primary through grade 12.

Section 5. Certification through Proficiency Evaluation. (1) Proficiency evaluations shall be conducted ***pursuant to*** ***[~~in accordance with~~]*** 16 KAR 5:030 by a Kentucky college or university with an approved educator preparation program.

(2) The EPSB may issue a proficiency provisional certificate to **an individual[~~a certified teacher~~]** upon request pursuant to this section ***provided that*** ***[~~as long as~~]*** the **individual[~~certified teacher~~]** meets the requirements ***established*** ***[~~set forth~~]*** in Section 3 of this administrative regulation or any certificate area offered in Section 4 of this administrative regulation ***pursuant to*** ***[~~in accordance with~~]***16 KAR 5:030.**[~~(3)(a) A certified teacher may also obtain a certificate endorsement and a certificate extension by a proficiency evaluation performed by a Kentucky college or university in accordance with 16 KAR 5:030.~~**

~~(b) The EPSB shall issue the proficiency provisional certificate and the professional certificate for the certificate endorsement and the certificate extension upon request as long as the certified teacher meets the requirements set forth in Section 3 of this administrative regulation.~~]

Section 6. Additional Certification. ***(1) A certificate extension may be issued to a certified teacher for any base or restricted base certificate offered in Section 4(1) through (4) of this administrative regulation and shall require:***

(a) An unexpired base or restricted base certificate, including a statement of eligibility;

(b) Successful completion of the applicable assessments; and

(c) Recommendation from an approved preparation program upon the demonstration of competency in the relevant teaching methodology verified via coursework, field experience, portfolio, or proficiency evaluation performed by a Kentucky college or university in accordance with 16 KAR 5:030.

(2) A certificate endorsement may be issued for any area listed in Section 4(5) of this administrative regulation and shall require:

(a) An unexpired base or restricted base certificate, including statement of eligibility;

(b) Successful completion of the applicable assessments; and

(c) Recommendation from an approved program of preparation upon the demonstration of competency in the relevant teaching methodology verified via coursework, field experience, portfolio, or proficiency evaluation performed by a Kentucky college or university in accordance with 16 KAR 5:030.

(3)**[~~(1)~~]****(a) A certified teacher may add a certificate endorsement or extension if the teacher applies for a certificate endorsement or extension and meets the requirements established in paragraph *(b)[~~(c)~~]*of this subsection.**

(b) *[Apply for a certificate endorsement or extension.*
***(c)]* A certificate extension or certificate endorsement shall be issued if an educator:**
1. Holds a valid Kentucky professional teaching certificate;
2. Submits proof that the educator has:
a. Current employment in a certified position;
b. A bona fide offer of employment in a certified position in a Kentucky public school; or
c. Approval of the local district superintendent;
3. Successfully completed the applicable content assessments; and
4. Has either:
a. A major in the area of certification being sought; or
b. A combination of education, experience, professional development, awards, and achievements in the area of certification being sought sufficient to demonstrate subject matter competency as evidenced by a score of ninety (90) points in Sections 3 and 4 within application form CA-HQ.
(i) Points shall be granted only for experience, professional development, awards, or achievements earned relative to the specific content area, student population taught, and grade range served.
(ii) Coursework shall be validated on the application by a Kentucky college or university approved by the EPSB to serve as a "clearinghouse" for the purposes of this option.
(iii) Successful completion of the appropriate content assessment or assessments for the certificate area being added shall count for forty-five (45) points.
(4)*[(2)]* If a teacher currently holds a professional certificate in the secondary grades 8 *through [-]*12, and applies for a certificate extension or endorsement in the same content area for middle school grades 5 *through [-]*9, the teacher shall not be required to complete the content assessment.
(5)[(3)] A certificate extension or endorsement issued *pursuant to [under]* the requirements established in subsection (3)(c) of this section shall be permitted in the areas of English, mathematics, sciences, foreign languages, or social studies. Health and physical education areas shall be added only if the teacher holds the correlative certificate.*[(4)(a) A certified teacher may also obtain a certificate endorsement and a certificate extension by a proficiency evaluation performed by a Kentucky college or university pursuant to in accordance with 16 KAR 5:030.]*
***(6)[(b)]* The EPSB shall issue the proficiency provisional certificate and the professional certificate for the certificate endorsement and the certificate extension upon request *provided that [as long as]* the certified teacher meets the requirements *established [set forth]* in Section 3 of this administrative regulation.**[Additional Certification. (1) A certificate extension may be issued for any base or restricted base certificate area offered in Section 4(2) or (4) of this administrative regulation and shall require:
(a) A valid base or restricted base certificate, including a statement of eligibility;
(b) Successful completion of the applicable assessments; and
(c) Recommendation from an approved preparation program upon demonstration of competency in the relevant teaching methodology verified via coursework, field experience, portfolio, or other proficiency evaluation.
(2) A certificate endorsement may be issued for any area listed in Section 4(5) of this administrative regulation and shall require:
(a) A valid base or restricted base certificate, including a statement of eligibility;
(b) Successful completion of the applicable assessments; and
(c) Recommendation from an approved preparation program upon demonstration of competency in the relevant teaching methodology verified via coursework, field experience, portfolio, or other proficiency evaluation.
(3)(a) A professionally-certified teacher may add a certificate endorsement or extension if the teacher meets the requirements established in paragraph (c) of this subsection.
(b)1. Until December 31, 2014, an application for a certificate endorsement or extension shall be made on a Form TC-HQ.
2. Beginning January 1, 2015, an application for a certificate endorsement or extension shall be made on a Form CA-HQ.
(c) A certificate extension or certificate endorsement shall be issued if an educator:
1. Holds a valid Kentucky professional teaching certificate;
2. Submits proof that the educator has:
a. Current employment in a certified position;
b. A bona fide offer of employment in a certified position in a Kentucky public school; or
c. Approval of the local district superintendent;
3. Successfully completed the applicable content assessments; and
4. Has either:
a. A declared major in the area of certification being sought; or
b. A combination of education, experience, professional development, awards, and achievements in the area of certification being sought sufficient to demonstrate subject matter competency as evidenced by a score of ninety (90) points on the index contained within the application forms TC-HQ or CA-HQ.
(i) Points shall be granted only for experience, professional development, awards, or achievements earned relative to the specific content area, student population taught, and grade range served.
(ii) Coursework shall be validated on the application by a Kentucky college or university approved by the EPSB to serve as a "clearinghouse" for the purposes of this option.
(iii) Successful completion of the appropriate content assessment or assessments for the certificate area being added shall count for forty-five (45) points.
(4) If a teacher currently holds a professional certificate in the secondary grades 8-12, and applies for a certificate extension or endorsement in the same content area for middle school grades 5-9, the teacher shall not be required to complete the content assessment.
(5) A certificate extension or endorsement issued under the requirements established in subsection (3)(c) of this section shall be permitted in the areas of English, mathematics, sciences, foreign languages, or social studies. Health and physical education areas shall be added only if the teacher holds the correlative certificate.]

Section **7[6]**. A candidate pursuing certification via an alternative route to certification shall receive the same certificates ***established [delineated]*** in Section 4 of this administrative regulation following completion of the appropriate requirements specific to each alternative route.

Section **8[7]**. Disclosure of Background Information. (1) Teachers and teacher candidates shall disclose certain background information to the EPSB when***[ever] applying [those teachers and teacher candidates apply]*** for the issuance ***or [and]*** renewal of the provisional certificate ***or [and]*** the professional certificate by answering the following questions:
(a) Have you ever had a professional certificate, license, credential, or any document issued for practice denied, suspended, revoked, or voluntarily surrendered? If you have had a professional certificate, license, credential, or any other document issued for practice initially denied by a licensing body, but later issued, you shall answer "yes."
(b) Have you ever been suspended or discharged from any employment or military service because of allegations of misconduct?
(c) Have you ever resigned, entered into a settlement agreement, or otherwise left employment as a result of allegations of misconduct?
(d) Is any action now pending against you for alleged misconduct in any school district, court, or before any educator licensing agency?
(e) Have you ever been convicted of or entered a guilty plea, an "Alford" plea, or a plea of nolo contendere (no contest) to a felony or misdemeanor, even if adjudication of the sentence was

withheld in Kentucky or any other state? Minor traffic violations should not be reported. Convictions for driving while intoxicated (DWI) or driving under the influence of alcohol or other drugs (DUI) shall be reported.

(f) Do you have any criminal charges pending against you?

(g) If you answered affirmatively to any of the questions in this Section, has the EPSB previously reviewed the information?

(2) The EPSB shall provide teachers and teacher candidates with the opportunity to submit a narrative to the board to consider before the board approves the request for issuance or renewal of a provisional certificate or a professional certificate. The teacher or teacher candidate may include in his or her narrative any dates, locations, school systems, court records, or any other information ***he or she [the teacher or teacher candidate]*** would like the board to consider.[~~(1) Until December 31, 2014, application for certification or additional certification shall be made on Form TC-1 and shall be accompanied by the fees required by 16 KAR 4:040.~~

~~(2) Beginning January 1, 2015, application for certification or additional certification shall be made on Form CA-1 and shall be accompanied by the fees required by 16 KAR 4:040.~~]

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

~~(a)~~] **"Form CA-HQ", 02/18*, is incorporated by reference.***

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.[~~Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Form CA-1", 03-14;~~

~~(b) "Form CA-HQ", 03-14;~~

~~(c) "Form TC-1", 10/05; and~~

~~(d) "Form TC-HQ", 10/2009.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

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EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(As Amended at ARRS, July 10, 2018)

16 KAR 5:030. Proficiency evaluation.

RELATES TO: KRS 161.020, [~~161.025,~~] 161.030

STATUTORY AUTHORITY: KRS [~~156.070,~~]161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020,[~~161.025,~~]and 161.030 require that educators[~~teachers~~] and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation[~~prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board of Education~~]. The traditional[~~and formal~~] means of recognizing competency and proficiency for educator[~~teacher~~] preparation is by earning academic[~~in terms of standard college credits and the teacher certification requirements are generally stated in terms of college~~] credits. This administrative regulation provides an alternate [~~a~~] means for recognizing competency and proficiency[~~that might have been attained in some manner~~] other than academic credit***[for educators already holding initial certification]***[~~college preparation~~].

Section 1. Definitions. (1) "Approved program of preparation" means a program approved by the Education Professional Standards Board (EPSB) ***pursuant to [under]*** 16 KAR 5:010 for a specific certification.

(2) "Comparable experience" means professional activity of equivalent quality requiring similar skills and knowledge.

(3) "Educator preparation provider" or "EPP" means a Kentucky-based college or university that offers educator preparation programs approved by the Board.

(4) "Proficiency evaluation" means the process by which an EPP may evaluate an educator [~~who currently holds a valid Kentucky professional certificate in accordance with 16 KAR 2:010~~] seeking ***initial certification***, another certification area, endorsement, or extension to recognize competency and proficiency[~~A state accredited teacher education institution may evaluate and accept competency for teacher certification purposes for any of the specific curriculum requirements when the teacher candidate can demonstrate proficiency by reason of previous education, unusual experience, or proficiency examination at a level comparable to the usual requirements in that curriculum area~~].

Section 2. (1) An EPP shall be required to meet the following requirements before conducting proficiency evaluations:

(a) The EPP shall provide notice to the EPSB of its intent to conduct proficiency evaluations; and

(b) The EPP shall provide to the EPSB a plan for approval that sets forth the process by which the EPP shall conduct proficiency evaluations. The evaluation must assess a candidate's attainment of the applicable educational program standards.

(2) Failure to satisfy the requirements of this administrative regulation may result in the following action:

(a) The board may take action against the EPP's state accreditation; and

(b) The board may notify the Council of Postsecondary Education that the EPP has not met the requirements of KRS 164.097.

Section 3. Educators holding a valid Kentucky certificate seeking another certification area shall not be required to meet the admission requirements ***established*** in 16 KAR 5:020(1)(2)(b) and 16 KAR 5:020(1)(3)(b).

Section 4. The EPP shall only conduct proficiency evaluations for the EPP's existing programs approved by the board.

Section 5. When conducting a proficiency evaluation, the EPP may assess proficiency by considering any of the following factors:

(1) Previous education;

(2) Comparable experience; or

(3) Proficiency assessment at a level comparable to the usual requirements in the content area in which the educator is seeking certification.

Section 6. Initial Certification for *Teacher Candidates [~~teacher candidates~~].* (1) An EPP may evaluate and accept competency for initial teacher certification purposes for any of the specific curriculum requirements when the teacher candidate can demonstrate proficiency by reason of previous education, unusual experience, or proficiency examination at a level comparable to the usual requirements in that curriculum area.

(2) The teacher candidate shall be required to:

(a) Satisfy the applicable admission requirements *established [~~set forth~~]* in 16 KAR 5:020; and

(b) Meet the internship requirements *established [~~set forth~~]* in 16 KAR 7:010 or 16 KAR 7:020.

(3) The EPP shall be required to report to EPSB *pursuant to [~~in accordance with~~]* the requirements of 16 KAR 5:020 the candidates for whom the EPP completed a proficiency evaluation.

(4) The teacher candidate may demonstrate proficiency of the requirements *established [~~set forth~~]* in 16 KAR 5:040 by reason of previous experience.

(5) The EPP shall be responsible for recommending that the EPSB issue certification.

(6) The EPSB shall issue certificate for teacher candidates *pursuant to [~~in accordance with~~]* the requirements of 16 KAR 2:010.

Section **7[~~6~~]**. Additional Certification for Certified Educators. (1) After completing the proficiency evaluation, the EPP shall:

(a) Prepare an educator learning plan (ELP) for the certified educator outlining all necessary requirements to complete a program for additional content area or grade range along with a timeline for completion not to exceed two (2) years; and

(b) Recommend that the EPSB issue a one (1) year provisional certificate ***pursuant to [~~in accordance with~~]*** 16 KAR 2:010.

(2) Upon successful completion of the ELP, the EPP shall recommend that the EPSB issue the educator a professional certificate, a certificate endorsement, or a certificate extension in the additional area ***pursuant to [~~in accordance with~~]***16 KAR 2:010, Section 4.

Section **8[~~7~~]**. (1) The EPSB shall issue a certificate endorsement or extension ***pursuant to [~~in accordance with~~]*** the process ***established [~~set forth~~]*** in 16 KAR 2:010, Section 3, upon receipt of the educator's request for certification; proof that the educator has successfully achieved a passing score on any required assessment; and recommendation of the EPP.

(2) The EPSB shall not require an educator to complete Kentucky Teacher Internship Program (KTIP) for the issuance of an endorsement or an extension if the certified educator previously completed KTIP for initial certification.

Section **9[~~8~~]**. Recency. (1) The certified educator seeking another certification shall submit a request for certification no later than five (5) years after successfully completing all requirements set forth in the ELP; or

(2) Within twelve (12) months after the EPP discontinues the educator preparation program identified in the ELP, whichever occurs first.

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PUBLIC PROTECTION CABINET
Board of Auctioneers
(As Amended at ARRS, July 10, 2018)

201 KAR 3:045. *Standards of conduct and complaints [~~Recordkeeping and accounting~~]*.

RELATES TO: KRS ***330.110, 330.120, 330.130[~~330.110(5)~~]***

STATUTORY AUTHORITY: KRS 330.050(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 330.050(8) authorizes the Board of Auctioneers to promulgate administrative regulations with the approval of the executive director of the Kentucky Real Estate Authority in accordance with KRS Chapter 13A as required to fulfill the duties and functions assigned to the board[~~concerning recordkeeping and accounting~~]. This administrative regulation establishes requirements to protect the public through adequate recordkeeping and accounting by licensees.

Section 1. Proceeds of a personal property auction not disbursed to the seller[~~owner~~] on auction day shall be deposited in an auction escrow account by the auctioneer or auction firm no later than three (3) banking days following the date of auction or sale of the goods, whichever occurs first.

Section 2. Auctioneers and auction firms shall use federally insured depositories in the Commonwealth of Kentucky.

Section 3. Proceeds due from the sale of goods, other than real property, shall be disbursed to the seller[~~owner~~] no later than thirty (30) days after the date of each auction, unless the auction consisted of both personal property and real property for the same seller, in which case the proceeds due from the sale of the personal property may be disbursed to the seller in conjunction with the real property closing and settlement if the real property closing and settlement occurs within sixty (60) days following the date of the auction.

Section 4. Funds from a real estate auction shall be held in escrow until settlement in accordance with the agreement of sale.

Section 5. If the seller's[~~owner's~~] goods are not sold in a single auction, proceeds due shall be disbursed to the seller[~~owner~~] within thirty (30) days after each auction for goods, other than real property, or in accordance with the agreement of sale for the sale of real property. Notice shall be given to the seller[~~owner~~] of the tentative date of auction of the remaining goods.

Section 6. (1) The auction escrow account or accounts shall be separate from any individual or office account and used solely for the preservation and guarantee of money belonging to others consisting of auction proceeds and real property contract deposits[~~until disbursed at settlement~~].

(2) Funds for any other purpose shall not be commingled with the auction escrow account.

(3) Escrow funds shall only be disbursed at settlement or withdrawn by agreement in writing by all parties, by an order of a court of competent jurisdiction or, in the case of real property contract deposits held by a broker, in accordance with KRS Chapter 324 and 201 KAR Chapter 11.

(4) Moneys due to the auctioneer or auction firm shall not be withdrawn from the auction escrow account until final settlement is made with the owner.[~~Section 7. Auction records, including lists of buyers and their addresses, and clerk sheets showing the items sold including the buyers' numbers or names and the selling prices, and the final settlement papers, shall be retained for a period of five (5) years from the date of settlement. These business records shall be available for inspection by the board or its designees.~~]

Section 7. A licensee shall comply with all applicable provisions of KRS Chapter 330 and 201 KAR Chapter 3.

(1) Failure to comply shall subject a licensee to administrative action.

(2) A complaint against a licensee for a violation of this administrative regulation or KRS Chapter 330 shall be notarized and filed with the board on the Complaint Form.

Section 8. Incorporation by Reference. (1) "Complaint Form", July 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Auctioneers, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOE GRIBBINS, Chair
H.E. CORDER II, Executive Director
DAVID DICKERSON, Secretary

APPROVED BY AGENCY: May 14, 2018

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

CONTACT PERSON: Heather Becker, General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave. Suite B, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-1538, email Heather.Becker@ky.gov.

PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Board of Auctioneers
(As Amended at ARRS, July 10, 2018)

201 KAR 3:090.[~~Administrative~~] Fees[~~for Applications and Services~~].

RELATES TO: KRS 330.050(6), 330.060, 330.070, 330.095, 330.192

STATUTORY AUTHORITY: KRS 330.050(8), 330.060(3)(b)[~~(a)~~], 330.070, 330.192

NECESSITY, FUNCTION, AND CONFORMITY: KRS 330.050(8) authorizes the Board of Auctioneers to promulgate administrative regulations with the approval of the executive director of the Kentucky Real Estate Authority in accordance with KRS Chapter 13A as required to fulfill the duties and functions assigned to the board by KRS Chapter 330. KRS 330.060(3)(b)[(~~a~~)] requires the board to establish an examination fee by administrative regulation. KRS 330.070 requires the board to promulgate administrative regulations concerning license fees and replacement fees***[,]*** and authorizes the board to establish fees for deferral of continuing education or a change of address[~~, late fees for continuing education completion, fees associated with pocket licenses, and change of address fees~~]. KRS 330.192 authorizes the board to promulgate administrative regulations concerning the auctioneer's education, research, and recovery fund. This administrative regulation establishes[~~necessary~~] fees associated with acquiring and maintaining auctioneer licenses.

Section 1. Licensure[~~Application, Renewal, and Examination~~] Fees. (1) The initial license fee for each new applicant with the Kentucky Board of Auctioneers shall be $125. Payment of the fee shall accompany the Auctioneer License Application.

(2)[~~The license renewal fee shall be paid as of June 30th of each year.~~

~~(a)~~] The license renewal fee shall be $125[~~if paid by June 30th of each year~~]. A late fee of $125 shall be added to the renewal fee during the six (6) month grace period following the expiration date of the license.[~~(b) The license renewal fee during the six (6) month grace period after June 30th shall be $125, in addition to a late fee of $125.~~]

(3) The examination fee for each applicant shall be $125. Payment of the fee shall accompany the Auctioneer Examination Application[~~The license renewal and late fees for an apprentice auctioneer shall be equal to the fees established in subsection (2) of this section~~].

(4) The licensing fee for a reciprocal applicant shall be determined ***pursuant to KRS 330.095(1)(c)[~~by the applicant's state of licensure, pursuant to the reciprocity agreement between the board and the proper authority for licensing auctioneers in the applicant's state~~]***. Payment of the fee shall accompany the Auctioneer Reciprocal License Application[~~The examination fee shall be $125 for each new applicant with the board~~].

Section 2. Late Continuing Education Completion Fee. A licensee who has failed to complete the required continuing education credits during the license year[~~in the time period established by KRS 330.070~~] may[~~shall~~] remit a fee of $300, and the continuing education reporting requirement shall be deferred to the next annual renewal.[~~and in addition, shall complete twice the amount of continuing education credits established by statute within the following year.~~]

Section 3. Replacement Fee.[~~of License or Pocket License. (1)~~] The fee for replacement of a license or a pocket license shall be fifteen (15) dollars.[~~(2) The fee for replacement of a pocket license shall be fifteen (15) dollars.~~]

Section 4. Reactivation Fees.[~~of License. The fee to~~] To reactivate a license that[~~which~~] has previously been placed in escrow status, a licensee shall pay:

(1) A reactivation fee of $125; and

(2) The annual renewal recovery fee of thirty (30) dollars.

(3) ***The*** reactivation ***fee[~~fees~~]*** shall not apply to any individual seeking to reactivate a license following a period of military service, who shall request reinstatement of licensure within sixty (60) days of the individual's honorable discharge from the service or return from military duty, and the board shall grant the request.[~~shall be $125. In addition, the licensee shall have completed the continuing education credits established by KRS 330.070 for the current year, and the licensee shall have paid the renewal recovery fee established in Section 6 of this administrative regulation.~~]

Section 5. Change of Address and License Verification Fees. (1) The fee for a[~~Residential~~] change of address shall be fifteen (15) dollars.

(2) The fee for a change of principal[~~Business Change of Address~~] shall be fifteen (15) dollars.

(3) There shall be no fee for the following changes:

(a) Placing license into escrow; and

(b) Change of name.

(4) The fee for a duplicate license shall be fifteen (15) dollars.

(5) The fee for a letter of good standing shall be five (5) dollars. Upon request, the board shall provide documentation directly to the auctioneer licensing authority in another jurisdiction.

(6) Change and license verification requests shall be submitted on the Information Update and License Documentation form.

Section 6. Recovery Fees[~~Education, Research, and Recovery Fund~~]. The following fees shall be assessed for the auctioneer's education, research, and recovery fund established by KRS 330.192:

(a) The initial recovery fee for[~~The Kentucky Board of Auctioneers shall assess~~] each new applicant[~~an initial recovery fee of~~] shall be thirty (30) dollars; and

(b) The renewal recovery fee for each licensee shall be[~~and may assess a renewal recovery fee, of~~] thirty (30) dollars per year[~~for the Education, Research, and Recovery Fund~~].

Section 7. Complaints. Complaints against a licensee shall be filed on the Complaint Form, and shall not require a fee.

Section 8. Incorporation by Reference:

(1) The following material is incorporated by reference:

(a) "Auctioneer License Application", May 2018;

(b) "Auctioneer Examination Application", May 2018;

(c) "Auctioneer Reciprocal License Application", May 2018;

(d) "Information Update and License Documentation Form", May 2018; and

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Auctioneers, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601 Monday through Friday, 8 a.m. to 4:30 p.m.

JOE GRIBBINS, Chair
H.E. CORDER, Executive Director
DAVID DICKERSON, Secretary

APPROVED BY AGENCY: May 14, 2018

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

CONTACT PERSON: Heather Becker, General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave. Suite B, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-1538, email Heather.Becker@ky.gov.

PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Kentucky Board of Auctioneers
(As Amended at ARRS, July 10, 2018)

201 KAR 3:100. Education requirements.

RELATES TO: KRS 330.050

STATUTORY AUTHORITY: KRS 330.050(8), 330.060(1), 330.070(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 330.050(8) authorizes the Board of Auctioneers to promulgate administrative regulations with the approval of the executive director of the Kentucky Real Estate Authority in accordance with KRS Chapter 13A as required to fulfill the duties and functions assigned to the board by KRS Chapter 330. KRS 330.060(1) requires applicants for an apprentice auctioneer or auction house operator's license to successfully complete instruction as prescribed by the board from a board-approved auction education provider. KRS 330.070(7) authorizes the board to require as a condition precedent to the renewal of any license, that each

licensee complete continuing education up to ten (10) hours per license year. This administrative regulation establishes pre-licensing and continuing education requirements for all board of auctioneer licensees.

Section 1. Education Providers. (1) All required education shall be obtained from a board-approved provider.

(2) A request to become an approved provider shall be made on the Continuing Education***:*** Approved Provider Application form provided by the board.

(3) A prospective or approved provider shall notify the board in writing within thirty (30) days of any material change in information submitted on the application or attachments. Notification shall be made on the Information Update and License Documentation form.

(4) An approved provider shall submit to the board advance notification of each course offering on the Continuing Education***:*** Course Notification form.

(5) An approved provider shall submit to the board a roster of attendees completing a course within ten (10) days of completion. The roster shall include each attendee's name, address, license number, and e-mail address.

(6) An approved provider shall disclose to all potential students prior to enrollment:

(a) The full cost of each course, including tuition, books, and required materials; and

(b) The number of continuing education hours to be earned by attending and completing each course.

(7) An approved provider shall maintain clear and correct written or electronic records for a minimum of five (5) years, including:

(a) Course handouts;

(b) Attendance records; and

(c) Course evaluations.

(8) ***A provider's approval shall be subject to withdrawal for a[~~The board may withdraw a provider's approval for any~~]*** violation of KRS Chapter 330 or 201 KAR Chapter 3.

(9) A complaint against an approved provider shall be notarized and filed on the Complaint Form, which is incorporated by reference in 201 KAR 3:045.

Section 2. Instructors. (1) An instructor for a course provided pursuant to this administrative regulation shall hold or have previously held:

(a) Current and comprehensive knowledge of the subject matter they will be teaching;

(b) The ability to effectively teach, interact, and communicate with the attendees; and

(c) The ability to provide a controlled and positive learning classroom environment.

(2) An instructor for a course provided pursuant to this administrative regulation shall not have:

(a) Had a professional license revoked or suspended;

(b)***[~~Been convicted of a felony;~~***

~~(c)~~] Been convicted of any crime involving auction, real estate, or any abuse of fiduciary responsibilities; or

(c)[~~(d)~~] Been disciplined in any jurisdiction for falsifying student attendance records ***or[~~,~~]*** completion of course requirements***[~~;~~]*** or other improper educational actions related to licensure.

(3) An instructor who is also a licensee ***shall[~~may~~]*** receive continuing education credit for teaching ***a course approved pursuant to this administrative regulation[~~an acceptable course~~]*** once per educational year for the same course.

Section 3. Pre-licensing Education Requirements. (1) An applicant for a license ***shall[~~may~~]*** obtain the required education from an approved provider or combination of approved providers.

(2) An applicant for an auctioneer license shall have successfully completed at least eighty (80) hours of approved classroom instruction.

(a) Up to eight (8) hours may include approved outside activities and field instruction, such as attendance at auctions;

(b) Up to forty (40) hours may include approved distance learning.

(3) The board ***shall[~~may~~]*** waive the approved classroom instruction requirement ***if requested in writing and*** if an applicant demonstrates sufficient previous auction experience and competency.

Section 4. Licensee Continuing Education Requirements. (1) A licensee shall attend a minimum of six (6) course hours of continuing education from any approved provider or combination of approved providers per license year.

(2) A licensee shall attend the Kentucky Auction Core Course at least once every four (4) years.

(a) A licensee seeking to reactivate a license from escrow shall complete the Kentucky Auction Core Course.

(b) A licensee with at least twenty-five (25) years of continuous licensure shall be exempt from the Kentucky Auction Core Course requirement.

(3) A licensee licensed prior to January 1, 1980 shall be exempt from this administrative regulation.

Section 5. Continuing Education Courses. (1) A licensee may attend a live course or participate in a distance learning course in which the instructor and attendee are not physically present at the same location.

(2) A continuing education course shall focus on auctions or auction law.

(a) An approved provider shall keep all course material current with KRS Chapter 330 and 201 KAR Chapter 3.

(b) The Kentucky Auction Core Course shall include instruction in the core subjects of KRS Chapter 330, 201 KAR Chapter 3, ethics, and any other applicable subject matter.

(C) Real estate education classes shall not qualify for continuing education.

(3) Courses sponsored by the National Auctioneers Association and the Certified Auctioneer's Institute shall qualify for continuing education.

(4) General business meetings and non-educational portions of auctioneer conventions shall not qualify for continuing education.

(5)***[~~In the event the board receives information calling into question a provider or a licensee's compliance with this regulation, the board may require the submission of specified handouts or presentations to attendees.~~***

~~Section 6. Oversight. (1)~~] Live courses shall be subject to monitoring visits from board personnel.

(6)[~~(2)~~] Distance learning shall be subject to periodic review by board personnel. For internet based courses, approved providers shall include "test" login information with the course notification to the board, which shall authorize the board to review the material.***[~~(3) Complaints regarding a licensee or an approved provider may be filed on the Complaint Form.~~]***

Section ***6[~~7~~]***. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Continuing Education***:*** Approved Provider Application", May 2018;

(b) "Information Update and License Documentation", May 2018; ***and***

(c) "Continuing Education***:*** Course ***Notification[~~Offering Notice~~]***", May 2018***[~~; and~~***

~~(d) "Complaint Form", May 2018.~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Auctioneers, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601 Monday through Friday, 8 a.m. to 4:30 p.m.

JOE GRIBBINS, Chair
H.E. CORDER, Executive Director
DAVID DICKERSON, Secretary

APPROVED BY AGENCY: May 14, 2018

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

CONTACT PERSON: Heather Becker, General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave. Suite B, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-1538, email Heather.Becker@ky.gov.

GENERAL GOVERNMENT CABINET
Board of Optometric Examiners
(As Amended at ARRS, July 10, 2018)

201 KAR 5:090 Annual renewal *fee[~~fees~~]*.

RELATES TO: KRS 320.280
STATUTORY AUTHORITY: KRS 320.240(4), 320.280(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.280(1) ***requires[~~authorizes~~]*** the Kentucky Board of Optometric Examiners to promulgate an administrative regulation to ***establish the payment of the fee required for an optometrist to[~~require that optometrists~~]*** annually secure a renewal certificate***. This administrative regulation establishes the amount of the annual renewal[~~upon payment of a~~]*** fee.[~~requires that optometrists annually secure a renewal certificate upon payment of a fee of not more than $200. This administrative regulation prescribes the renewal fee.~~]

Section 1. The annual renewal fee for an optometrist shall be $250[~~$200~~].

JONATHON L. SHREWSBURY, O.D., President
APPROVED BY AGENCY: May 9, 2018
FILED WITH LRC: May 10, 2018 at 3 p.m.
CONTACT PERSON: Connie Calvert, Board Administrator, Kentucky Board of Optometric Examiners, 2365 Harrodsburg Road, Suite A240, Lexington, Kentucky 40601, phone (859) 246-2744, fax (859) 246-2746, email connie.calvert@ky.gov.

PUBLIC PROTECTION CABINET
Department of Professional Licensing
Board of Licensure for Long-term Care Administrators
(As Amended at ARRS, July 10, 2018)

201 KAR 6:050. Licensure by endorsement.

RELATES TO: KRS 216A.130
STATUTORY AUTHORITY: KRS 216A.070(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070(3) authorizes the Board of Licensure for Long-term Care Administrators to promulgate administrative regulations necessary for the proper performance of its duties. KRS 216A.130 authorizes the board to issue a license to a long-term care administrator possessing a license issued by another state. This administrative regulation establishes the requirements for issuance of a license by endorsement.

Section 1. An applicant[~~applying~~] for licensure by[~~via~~] endorsement shall submit[~~cause to be submitted~~] to the board:
(1) A completed Application for Licensure***, as incorporated by reference in 201 KAR 6:020***;
(2) A completed Endorsement Form;
(3) Verification that the applicant:
(a) Meets all current requirements for licensure as established by KRS 216A.130;[~~or~~]
(b) Is currently designated as a certified long-term care administrator by the American College of Health Care Administrators (ACHCA); or
(c) Currently holds a Health Services Executive ***(HSE)*** qualification from the National Association of Long Term Care Administrator Boards ***(NAB);[~~.~~]***
(4) Payment of the fee for licensure by endorsement as established by 201 KAR 6:060; and
(5) Documentation from the appropriate long-term care licensing authority in the endorsing jurisdiction confirming the license[~~other state's board verifying that the license issued by that other state~~]:
(a) Is active;
(b) Is valid;
(c) Is in good standing;
(d) Does not have an unresolved complaint pending against it; and
(e) Has not been subject to disciplinary action during the five (5) years immediately preceding the application.

Section 2. Incorporation by Reference. (1) "Endorsement Form", May 2018[~~The following material~~] is incorporated by reference[~~:~~
~~(a) "Application for Licensure", January 2014; and~~
~~(b) "Endorsement Form", January 2014~~].
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Long-Term Care Administrators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GREG WELLS, Board Chair
APPROVED BY AGENCY: May 7, 2018
FILED WITH LRC: May 11, 2018 at 10 a.m.
CONTACT PERSON: R. Quincy Ward, Board Counsel, Office of Legal Services, Public Protection Cabinet, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969, email quincy.ward@ky.gov.

GENERAL GOVERNMENT CABINET
Board of Cosmetology
(As Amended at ARRS, July 10, 2018)

201 KAR 12:010. Administrator's duties.

RELATES TO: KRS ***Chapter 18A,***[~~317A.030,~~] 317A.040, 317A.050***, 317A.060, 317A.120, 317A.145***
STATUTORY AUTHORITY: KRS ***317A.040,*** 317A.060***, 317A.120*** [~~317A.040~~]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.040***(2)*** requires the employment of an administrator to administer the provisions of KRS Chapter 317A and the policies and administrative regulations of the board[~~coordinate the examinations, inspections, and supervise the general office functions of the agency~~]. ***KRS 317A.040(1) authorizes the board to delegate staffing decisions to the administrator. KRS 317A.060 requires the board to promulgate administrative regulations that include protecting the public and establishing examination requirements. KRS 317A.120 requires trained proctors at examinations.*** This administrative regulation clarifies the authority and establishes duties of the board administrator.

Section 1. Duties. (1) The administrator shall:
(a) Serve as the board's liaison officer and coordinate all administrative matters of the board***;[~~.~~]***
(b) Assist the board in hiring proctors to conduct examinations***;[~~.~~]***
(c) Make staffing decisions, including filling merit positions from the merit register pursuant to and ***in*** accordance with KRS Chapter 18A and KAR Title 101 of the Kentucky Administrative Regulations***;[~~.~~]*** and
(d)[~~shall~~] Be considered the designated appointing authority for the purposes of filling merit positions, and taking disciplinary actions in accordance with ***201 KAR Chapter 12 and KRS Chapter 317A[~~applicable law~~]***.
(2) The administrator may:
(a) Inspect any establishment licensed or issued a permit by the board;
(b) Investigate a reported violation of KRS Chapter 317A or ***201 KAR Chapter 12[~~any administrative regulation promulgated by the board~~]***; and
(c) On behalf of the board, require the production of:
1. A license;
2. The attendance of a witness; or
3. The production of records, documents, and material relating to licensed activity by the board.[~~serve as the board's liaison officer and coordinator in all administrative matters.~~]

~~Section 2. The administrator shall have full powers to inspect any establishment licensed by this board or investigate any reported illegal practice.~~

~~Section 3. The administrator shall have the power for and on behalf of the board to issue subpoenas for licenses, for the attendance of witnesses, and the production of such records, documents, and material as may be necessary in the conduct of board meetings.~~

~~Section 4. The administrator shall assist the members of the board in the giving and supervising of examinations.~~

~~Section 5. The administrator shall fill all merit positions from the merit register as required by the Department of Personnel statutes and rules and administrative regulations. Any or all dismissals of employees shall be made by the majority decision of the board with notification to be made by the administrator. Any suspension or disciplinary action may be made by the appointing authority of the board.~~]

R. KAY SWANNER, Board Chair
APPROVED BY AGENCY: May 11, 2018
FILED WITH LRC: May 11, 2018 at 2 p.m.
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 CABINET
Board of Cosmetology
(As Amended at ARRS, July 10, 2018)

201 KAR 12:030. Licensing, permits, and examinations.

RELATES TO: KRS 317A.020, 317A.050, 317A.060[~~317A.062,317A.100, 317B.025~~]
STATUTORY AUTHORITY: KRS 317A.060[~~, 317B.020~~]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 requires[~~and 317B.020 require~~] the board to promulgate administrative regulations governing licenses in cosmetology, ***esthetic practices[~~esthetics~~]***, and nail technology,[~~and esthetics,~~] including the operation of schools and salons of cosmetology, ***esthetic practices[~~esthetics~~]***, and nail technology[~~, and esthetics~~]. This administrative regulation establishes procedures for examinations and licensing.

Section 1. Fees. License and permit fees are set forth in 201 KAR 12:260.

Section 2. Prior Felony Convictions. An applicant for any license, permit, or examination issued or conducted by the board convicted of a prior felony shall include with ***his or her[~~their~~]*** application:
(1) A signed letter of explanation from the applicant;
(2) A certified copy of the judgment and sentence from the issuing court; and
(3) A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole.

Section 3[~~2~~]. Reciprocal Licensing. (1) A license issued by another state shall be considered comparable if the laws of that state require at a minimum:
(a) 1,500 hours of curriculum for cosmetology;
(b) 450[~~600~~] hours of curriculum for nail technology;
(c) 750[~~1,000~~] hours of curriculum for esthetics; or
(d) 750[~~1,000~~] hours of curriculum for instructors.
(2) An[~~out of state~~] applicant licensed in another state[~~who meets the requirements of KRS 317A.100(1) or 317B.040(1)~~] may be licensed by reciprocity by submitting the Out of State Transfer Application and the following:
(a) Proof of a passing score on a board-approved nationally recognized theory and practical exam***[.]***[~~Two (2) or more years documentation of tax records corresponding to the out of]state license to demonstrate work history~~];
(b) Current certification[~~Certification~~] of the out of state license from the issuing state board;
(c) Diploma or certified testing documents proving 12th grade equivalency education;
(d) Payment of the applicable license and endorsement fees required by 201 KAR 12:260;
(e) A copy of the applicant's government-issued photo identification; ***and***
(f)[~~If convicted of a prior felony:~~
~~1. A typed and signed letter of explanation from the applicant;~~
~~2. Judgment of sentence; and~~
~~3. A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole; and~~
~~(g)~~] A two (2)[~~inch~~] by two (2) inch passport***[~~sized~~]*** photo of the applicant taken within the past six (6) months.
(3) An applicant from a state whose licensing requirements fail to meet subsection (1) of this section[~~An out of state applicant who meets the requirements of KRS 317A.100(2) or (3)~~] shall apply for a reciprocal license by submitting:
(a)[~~Submit the~~] Documentation required by subsection (2)(a)[~~through (c) and (2)(e)~~] through (f)[~~(g)~~] of this section; and
(b)[~~Pay the applicable license and endorsement fees required by 201 KAR 12:260; and~~
~~(c) If required by the board, pay~~] Payment of the applicable examination fees established in 201 KAR 12:260.
(4) Active duty military and family members shall apply for a reciprocal license by submitting:[~~using the Military Transfer Application and including the following:~~]
(a) All documents required by subsection 2(a) through (f) of this section;[~~Certification of a current license from the out of state licensing agency;~~]
(b) The Military Transfer Application;
(c)[~~(b)~~] A copy of the[~~military~~] sponsor's active-duty orders listing the applicant as sponsor or an accompanying family member; and
(d)[~~(c)~~] Payment of a twenty-five (25) dollar license fee.[~~;~~
~~(d) Diploma or certified testing documents proving 12th grade equivalency education;~~
~~(e) A copy of applicant's government-issued photo identification;~~
~~(f) If convicted of a prior felony:~~
~~1. A typed and signed letter of explanation from the applicant;~~
~~2. Judgment of sentence; and~~
~~3. A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole; and~~
~~(g) A two (2) inch by two (2) inch passport photo of the applicant taken within the past six (6) months.~~]
(5) All requests for certification of hours or a license[~~issued by the board~~] shall use[~~be requested from the board using~~] the Certification Request Form accompanied by[~~that includes~~] a copy of the applicant's government-issued photo identification, and payment of the fee as set forth in 201 KAR 12:260.

Section 4[~~3~~]. Permits[~~Threading Permit~~]. (1) Any person who engages in the practice of threading, makeup artistry, or lash extensions shall first obtain a[~~threader~~] permit from the board by submitting a completed[~~completing the Threading~~] Permit Application and paying the fee established in 201 KAR 12:260.
(2) The applicant shall include with the[~~Threading~~] Permit Application:
(a)[~~Payment of the fee required in subsection (1) of this section;~~
~~(b)~~] A copy of applicant's government-issued photo identification***;[.]***[;]
(b) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months***;[.]***
(c) Proof of completion of a board-approved sanitation course within the (1) year period preceding the application***; and[.]***
(d)***[~~Lash extension permits shall additionally require~~]*** Proof of completion of board- approved national certification program***, if applying for a lash extension permit***.[~~(c) If convicted of a prior~~

~~felony:~~

~~1. A typed and signed letter of explanation from the applicant;~~

~~2. Judgment of sentence; and~~

~~3. A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole; and~~

~~(d) A two (2) [inch] by two (2) inch passport photo of the applicant taken within the past six (6) months.~~]

Section 5[4]. Examination Registration. (1) Applicants shall register[~~with the board~~] as follows:

(a) A student of a licensed cosmetology school shall register with the board at least eight (8) months prior to graduation for the requested[~~apprentice~~] cosmetologist examination date;

(b) A nail technician student shall register with the board at least forty-five (45)[~~seventy-five (75)~~] days prior to graduation for the requested nail technician examination date; and

(c) An esthetician student shall register with the board at least four (4) months[~~six (6)~~]***[months]*** prior to graduation for the requested esthetician examination date.

(2) A completed Application for Examination or Out of State Application for Examination shall be received in the Board office no later than ten (10) business days prior to the examination date to be scheduled for either the theory test or the practical demonstration component of the exam. Each exam component shall be scheduled using a separate application and payment of the fee set forth in 201 KAR 12:260[~~A person shall not take the board's examination unless the board has received a completed Application for Examination or Out of State Application for Examination at least ten (10) business days prior to the beginning examination date~~].

(3)[~~An applicant shall submit the following with the Application for Examination:~~

~~(a) If convicted of a prior felony:~~

~~1. A typed and signed letter of explanation from the applicant;~~

~~2. Judgment of sentence; and~~

~~3. A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole; and~~

~~(b)~~] All examination applicants shall submit a two (2)[~~inch~~] by two (2) inch passport photo of the applicant taken within the past six (6) months.

(4) Theory examination dates shall be valid for ninety (90) days from student notification.

(5) A passing score for the theory examination, proper application, and payment of fees shall be required prior to being scheduled for the practical examination.[~~(4) Apprentice cosmetologists shall complete the Affidavit of Apprenticeship included with the Application for Examination when applying to take the Cosmetology examination.~~]

(6)[~~(5)~~] An applicant with curriculum hours obtained in another state shall include with the Out of State Application for Examination the following:

(a)[~~1.~~] Certification of curriculum hours from the state licensing board or agency where the hours were obtained, if the state requires the reporting of curriculum hours; or

(b)[~~2.~~] Certification of the valid licensing status of the school attended from the state board or licensing authority and an official transcript certified by the school.[~~;~~

~~(b) Payment of the applicable license fees as set forth in 201 KAR 12:260;~~

~~(c) Diploma or certified testing documents proving 12th grade equivalency education;~~

~~(d) A copy of applicant's government issued photo identification;~~

~~(e) If convicted of a prior felony:~~

~~1. A typed and signed letter of explanation from the applicant;~~

~~2. Judgment of sentence; and~~

~~3. A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole; and~~

~~(f) A two (2) inch by two (2) inch passport photo of the applicant taken within the past six (6) months~~].

(7)[~~(6)~~] Examination applicants shall wear a full set of solid color medical scrubs and bring all instruments and supplies as listed on the board Web site for the practical examination. White colored scrubs or other clothing is prohibited.

Section 6[~~5~~]. Examination Components. (1) The examination shall consist of a theory[~~written~~] test and a practical demonstration taken from the curriculum requirements specified in 201 KAR 12:082.

(2) The practical demonstration shall be performed on a:

(a) Mannequin head and hand for the cosmetology practical examination;

(b) Mannequin head for the esthetician practical examination; or

(c) Mannequin hand for the nail technician practical examination.

(3) The applicant shall provide a mannequin head or hand as needed for an examination.

Section 7[~~6~~]. Grading. (1) A minimum passing grade of seventy (70) percent on[~~for both~~] the theory test[~~written examination~~] and the practical demonstration shall be required for the[~~apprentice~~] cosmetologist, esthetician, and nail technician[~~, and esthetician~~] examinations.

(2) A minimum passing grade of eighty (80) percent on the theory test[~~written examination~~] and eighty-five (85) percent on the practical demonstration shall be required for all instructor examinations.

Section 8[~~7~~]. Practice before Examination Prohibited. A student engaging in the practice of cosmetology, ***esthetic practices[esthetics]***, or nail technology[~~, or esthetics~~] prior to the board examination shall be ineligible to take the examination for a period of one (1) year from the date of the unauthorized practice.

Section 9[~~8~~]. License Application. (1) An applicant who passes the[~~state board~~] examination shall have ninety (90) days following the examination to apply for a license.

(2) Failure to apply for a license as required by subsection (1) of this section shall require payment of the appropriate restoration and licensing fees set forth in[~~under~~] 201 KAR 12:260 before a license may be issued.

(3) An applicant who fails to apply for a license within one (1) year of passing the examination shall retake the examination and pay the appropriate examination fee set forth in[~~under~~] 201 KAR 12:260.

Section 10[~~9~~]. Retaking Examinations.[~~Any applicant who:~~] (1) Any applicant who fails either the theory test or the practical demonstration[~~Fails the state board examination~~] may retake that portion of the examination upon submitting a new ***Application for*** Examination[~~Retake~~]***[Application]*** with a two (2)[~~inch~~] by two (2) inch passport photo of the applicant taken within the preceding[~~past~~] six (6) months, and paying the examination fee required by 201 KAR 12:260.[~~;~~]

(a) After three (3) failed attempts, the examinee shall be required to wait six (6) months before retaking either portion of the examination.

(b) If, after three (3) additional failed attempts, the examinee does not receive a passing score then the individual shall be required to take an eighty (80) hour brush-up course in theory studies at a school licensed by the board.

(2) An applicant[~~Is~~] caught cheating or impersonating another shall not be allowed to retake the examination for a minimum of one (1) year from the date of the original examination.[~~; and~~]

(3) Any applicant who fails[~~Fails~~] to report for the examination on the date specified by the board shall submit a new examination application[~~Application for Examination~~] and[~~pay the~~] examination fee[~~as required by 201 KAR 12:260~~] prior to being rescheduled for examination. The board may waive the examination fee for good cause shown. "Good cause" includes:

(a) An illness or medical condition of the applicant that prohibits the applicant from reporting for[~~to~~] the examination; or

(b) A death, illness, or medical condition in the applicant's immediate family that prohibits the applicant from reporting for[~~to~~] the examination [~~site~~].

(4) Documents and certificates submitted with an Application for Examination are valid for one (1) year following the date of submission after which time applicants shall submit updated documents and a new examination application[certificates with the Examination Retake Application].

Section 11[10]. Duplicate Licenses, Renewal, and Restoration. (1) If a license is lost, destroyed, or stolen after issuance, a duplicate license may be issued. The licensee shall submit a statement verifying the loss of the license using the Duplicate License Application that includes a copy of a government-issued photo identification, and pay the duplicate license fee listed in 201 KAR 12:260. Each duplicate license shall be marked "duplicate".

(2) The annual license renewal period is July 1 through July 31. All licenses and permits shall be***:***

(a) Renewed using the Renewal Application or by using the board's online portal***;***

(b) Include the required copy of a government-issued photo identification; and

(c) Include payment of the fee set forth 201 KAR 12:260.

(3)[2] To restore an expired license or permit, a***[License]*** Restoration Application shall be submitted to the board[along] with[a copy of a government issued photo identification, and] payment of the restoration and license fees set forth in 201 KAR 12:260 and the following:[.]

(a) For an expired individual license or permit, a copy of a government-issued photo identification;

(b) For an expired salon license or limited facility permit, a new Salon ***Application*** or ***Limited Facility*** Permit Application; or

(c) For an expired school license, a new School Application.

Section 12[11]. Salon and Facility Applications. (1) Each person, firm, or corporation applying for a license to operate a new or relocating beauty salon, nail salon, esthetic salon, or limited[threading] facility shall submit the Salon Application or Limited[Threading] Facility ***Permit*** Application with required copies of state identification and driver's licenses, pay the applicable fee set forth in 201 KAR 12:260, and be inspected by the board inspector a minimum of five (5) business days prior to opening for business.

(2) A new or relocating salon or[threading] facility shall comply with all applicable city, county, state zoning, building, and plumbing laws, administrative regulations, and codes.

(3) A salon or facility may be located on the premises of a nursing home or assisted living facility if the salon or facility meets all requirements of this section.

(4) Any salon or facility located in a residence shall have a separate[dedicated] outside entrance for business purposes only[separate from that of the residence]. This subsection shall not apply to a nursing home or assisted living facility if the home or facility has obtained a salon license from the board.

(5) A salon or facility shall not open for business prior to issuance of its[a] license or permit.

(6) A change in[to] the ownership, management[owner, manager], or location of a licensed salon or[threading] facility shall require a new Salon Application, Limited[or Threading] Facility ***Permit*** Application, or Manager Change Form[to be submitted to the board] and payment of the license or change fee as set forth in[under] 201 KAR 12:260.

(7) ***Each salon[Salons]*** shall maintain a board licensed manager at all times.

Section 13[12].***[Cosmetology]*** School Licenses. (1) Each person, firm, or corporation applying for a license to operate a school***[of cosmetology]*** shall submit a[Cosmetology] School Application and the applicable fee set forth in 201 KAR 12:260.

(2) The[Cosmetology] School Application shall be accompanied by:

(a) A proposed student contract listing all financial charges to enrolling students;

(b) A proposed floor plan drawn to scale by a draftsman or architect[architects]; and

(c) Proof of five (5) years of residency in the Commonwealth.[; and

(d) If an applicant is convicted of a prior felony:

1. A typed and signed letter of explanation from the applicant;

2. Judgment of sentence; and

3. A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole.]

(3) Each school shall comply with city, county, and state zoning, building, and plumbing laws, administrative regulations and codes.

(4) Prior to license issuance and following the receipt of a completed application with all accompanying materials, the board inspector and board administrator shall conduct an inspection[An inspection of the school prior to license issuance shall be:

(a) Conducted by the board inspector and two (2) board members; or

(b) The board inspector, one (1) board member, and the board administrator].

(5)(a) The inspection shall be completed within twelve (12) months of the date that the School Application and all accompanying materials are received[is submitted] unless the board extends the time period for good cause. "Good cause" includes:

1. An illness or medical condition of the applicant that prohibits the applicant from completing the final preparations; or

2. A death, illness, or medical condition in the applicant's immediate family that prohibits the applicant from completing the final preparations.

(b) Requests for an extension of time shall be submitted in writing to the board and include the following:

1. The reason for the extension and the term of the request; and

2. Supportive documentation of the extension request.

(6) A license to operate a***[cosmetology]*** school shall be valid only for the location and person, firm, or corporate owner named on the application. A***[cosmetology]*** school license shall not be transferable from one (1) location to another or from one (1) owner to another.

(7) The***[cosmetology]*** school license shall contain:

(a) The name of the proposed school; and

(b) A statement that the proposed school may operate educational programs beyond secondary education.

(8) ***Each*** licensed ***school[schools]*** shall maintain a board licensed instructor as school manager at all times.

Section 14[13]. Change in School Ownership or Management. (1) The owners, firm, or corporation operating a licensed***[cosmetology]*** school shall submit to the board a new[Cosmetology] School Application or a Manager Change Form and payment of the applicable fee set forth in 201 KAR 12:260 no later than thirty (30) business days prior to selling, transferring, or changing ownership or changing school managers.

(2) A prospective owner(s) or manager shall meet all qualifications of KRS Chapter 317A[, KRS Chapter 317B,] and 201 KAR Chapter 12, and obtain[have the] approval of the board prior to[before] assuming operation of the school.

Section 15[14]. Classification as School. Any person, establishment, firm, or corporation that accepts, directly or indirectly, compensation for teaching any subject of cosmetology as defined in KRS 317A.010 [shall be classified as a cosmetology school and]shall comply with KRS Chapter 317A[Chapter 317B,] and 201 KAR Chapter 12.

Section 16[15]. Owner and Manager Student Prohibited. An owner, partner, stockholder, corporate officer, or a manager of a licensed[cosmetology] school shall not be enrolled as a student in the school.

Section 17[16]. Board Member Disclosure. A board member shall disclose to the board a financial interest in a salon or school when submitting an application for a salon or school license.

Section 18[17]. Demonstration Permits. Professional services

performed outside a licensed facility shall have approval of the board and display the proper permit. Permits may be obtained by completing the Demonstration Permit Application and paying the applicable fee set forth in 201 KAR 12:260.

Section 19[~~18~~]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Out of State Transfer Application", March 2018[~~October 2017~~];

(b) "Military Transfer Application", March 2018[~~October 2017~~];

(c) "Certification Request Form" March 2018[~~October 2017~~];

(d) "[~~Threading~~] Permit Application", March 2018[~~October 2017~~];

(e) "Application for Examination", March 2018[~~October 2017~~];

(f) "Out of State Application for Examination", March 2018[~~October 2017;~~

~~(g) "Examination Retake Application", October 2017~~];

(g)[~~(h)~~] "Duplicate License Application", March 2018[~~October 2017~~];

(h) "Renewal Application", March 2018;

(i) "[~~License~~] Restoration Application", March 2018[~~October 2017~~];

(j) "Salon Application", March[~~February~~] 2018;

(k) "Limited[~~Threading~~] Facility Permit Application", March 2018[~~October 2017~~];

(l) "Manager Change Form", March 2018[~~October 2017~~];

(m) "[~~Cosmetology~~] School Application", March 2018;[~~October 2017~~] and

(n) Demonstration Permit Application", February 2018[~~October 2017~~].

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

R. KAY SWANNER, Board Chair

APPROVED BY AGENCY: May 11, 2018

FILED WITH LRC: May 11, 2018 at 2 p.m.

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, July 10, 2018)

201 KAR 12:140. School Equipment.

RELATES TO: KRS 317A.060,***[317A.082,]*** 317A.090 [~~317A.050(7)(a), 317A.060(1)(b), 317B.020(3)(e), 317B.025(6),~~]

STATUTORY AUTHORITY: KRS 317A.060[~~, 317A.090, 317B.020(3)(e)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS ***317A.060[317A.050]*** [~~(7)(a) and 317B.025(6) require~~] requires ***the board to set standards by administrative regulation for*** licensed schools of cosmetology, ***esthetic practices[~~esthetics~~]***, and nail technology[~~, and esthetics schools~~] to meet***[the requirements established in administrative regulations]*** relating to ***quantity and quality of*** equipment, supplies, and ***furnishings[~~facilities~~]***. This administrative regulation establishes the necessary physical requirements for[~~equipment, supplies, and space for instruction that are necessary for~~] licensed schools[~~cosmetology and esthetics schools~~].

Section 1. Equipment and Supplies. (1) A licensed school of cosmetology, ***esthetic practices[~~esthetics~~]***, and nail technology shall have all equipment and supplies needed to meet the curriculum outlined in 201 KAR 12:082***, including at a minimum:***

(a) Shampoo bowls;

(b) Pedicure equipment;

(c) Hydraulic styling chairs;

(d) Station mirrors;

(e) Chemicals, cleansers, and emulsions;

(f) Cutting and styling implements; and

(g) Proper storage.

(2) A licensed school of ***esthetic practices[~~esthetics~~]*** shall have***[~~the following~~]***:

(a) A private student or client changing area;

(b) A minimum of one (1) fully equipped facial machine in the esthetics area;

(c) A minimum of one (1) sink in the clinic area with hot and cold running water;

(d) A minimum of one (1) steamer for hot towels; and

(e) A Sharps container.[~~A licensed school of cosmetology shall have the following equipment:~~

~~(a) Shampoo bowls;~~

~~(b) Facial chairs;~~

~~(c) Dryers;~~

~~(d) Manicure tables;~~

~~(e) Styling chairs;~~

~~(f) Curling irons;~~

~~(g) Facial supplies;~~

~~(h) Covered containers for:~~

~~1. Hairpins;~~

~~2. Clips; and~~

~~3. Rollers;~~

~~(i) Mannequins for use in practicing:~~

~~1. Iron curling;~~

~~2. Finger waving; and~~

~~3. Other related subjects; and~~

~~(j) Necessary supplies including:~~

~~1. Shampoos;~~

~~2. Color preparations;~~

~~3. Permanent waves;~~

~~4. Cosmetics; and~~

~~5. Manicuring equipment.~~]

(3)[~~(2)~~] All equipment and supplies shall be available for student use and practice.[~~(3) A licensed school offering an esthetics course shall meet the requirements of 201 KAR 12:115~~].

Section 2. Physical Characteristics. (1) A licensed school shall be physically[~~located as to be entirely~~] separated[~~and shall not have a connection with~~] from any beauty salon or barber shop, or any other place of business.

(2)[~~Section 3.~~] A licensed school shall[~~not be approved and shall not operate if it:~~] maintain, at ***a*** minimum***[~~, the following~~]***:

(a)[~~(1) Has space of less than~~] Thirty-six (36) square feet per student in the clinical area[~~for each student involved on the floor of the clinical area at any one (1) time~~];

(b)[~~(2) Has a space less than~~] Eighteen (18) square feet per student in the mannequin or nail table area[~~for each student involved on the floor of the mannequin area at any one (1) time~~]; [~~and~~]

(c)[~~(3) Does not have~~] A reasonable amount of area allotted for training of students in all other areas;[~~other than those previously mentioned.~~]

(d)[~~Section 4. All schools licensed by this board shall have~~] A separate room[~~to be used~~] for demonstration and study with all necessary charts and equipment to carry out the curriculum[~~. This room shall have necessary charts and equipment to carry out the curriculum. This room shall also contain a blackboard, charts relating to the curriculum, classroom chairs with armrests, or desks for students' use.~~]; and

(e) Booths or partitions in the clinical area that permit observation of students.[~~Section 5. Every school shall maintain a separate lavatory and toilet for male and female students.~~

~~Section 6. Lockers shall be provided by the schools for student use.~~

~~Section 7. Booths or partitions in the [work department] shall be sufficiently low to permit observation of students while they are working.~~

~~Section 8. Every school shall have a reference library composed of the books recommended and set forth in the administrative regulations as well as any other literature and materials pertinent to the teaching and study of cosmetology, including the informational copy of the Kentucky State Board of Hairdressers and Cosmetologists statutes and administrative regulations.~~

~~Section 9. (1) Each school of cosmetology shall furnish a supply or dispensing room in which each student shall obtain actual experience for a period of time as indicated by the course of instruction.~~

~~(2) The supply room shall contain the following:~~

~~(a) A supply of clean towels or linens;~~

~~(b) A lavatory, or sink;~~

~~(c) Bottles and containers distinctly and correctly labeled;~~

~~(d) A large wet sterilizer;~~

~~(e) A large dry sterilizer;~~

~~(f) Soap;~~

~~(g) Covered waste containers;~~

~~(h) Closed storage space for supply of clean towels or linens;~~

~~(i) Covered containers for used towels or linens;~~

~~(j) A stove;~~

~~(k) Pressing combs;~~

~~(l) Irons; and~~

~~(m) All other solutions, and preparations used.~~]

R. KAY SWANNER, Board Chair

APPROVED BY AGENCY: May 11, 2018

FILED WITH LRC: May 11, 2018 at 2 p.m.

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 CABINET
Board of Cosmetology
(As Amended at ARRS, July 10, 2018)

201 KAR 12:190. Complaint and disciplinary process[~~Investigations and complaints~~].

RELATES TO: KRS 317A.070, 317A.140, 317A.145

STATUTORY AUTHORITY: KRS ***317A.060,*** 317A.145

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.145[~~(1)~~] authorizes[~~requires~~] the board to[~~receive and~~] investigate complaints and, where appropriate, take disciplinary action for violations of KRS Chapter 317A and the administrative regulations promulgated by the board. KRS 317A.070 ***requires the board to hold hearings to review the board's decision upon the request of any[~~allows a~~]*** licensee or applicant ***affected by the board's decision[~~to request a hearing to review the board's decision~~]*** to refuse to issue or renew a license or permit, or to take disciplinary action against a license or permit. This administrative regulation ***establishes[~~details~~]*** the board's complaint and disciplinary process[~~requires the board to receive and relating to a licensee's business or professional practices and illegal practices. This administrative regulation establishes the requirements relating to investigations and complaints~~].

Section 1. Definitions[~~Definition~~]. (1) "Complaint" means any writing received by the board alleging conduct by an individual or entity that may constitute[~~which contains the name of the complainant and alleges~~] a violation of KRS Chapter 317A or 201 KAR Chapter 12.

(2) "Respondent" means the person or entity against whom a complaint has been made[~~by a licensee relating to the licensee's business or professional practice~~].

Section 2. Complaint Committee. The board may appoint a committee of no more than two (2) board members to review complaints, initiate investigations, participate in informal proceedings to resolve complaints, and make recommendations to the board for disposition of complaints. The board staff and board counsel may assist the committee.

Section 3. Complaint Procedures. (1) Complaints shall be submitted on the board's Complaint Form, signed by the person making the complaint, and describe with sufficient detail the alleged violation(s) of KRS Chapter 317A, or ***201 KAR Chapter 12[~~the administrative regulations promulgated by the board~~]***. The Complaint Form shall be made available on the board's Web site ***at http://kbc.ky.gov***.

(2) A copy of the complaint shall be provided to the respondent. The respondent shall have ten (10) days from the date of receipt to submit a written response. The complaints committee or the board administrator may extend these timelines as appropriate.

(3) ***The complaint committee shall meet once a month. A complaint shall arrive ten (10) days prior to the meeting to meet that month's deadline for making a recommendation to the board.*** The complaint committee shall review the complaint, the response, and any other relevant information or material available, and recommend that the board:

(a) Dismiss the complaint;

(b) Order further investigation;

(c) Issue a written admonishment for a minor violation; ***or***

(d) Issue a notice of disciplinary action informing the respondent of the following:

1. The statute(s) or administrative regulation(s) violated;

2. The factual basis for the disciplinary action;

3. The penalty to be imposed; and

4. The licensee's or permittee's right to request a hearing.

(4) A written admonishment shall not be considered disciplinary action by the board**,** but may be considered in any subsequent disciplinary action against the licensee or permittee. A copy of the written admonishment shall be placed in the licensee or permittee's file at the board office.

(5) If the board determines that a person or entity is engaged in the unlicensed practice of cosmetology, esthetics practices, or nail technology, the board may:

(a) Issue to the person or entity a written request to voluntarily cease the unlicensed activity; or

(b) Seek injunctive relief in a court of competent jurisdiction pursuant to KRS 317A.020(7).

(6) Any board member who has participated in the investigation of a complaint or who has substantial personal knowledge of facts concerning the complaint, which could influence an impartial decision, shall disqualify himself or herself from participating in the adjudication of the complaint.

Section 4. Settlement by Informal Proceedings. (1) The board, through its complaints committee or counsel, may, at any time during this process, resolve the matter through informal means, including an agreed order of settlement or mediation.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the respondent and board chair, or the chair's designee.

Section 5. Hearings. (1) A written request ***made by the respondent*** for a hearing shall be filed with the board within thirty (30) days of the date of the board's notice that it intends to refuse to issue or renew a license or permit, to deny, suspend, probate, or revoke a license or permit, or to impose a fine on a licensee or permittee.

(2) If no request for a hearing is filed, the board's refusal to issue or renew a license or permit, or the board's notice of disciplinary action, shall become effective upon the expiration of the time to request a hearing.[~~The board or other board personnel shall receive all complaints against a person or salon licensed under the provisions of KRS Chapter 317A and 201 KAR Chapter 12 relating to the licensee's business or professional practices~~].

~~Section 3. The board shall make available to the public its Complaint Form, which shall be used by any person filing a complaint against a licensee~~.

~~Section 4. Each complaint received by the board concerning a~~

~~licensed person or salon shall be investigated.~~

~~Section 5. The board may, at any time, on its own volition or on the basis of information available, conduct an investigation or inspection and file a complaint against a person or salon licensed under the provisions of KRS Chapter 317A and 201 KAR Chapter 12~~.

~~Section 6. A complaint that alleges that a licensee or salon has violated a provision of KRS Chapter 317A or 201 KAR Chapter 12 shall be sent to the licensee or salon before the complaint is placed on the board agenda. The licensee shall be provided ten (10) days after the complaint is mailed to file a written response to the complaint.~~

~~Section 7. The complaint and the response, if any is received, shall be placed on the board agenda for consideration at the next board meeting, or as soon thereafter as is practicable, following receipt of the written response or the expiration of the ten (10) days provided for a response, whichever occurs first.~~

~~Section 8. The board members shall review the complaint and any response received and shall take action as it deems necessary.~~

~~Section 9. Any board member who has participated in the investigation of a complaint or who has substantial personal knowledge of facts concerning the complaint which could influence an impartial decision by the board member shall disqualify himself or herself from participating in the adjudication of the complaint.~~]

Section 6[~~10~~]. Incorporation by Reference. (1) "Complaint Form", April 2018[~~October 2013~~], is incorporated by reference.

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

R. KAY SWANNER, Board Chair

APPROVED BY AGENCY: May 11, 2018

FILED WITH LRC: May 11, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2018, at 10:30 a.m., at Kentucky Board of Cosmetology. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on June 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the Kentucky Board of Cosmetology (KBHC)'s complaint and disciplinary process for submitting complaints and, where appropriate, for the KBC to take disciplinary action against a licensee.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide a uniform and consistent process to receive, investigate, and where appropriate, to take disciplinary action against persons and entities licensed by the KBC.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation implements a complaint and disciplinary processed as required by KRS 317A.145.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Currently, disciplinary matters are referenced in multiple administrative regulations. By combining complaints and disciplinary matters in one administrative regulation, this amendment ensures uniformity, clarity, and consistency in the process of receiving, investigating, and taking disciplinary action when appropriate. It also provides for method of issuing a private admonishment for minor violations.

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

(a) How the amendment will change this existing administrative regulation: This amendment incorporates all matters pertaining to complaints and disciplinary matters into one administrative regulation. It also adds the option for the KBC to issue a private admonishment for minor violations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide a uniform, clear, and consistent method for receiving and investigating complaints against persons and entities licensed by the KBC.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment updates the existing administrative regulation to provide guidelines for processing complaints and, where appropriate, for taking disciplinary action against licensees of the KBC.

(d) How the amendment will assist in the effective administration of the statutes: By providing a uniform, clear, and consistent method for receiving and investigating complaints, and taking disciplinary action when appropriate, the KBC can better meet its statutory charter to protect public health and safety and ensure the ethical practice of cosmetology in the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 38,000, licensees, permittees, and students affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment modifies the existing process by which the public may file complaints against persons and entities licensed by the board. It does not impose any new requirements on those regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated cost to licensees because of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment establishes a uniform, clear, and consistent method for processing complaints and issuing disciplinary action against licensees. Benefits include a better understanding for the public of the method by which the KBC issues disciplinary actions while safeguarding licensees against meritless complaints.

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

(a) Initially: This amendment modifies existing practices of the KBC and does not establish any new requirement. No additional funds are necessary initially to implement this amendment.

(b) On a continuing basis: This amendment modifies existing practices of the KBC and does not establish any new requirement. No additional funds are necessary on a continuing basis to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KBC is self-funded through fees it collects for services it

provides to the public and to licensees. Funding necessary for processing complaints and related disciplinary actions is derived from the KBC's fees.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are created or increased directly or indirectly by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation applies equally to all KBC licensees, permittees, and applicants.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A.145.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The existing administrative regulation sets out a process for receiving and investigating complaints against KBC licensees and does not establish any fee or cost. This amendment modifies existing processes and procedures but similarly does not establish any fee or cost. This amendment is not anticipated to impact the expenditures and revenues of the KBC.

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

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

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

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

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

Revenues (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other Explanation: Not applicable.

GENERAL GOVERNMENT CABINET
Board of Cosmetology
(As Amended at ARRS, July 10, 2018)

201 KAR 12:230. Code of ethics.

RELATES TO: KRS 317A.060[~~317B.020(3)(k)~~]

STATUTORY AUTHORITY: KRS 317A.060[~~317B.020(3)(k)~~]

NECESSITY, FUNCTION AND CONFORMITY: KRS 317A.060[~~317B.020(3)(k)~~] requires the board to establish a code of ethics for all persons and entities issued a license or permit[~~licensed~~] by the board. This administrative regulation establishes the required code of ethics.

Section 1. Code of Ethics. A licensee or permittee shall:

(1) Provide competent professional services to the consumer;

(2)[~~Wear a lab coat or smock with an insignia or badge indicating the licensee's name and the designation as a licensed esthetician;~~

~~(3)~~] Provide a clear explanation of the services offered and the cost of those services;

(3)[~~(4)~~] Follow appropriate disinfection and sanitation requirements as established in KRS Chapter 317A[~~317B~~] and ***201 KAR 12:100***[~~***the administrative regulations promulgated thereunder***~~]*;*

(4)[~~(5)~~] Follow proper health profile procedures before application of the product;

(5)[~~(6)~~] Perform a thorough service[~~skin~~] evaluation and consultation for each client to determine if the procedure or product is appropriate before application;

(6)[~~(7)~~] Discuss and outline realistic expectations with the client after the evaluation; and

(7)[~~(8)~~] Treat all clients with courtesy and respect.

R. KAY SWANNER, Board Chair

APPROVED BY AGENCY: May 11, 2018

FILED WITH LRC: May 11, 2018 at 2 p.m.

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.

PUBLIC PROTECTION CABINET
Board of Licensure for Professional Art Therapists
(As Amended at ARRS, July 10, 2018)

201 KAR 34:060. Qualifying experience under supervision.

RELATES TO: KRS[~~309.130(3), 309.1305(5),~~] 309.1315, 309.133, 309.134

STATUTORY AUTHORITY: KRS 309.1315[~~(1), (4), (12), (16), 309.134(1)(b)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.1315[~~(1), (12), and (16) require~~] requires the board to promulgate administrative regulations necessary to carry out the provisions of KRS 309.130 to 309.1399, to approve the level of supervision for a person seeking licensure, and to establish requirements for supervision and qualifications of supervisors[~~. KRS 309.1315(4) requires the board to process applications. KRS 309.134(1)(b) requires an applicant to obtain a board-approved supervisor of record~~]. This administrative regulation establishes[~~the~~] supervision requirements[~~for supervision~~] and[~~the~~] qualifications necessary to be a board-approved supervisor[~~and a supervisor of record~~].

Section 1. Definitions. (1)[~~"Board-approved qualified mental health professional" means a licensed marriage and family therapist, licensed psychologist, licensed psychiatrist, licensed professional clinical counselor, or licensed clinical social worker.~~

~~(2)~~] "Direct client contact hours" means hours spent providing art therapy services to a client[~~with services performed~~] in an individual, couple, family, or group format.

(2)[~~(3)~~] "Face-to-face supervision" means***[supervision that is either]***:

(a) Two (2)-way interactive[~~Interactive~~] ***supervision***, simultaneous video and audio,[~~media~~]if at least two (2)[~~direct meetings per month~~] hours of supervision per month are conducted in person[~~with the supervisor and supervisee physically present in the same room~~]; or

(b) All[~~the~~] supervision is conducted in person[~~meetings take place with the supervisor and supervisee physically present in the same room~~].

(3)[~~(4)~~] "Group supervision" means the supervision of no more than[~~a group of~~] six (6) supervisees at the same time[~~individuals or less~~].

(4)[~~(5)~~] "Individual supervision" means case consultation between the supervisor and the supervisee that is restricted to the supervisee's cases.

(5)[~~(6)~~] "Supervisee" means a licensed professional art therapy associate who works with clients under board-approved

supervision.

(6)[(~~7~~)] "Supervision" means the educational process of utilizing a partnership between a supervisor and a supervisee aimed at enhancing the professional development of the supervisee in the practice of professional art therapy[~~to meet the requirements of KRS 309.134~~].

(7)[(~~8~~)] "Supervisor of record"[~~"Supervisor"~~] means a board-approved licensed professional art therapist who meets the requirements established in Section 2 of this administrative regulation [~~or qualified mental health professional who controls, oversees, guides, and takes responsibility for the practice of professional art therapy of a supervisee in accordance with this administrative regulation.~~

~~(9) "Supervisor of record" means an approved licensed professional art therapist in the Commonwealth of Kentucky who meets the requirements established in Section 2 of this administrative regulation~~].

Section 2.[~~Requirements to be a board~~]Board-approved Supervisors[~~supervisor~~]. (1) To be eligible as a board-approved supervisor, a licensed professional art therapist[~~that is a supervisor~~] shall have a minimum of four (4) years of licensed experience ***as a professional art therapist[~~in the practice of art therapy~~]***[~~A board-approved qualified mental health professional that is a supervisor shall have a minimum of four (4) years of independent experience~~].

(2) The following shall render an applicant ineligible for board-approved supervisor status[~~A supervisor shall not have~~]:

(a) An unresolved citation filed against him or her by a licensing[~~the~~] board or similar agency;

(b) A disciplinary action that resulted in the suspension or probation of a license; or

(c) A previous or current dual[~~existing personal~~] relationship with a supervisee as ***established[~~defined~~]*** by 201 KAR 34:040.

(3) In order to obtain board-approved supervisor status, an applicant[~~a supervisor~~] shall***[~~submit~~]***:

(a) ***Submit*** a Board-***[~~-~~]***Approved Supervisor Application; and

(b) ***Successfully complete[~~Proof of completion of~~]*** the Board-Approved Supervisor Examination.

Section 3. Examination. (1) [~~complete three (3) hours of board-approved supervisor training which shall be completed within one (1) year of the supervisor seeking board approval.~~

~~(a)~~] The Board-Approved Supervisor Examination[~~board-approved supervisor training~~] shall cover:

(a)[~~1.~~] Kentucky law governing the practice of art therapy contained in both KRS Chapter 309 and 201 KAR Chapter 34, theories of supervision, ethical issues involved in supervision, and supervisor responsibilities; and

(b)[~~2.~~] Documentation in a supervision log that includes supervision times as well as the planning and treatment utilized.[~~treatment and planning that is employed.~~

~~(b)~~](2) To take the examination, an applicant shall submit to the board:

(a) An Application for Examination Continuing Education Credit form***[~~, available on the board's Web site~~]***; and

(b) Payment of thirty (30) dollars in the form of a check or money order made payable to the Kentucky State Treasurer.

(3) Upon receipt of the application and fee, the board ***shall[~~will~~]*** send the applicant the exam to complete and return within thirty (30) days of receipt.

(4) The board ***shall[~~will~~]*** notify the applicant of the examination results and, if a***[~~passing~~]*** score ***of eighty (80) percent or above*** is obtained, the board shall send the applicant a certificate confirming board-approved supervisor status and the receipt of three (3) hours continuing education credit.

Section 4. Expiration and Grace Period. (1) Board-approved supervisor status shall expire three (3) years from the date of approval.

(2) To renew, a board-approved supervisor shall ***follow the steps listed in Section 3(2) through (4) of this administrative regulation. The Board-Approved Supervisor Examination shall be taken within ninety (90) days prior to or following the board-approved supervisor's expiration date.[~~submit:~~***

[~~(a) A Board-Approved Supervisor Application; and~~

[~~(b) Proof of a passing score on the Board-Approved Supervisor Examination taken within ninety (90) days of the board-approved supervisor's expiration date.~~]

(3) A board-approved supervisor may continue supervising for ninety (90) days after the expiration date while awaiting approval of a renewal application.

(4) Failure to renew in accordance with this administrative regulation shall result in termination of board-approved supervisor status.[~~Supervisor training shall be an onsite or online course which shall be conducted by an instructor who is a licensed professional art therapist or board-approved qualified mental health professional and who has demonstrated proficiency in the curriculum established in this administrative regulation.~~

~~(c) To maintain board-approved supervisor status, a supervisor shall retake the board-approved supervisor training every three (3) years.~~

~~(4) Supervisory experience obtained in Kentucky with a supervisor who has not completed the course required by subsection (3) of this section shall not be accepted by the board.(5)~~]

Section 5. Prohibition. A board-approved supervisor[~~A licensed professional art therapist~~] shall not serve as a supervisor of record for more than six (6) licensed professional art therapist associates[~~with whom he or she has a supervisory agreement~~] at the same time.

Section 6. Reciprocity[~~(6)(a)~~] An applicant for licensure with[~~receiving~~] supervision obtained outside of Kentucky shall demonstrate that his or her out-of-state supervisor has[~~been independently licensed in a clinical practice for four (4) years following licensure as a professional art therapist or with one (1) of the groups approved by the board as of the time of the supervision.~~

~~(c) The out of state supervisor shall have the~~] substantially equivalent qualifications at the time of the supervision as those[~~to those prescribed for a supervisor~~] established in this administrative regulation. [~~(7) To be recognized as a supervisor, a licensed professional art therapist or board-approved qualified mental health professional who meets the requirements of this section shall request in writing to become a supervisor in Kentucky and provide a copy of the supervisory training certificate.~~]

Section 7[~~3~~]. Supervisory Agreement[~~for Licensed Professional Art Therapist Associate Supervision~~]. (1) Prior to beginning supervision, a licensed professional art therapist associate applicant[~~supervisee~~] shall submit to the board[~~enter into~~] a Supervisory Agreement[~~supervisory agreement~~] with a supervisor of record[~~and submit it to the board for approval~~].

(2) The[~~At a minimum, the~~] Supervisory Agreement shall include [~~address~~] the following:

(a) The name [~~and license number~~] of the supervisee;

(b) The name and license number of the supervisor of record;

(c) [~~The name and license number of other supervisors;~~

~~(d)~~]The agency, institution, or organization where the supervised experience will be obtained[~~received~~];***[~~and~~]***

(d)[~~(e)~~] A detailed description of the nature of the practice including:

1. The type of clients who will be seen;

2. An accurate assessment of client problems leading to proficiency in applying professionally recognized nomenclature and developing a plan for treatment ***that[~~which~~]*** meets currently recognized standards in the profession;

3. The therapies and treatment modalities that will be used including the prospective length of treatment;

4. Problems that will be treated; ***and***

5. The nature, duration, and frequency of the supervision, including the:

a. Number of hours of supervision per week;

b. Amount of group and individual supervision;

c. Ethical considerations for the use of internet, social

networking, and electronic media for the transmission of case information; and

d. Number of hours of face-to-face supervision, including how that supervision shall be obtained; and

(e)[(f) The conditions or procedures for termination of the supervision;

(g)] A statement that[:

1. The] the supervisor of record understands that he or she shall be held accountable to the board for the care given to the supervisee's clients.[; and

2. The supervisor of record and other supervisors shall meet the criteria established in Section 2 of this administrative regulation;

(h) An individualized job description that:

1. Describes in detail how the requirements of this administrative regulation will be met; and

2. Is on office or agency letterhead that is signed by the executive director, the agency director, or the individual who heads the office; and

(i)](3) A copy of the[each] supervisor's current[supervisory training] certificate as a board-approved supervisor shall be[that is] attached to the Supervisory Agreement.

(4)[(3)] Changes to that portion of the Supervisory Agreement that describes the nature of the practice and experience that the supervisee is to obtain[as required by this administrative regulation] shall be submitted to the board for approval.

(5)[(4)] If the supervisee changes his or her supervisor of record, a new Supervisory Agreement shall be submitted to the board for approval.

(6)[(5)] A supervisee shall submit a completed supervisory agreement for each supervisor of record.[A supervisee shall notify the board by letter of changes of supervisors who are not the supervisor of record, but who are identified in the supervisory agreement and attach a copy of the supervisor's supervisory training certificate.]

Section 8[4]. Notice to Client. A licensed professional art therapy associate practicing under a supervisor of record[the supervision of a licensed professional art therapist or a board-approved qualified mental health professional] shall notify in writing each client of the associate or by posting a notification ***that[which]*** shall include:

(1) The name, office address, telephone number, and license number of the supervisor of record; and

(2) A statement that the supervisee is licensed by the board.

Section 9[5]. Experience under supervision. (1) Experience under supervision shall consist of:

(a) On average, at least two (2) meetings and four (4) hours total of face-to-face supervision each month[At least sixty (60) percent of the required experience in direct client contact hours];

(b) Direct responsibility for a specific individual or group of clients; and

(c) Broad exposure and opportunity for skill development with a variety of dysfunctions, diagnoses, acuity levels, and population groups.

(2) For[The board may for] extenuating circumstances beyond the supervisor's or supervisee's control, such as in cases of disability, illness, or undue hardship, the board may, upon written request by the supervisor and supervisee, grant a limited waiver from the monthly meeting and face-to-face supervision[requirement of two (2) monthly direct in person meetings to satisfy the face-to-face supervision] requirements of this section[upon written request by the supervisor and supervisee].

(3) In extenuating circumstances, if a licensed professional art therapist associate is without supervision, the associate may continue working for up to ninety (90) calendar days under the supervision of a clinical supervisor while a board-approved supervisor is sought and a new supervisory agreement is submitted to the board.

(a) Extenuating circumstances ***may*** include situations such as death or serious illness of the board-approved supervisor, a leave of absence by the supervisor, or termination of the supervisor's employment.

(b) The supervisee shall notify the board of these extenuating circumstances within ten (10) days of the occurrence and shall submit, in writing, a plan for resolution of the situation within thirty (30) calendar days of the change in status of board-approved supervision. The written plan shall include:

1. The name of the temporary supervisor;

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

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

4. A telephone number for the temporary supervisor.

Section 10[6]. Supervision Requirements. (1)[A minimum of seventy-five (75) percent of the supervision hours shall be provided by a licensed professional art therapist who has been recognized as a board-approved supervisor under Section 2 of this administrative regulation.

(2) A board-approved qualified mental health professional who has been recognized as a board-approved supervisor under Section 2 of this administrative regulation may provide up to a maximum of twenty-five (25) percent of supervision hours.

(3)] Supervision shall relate specifically to the qualifying experience and shall focus on:

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

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

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

(d) Ethical problems in the practice of art therapy; and

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

(2)[(4)(a)] Supervision shall total a minimum of 100 hours and 1,000 ***direct*** client contact hours ***that[which]*** shall include individual supervision of no less than one (1) hour for every ten (10) hours of client contact.

(3)[(b)] A supervisee shall not obtain more than twenty-five (25) hours of the required supervision by group supervision. [(c) Group supervision shall not be permitted in groups of more than six (6) supervisees.]

Section 11[7]. Documentation Requirements. (1) The supervisor of record[board-approved supervisor] and licensed professional art therapy associate shall maintain copies of ***any***[the] completed supervision ***logs[log(s)]***[log], which shall document:

(a) The frequency and type of supervision provided; and

(b) The method of supervision utilized, such as observation, dialogue and discussion, and instructional techniques employed.

(2) Documentation shall distinguish between individual and group[identify modality of] supervision.

Section 12. A licensed professional art therapist engaged in board-approved supervision pursuant to this administrative regulation shall be referred to as "licensed professional art therapist supervisor" and may use the acronym "LPAT-S".[Section 8. Temporary Supervision. (1) In extenuating circumstances, if a licensed professional art therapist associate is without supervision, the associate may continue working for up to ninety (90) calendar days under the supervision of another clinical supervisor while a board-approved supervisor is sought and a new supervisory agreement is submitted to the board. Extenuating circumstances include situations such as death or serious illness of the board-approved supervisor, a leave of absence by the supervisor, or the termination of the supervisor's employment.

(2) The supervisee shall notify the board of these extenuating circumstances within ten (10) days of the occurrence and shall submit, in writing, a plan for resolution of the situation within thirty (30) calendar days of the change in status of board-approved supervision. The written plan shall include:

(a) The name of the temporary supervisor;

(b) Verification of the credential held by the temporary supervisor;

~~(c) An email address and a postal address for the temporary supervisor and the supervisee; and~~

~~(d) A telephone number for the temporary supervisor.~~]

Section 13[~~9~~]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Supervisory Agreement", May 2018;***[~~and~~]***

(b) "Board-Approved Supervisor Application", May 2018***; and***

(c) "Application for Examination Continuing Education Credit", October 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.***, and is available online at pat.ky.gov/Pages/applications.aspx.***[~~Evaluation by the Board. The period of supervised experience required by KRS 309.133(1) and 309.134 shall be evaluated by the board according to one (1) of the following methods:~~

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

~~(2) Documentation for an applicant for licensure as a licensed professional art therapist that establishes that an individual has been licensed art therapist in another jurisdiction at the clinical level and has been engaged in the active practice of professional art therapy work in that jurisdiction for at least five (5) years immediately preceding the filing of an application for licensure as a professional art therapist with the board pursuant to 201 KAR 34:025 shall meet the requirement for supervision established in this administrative regulation.~~]

MARYBETH ORTON, Chair

APPROVED BY AGENCY: May 10, 2018

FILED WITH LRC: May 11, 2018 at 10 a.m.

CONTACT PERSON: Quincy Ward, Board Counsel, Office of Legal Services, Public Protection Cabinet, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969, email quincy.ward@ky.gov.

PUBLIC PROTECTION CABINET
Department of Professional Licensing
Board of Licensure for Private Investigators
(As Amended at ARRS, July 10, 2018)

201 KAR 41:100. Verification of limited[~~240 hour~~] employees.

RELATES TO: KRS 329A.025, ***[~~KRS~~]*** 329A.070

STATUTORY AUTHORITY: KRS 329A.025***(2)***, 329A.070***(9)***[~~(a)~~]

NECESSITY, FUNCTION AND CONFORMITY: KRS 329A.025(2) and 329A.070(9) require[~~32A9.070 states~~] the board[~~shall~~] to establish a fee and a method of verification of the number of hours worked by a limited[~~an~~] employee who works[~~working~~] under the direction of a[~~the~~] private investigator or private investigating firm licensed by the board[~~works, to ensure the employee does not exceed 240 hours of work per year~~]. This administrative regulation establishes a fee and method[~~process~~] for this verification.

Section 1. ***Definitions[~~Definition~~]***. ***(1)*** "Limited employee" means a person who engages in ***["]***private investigating***["]*** for a licensed private investigator or licensed private investigating firm ***[~~as defined by KRS 329A.010(4)~~]*** for less than 240 hours per year[~~pursuant to the limitation authorized by KRS 309.070(9)~~].

(2) "Private investigating" is defined by KRS 329A.010(4).

Section 2. Registration of Limited Employees. (1) Within five (5) business days of hiring, a licensee of the board[~~A private investigator or private investigator firm~~] shall file with the board a Limited Employee Registration form for[~~listing provide the name and address of~~] each ***limited*** employee who works for that licensee[~~private investigator or private investigator firm~~] under the[~~licensure~~] exemption in[~~of~~] KRS 329A.070(9). The Limited Employee Registration form shall be[~~The licensee shall file with the board an Employee Registration form~~] accompanied by payment of a twenty (20) dollar fee per[~~for each~~] ***limited*** employee registered.

(2) The board shall assign[~~employee shall be assigned~~] the limited employee a tracking number[~~by the board~~] that the licensee shall use on all reporting forms.

(3) A licensee shall file a Limited Employee Registration form with the Board to update ***a limited[~~an~~]*** employee's information, if changed, or upon termination of employment.

(4)(a) Each licensee shall maintain a daily log listing the dates and hours worked for each limited employee[~~. The daily log shall include the dates and hours worked by the employee~~].

(b) Within five (5) business days of the board's request[~~Upon a request by the board~~], the licensee shall provide the daily log to the board[~~within five (5) business days of the date the log is requested~~].

(5)[~~(4)~~] A[~~an~~] limited employee may[~~perform~~] work for more than one (1) licensee during a one (1) year period. Each licensee employing that person shall comply with the requirements of this administrative regulation[~~provide the required information to the board~~].

Section 3. Annual[~~Quarterly~~] Reports.[~~(1)~~] Between December 1st and December 31st each year, the licensee shall submit to the board an Annual ***Limited*** Employee Report listing each registered ***limited*** employee and the number of hours each ***limited*** employee worked during that year[~~file a Quarterly Report with the board for each employee working under the licensee, even if no hours were worked during the reporting quarter.~~

~~(2)(a) The report shall be completed for the following quarterly dates:~~

~~1. March 31;~~

~~2. June 30;~~

~~3. September 30; and~~

~~4. December 31st.~~

~~(b) The report shall be submitted to the board by the last day of the month following the quarter's ending date.~~

~~(3) The reports shall be subject to review by the board~~].

Section 4.[~~Notification of Maximum Hours. (1) If an employee reaches the maximum 240 hours of work with a licensee prior to the end of the year, that licensee shall notify the board that the employee is ineligible to work for that licensee under the KRS 329A.070(9) exception for the remainder of the year.~~

~~(2) If an employee reaches the maximum 240 hours with that licensee before the quarter expires, the licensee shall notify the board within five (5) business days and cause the employee to immediately cease working in that capacity.~~

~~Section 5.~~] Registration Renewal. (1) ***Limited*** employee registration[~~The notification of an employee working pursuant to this administrative regulation~~] shall expire[~~be valid for~~] one (1) year from the date of issuance. To renew, a licensee shall submit ***a Limited[~~an~~]*** Employee Registration form listing each registered ***limited*** employee to be renewed and payment of the twenty (20) dollar fee per ***limited*** employee registered[~~A renewal application shall be received by the board~~] no later than forty-five (45) days prior to the expiration date[~~before the one (1) year time period expires~~].

(2) Failure to timely submit ***the*** fee payment or the ***Limited*** Employee Registration form ***shall*** automatically ***suspend[~~suspends~~]*** the ***limited*** employee's licensure exemption under KRS 329A.070(9) until ***the board receives and processes the [~~such time as both~~]*** payment and ***[~~a~~]*** completed ***Limited*** Employee Registration form ***[~~are received and processed by the board~~]***[~~An employee's ability to work shall be renewed upon:~~

~~(a) The licensee's payment of the twenty (20) dollar renewal fee; and~~

~~(b) Submission of a completed Employee Registration form~~].

Section 5[~~6~~]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Limited Employee Registration", 5/2018***[edition]***[~~KPI 08, 01/2011 edition~~]; and

(b) "Annual Limited Employee[~~Quarterly~~] Report", 5/2018***[edition]***[~~KPI 09, 1/2011 edition~~].

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

BILLY RAY COURSEY, Chair

APPROVED BY AGENCY: May 9, 2018

FILED WITH LRC: May 11, 2018 at 10 a.m.

CONTACT PERSON: R. Quincy Ward, Board Counsel, Office of Legal Services, Public Protection Cabinet, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601. phone (502) 564-7760, fax (502) 564-3969, email quincy.ward@ky.gov.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife
(As Amended at ARRS, July 10, 2018)

301 KAR 2:228. Sandhill crane hunting requirements.

RELATES TO: KRS 150.010, 150.305, 150.340, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.170(3), (4), 150.330, 150.603(2), 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.170(3)(4) authorizes license exemptions for people under twelve (12) and resident owners of farmlands, including their spouses and dependent children who hunt on those farmlands. KRS 150.330 authorizes take and possession of migratory birds when in compliance with the provisions of the Federal Migratory Bird Treaty Act and authorizes hunting of migratory birds with the appropriate permits. KRS 150.603(2) requires a person sixteen (16) years or older to possess a hunting license and a Kentucky migratory game bird and[~~permit or~~] waterfowl permit in order to hunt migratory birds. This administrative regulation establishes the requirements for taking sandhill cranes within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Crane" means a sandhill crane.

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

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

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

Section 2. Applications and Permits. (1) To apply for a crane hunting permit a person shall:

(a) Complete the online application process on the department's Web site at fw.ky.gov[~~http://fw.ky.gov~~] between September 1 and September 30[~~November 15 and November 30~~];

(b) Possess a valid hunting license by September 30, unless the applicant is license exempt pursuant to KRS 150.170[~~Unless exempt pursuant to KRS 150.170, purchase a hunting license by November 30~~];

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

(d) Not apply more than once.

(2) The department shall:

(a) Rank[~~Issue a maximum of 400 crane hunting permits;~~

~~(b) Select~~] each applicant[~~permit recipient~~] with a random electronic draw from all qualified applicants;

(b) Issue a crane hunting permit and one (1) crane tag to all ranked applicants up to the maximum number of crane tags allowed by the United States Fish and Wildlife Service for that season, as established in 50 C.F.R. 20, except that if the number of applicants:

1. Exceeds the maximum number of tags, then those applicants ranking higher than the maximum will not receive a permit; and

2. Is less than the maximum number of tags available, then the additional tags will be assigned to applicants in the order of ranking until all tags are assigned;

(c) Issue each permit via the department's Web site at fw.ky.gov[~~http://fw.ky.gov~~];

(d) Issue the appropriate number of[~~two (2)~~] metal leg tags to each permit recipient prior to the crane hunting season; and[~~.~~]

(e) Disqualify an applicant who does not possess a hunting license prior to September[~~November~~] 30, unless the applicant is license exempt pursuant to[~~exempted by~~] KRS 150.170.[~~; and~~]

(3) A person who does not have access to the internet may call the department's toll-free number at 1-800-858-1549 for assistance in applying.

(4) A crane hunting permit shall not be transferable.

(5) A person selected to receive a permit shall pass a bird identification test provided by the department prior to receiving a permit.[~~;~~]

(6) A permit recipient shall complete and submit a post-season crane hunting survey on the department's website no later than fourteen (14) days after the close of the season[~~January 25~~].

(7) A person who fails to complete the post-season survey by the date specified in subsection 6 of this section shall be ineligible to be drawn the following year.

Section 3. Season, Bag Limits, and Hunting Requirements. (1) Unless license exempt pursuant to[~~exempted by~~] KRS 150.170, a person shall not hunt a crane without a:

(a)[~~A~~] Valid Kentucky hunting license;

(b)[~~A~~] Valid Kentucky crane hunting permit; and

(c)[~~A~~] Kentucky migratory game bird and waterfowl permit[~~; or~~

~~(d) A Kentucky waterfowl permit~~].

(2) A permit recipient shall possess a printed copy of a valid crane hunting permit:

(a) While crane hunting; and

(b) When in possession of a harvested crane.

(3) The season shall be for fifty-six (56) consecutive days ending on the last Sunday in January of the following year[~~:~~

~~(a) Begin on the Saturday closest to December 15 for thirty (30) consecutive days; or~~

~~(b) End at sunset on the day when a harvest of 400 cranes is projected to be attained;~~

~~(4) The department shall notify hunters on the day that the crane season has closed by:~~

~~(a) Providing a pre-recorded message on the department's toll-free number at 1-800-858-1549; and~~

~~(b) Posting the closure on the department's website.~~

~~(5) A permit recipient shall be responsible for checking if the crane season is closed on a daily basis prior to hunting cranes~~].

(4)[~~(6)~~] The[~~season~~] bag limit shall be:

(a) Two (2) cranes daily for permit holders with two (2) or more crane tags; or

(b) One (1) crane for permit holders with one (1) tag[~~per person~~].

(5)[~~(7)~~] A person shall only hunt cranes from sunrise to sunset.

(6)[~~(8)~~] A person who has harvested a crane shall attach a department-issued metal tag to the leg of the crane prior to moving the carcass.

(7) A person shall check a harvested crane on the day the crane is harvested by:

(a)[~~Attaching one of the department-issued metal tags to the leg of the harvested crane prior to moving the carcass;~~

~~(b)~~] Calling 800-245-4263 and providing the information requested by the automated check-in system; or

(b) Completing the check-in process on the department's Web site at fw.ky.gov[~~1-877-245-4263 on the day the crane is harvested~~]; and

(c)[~~Providing the information requested by the automated check-in system; and~~

~~(d)~~] Recording and retaining the check-in confirmation number

for the rest of the current season.

(8)[~~(9)~~] A hunter who has harvested a crane shall possess the check-in confirmation number when in the field during the current season.

(9)[~~(10)~~] A person shall not knowingly falsify the harvest of a crane on the automated check-in system.

(10)[~~(11)~~] A person hunting cranes shall not use or possess a shotgun shell containing:

(a) Lead shot; or

(b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting.

(11)[~~(12)~~] A person shall not use the following to take cranes:

(a) A shotgun larger than ten (10) gauge;

(b) A shotgun shell larger than three and one-half (31/2) inches; or

(c) A shotgun shell with shot larger than size "T".

(12)[~~(14)~~][~~(13)~~] A person hunting a crane on a Wildlife Management Area shall comply with the applicable WMA waterfowl hunting requirements, pursuant to 301 KAR 2:222, except that on Barren River WMA crane hunting shall be prohibited within 100 yards of the normal summer pool level of 552 feet in the[~~following~~] embayments established in paragraphs (a) through (c) of this subsection:

(a) Beaver Creek;

(b) Peters Creek; and

(c) Skaggs Creek.

(13) On Green River Lake, crane hunting shall be prohibited within 100 yards of the normal summer pool level of 675 feet, east of the Hwy 551 bridge in the embayments established in paragraphs (a) and (b) of this subsection:

(a) Green River to the Snake Creek Boat Ramp; and

(b) Casey Creek to the Hwy 76 bridge.

FRANK JEMLEY, Acting Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: April 11, 2018

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

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, July 10, 2018)

501 KAR 6:070. Kentucky Correctional Institution for Women.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Kentucky Correctional Institution for Women.

Section 1. Incorporation by Reference. (1) "Kentucky Correctional Institution for Women Policies and Procedures", ***July 10[~~May 15~~]***, 2018[~~March 10, 2015~~], are incorporated by reference. Kentucky Correctional Institution for Women Policies and Procedures include:

KCIW 01-03-01 Communications Between Staff and Inmates (Amended 2/14/13)
KCIW 01-08-01 News Media Access (Amended 2/14/13)
KCIW 02-04-01 Accounting Procedures (Amended 2/14/13)
KCIW 02-05-01 Inmate Canteen and Staff Canteen (Amended 5/15/18[~~2/14/13~~])
KCIW 05-01-01 Outside Consultation, Research and Student Interns (Amended 2/14/13)
KCIW 06-01-01 Offender Information (Amended 5/14/13)
KCIW 08-02-01 Fire Safety Practices (Amended 2/14/13)
KCIW 08-02-02 Fire Evacuation Routes (Amended 5/15/18[~~11/25/13~~])
KCIW 09-01-02 Inmate Move Sheet (Amended 2/14/13)
KCIW 09-06-04 Regulation of Inmate Movement (Amended 5/15/18[~~2/14/13~~])
KCIW 09-06-05 State Vehicles and Private Vehicles (Added ***7/10/18[~~5/15/18~~]***)
KCIW 09-10-01 Pedestrian and Vehicular Traffic (Amended 11/25/2013)
KCIW 09-10-02 Inmate Entry and Exit Procedure (Amended 5/14/13)
KCIW 09-11-01 Prohibiting Inmate Authority Over Other Inmates (Amended 2/14/13)
KCIW 09-12-01 Search Plan (Amended 12/29/2014)
KCIW 09-13-01 Tobacco Free Environment (Amended 11/25/13)
KCIW 09-13-02 Alcohol Detection (Amended 5/14/13)
KCIW 10-01-01 ***Restrictive Housing[~~Special Management~~]*** Unit General Operations and Regulations (Amended ***7/10/18[~~5/15/18~~]***[~~3/10/15~~])
KCIW 10-01-02 ***Restrictive Housing[~~Special Management~~]*** Unit Status, Placement and Review (Amended ***7/10/18[~~5/15/18~~]***[~~2/14/13~~])
KCIW 10-01-04 Death Row (Amended ***7/10/18[~~5/15/18~~]***[~~2/14/13~~])
KCIW 11-02-01 Menu Preparation and Special Diets (Amended 2/14/13)
KCIW 11-03-01 Food Service Operations (Amended 5/15/18[~~2/14/13~~])
KCIW 11-04-01 Health Regulations and General Guidelines for the Food Service Area (Amended 12/29/2014)
KCIW 11-07-01 Special Religious Diets (Amended ***7/10/18[~~5/15/18~~]***[~~2/14/13~~])
KCIW 12-01-01 Laundry, Clothing, and Personal Hygiene (Amended 5/15/18[~~3/10/15~~])
KCIW 12-02-01 Pest Control (Amended 12/29/[~~20~~]14)
KCIW 12-04-04 Sanitation Plan (Amended 5/15/18[~~11/25/13~~])
KCIW 13-01-01 Provision of Medical and Dental Care (Amended 11/25/13)
KCIW 13-01-02 Health Appraisal and Periodic Exams (Amended 2/14/13)
KCIW 13-01-03 Pharmaceutical Services (Amended 11/25/13)
KCIW 13-02-01 Family Notification (Amended 5/14/13)
KCIW 13-03-01 Emergency Care (Amended 2/14/13)
KCIW 13-03-02 Convalescent and Chronic Care (Amended 2/14/13)
KCIW 13-04-02 Psychiatric and Psychological Services (Amended 3/10/15)
KCIW 13-07-01 Detoxification and Alcohol or Chemical Dependency (Amended 2/14/13)
KCIW 13-09-01 Suicide Prevention and Intervention Program (Amended 2/14/13)
KCIW 13-09-02 Inmate Observer Program (Amended 2/14/13)
KCIW 13-13-01 Health Care Records (Amended 11/25/13)
KCIW 13-14-01 Health Services (Amended 2/14/13)
KCIW 13-14-02 Operational Guidelines for the Mental Health Area of the Lonnie Watson Center (Amended 11/25/[~~20~~]13)
KCIW 13-14-04 Injury Prevention (Added 2/14/13)
KCIW 14-02-01 Access to Legal Resources and Services (Amended 5/15/18[~~12/29/2014~~])
KCIW 15-06-01 Restriction Guidelines (Amended 2/14/13)
KCIW 16-01-01 Inmate Correspondence (Amended ***7/10/18[~~5/15/18~~]***[~~12/29/2014~~])
KCIW 16-02-01 Access to Telephones (Amended 2/14/13)
KCIW 16-03-01 Inmate Visiting (Amended 5/15/18[~~3/10/15~~])
KCIW 16-05-01 Inmate Packages (Amended 5/15/18[~~12/29/2014~~])
KCIW 17-01-01 Assessment Center Operations and Programs

(Amended 5/15/18[~~5/14/13~~])
KCIW 17-02-01 Admission Procedure (Amended 2/14/13)
KCIW 17-05-01 Inmate Personal Property (Amended ***7/10/18[~~5/15/18~~]***[~~5/14/13~~])
KCIW 18-01-01 Inmate Classification (Amended 11/25/13)
KCIW 18-01-03 Honor Program (Amended 5/15/18[~~2/14/13~~])
KCIW 18-05-01 Special Needs Inmates (Amended 5/15/18[~~11/25/13~~])
KCIW 18-05-02 Youthful Offender (Added 12/15/14)
KCIW 18-05-03 Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) (Amended 5/15/18[~~3/10/15~~])
KCIW 19-01-01 Inmate Work and Program Assignments (Amended 5/15/18[~~12/29/2014~~])
KCIW 19-02-01 Governmental Services (Amended 2/14/13)
KCIW 19-03-01 Landscape and Maintenance Work Details (Amended 2/14/13)
KCIW 19-04-01 Correctional Industries (Amended 5/15/18[~~12/29/2014~~])
KCIW 20-01-01 Educational Programs (Amended ***7/10/18[~~5/15/18~~]***[~~12/29/2014~~])
KCIW 21-01-01 Library Services (Amended 3/10/15)
KCIW 22-01-01 Recreation and Inmate Activity (Amended 11/25/13)
KCIW 22-01-02 Arts and Crafts Program (Amended 2/14/13)
KCIW 22-01-04 Inmate Club Activities (Amended 11/25/13)
KCIW 23-01-01 Religious Services (Amended 12/29/2014)
KCIW 24-01-01 Social Services Program (Amended 2/14/13)
KCIW 24-02-01 Substance Abuse Program (Amended 2/14/13)
KCIW 25-02-01 Temporary Release and Community Release (Amended 5/14/13)
KCIW 25-03-01 Funeral Home Visit or Bedside Visit (Amended 2/14/13)
KCIW 26-01-01 Volunteer Service Program (Amended 2/14/13)

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JAMES ERWIN, Commissioner

APPROVED BY AGENCY: May 8, 2018

FILED WITH LRC: May 15, 2018 at 11 a.m.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegsContact@ky.gov.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Code Enforcement
(As Amended at ARRS, July 10, 2018)

815 KAR 7:110. Criteria for expanded local jurisdiction.

RELATES TO: KRS 67A, 67C, 82.105(1), 83, 83A, 198B.040(7), 198B.050, 198B.060, 198B.070, 212.626(5), 227.489[~~236.318~~]

STATUTORY AUTHORITY: KRS 198B.050(5), 198B.060(5), (6), (18)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.060(5) and (6) authorize a local government to petition the commissioner to request additional plan review and inspection functions[~~to be allocated~~]. This administrative regulation establishes the requirements for local governments[~~building departments~~] to request and be granted expanded jurisdiction for building code plan review and inspection[~~jurisdiction by the department~~].

Section 1. Definitions. (1) "Local governing body" means the chief governing body of a city, county, consolidated local government, or urban-county having legislative powers.

(2) "Local government" means:

(a) A city, as established by KRS Chapters 67A, 67C, 83, and 83A;

(b) A county, as defined by KRS 212.626(5);

(c) A consolidated local government; or[~~and~~]

(d) An urban-county government.

Section 2. Uniform Criteria for Granting Expanded Jurisdiction.[~~To apply for expanded jurisdiction pursuant to KRS 198B.060(5), a local government shall comply with the requirements established in this section.~~] (1) Inspector requirements. A local government shall employ or execute a legal contract with at least one (1):

(a) Individual certified as a building inspector, level III, in accordance with 815 KAR 7:070. The building inspector, level III, shall be responsible for reviewing plans, reviewing specifications, and performing building inspections; and

(b) Certified electrical inspector in accordance with KRS 227.489 and 815 KAR 35:015. The certified electrical inspector shall enforce the National Electric Code (NFPA 70) as adopted and incorporated into the Kentucky Building Code and Kentucky Residential Code[~~An authorized representative of a local government shall complete the Application for Local Expanded Jurisdiction, Form BCE/EJ #1, and submit it to the department together with the supporting documentation required by this administrative regulation~~].

(2) Record retention[~~Certified inspectors required~~].

(a) The local government shall be responsible for maintaining all records in compliance with the department's record retention schedule in accordance with 725 KAR 1:061[~~certify that it employs or contracts with a person, firm, or company to perform the plan reviews, specifications, and building inspection functions granted to the local government~~].

(b) If the local government contracts with a person, firm, or company to perform plan and specification inspections or building inspection functions pursuant to KRS 198B.060(15), the local government shall be responsible for the records produced by the person, firm, or company in compliance with paragraph (a) of this subsection[~~employ or execute a legal contract with at least one (1) person certified as a building inspector level III, pursuant to 815 KAR 7:070. The building inspector level III shall be responsible for reviewing plans, reviewing specifications, and performing building inspections.~~

~~(c) The local government shall employ or execute a legal contract with a certified electrical inspector to enforce the National Electric Code (NFPA 70) as adopted and incorporated into the Kentucky Building Code (815 KAR 7:120) and Kentucky Residential Code (815 KAR 7:125)~~].

(3) Minimum jurisdiction responsibilities. The local government shall maintain the minimum responsibilities required by KRS 198B.060(2), unless ***additional responsibilities are*** specifically agreed ***upon[~~otherwise~~]*** in writing between the local government and the department ***pursuant to KRS 198B.060(5) and this administrative regulation***[~~Additional personnel. A complete list of code enforcement personnel, including the building inspector level III and certified electrical inspector, employed or contracted with to enforce the code within the expanded jurisdiction shall be submitted with the application. The list of personnel shall include the name, job title, and certification status of each individual~~].

(4)[~~Construction activity. The local government shall provide documentation of the permits issued and fees collected for the previous calendar year, if any, and an estimation of the anticipated increase in activity if granted expanded jurisdictional authority.~~

~~(5) Local government contracts.~~

~~(a) If a local government associates with other local governments to share plan and specifications inspection or building functions pursuant to KRS 198B.060(15), the documentation of permit and fee activity required by subsection (4) of this section shall be provided by the applicant; or~~

~~(b) If a local government contracts with a person, firm, or company to provide plan and specification inspections or building inspection functions, and the person, firm, or company, the documentation of permit and fee activity required by subsection (4) of this section shall be provided by the applicant.~~

~~(6) Official contact person. The local government shall identify and provide the:~~

~~(a) Name and title of the chief building code official;~~

~~(b) Name of the department;~~

~~(c) Official mailing address;~~

~~(d) Phone number;~~

~~(e) Fax number; and~~

~~(f) E-mail address, if applicable.~~

~~(7) Inclusions and exclusions.~~

~~(a) Application for expanded jurisdiction pursuant to KRS 198B.060(5) shall include a:~~

~~1. List of each building occupancy classification and size for which expanded jurisdiction is requested;~~

~~2. List of each building occupancy classification and size for which expanded jurisdiction is not requested;~~

~~3. Copy of the local ordinance requiring single family dwelling plan review and inspection within the jurisdiction; and~~

~~4. Copy of the schedule of fees as adopted by the local governing body.~~

~~(b) The minimum responsibilities required by KRS 198B.060(2) shall be maintained by the local government, unless specifically agreed otherwise in writing between the local government and the department.~~

~~(8)~~] State jurisdiction. The department shall retain plan review, inspection, and enforcement responsibility pursuant to the Kentucky Building Code, 815 KAR 7:120, for all buildings that are:

(a) Institutional buildings;

(b) Educational buildings[~~, unless specifically agreed in writing by the local government and the department~~];

(c) Licensed facilities as mandated by the Cabinet for Health and Family Services, including day care centers, hospitals, and nursing homes;

(d) State-owned and state-leased buildings and facilities;

(e) High-hazard occupancies, unless specifically agreed in writing by the local government and the department; and

(f) Industrialized building systems (including modular homes), except for site placement and assembly of individual modular homes. A local government may permit placement and assembly locally. Local placement and assembly shall not commence until the local government submits written notification to the department for each placement.

Section 3. Application for Expanded Jurisdiction. (1) Application. An authorized representative of a local government shall submit to the department:

(a) A completed Application for Local Expanded Jurisdiction, Form BCE/EJ #1;

(b) An affidavit certifying the local government employs or contracts with a certified building inspector, level III, and a certified electrical inspector, and the name and job title for each inspector;

(c) A complete list of code enforcement personnel employed by or contracted with the local government, including the name, job title, and certification status of each individual;

(d) Documentation of all permits issued and fees collected for the previous calendar year, if any, and an estimation of the anticipated increase in activity if granted expanded jurisdictional authority;

(e) A complete list of each:

1. Building occupancy, classification, and size for which expanded jurisdiction is requested; and

2. Building occupancy, classification, and size for which expanded jurisdiction is not requested;

(f) A copy of the local ordinance requiring single-family dwelling plan review and inspection within the jurisdiction;

(g) A copy of the schedule of relevant fees adopted by the local governing body;

(h) A copy of any agreement between the applicant and another local government pursuant to KRS 198B.060(14); and

(i) A copy of any agreement between the applicant and any person, firm, or company to perform plan and specification inspections or building inspection functions pursuant to KRS 198B.060(15).

(2) Expanded jurisdiction agreement.

(a) If the application is approved by the department, the department and the local government shall enter into an expanded jurisdiction agreement.

(b) Each agreement for expanded jurisdiction shall be in effect for three (3) years, unless:

1. Canceled by one or both parties in writing; or

2. Preempted in whole or in part pursuant to subsection (1) of this section.

(c) The local government shall notify the department within thirty (30) days of any changes in personnel or fees that differ from the terms of the agreement.

Section 4. Procedures for Maintaining Expanded Jurisdiction. (1) Renewal.[~~The department shall monitor the program of each local government granted expanded jurisdiction responsibilities. If a local government is found to be in violation of the requirements of this administrative regulation, the Kentucky Building Code, 815 KAR 7:120, the Kentucky Residential Code, 815 KAR 7:125, the terms of the applicable expanded jurisdiction agreement, or KRS Chapters 198B, 236, or 318, the local government shall be subject to preemption, in whole or in part, by the department.~~

~~(2) Each agreement for expanded jurisdiction shall be in effect for three (3) years, unless:~~

~~(a) Canceled by agreement of the parties in writing; or~~

~~(b) Preempted in whole or in part pursuant to subsection (1) of this section.~~

~~(3)(a) The local government shall notify the department, within thirty (30) days of changes in personnel or fees during the terms of the agreement.~~

~~(b) Failure to notify the department of changes may result in the revocation of expanded jurisdiction responsibilities pursuant to KRS 198B.060(4).~~

~~(4)~~] Before the expiration of the[~~three (3) year~~] agreement[~~for expanded jurisdiction~~], the local jurisdiction shall submit a Renewal[~~Renewable~~] Application for Expanded Jurisdiction on Form BCE/EJ #2. The renewal application shall include the submissions required by Section 3 of this administrative regulation.

(2) Renewal application review.[~~contain a:~~

~~(a) List of each building occupancy classification and size for which expanded jurisdiction is requested to continue;~~

~~(b) List of each building occupancy classification and size for which expanded jurisdiction is not requested;~~

~~(c) Copy of the local ordinance, if different than submitted with previous application requiring single family dwelling plan review and inspection within the jurisdiction; and~~

~~(d) Copy of the current schedule of fee as adopted by the local governing body.~~

~~(5)~~] After receiving and reviewing the local government's application for renewal, the department shall:

(a) Reevaluate the building code enforcement program of the local government; and

(b)[~~Either~~] Renew the local government's expanded jurisdiction agreement or deny the renewal request within forty-five (45) days of receiving the local program's renewal application and supporting documentation.

(3) Expanded jurisdiction monitoring. The department shall monitor the program of each local government granted expanded jurisdiction responsibilities. If a local government violates the requirements of this administrative regulation, the Kentucky Building Code, 815 KAR 7:120, the Kentucky Residential Code, 815 KAR 7:125, the terms of the expanded jurisdiction agreement, or KRS Chapters 198B, 236, or 318, the local government shall be subject to preemption, in whole or in part, by the department.

(4)[~~(6) The department shall report to the Board of Housing, Buildings, and Construction the department's decision regarding the renewal of expanded building code enforcement program of the local government.~~

~~(7)~~] The department shall retain plan review, inspection, and enforcement responsibility pursuant to the Kentucky Building Code, 815 KAR 7:120, for all buildings as specified in the original agreement for expanded local jurisdiction with the local government.

Section 5[~~4~~]. Local Appeals Board. (1) The local government with expanded jurisdiction may establish a local appeals board. A local appeals board shall operate in accordance with KRS 198B.070.

(2) If the local government establishes a local appeals board, the local government shall send a written notice to the department, which shall:

(a) Identify each member by name and qualifications for being appointed to the appeals board; and

(b) Include contact information for the local appeals board.

(3) If a local appeals board is not established, all costs incurred by the department[~~and Board of Housing, Buildings, and Construction~~] to conduct hearings for appeals filed pursuant to KRS 198B.070(5) shall be charged to the local government.

Section 6[~~5~~]. One (1) and Two (2) Family Dwellings. (1) The local building inspection program shall not include the plan review and inspection for one (1) and two (2) family dwellings that are:

(a) Manufactured homes;

(b) Modular homes; or

(c) Farm dwellings.

(2) The local building inspection program shall include permits and inspections for the foundation system and other on-site construction related to modular home installations.

Section 7[~~6~~]. Incorporation by Reference. (1) The following material incorporated by reference:

(a) "Application for Local Expanded Jurisdiction", Form BCE/EJ #1, May 2018[~~December 2012~~]; and

(b) "Renewal Application for Expanded Jurisdiction", Form BCE/EJ #2, May 2018[~~December 2012~~].

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN A. MILBY, Commissioner
DAVID A. DICKERSON, Secretary
APPROVED BY AGENCY: April 12, 2018
FILED WITH LRC: April 13, 2018 at 9 a.m.
CONTACT PERSON: David Startsman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone: 502-573-0365, fax 502-573-1057, email david.startsman@ky.gov.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Heating, Ventilation and Air Conditioning
(As Amended at ARRS, July 10, 2018)

815 KAR 8:070. Installation permits.

RELATES TO: KRS 198B.654, ***198B.6671-[~~198B.6673, 198B.6674,~~]***198B.6678, Chapter 236

STATUTORY AUTHORITY: KRS 198B.654***(1)(a), 198B.6673(1)[~~, 198B.6671, 198B.6672, 198B.6673, [198B.6674,] 198B.6675, 198B.6676, 198B.6677, 198B.6678~~]***

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654***(1)(a)*** requires the department[~~Board of Heating, Ventilation and Air Conditioning Contractors~~] to promulgate administrative regulations to administer, coordinate, and enforce [~~for the enforcement, administration and coordination of~~] KRS 198B.650 through 198B.689. KRS 198B.6673***(1)*** requires the department[~~board~~] to establish a reasonable schedule of fees***[~~and charges~~]*** to be paid for HVAC installation permits and inspections. This administrative regulation establishes the process, procedures, ***and*** fees***[~~, and charges~~]*** for obtaining HVAC installation permits in Kentucky.

Section 1. Permit Required. (1) An HVAC installation permit shall be required for the initial heating, ventilation, or air conditioning system:

(a) For all new construction installations of heating, ventilation, or air conditioning systems;

(b) For all construction additions in which an additional heating, ventilation, or air conditioning system is installed; and

(c) For all existing buildings in which the first heating, ventilation, or air conditioning system is being installed.

(2) Permit application. An application shall be made for a permit prior to installation on the appropriate form:

(a) HVAC Construction Permit Application: Commercial Buildings;

(b) HVAC Construction Permit Application: Multi-family Dwellings;

(c) HVAC Construction Permit Application: One & Two Family Dwellings; or

(d) HVAC Construction Permit Application: Homeowner One & Two Family Dwellings.

Section 2. Issuance of HVAC***[~~Installation~~]*** Permits. (1) A permit to construct, install, or alter a heating, ventilation, or air conditioning system shall only be issued to a licensed master heating, ventilation, and air conditioning contractor, except as provided by subsection (2)[~~subsection (3)~~] of this section.

(2)[~~A journeyman HVAC mechanic shall not construct, install, or alter a heating, ventilation, or air conditioning system unless the work is performed under the supervision of a licensed master HVAC contractor.~~

~~(3)~~] A permit to construct, install, or alter a heating, ventilation, or air conditioning system shall be issued to a homeowner who installs a heating, ventilation, or air conditioning system in the homeowner's legal residence or in a home constructed by a homeowner for personal residential use, if all the requirements of this subsection are met.

(a) Application for the permit shall be made on the HVAC Construction Permit Application: Homeowner One (1) & Two (2) Family Dwellings[~~, for the permit~~] prior to the initiation of the HVAC work.

(b) The homeowner shall file with the application:

1. An affidavit stating that the homeowner shall abide by the terms of this administrative regulation;

2. Proof of adequate sizing of heating, ventilation, or air conditioning system to be installed; and

3. A complete design plan of all related duct and piping of system.

(c) All work shall be performed in compliance with the Kentucky Residential Code in 815 KAR 7:125 and the Kentucky Building Code in 815 KAR 7:120.

(d) All the work shall be personally performed by the owner.

(3)[~~(4)~~] Only one (1) homeowner HVAC construction permit[~~permit for construction of a new home~~] shall be issued to an individual within a five (5) year period. [~~Section 2. Permit Required. (1) An application shall be made for a permit prior to installation on the:~~

~~(a) HVAC Construction Permit Application: Commercial Buildings;~~

~~(b) HVAC Construction Permit Application: Multi-family Dwellings; or~~

~~(c) HVAC Construction Permit Application: One & Two Family Dwellings.~~

~~(2) An HVAC installation permit shall be required for the initial heating, ventilation, or air conditioning system:~~

~~(a) For all new construction installations of heating, ventilation, or air conditioning systems;~~

~~(b) For construction additions in which an additional heating, ventilation, or air conditioning system is installed;~~

~~(c) For all existing buildings in which the first heating, ventilation, or air conditioning system is being installed; and~~

~~(d) For projects in which a contractor assumes responsibility to:~~

~~1. Make corrections;~~

~~2. Test an installation performed by another contractor; or~~

~~3. Install a system for which another master contractor has obtained a permit.~~]

Section 3. Issuance of HVAC Related Permits. (1) A permit

shall be issued and inspections performed upon request for the replacement of:

(a)[~~(1)~~] Furnaces;

(b)[~~(2)~~] Condensing units;

(c)[~~(3)~~] Heat pumps;

(d)[~~(4)~~] Fan coil units;

(e)[~~(5)~~] Chiller systems; or

(f)[~~(6)~~] Heating boiler systems not covered by KRS Chapter 236.

(2) An HVAC correction and testing permit may be requested for projects in which a contractor assumes responsibility to:

(a) Make corrections;

(b) Test an installation performed by another contractor; or

(c) Install a system for which another master contractor has obtained a permit.

Section 4.[~~HVAC Installation~~] Permit Fees. (1) One (1)- and Two (2)- Family Dwelling Installations and Homeowner permits. The fee for each heating, ventilation, or air conditioning system installation permit for one (1)- and two (2)- family dwellings and Homeowner permits shall be $105 for the first system plus fifty (50) dollars for each additional system.

(2) Multi-Family Dwelling Installations. The fee for each heating, ventilation, or air conditioning system installation permit for multi-family dwellings other than duplexes, shall be $105 for the first system plus fifty (50) dollars for each additional system.

(3) Commercial installations.

(a) The fee for each heating, ventilation, or air conditioning system installation permit other than one (1), two (2), and multi-family dwellings shall be based upon the total dollar value of each HVAC installation, either actual or estimated.

(b) 1. The[~~It shall be the obligation of the~~] installing contractor shall[~~to~~] supply the total dollar[~~complete~~] value of the installation, including labor and material costs regardless of the purchaser.

2. Except as provided in subparagraph 3b of this paragraph, an exact figure does not need to be quoted or divulged to the HVAC inspector or department.

3. The permit application shall include a statement signed by the applicant affirming that the total dollar[~~true~~] value of the installation lies within certain limits, as listed in the left column of the table in clause c of this subparagraph and as established in clause d of this subparagraph.

a. The fees for heating, ventilation, or air conditioning system installation are listed in the right column of the table.

b. The department may request documented proof of costs from the permit applicant if the true value is in question.

c. The permit fee shall be calculated as follows:

Amount in dollars	Permit fee
$2,000 or less	$125
$2,001 to $10,000	$180
$10,001 to $25,000	$270
$25,001 to $50,000	$330
$50,001 to $75,000	$390
$75,001 to $100,000	$500
$100,001 to $150,000	$630
$150,001 to $200,000	$760
$200,001 to $250,000	$885
$250,001 to $300,000	$1,025
$300,001 to $400,000	$1,150
$400,001 to $500,000	$1,500
$500,001 to $600,000	$1,725
$600,001 to $700,000	$1,900
$700,001 to $800,000	$2,125
$800,001 to $900,000	$2,355
$900,001 to $1,000,000	$2,590
$1,000,001 to $1,100,000	$2,820
$1,100,001 to $1,200,000	$3,050
$1,200,001 to $1,300,000	$3,280
$1,300,001 to $1,400,000	$3,510
$1,400,001 to $1,500,000	$3,735
$1,500,001 to $1,600,000	$3,965

d. The permit for a commercial installation valued over $1,600,000 shall be calculated at the cost of $3,965 plus $200 per $100,000 or fraction thereof in excess of $1,600,000.

(4) Request permit fees. (a) One (1) and two (2) family dwelling and homeowner. A permit request pursuant to Section 3(1) of this administrative regulation for a one ***(1)*** or two ***(2)*** family dwelling, or by a homeowner shall be seventy-five (75) dollars.

(b) Commercial. The fee for a permit requested pursuant to Section 3(1) of this administrative regulation for a commercial project shall be calculated the same as subsection (3) of this section.

(5) Correction and Testing Permits. The correction and testing permit fee shall be[~~the base fee of~~] seventy-five (75) dollars if[~~the~~] application for a permit does not include any new installation[~~, but is to make corrections or provide testing for an installation made by someone else~~].

Section 5. Inspection Fees. (1) Each heating, ventilation, or air conditioning system permit shall include three (3) heating, ventilation, or air conditioning system inspections at no additional cost.

(2)(a) A heating, ventilation, or air conditioning system inspection in excess of the three (3) provided with purchase of permit shall be performed at the rate of fifty (50) dollars per inspection.

(b) Payment shall be received by the inspecting authority prior to the final inspection approval being granted.

Section 6. Expiration of Permits. (1) A heating, ventilation, or air conditioning system installation permit issued under this administrative regulation shall expire six (6) months after the date of issuance unless the permitted work has begun.

(2) If construction begins within six (6) months of permit issuance:

(a) The permit shall be effective until completion of the planned heating, ventilation, or air conditioning system inspection; or

(b) If the work ceases on a permitted project for a period exceeding twelve (12) months, the permit shall be void.

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

(a)[~~HVAC-27,~~] "HVAC Construction Permit Application: Commercial Buildings", Form HVAC 27, April 2018[~~September 2014~~];

(b)[~~HVAC-28,~~] "HVAC Construction Permit Application: Multi-family Dwellings", Form HVAC 28, April 2018;[~~September 2014; and~~]

(c)[~~HVAC-29,~~] "HVAC Construction Permit Application: One (1) & Two (2) Family Dwellings", Form HVAC 29, April 2018; and [~~September 2014~~]

(d) "HVAC Construction Permit Application: Homeowner One (1) & Two (2) Family Dwellings", Form HVAC 30, April 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the[~~Kentucky~~] Department of Housing, Buildings, and Construction, Division of Heating, Ventilation, and Air Conditioning, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8:30 a.m. to 4:30 p.m.

STEVEN A. MILBY, Commissioner
DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: April 12, 2018

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

CONTACT PERSON: David R. Startsman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startsman@ky.gov.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Heating, Ventilation and Air Conditioning
(As Amended at ARRS, July 10, 2018)

815 KAR 8:080. Inspections and tests.

RELATES TO: KRS 198B.6671, 198B.6672, 198B.6673, 198B.6674, 198B.6675, 198B.6676, 198B.6677, 198B.6678[~~, EO 2009-535~~]

STATUTORY AUTHORITY: KRS 198B.654***(1)***,***[~~198B.6671,~~]*** 198B.6673, 198B.6675[~~EO 2009-535~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654***(1) requires[~~authorizes~~]*** the department[~~Board of Heating, Ventilation and Air Conditioning contractors~~] to promulgate administrative regulations to administer, coordinate, and enforce KRS 198B.650-***198B.689[~~689~~]***.[~~EO 2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department.~~] This administrative regulation establishes the requirements for the tests and inspections[~~that are~~] necessary to ensure compliance with the Uniform State Building Codes.

Section 1. Inspections. (1) The department or authorized local HVAC permitting and inspection program shall inspect the following initial installations to ensure compliance with the Uniform State Building Code and the Uniform State Residential Code:

[~~(1)~~](a) Air conditioning or cooling system;

(b) Heating system; [~~and~~]

(c) Residential exhaust and ventilation systems;

(d) Commercial exhaust and ventilation systems, other than commercial range hood exhaust systems; and

(e) Dryer venting[~~Ventilation system; and~~].

(2) Alterations of an HVAC system in a building[~~buildings~~] condemned by a local jurisdiction[~~jurisdictions, alterations of an HVAC system, which~~] shall be considered an initial HVAC system installation.

Section 2. Major Repairs. At the request of a master HVAC contractor or homeowner with purchase of the requisite permit, the department or authorized local HVAC permitting and inspection program may inspect major repairs[~~, if requested and permitted. This shall not pertain to inspections that arise from violations or complaints~~].

Section 3. Access. All access, equipment, and material necessary for inspections and tests shall be provided[~~furnished~~] by the persons obtaining the HVAC installation permit.

Section 4. Conduct of[~~Residential~~] Inspections. (1)***[~~It shall be the responsibility of~~]*** The person who obtained the HVAC installation permit ***shall[~~to~~]*** [~~notify the department or authorized local HVAC permitting and inspection program and~~] request an inspection by the department or authorized local HVAC permitting and inspection program[~~all inspections~~].

(2) For residential inspections:

(a) Prior to, or at the time of the first inspection, sizing calculations shall be provided to the department or authorized local HVAC permitting and inspection program or inspector; and[~~.~~]

(b)[~~(3)~~] The inspector shall verify the:

1.[~~(a)~~] Date of calculation;

2.[~~(b)~~] Orientation of structure;

3.[~~(c)~~] Design conditions;

4.[~~(d)~~] Heat gain;

5.[~~(e)~~] Heat loss;

6.[~~(f)~~] Square footage; and

7.[~~(g)~~] Additional documentation if necessary to support sizing calculations.

(3) For commercial inspections, approved plans shall be made available to an inspector on site during an inspection.

(4)[~~(a)~~] If any portion of the HVAC system is below ground, the underground portion of the system shall be inspected and approved prior to covering.

(5) Rough-in inspections shall be required only if any portion of the system will be covered or concealed. The rough-in inspection shall be conducted prior to covering or concealment.

(6)(a)[~~(b)~~] If[~~conditions require partial coverage of the permitted system, permission shall be requested of and received from the inspector prior to coverage.~~

~~(c) Covering~~] an installation is covered without prior inspection, the inspector shall require[~~approval or permission shall result in the uncovering of~~] the system to be uncovered for inspection, unless unnecessary to perform the inspection[~~or if uncovering the system is likely to result in more damage~~].

(b) If conditions require partial coverage of the permitted system, permission shall be requested of and received from the inspector prior to coverage.

(c) If in the judgment of the inspector uncovering the system is likely to result in more damage, then exposing the system shall only occur at the request of the property owner.

(7)[~~(5)(a) Rough-in inspections shall be conducted on all work prior to covering or concealment.~~

~~(b) If conditions require partial coverage of the permitted system, permission shall be requested of and received from the inspector prior to coverage.~~

~~(c) Covering an installation without approval or permission shall result in the uncovering of the system for inspection, unless unnecessary or if uncovering the system is likely to result in more damage.~~

~~(6)~~] A final inspection shall be conducted after all equipment has been set, in working order, and prior to occupancy.

(8)[~~Section 5. Commercial Inspections. (1) It shall be the responsibility of the person who obtained the HVAC installation permit to notify the department or authorized local HVAC permitting and inspection program and request all inspections.~~

~~(2) Approved plans shall be made available to an inspector on site during an inspection.~~

~~(3)(a) If any portion of the HVAC system is below ground, the underground portion of the system shall be inspected and approved prior to covering.~~

~~(b) If conditions require partial coverage of the permitted system, permission shall be requested of and received from the inspector prior to coverage.~~

~~(c) Covering an installation without approval or permission shall result in the uncovering of the system for inspection, unless unnecessary or if uncovering the system is likely to result in more damage.~~

~~(4)(a) Rough-in inspections shall be conducted on all work prior to covering, concealment, or setting equipment.~~

~~(b) If conditions require partial coverage of the permitted system, permission shall be requested of, and received from the inspector prior to coverage.~~

~~(c) Covering an installation without approval or permission shall result in the uncovering of the system for inspection, unless unnecessary or if uncovering the system is likely to result in more damage.~~

~~(5) A final inspection shall be conducted after all equipment has been set, in working order, and prior to occupancy.~~

~~(6)~~] A partial or temporary final inspection may be conducted if:

(a) The HVAC system's service area of the building is completed; and

(b) The temporary or partial final inspection will not prevent the remaining portion of the system from being inspected.

Section 5.[~~6.~~] Extent of Inspections. (1) Inspections shall include the following:

(a) Heating systems;

(b) Cooling systems;

(c) Residential exhaust and ventilation systems;

(d) Commercial exhaust and ventilation systems, other than commercial range hood exhaust systems; and

(e) Dryer venting.

(2) An inspection shall not include[~~consist of~~] gas piping on the supply side of equipment shut offs.

Section ***6[7]***. Certificate of Approval. Upon the satisfactory completion, in accordance with this administrative regulation, of final inspection of the HVAC system,[~~a certificate of approval shall be issued by~~] the department or authorized local HVAC permitting and inspection program shall issue a certificate of approval.

STEVEN A. MILBY, Commissioner
DAVID A. DICKERSON, Secretary
APPROVED BY AGENCY: April 12, 2018
FILED WITH LRC: April 13, 2018 at 9 a.m.
CONTACT PERSON: David R. Startsman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startsman@ky.gov.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Heating, Ventilation and Air Conditioning
(As Amended at ARRS, July 10, 2018)

815 KAR 8:100. Criteria for local jurisdiction HVAC programs.

RELATES TO: KRS 171.450, 198B.650 - 198B.689
STATUTORY AUTHORITY: KRS ***[171.450,]*** 198B.654(1), 198B.6673***(2)***
NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654(1) requires the department to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 to 198B.689. KRS 198B.6673***(2)*** requires[~~authorizes~~] the department[~~Board of Heating, Ventilation and Air Conditioning Contractors~~] to authorize local governing ***entities[bodies]*** to establish[~~regulate~~] HVAC inspection and permitting programs upon application. This administrative regulation[~~regulations~~] establishes the requirements for local HVAC inspection and permitting programs[~~to operate a program pursuant to board adopted guidelines~~].

Section 1. Uniform Criteria for Authorizing HVAC Inspection and Permitting Program[~~existing as of January 1, 2007~~]. To petition the department[~~Kentucky Board of Heating, Ventilation and Air Conditioning Contractors~~], an individual governing entity or combination of entities applying for approval for an HVAC[~~with an existing HVAC permitting and~~] inspection program shall comply with the requirements established in this administrative regulation[~~section~~]. (1) A local governing entity or combination of entities shall complete [~~Form HVAC 31,~~] Notice of Local HVAC Inspection Program, Form HVAC 31, and submit it to the Department of Housing, Buildings, and Construction, Division of HVAC together with supporting documentation required by this administrative regulation.

(2) Qualified HVAC inspector and plan reviewer required. A[~~The~~] local jurisdiction administering a local HVAC inspection program shall employ a qualified person to perform HVAC installation plan reviews and inspections[~~inspection functions granted to the local government~~]. To be qualified, an inspector shall be licensed or certified in accordance with the provisions of KRS 198B.6673 and 198B.6678[~~198B.650 to 198B.689 at employment and:~~

~~(a) Have at least six (6) years of experience as a Kentucky licensed HVAC journeyman mechanic; or~~

~~(b) Have at least six (6) years of experience as a Kentucky licensed master HVAC contractor; or~~

~~(c) Be a certified building inspector who has successfully passed the examinations relating to HVAC systems as approved and recognized by the department pursuant to 815 KAR Chapter 8~~].

(3)[~~HVAC Plan Review. A local government's inspection program shall include plan review for commercial installations. Plan reviewers shall minimally have the same experience as those persons qualified under subsection two (2) of this administrative regulation.~~

~~(4)~~] Personnel. A complete list of HVAC inspection program personnel, who shall be employed to enforce the HVAC code within the local program's jurisdiction, shall be submitted to the Department of Housing, Buildings[~~,~~] and Construction, Division of HVAC. The list of personnel shall include the name, job title, and certification or license status of each individual.

(4)[~~(5)~~] Installation activity. The local HVAC program shall provide documentation of an estimation of the anticipated plan review, permitting, inspection, and enforcement activities for one (1) year to the Department of Housing Buildings and Construction, Division of HVAC[~~the permits issued and fees collected for the 2006 calendar year, if any, and an estimation of the anticipated activity for the current year~~].

(5)[~~(6)~~] Schedule of fees. Each local inspection program shall adhere to the schedule of fees established in 815 KAR 8:070, Sections 4 and 5, for the permitting and inspection functions performed under the provisions of KRS 198B.6671, 198B.6673, and 815 KAR Chapter 8.

(6)[~~(7)~~] Official contact person. The local government shall identify an individual authorized to correspond with the department[~~:~~

~~(a) The name and title of the chief building code official;~~

~~(b) The name of the department;~~

~~(c) The official mailing address;~~

~~(d) The phone number;~~

~~(e) The fax number; and~~

~~(f) The e-mail address, if applicable~~].

(7)[~~(8)~~] Detailed map required. If a local government's inspection program consists of a portion of a county, a detailed map shall be submitted to the department to identify[~~for clarification of~~] the areas subject to the program.

Section 2.[~~Uniform Criteria for Authorizing a New HVAC Inspection and Permitting Program. To petition the Kentucky Board of Heating, Ventilation and Air Conditioning Contractors, an individual governing entity or combination of entities applying for approval for an HVAC inspection program shall comply with the requirements established in this section.~~

~~(1) A local governing entity or combination of entities shall complete Form HVAC 31, Notice of Local HVAC Inspection Program, and submit it to the Department of Housing, Buildings and Construction, Division of HVAC together with supporting documentation required by this administrative regulation.~~

~~(2) Qualified HVAC inspector required. The local HVAC inspection program shall employ a person to perform HVAC installation inspection functions granted to the local government. To be qualified, an inspector shall be licensed or certified in accordance with the provisions of KRS 198B.650 to 198B.689 at employment and:~~

~~(a) Have at least six (6) years of experience as a Kentucky licensed HVAC journeyman mechanic; or~~

~~(b) Have at least six (6) years of experience as a Kentucky licensed master HVAC contractor; or~~

~~(c) Be a certified building inspector who has successfully passed the examinations relating to HVAC systems.~~

~~(3) HVAC Plan Review. A local government's inspection program shall include plan review for commercial installations. Plan reviewers shall minimally have the same experience as those persons qualified under subsection two (2) of this section of this administrative regulation.~~

~~(4) Personnel. A complete list of HVAC inspection program personnel, who shall be employed to enforce the HVAC code within the local program's jurisdiction, shall be submitted to the department, Division of HVAC. The list of personnel shall include the name, job title, and certification or license status of each individual.~~

~~(5) Installation activity. The local HVAC inspection program shall provide documentation an estimation of the anticipated plan review, permitting, inspection, and enforcement activities for one (1) year.~~

~~(6) Schedule of fees. Each local inspection program shall adhere to the schedule of fees established in 815 KAR 8:070, Sections 4 and 5, for the permitting and inspection functions~~

~~performed under the provisions of KRS 198B.6671, 198B.6673, and 815 KAR Chapter 8.~~

~~(7) Official contact person. The local government shall identify:~~

~~(a) The name and title of the chief building code official;~~

~~(b) The name of the department;~~

~~(c) The official mailing address;~~

~~(d) The phone number;~~

~~(e) The fax number; and~~

~~(f) The e-mail address, if applicable.~~

~~(8) Detailed map required. If a local government's HVAC inspection program consists of a portion of a county, a detailed map shall be submitted to the department for clarification of the areas subject to the program.~~

~~Section 3.~~] Contractual Agreement.***[(1)]*** If the department approves[~~Upon approval of~~] the Notice of Local HVAC Inspection Program[~~by the board~~], the department shall prepare a[~~the~~] contract to be executed by the department and local government to authorize the local HVAC inspection program. The contract shall specify the jurisdictional authority of each entity to provide clarity for the public and to avoid duplication of services.

Section 3.[~~4.~~] State Jurisdiction. The department shall retain plan review, permitting, inspection, and enforcement responsibility in accordance with[~~under~~] the Kentucky Building Code, 815 KAR Chapter 7, for all buildings that are:

(1) Institutional buildings; and

(2) Educational buildings or other facilities required to be licensed by the Cabinet for Health and Family Services, including day care centers, hospitals, and nursing homes, or other similar facilities.

Section 4.[~~5.~~] HVAC Complaints. (1) A local government's inspection program shall:

(a) Address all complaints occurring within the jurisdiction related to HVAC;

(b) Document findings; and

(c) Document resolutions reached, if any.

(2)[~~All documentation of complaints shall be maintained by the local HVAC inspection program for a period of at least three (3) years following resolution.~~

~~(3)~~] If no resolution is reached, the alleged violator may request a hearing on the matter pursuant to KRS Chapter 13B.

Section 5.[~~Unresolved complaints shall be maintained for at least five (5) years following receipt of initial complaint.~~

~~(4) Status summaries of all complaints shall be submitted to the Division of HVAC by the 10th of the following month.~~

~~Section 6.~~] HVAC Violations. (1) A local government's HVAC inspection program shall:

(a) Investigate all violations that occur within the jurisdiction;[~~,~~]

(b) Issue stop work orders;[~~,~~] or

(c) Require other remedial measures upon proof of violations.

(2) Local HVAC inspection programs shall initiate contact with and fully cooperate with county and Commonwealth attorneys regarding court cases resulting from a violation.

(3) A local government inspection program representative shall act as a witness for the department on violations resulting in a hearing pursuant to KRS Chapter 13B.

(4) Violations shall be documented in writing.

Section 6.[~~(5) All documentation of violations shall be maintained by the local HVAC inspection program for a period of at least three (3) years following resolution of the violation or closure of the violation.~~

~~Section 7.~~] Accounting of Fees. (1) A local HVAC inspection program shall maintain an accurate accounting of all HVAC plan review, permitting, and inspection fees.

(2) The fees received shall be deposited no less frequently than monthly in the local government's treasury or otherwise disposed of as required by law.

Section 7.[~~(3) Monthly reports containing the number of commercial permits and number of residential permits issued, cost of each permit, the number of plans reviewed, and the number of inspections made shall be submitted to the Division of HVAC by the tenth of the following month.~~

~~Section 8.~~] Record Retention and Audits. (1) A local HVAC inspection program shall maintain official records of:

(a) Applications received;

(b) Permits and certificates issued;

(c) Fees collected;

(d) Inspection reports; and

(e) Notices and orders issued.

(2) Official records shall be retained for at least the statutory period required for retention of public records pursuant to KRS 171.450.

(3) All documentation of violations and complaints shall be maintained by the local HVAC inspection program ***in compliance with 725 KAR 1:061[~~for a period of at least three (3) years~~]*** following resolution.

(4) Unresolved complaints shall be maintained ***in compliance with 725 KAR 1:061[~~for at least five (5) years~~]*** following receipt of initial complaint.

Section 8.[~~9.~~] Procedures for Maintaining Local HVAC Inspection Program. (1)(a) The department shall monitor the program of local governments [~~that have been~~] granted to a local HVAC inspection and permitting program.

(b) If the local government is found to be in violation of the requirements of this administrative regulation; the Kentucky Building Code, 815 KAR Chapter 7; any terms of their agreement; or KRS Chapter 198B, the department shall cancel the agreement, rescind the local HVAC inspection jurisdiction, and preempt the local program in its entirety[~~, upon approval of the board~~].

(2) Each agreement for local HVAC inspection jurisdiction shall be in effect for three (3) years, unless canceled subject to subsection (1) of this section or[~~:~~

~~(a)~~] by agreement of the parties in writing[~~; or~~

~~(b) Pursuant to subsection (1) of this section~~].

(3) The local government shall notify the department[~~,~~] within thirty (30) days of ***the date of*** any changes in personnel or fees during the contract period.

(4)(a) The department shall review any potential deficiencies of a local government's HVAC inspection program brought to the attention of the department.

(b) A representative of the local HVAC inspection program shall be present during the department's review.

(5)(a)[~~(4)~~] The department shall reevaluate the HVAC inspection program of the local government [~~and make a recommendation to the board~~] regarding continuation of the local inspection program and renewal of the agreement before the expiration of the three (3) year contract with the department.

(b) Upon approval by the department[~~board~~] and the local government, the department shall renew the contractual agreement for three (3) years.

Section 9.[~~10. Program Deficiencies. (1) Deficiencies documented in a local government's HVAC inspection program shall be brought before the board for review and decision.~~

~~(2) The board shall reconsider a local government's HVAC inspection program approval if evidence of incompetence is found, the program requirements are not being met, terms of the contract with the department are violated, or KRS Chapter 198B or 815 KAR Chapter 8 are not being properly enforced.~~

~~(3) A representative of the local HVAC inspection program shall be present during review to address questions and concerns the HVAC board may have.~~

~~Section 11.~~] Incorporation by Reference. (1)[~~Form HVAC 31,~~] "Notice of Local HVAC Inspection Program", Form HVAC 31, April 2018[~~June 2010~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Heating,

Ventilation, and Air Conditioning, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412[~~5405~~], Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN A. MILBY, Commissioner
DAVID A. DICKERSON, Secretary
APPROVED BY AGENCY: April 12, 2018
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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Epidemiology and Health Planning
(As Amended at ARRS, July 10, 2018)

902 KAR 2:055. Immunization data reporting and exchange.

RELATES TO: KRS 158.035, 158.037, 211.090(3),[~~211.180, 214.032-214.036,~~] 45 C.F.R. 164.512(b)
STATUTORY AUTHORITY: KRS[~~158.035, 158.037,~~] 194A.050(1)[~~211.090(3)~~], 211.180(1)(a) and (e), 214.034, 214.036[~~, 45 C.F.R. 164.512(b)~~]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.180 requires the Cabinet for Health and Family Services to implement a statewide program for the detection, prevention and control of communicable diseases. KRS 214.034 requires public or private primary or secondary schools, day-care centers, certified family child-care homes, or any other licensed facility which cares for children to maintain a current immunization certificate on file for each child in attendance, unless exempted by KRS 214.036[~~KRS 158.035 prohibits a child from enrolling as a student in a public or private elementary or secondary school unless the child presents with a current immunization certificate issued by a licensed medical or osteopathic physician or an advanced practice registered nurse. KRS 158.037 requires the Cabinet for Health and Family Services to promulgate administrative regulations for public or private schools to report immunization results to local health departments. 45 C.F.R. 164.512(b), an implementing regulation for the Health Insurance Portability and Accountability Act (HIPAA), Pub. L. 104-191, permits a covered entity to disclose protected health information (PHI) for public health activities and purposes to a public authority that is authorized by law to collect or receive that information for prevention or controlling disease or surveillance. Vaccinations prevent disease and are a core public health function. Reporting vaccination status constitutes infectious disease control and surveillance~~]. This administrative regulation establishes requirements for reporting immunization results in schools by the public health immunization reporting entity and permits recording and exchange of immunization data.

Section 1. Definitions. (1) "Public health immunization reporting entity" means a:
(a) Health care provider;
(b) Health insurer;
(c) Public or private kindergarten, elementary, or secondary school;
(d) Childcare facility;
(e) Preschool;
(f) Public or private postsecondary educational institution; or
(g) State or local health department.
(2) "Public health interest" means[~~participation in~~] core public health functions of[~~such as~~]:
(a) Surveillance;
(b) Data collection;
(c) Vaccination;
(d) Vaccination certification;[~~or~~]
(e) Prevention of communicable diseases for the protection of the public's health and safety; and
(f) Outbreak investigation.

Section 2. Immunization Reporting. (1) Kindergartens and public and private elementary and secondary schools shall submit to the local health department in their area immunization results for:
(a) Kindergarten;
(b) Seventh grade;
(c) Eleventh grade; and
(d) Twelfth grade only for the first twelve (12) months after the effective date of this administrative regulation.[~~kindergartens, seventh~~][and sixth]***[~~grades, eleventh grades; and~~***
[~~(2) Twelfth grades only for the first twelve (12) months this administrative regulation is effective~~][on the:
(a) Commonwealth of Kentucky School/Facility Annual Immunization Survey: Kindergarten; and
(b) Commonwealth of Kentucky School/Facility Annual Immunization Survey: Sixth Grade].
(2)[(3)][(2)] The annual survey shall include the number of:
(a) Students in the grade surveyed;
(b) Missing immunization records;
(c) Religious exemptions declinations;
(d) Medical exemptions;[~~and~~]
(e) Children who have received age-appropriate immunizations; and
(f) Vaccine-specific exemptions.
(3)[(4)] All immunization reporting for the annual school survey shall be submitted using an electronic reporting system provided by the Kentucky Department for Public Health.

Section 3. Immunization Data Exchange. (1) A public health immunization reporting entity may record and exchange immunization data if the person requesting the data provides health related or educational services on behalf of the patient or has a public health interest ***in accordance with 45 C.F.R. 164.512(b)(i).[~~in compliance with the Health Insurance Portability and Accountability Act (HIPAA), Pub. L. 104-191.~~]***
(2) Immunization data may be recorded and exchanged electronically via an immunization registry.
(3) Immunization data that may be recorded and exchanged may include:
(a) Patient's name;
(b) Patient's address;
(c) Date of birth;
(d) Sex[~~Gender~~];
(e) Social Security number;
(f) Medicaid number;
(g) Birth state;
(h) Birth County;
(i) Mother's name;
(j) Mother's maiden name;
(k) Mother's date of birth;
(l) Mother's Social Security number;
(m) Father's name;
(n) Father's date of birth;
(o) Father's Social Security number;
(p) Guardian's name;
(q) Date vaccines were administered;
(r) Vaccine type;
(s) Vaccine lot number;
(t) Vaccine manufacturer;[~~and~~]
(u) Vaccine contraindications or adverse reaction indications; and
(v) Vaccine-specific exemptions.
(4) This section shall apply to immunization data regardless of when the immunizations occurred or the medium used to collect and exchange the data.[~~Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:~~
~~(a) "Commonwealth of Kentucky School/Facility Annual Immunization Survey: Kindergarten", 7/2011; and~~
~~(b) "Commonwealth of Kentucky School/Facility Annual~~

~~Immunization Survey: Sixth Grade", 7/2011~~

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JEFFREY D. HOWARD, JR., M.D., Acting Commissioner
SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 15, 2018 at 8 a.m.

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, July 10, 2018)

902 KAR 10:040. Kentucky youth camps.

RELATES TO: KRS 194A.005(1), 194A.381-383, 217.005-217.215[~~211.180~~]

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[~~211.180 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~~] 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 ***inspect[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 ***shall*** not ***be*** located in a swamp or similar place in which mosquitoes ***can[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 219.081 and 219.991~~] 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***, in accordance with 815 KAR 7:120***.

(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 ***the*** federal flammability standards ***in 16 C.F.R. Part 1632***, 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***, 815 KAR Chapter 20***.

(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 ***in 815 KAR Chapter 20*** 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) ***If[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 ***in 902 KAR 10:085***and[~~or~~] the Energy and Environment[~~Natural Resources and Environmental Protection~~] Cabinet ***in KAR Title 401***;

(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 ***in KAR Title 401***;

(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 ***in 815 KAR Chapter 20*** or portable drinking water containers of an approved type shall be used within the camp. Common drinking cups, glasses, and[or] vessels ***shall be[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 ***is[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 ***of water, in accordance with Title 401 KAR and 902 KAR 45:005,*** 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 ***in accordance with 902 KAR 45:005,*** 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 ***avoid[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 ***in KAR Title 401***.

(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 ***that has been approved by the local health department*** shall be provided and shall be designed and maintained to ***avoid[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 a[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 ***attracting flies or becoming a[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 ***requirements of the Tourism, Arts, and Heritage Cabinet, pursuant to 301 KAR Chapter 6.[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 ***KAR Title 302[applicable state laws and administrative regulations]***.

(2) Camps shall be maintained free of accumulations of debris that[which] ***can[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 prospective employee, contractor, or volunteer shall submit a letter to the camp operator from the cabinet stating that a background check of child abuse and neglect records maintained by the cabinet has not revealed any findings of substantiated child abuse or neglect prior to the individual's presence at the camp or involvement in any program of the camp. 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 designed 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)~~][~~(5)~~] 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 ***for any emergencies[~~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 ***KRS 227.200 to 227.400[~~applicable rules and administrative regulations of the State Fire Marshal~~]*** and applicable local fire codes pertaining to fire safety, fuel supply, and fuel connections.

(2) In every camp with an electrical system, the wiring, fixtures, and equipment shall be installed and maintained pursuant to applicable ***local*** codes and ***815 KAR 7:120[~~administrative regulations~~]***.

(3) Protection from[;] natural hazards.

(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[~~which~~] 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:***

1. Location and number of personal hygiene facilities; and

2. A plumbing riser diagram.[~~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[~~Detail~~] drawings of sewage disposal facilities, including written specifications;

(f) Detailed[~~Detail~~] drawings of water supply if ***the*** source is ***not[~~other than~~]*** public; and

(g) The location and size of water and sewer lines within the camp.

(3)[~~(2)~~] 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)[~~(3)~~] If artificially constructed swimming pools or beaches are ***planned, the[~~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**, the cabinet shall inspect[~~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[~~he~~] shall be recorded[~~record his findings~~] on an official cabinet inspection report form, DFS-308,[-] Youth Camp Inspection Report, and a copy provided to[~~provide~~] the permit holder or operator [~~with a copy~~]. The inspection report shall:

(a) Set forth any violation[~~violation(s) if~~] found;

(b) Establish a specific and reasonable period of time for the correction of any violation[~~the violations(s)~~] found; and

(c) State that failure to comply with a[~~any~~] notice issued pursuant to the provisions of this administrative regulation ***can[~~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 ***shall[~~may~~]*** be suspended immediately upon notice to the permit holder ***prior to holding[~~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)(a) 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[~~violation(s)~~] in question and afford the holder a reasonable opportunity to correct it[~~them~~].

(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[~~hearing~~] is submitted to[~~filed with~~] the cabinet[~~,~~] by the permit holder[~~,~~] within the five (5) business day period.

(4)[~~(3)~~] All administrative conferences [~~hearings~~] shall be conducted in accordance with 902 KAR 1:400.

Section 19. Reinstatement of Suspended Permits. (1) A[~~Any~~] person whose permit has been suspended may ***apply[~~, 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 ***the*** 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[serious or] repeated violations of any of the requirements of this administrative regulation[or for interference with the agents of the cabinet in the performance of their duties], the permit may be permanently revoked after an opportunity for a **conference[hearing]** has been provided in accordance with 902 KAR 1:400.

(2) Prior to ***permanent revocation[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[hearing]** is filed with the cabinet ***by the permit holder***, 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)[(b)] "DFS-309, Kentucky Youth Camp Accident/Illness Report", 3/2018; and

(d)[(c)] "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

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CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(As Amended at ARRS, July 10, 2018)

902 KAR 20:016. Hospitals; operations and services.

RELATES TO: KRS 198B.260, Chapter 209, 211.842-211.852, Chapter 214[214.175], 216.2970, 216B.010, 216B.015, 216B.040, 216B.042, 216B.0425(2), 216B.045, 216B.050, 216B.055, 216B.075, 216B.085, 216B.105-216B.125, 216B.140-216B.175, 216B.185, 216B.190, 216B.230-216B.239, 216B.250, 216B.400-216B.402, 216B.990, 219.011-219.081, Chapter 310 [311.241-311.247,] 311.560[(4)], 311.992, Chapter 311B, 314.011(8), 314.042(8), 320.210(2), 333.030, 446.400, Chapter 620, 29 C.F.R. 1910.1030(d)(2)(vii), 40 C.F.R. Part 403, 42 C.F.R. Part 405, 412.22(c), ***412.92, 413.65, 482.12(c), 489.25,*** Part 493, 45 C.F.R. ***Part*** 160, ***Part*** 164, 42 U.S.C. 1320d-2-1320d-8, ***1395u(b)(18)(C),*** 1395x(r)(2)-(5), ***1395dd[1395u(b)(18)(C)]***[412.23(e)]

STATUTORY AUTHORITY: KRS[216.2970(1),] 216B.042(1)[, 216B.175(3), 42 U.S.C. 263a]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires[that] the[Kentucky] Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient[regulate] health facilities and health services. This administrative regulation establishes the minimum licensure requirements for the operation of hospitals and the basic services [to be] provided by hospitals.

Section 1. Definitions. (1) "Accredited record technician" means an individual who:

(a)[a person who] Has graduated from a program for medical record technicians that is accredited by the Council on Medical Education of the American Medical Association and the American Health Information Management[Medical Record] Association;[,] and

(b)[who] Is certified as an accredited record technician by the American Health Information Management[Medical Record] Association.

(2)["Certified radiation operator" means a person who has been certified pursuant to KRS 211.870 and 902 KAR 105:010 to 105:070 as an operator of radiation producing machines.

(3)] "Governing authority" means the individual, agency, partnership, or corporation[,] in which the ultimate responsibility and authority for the conduct of the health facility[institution] is vested.

(3)[(4) "Induration" means a firm area in the skin which develops as a reaction to the intradermal injection of five (5) tuberculin units of purified protein derivative by the Mantoux technique when a person has tuberculosis infection.

(5)] "Long-term acute inpatient hospital services" means acute inpatient services provided to patients whose average inpatient stay is greater than twenty-five (25) days.

(4)[(6) "Medical staff" means an organized body of physicians, and dentists when applicable, appointed to the hospital staff by the governing authority.

(7)] "Organ procurement agency" means a federally designated organization that[which] coordinates and performs activities to[which] encourage the donation of organs or tissues for transplantation.

(5)[(8)] "Protective device" means a device designed to protect a person from falling, and may include:

(a)[to include] Side rails;

(b) A[,] safety vest; or

(c) A safety belt.

(6)[(9)] "Psychiatric unit" means a department of a general acute care hospital consisting of eight (8) or more psychiatric beds organized for the purpose of providing psychiatric services.

(7) "Registered health information administrator" means an individual who has obtained professional certification from the American Health Information Management Association.

(8)[(10)] "Registered[, certified] or registry-eligible dietician" means an individual [a person] who is licensed as a dietician[certified] in accordance with KRS Chapter 310.

(9)[(11) "Registered records administrator" means a person who is certified as a registered records administrator by the American Medical Record Association.

(12)] "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.[(13) "Skin test" means a tuberculin skin test utilizing the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD). The results of the test shall be read forty-eight (48) to seventy-two (72) hours after injection and recorded in terms of millimeters of induration.

(14) "Two (2) step skin testing" means a series of two (2) tuberculin skin tests administered seven (7) to fourteen (14) days apart.]

Section 2. Requirements to Provide Services. A facility shall not be licensed as[,] or hold itself out to be[, or be called,] a hospital unless it provides:

(1) The full range of services required by Section 4 of this administrative regulation; and

(2) Treatment for a variety of illnesses.

Section 3. Administration and Operation. (1) Governing

authority licensee.

(a) The hospital shall have a recognized governing authority that has overall responsibility for:

1. The management and operation of the hospital; and

2.[for] Compliance with federal, state, and local law pertaining to its operation.

(b) The governing authority shall:

1. Appoint an administrator whose qualifications, responsibilities, authority, and accountability shall be defined in writing and approved by the governing authority; and

2. Designate a mechanism for the annual[periodic] performance review of the administrator.

(2) Administrator.

(a) The administrator shall:

1. Act as the chief executive officer;

2. Be responsible for the management of the hospital; and

3. Act as the[Provide] liaison between the governing authority and the medical staff.

(b) The administrator shall keep the governing authority fully informed of the conduct of the hospital through:

1.[Periodic] Reports; and

2. Attendance at meetings of the governing authority.

(c) The administrator shall:

1. Develop an organizational structure including lines of authority, responsibility, and communication; and

2. Organize the day-to-day functions of the hospital through appropriate departmentalization and delegation of duties.

(d) The administrator shall establish formal means of accountability on the part of each subordinate[subordinates] to whom the administrator[he] has assigned duties.

(e) The administrator shall:

1. Hold interdepartmental and departmental meetings as[, where] appropriate;

2. Attend or be represented at the meetings on a regular basis; and

3. Report to each department and[as well as] to the governing authority the pertinent activities of the hospital.

(3) Administrative records[and reports].

(a) The hospital shall establish administrative records that reflect and guide the administrative operations of the hospital, including:

1. Minutes of the governing authority;

2. Financial records;

3. Personnel records; and

4. Employee health records.

(b) A hospital shall have discretion as to the form or content of any administrative record it establishes.

(c)[Administrative reports shall be established, maintained and utilized as necessary to guide the operation, measure productivity, and reflect the programs of the facility. Administrative reports shall include:

1. Minutes of the governing authority and staff meetings;

2. Financial records and reports;

3. Personnel records;

4. Inspection reports;

5. Incident investigation reports; and

6. Other pertinent reports made in the regular course of business.

(b)] The hospital shall maintain a:

1. Patient admission register;

2.[and] Discharge register;

3.[. If applicable, a] Birth register, if applicable; and

4.[a] Surgical register, if applicable[shall also be maintained].

(d)[(c)] Licensure inspection reports and plans of correction shall be made available to the general public upon request.

(4) Policies. The hospital shall have written policies and procedures governing all aspects of the operation of the facility and the services provided, including:

(a) A written description of the organizational structure of the facility that includes the[including] lines of authority, responsibility, and communication, and departmental organization;

(b) The admission procedure to assure[which assures] that a patient is admitted to the hospital in accordance with medical staff policy;

(c) Any constraint imposed on admissions by a limitation of:

1. Services;

2. Physical facilities;

3. Staff coverage; or

4. Other relevant factor;

(d) Financial requirements for patients on admission;

(e) Emergency admissions;

(f) Requirements for informed consent by patient, parent, guardian, or legal representative for diagnostic or[and] treatment procedures;

(g) Effective procedures for tracking[An effective procedure for recording accidents involving a patient, visitor, or staff member, including] incidents, including[of] transfusion reactions, drug reactions, and medication errors that may occur in the facility. A hospital shall have discretion as to its process, and the procedures shall encourage[, and similar events, and a] statistical analysis to inform process improvement activities[shall be reported in writing through the appropriate committee];

(h) Procedures for meeting the requirements of KRS Chapter 214 and 902 KAR 2:020, including the reporting of:

1. Notifiable infectious conditions;

2. Notifiable non-infectious conditions;

3. Multi-drug resistant organisms;

4. Other reportable disease surveillance; and

5. Electronic laboratory reporting;[Report of communicable diseases to the health department in whose jurisdiction the disease occurs, pursuant to the reporting requirements of KRS Chapter 214 and 902 KAR 2:020];

(i) Use of restraints and a mechanism for monitoring and controlling the[their] use of restraints;

(j) The internal transfer of a patient from one (1) level or type of care to another, if applicable;

(k) The discharge and termination of services;[and]

(l) An organ procurement for transplant protocol developed by the medical staff in consultation with the organ procurement agency; and

(m) Policies that assure the reporting of cases of abuse, neglect, or exploitation of adults and children to the cabinet pursuant to KRS Chapters 209 and 620, including evidence that all allegations of abuse, neglect, or exploitation are thoroughly investigated internally to prevent further potential abuse while the investigation is in progress.

(5) Patient identification. The hospital shall have a system for identifying each patient from the time of admission to discharge.[;] For example, an identification bracelet imprinted with the following:

(a) Name of patient;

(b) Hospital identification number;

(c) Date of admission; and

(d) Name of attending medical staff member.

(6) Discharge planning.

(a) The hospital shall have a discharge planning program to assure continuity of care for a patient who is[being]:

1. Transferred to another health care facility; or

2. Discharged to the home.

(b) The professional staff of the facility involved in the patient's care during hospitalization shall participate in discharge planning of the patient whose illness requires a level of care outside the scope of the general hospital.

(c) The hospital shall:

1. Coordinate the discharge of the patient with the patient and the person or agency responsible for the postdischarge care of the patient; [and]

2. Provide pertinent information concerning postdischarge needs to the responsible person or agency, including the full range of qualified providers or appropriate support organizations in the community available to provide post-acute care services; and

3. Comply with the requirements established in KRS 216B.230 to 216B.239, which include providing each patient or the patient's legal guardian, if applicable, with at least one (1) opportunity to designate a lay caregiver.

(7) Transfer procedures and agreements.

(a) The hospital shall have a written patient transfer procedure

and agreement with at least one (1) of each type of other health care facility able to provide a level of inpatient care not provided by the hospital.

(b) A hospital that[~~facility which~~] does not have a transfer agreement in effect, but has documented a good faith effort to enter into [~~such~~] an agreement, shall be in compliance with paragraph (a) of this subsection[~~requirement~~].

(c) A transfer procedure and agreement shall:

1. Specify the responsibilities each institution assumes in the transfer of a patient; and

2. Establish the hospital's responsibility for:

a. Notifying the receiving entity promptly of the impending transfer of a patient; and

b. Arranging for appropriate and safe transportation.

(d)[~~(b)~~] If a patient is transferred to another health care facility or to the care of a home health agency:

1. A transfer form containing the following information shall accompany the patient or be sent immediately to the other health care facility or home health agency:

a. Attending medical staff member's instructions for continuing care;

b. Current summary of the patient's medical record;

c. Information as to special supplies or equipment needed for patient care; and

d. Pertinent social information on the patient and family; and

2. A copy of the patient's signed discharge summary shall be forwarded to the health care facility or home health agency within thirty (30) days of the patient's discharge.

(e)[~~(c)~~] If a patient is transferred[~~transfer is~~] to another licensed level of care within the same facility:

1. The history and physical examination report shall:

a. Be transferred to the other licensed level of care within the same hospital pursuant to KRS 216B.175(3); and

b.[~~shall be transferred and shall~~] Serve to meet the history and physical examination requirement for the licensed level of care to which the patient has been transferred[~~, in accordance with KRS 216B.175(3)~~]; and

2. The complete medical record or a current summary of the record shall be transferred with the patient.

(8) Medical staff.

(a) The hospital shall have a medical staff organized under bylaws approved by the governing authority.

(b) The medical staff shall be responsible:

1. To the governing authority for the quality of medical care provided to the patients; and

2. For the ethical and professional practice of its members.

(c) The organized medical staff shall be composed of doctors of medicine or doctors of osteopathy.

(d) At the discretion of the hospital, the governing body may elect to include the following practitioners as eligible for appointment to the medical staff to provide only those services authorized within the practitioner's respective scope of practice:

1. A licensed practitioner described in 42 U.S.C. 1395x(r)(2) – (5); or

2. A**[non-physician]** licensed practitioner described in 42 U.S.C. 1395u(b)(18)(C).

(e) The governing body of a hospital shall not be required to open eligibility for medical staff appointment to any licensed practitioner in addition to doctors of medicine or doctors of osteopathy.

(f)[~~(b)~~] The medical staff shall develop and adopt policies or bylaws, subject to the approval of the governing authority that address the following[~~, which shall~~]:

1.[~~State the necessary~~] Qualifications for medical staff membership, including licensure to practice[~~medicine or dentistry~~] in Kentucky in accordance with authorized scope of practice, except for graduate doctors of medicine or doctors of osteopathy[~~physicians~~] in their first year of hospital training;

2.a.[~~Define and describe the~~] Responsibilities and duties of each category of medical staff membership the medical staff may choose to create, for example, active, associate, or courtesy;

b.[~~Delineate the~~] Clinical privileges that may be possessed by medical[~~of~~] staff members and allied health professionals;

c. Procedures[~~Establish a procedure~~] for granting and withdrawing medical staff membership and clinical privileges; and

d. Procedures for reviewing credentials [~~review~~];

3.[~~Provide~~] A mechanism for appeal of decisions adversely affecting medical[~~regarding~~] staff membership or clinical[~~and~~] privileges;

4.[~~Provide~~] A method for the selection of officers of the medical staff;

5. Policy[~~Establish requirements~~] regarding the frequency of[~~,~~] and attendance at[~~,~~][~~general staff and department or service~~] meetings of the medical staff;

6. Authority to appoint committees to address areas of operation or clinical focus, which may include the following [~~Provide for the appointment of standing and special committees, and include requirements for composition and organization, frequency of and attendance at meetings, and the minutes and reports which shall be part of the permanent records of the hospital. Committees may include~~]:

a. Executive committee;

b.[~~,~~] Credentials committee;

c.[~~,~~] Medical audit committee;

d.[~~,~~] Medical records committee;

e. Infection[~~, Infections~~] control committee;

f.[~~,~~] Tissue committee;

g.[~~,~~] Pharmacy and therapeutics committee;

h.[~~,~~] Utilization review committee; or

i.[~~, and~~] Quality assurance committee; and

7.[~~Establish~~] A policy requiring a member of the medical staff to sign a verbal order for diagnostic testing or treatment:

a. As soon as possible after the order was given; or

b. If the patient was discharged prior to the order being authenticated, within thirty (30) days of the patient's discharge.

(g) All licensed practitioners appointed to the medical staff shall:

1. Be privileged in accordance with and function under the policies or bylaws required by paragraph (f) of this subsection; and

2. Comply with the hospital infection control and employee **health[~~heath~~]** policies.

(9) Personnel.[~~(a)~~] The hospital shall:

(a) Employ a sufficient number of qualified personnel to provide effective patient care and other related services;

(b)[~~and shall~~] Have written personnel policies and procedures available to hospital personnel;

(c) Have[~~. (b) There shall be~~] a written job description for each position subject to review and revision[~~. Each job description shall be reviewed and revised~~] as necessary;

(d) Have[~~. (c) There shall be~~] an employee health program for the mutual protection of employees and patients, including provisions for preemployment medical[~~and periodic health~~] examination and follow-up medical examination no less than every three (3) years thereafter for staff who serve patients;

(e) Have a tuberculosis infection control program;(f)[~~. The hospital shall~~] Comply with the[~~following~~] tuberculosis testing requirements established for health care workers in 902 KAR 20:205; and

(g) Maintain the following information[~~: 1. The skin test status of each staff member shall be documented in the employee's personnel record.~~

~~a. A skin test shall be initiated on each new staff member before or during the first week of employment and the results shall be documented in the employee's personnel record within the first month of employment.~~

~~b. Skin testing shall not be required at the time of initial employment if the employee:~~

~~(i) Documents a prior skin test of ten (10) or more millimeters of induration; or~~

~~(ii) Is currently receiving or has completed six (6) months of prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis.~~

~~c. Two (2) step skin testing shall be required for a new employee over age forty-five (45) whose initial test shows less than ten (10) millimeters of induration, unless the employee can document that he or she has had a tuberculosis skin test within~~

~~one (1) year prior to his or her current employment.~~

~~d. A staff member who has never had a skin test result of ten (10) or more millimeters induration shall be skin tested annually, on or before the anniversary of the last skin test.~~

~~2. A staff member who has a skin test result of ten (10) or more millimeters induration on initial employment or annual testing, shall receive a chest x-ray unless:~~

~~a. A chest x-ray within the previous two (2) months showed no evidence of tuberculosis; or~~

~~b. The individual can document the previous completion of a course of prophylactic treatment with isoniazid. The employee shall be advised of the symptoms of the disease and instructed to report to his or her employer and to seek medical attention promptly if symptoms persist.~~

~~3. The hospital administrator shall ensure that skin tests and chest x-rays are done in accordance with subparagraphs 1 and 2 of this paragraph. Skin testing dates and results and chest x-ray reports shall be recorded as a permanent part of the personnel record.~~

~~4. The following shall be reported by the hospital administrator to the local health department having jurisdiction immediately upon becoming known:~~

~~a. Names of staff who convert from a skin test of less than ten (10) to a skin test of ten (10) millimeters or more induration at the time of employment; and~~

~~b. Chest x-rays suspicious for tuberculosis.~~

~~5. A staff member whose skin test status changes on annual testing from less than ten (10) to ten (10) or more millimeters of induration shall be considered to be recently infected with Mycobacterium tuberculosis. Recently infected persons who have no signs or symptoms of tuberculosis disease on chest x-ray or medical history should be given preventive therapy with isoniazid for six (6) months, unless medically contraindicated, as determined by a licensed physician. A medication shall be administered only upon the written order of a physician or other ordering personnel acting within their statutory scope of practice. If an individual is unable to take isoniazid therapy, the individual shall be advised of the clinical symptoms of the disease, and shall have an interval medical history and a chest x-ray taken and evaluated for tuberculosis disease every six (6) months during the two (2) years following conversion, for a total of five (5) chest x-rays.~~

~~6. A staff member who documents completion of preventive treatment with isoniazid shall be exempt from further screening requirements.~~

~~(d) The following information shall be included~~] in each employee's personnel record:

1. Name, address, Social Security number;

2. Health record[~~records~~];

3. Evidence of current registration, certification, or licensure;

4. Record[~~Records~~] of training and experience; and

5. Record[~~Records~~] of performance evaluation.

(10) Physical and sanitary environment.

(a) The condition of the physical plant and the overall hospital environment shall be maintained in such a manner that the safety and well-being of patients, personnel, and visitors are assured.

(b) A person shall be designated responsible for services and for the establishment of practices and procedures in each of the following areas:

1. Plant maintenance;

2.[~~,~~] Laundry operations;[~~(if applicable),~~] and

3. Housekeeping.

(c) There shall be an infection control program[~~committee~~] charged with [~~the~~] responsibility for[~~of~~] investigating, controlling, and preventing infections in the hospital. A multidisciplinary infection control[~~The~~] committee shall have oversight of the program. The program shall:

1. Be directed by:

a. A certified infection control preventionist; or

b. An infection preventionist that has education or specialized training and experience necessary to be certified within two (2) years of employment;

2. Have assigned administrative and professional staff to perform:

a. Infection control surveillance;

b. Investigation of cases and outbreaks;

c. Infection control training;

d. Reporting of diseases; and

e. Infection control collaborations with employee health services;

3. Receive every report of an infection incident discovered by an employee; and

4.[~~2.~~] Develop written infection control policies[~~,~~] consistent with the Centers for Disease Control and Prevention guidelines.

(d) The infection control policies shall address the:

1. Prevention of disease transmission to and from patients, visitors, and employees, including:

a. Universal blood and body fluid precautions;

b. Precautions for infections that[~~which~~] can be transmitted by the airborne route;[~~and~~]

c. Work restrictions, including return to work policies for employees with infectious diseases;

d. Policies for vaccinating health care personnel or documenting immunity status for:

(i) Hepatitis B;

(ii) Influenza;

(iii) Measles;

(iv) Mumps;

(v) Rubella;

(vi) Pertussis; and

(vii) Varicella;

e. Policies for vaccinating health care personnel to prevent meningococcal disease, typhoid fever, or polio for personnel who have certain health conditions or are at risk for work-related exposure;

f. Handwashing and hand hygiene;

g. Antimicrobial stewardship; and

h. Reporting, investigating, and controlling outbreaks of healthcare-associated infections;

2. Use of environmental cultures.[~~;~~] Culture testing results shall be recorded and reported to the Infection Control Committee; and

3. Cleaning, disinfection, and sterilization methods used for equipment and the environment.

(e) The hospital shall provide in-service education programs on the cause, effect, transmission, prevention, and elimination of infections.

(f) The hospital buildings, equipment, and surroundings shall be kept in a condition of good repair, neat, clean, and free from accumulations of dirt, rubbish, and foul, stale, or musty odors.

1. An adequate number of housekeeping and maintenance personnel shall be provided.

2. A written housekeeping procedure shall be:

a. Established for the cleaning of each area; and

b.[~~copies shall be~~] Made available to personnel.

3. Equipment and supplies shall be provided for cleaning of all surfaces. The[~~Such~~] equipment shall be maintained in a safe, sanitary condition.

4. Hazardous cleaning solutions, compounds, and substances shall be:

a. Labeled;

b.[~~,~~] Stored in closed metal containers;[~~,~~] and

c. Kept separate from other cleaning materials.

5. The facility shall be kept free from insects,[~~and~~] rodents, and their nesting places, and entrances to their nesting places shall be eliminated.

6. Garbage and trash shall be:

a.[~~Shall be~~] Stored in areas separate from those used for preparation and storage of food; and

b.[~~Shall be~~] Removed from the premises regularly.

7. Trash[~~; and c.~~] containers shall be cleaned on a regular basis.

(g) Sharp wastes.

1. Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be:

a. Segregated from other wastes; and

b. Placed in puncture resistant containers immediately after use.

2. A needle or other contaminated sharp shall not be purposely bent, broken, or otherwise manipulated by hand as a means of disposal, except as permitted by Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vii).

3. A sharp waste container shall be:

a. Incinerated on or off site;[,] or

b.[shall be] Rendered nonhazardous.

4. Nondisposable sharps, such as large-bore needles or scissors, shall be placed in a puncture resistant container for transport to the Central Medical and Surgical Supply Department, in accordance with 902 KAR 20:009, Section 22.

(h) Disposable waste.

1. Disposable waste shall be:

a. Placed in a suitable bag or closed container[so as] to prevent leakage or spillage;[,] and

b.[shall be] Handled, stored, and disposed of[in such a way as] to minimize direct exposure of personnel to waste materials.

2. The hospital shall establish specific written policies regarding handling and disposal of waste material.

3. The[following] wastes identified in this subparagraph shall receive special handling.[:]

a. Microbiology laboratory waste including a viral or bacterial culture, contaminated swab, or a specimen container or test tube used for microbiologic purposes shall be incinerated, autoclaved, or otherwise rendered nonhazardous.[; and]

b. Pathological waste including a tissue specimen from a surgical or necropsy procedure shall be incinerated.

4. Blood, blood specimens, used blood tubes, or blood products[The following wastes] shall be:

a. Disposed of by incineration;

b.[, or be] Autoclaved before disposal;[,] or

c.[be] Carefully poured down a drain connected to a sanitary sewer, subject to limitations in subparagraph 5. of this paragraph[: blood, blood specimens, used blood tubes, or blood products].

5. Wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment law, including 40 C.F.R. ***Part***[C.F.R.] 403[, 401 KAR 5:557,] and relevant local ordinances.

6. An incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 and 401 KAR 61:010.

(i) The hospital shall have available at all times a quantity of linen essential to the proper care and comfort of patients.

1. Linens shall be handled, stored, and processed [so as] to control the spread of infection.

2. Clean linen and clothing shall be stored in a clean, dry, dust-free area designated exclusively for this purpose.

3. An uncovered mobile cart may be used to distribute a daily supply of linen in patient care areas.

4.[3.] Soiled linen and clothing shall be placed in a suitable bag or closed container [so as] to prevent leakage or spillage, and there shall be minimal handling of soiled linen to prevent generating further aerosols[handled in such a way as to minimize direct exposure of personnel to soiled linen].

5. Soiled linen shall be stored in an area separate from clean linen.

(11) Medical and other patient records.

(a) The hospital shall have a medical records service with administrative responsibility for medical records.

(b) A medical record shall be maintained[,] in accordance with accepted professional principles[,] for every patient admitted to the hospital or receiving outpatient services.

1. The medical records service shall:

a. Be directed by:

(i) A registered health information[records] administrator[, either] on a full-time, part-time, or consultative basis;[,] or

(ii)[by] An accredited record technician on a full-time or part-time basis;[,] and

b.[shall] Have available a sufficient number of regularly assigned employees so that medical record services may be provided as needed.

2. Medical records shall be retained for at least:

a. Six (6)[Five (5)] years from date of discharge;[,] or

b. If[, in the case of] a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest[longer].

3. A provision shall be made for written designation of the specific location for storage of medical records if[in the event] the hospital ceases to operate because of disaster[,] or for any other reason.

4. The hospital shall be responsible for safeguarding[It shall be the responsibility of the hospital to safeguard both] the record and its informational content against loss, defacement, and tampering.

5. Particular attention shall be given to protection from damage by fire or water.

(c)[(b)] A system of identification and filing to assure[insure] the prompt location of a patient's medical record shall be maintained in accordance with the requirements of this paragraph.[:]

1. Index cards, if used, shall bear at least the patient's full name, birth date, and medical record number.

2. There shall be a system for coordinating the inpatient and outpatient medical records of a patient whose admission is a result of, or related to, outpatient services.

3. Clinical information pertaining to inpatient and outpatient services shall be centralized in the patient's medical record.

4. A hospital using automated data processing shall[may] keep patient indices electronically or reproduced on paper and kept in books.

(d) Ownership.

1. Medical records shall be[(c) Records of patients are] the property of the hospital.

2. The original medical record shall not be removed[and shall not be taken] from the facility except by court order or subpoena.

3. Copies of a medical record or portions of the record may be used and disclosed. Use and disclosure shall be as established by paragraph (e) of this subsection.

(e) Confidentiality and Security: Use and Disclosure.

1. The hospital shall maintain the confidentiality and security of medical records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law.

2. The hospital may use and disclose medical records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation.

3. A hospital may establish higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.

(f)[A patient's records, or portion thereof, including x-ray film, may be routed for consultation.

1. Only authorized personnel shall be permitted access to the patient's records.

2. Patient information shall be released only on authorization of the patient, the patient's guardian, or the executor of his estate. (d)] Medical record contents shall be pertinent,[and] current, and[shall] include the following:

1. Identification data and signed consent forms, including name and address of next of kin, and of the person or agency responsible for patient;

2. Date of admission, name of attending medical staff member, and allied health professional in accordance with subsection (8)(d)2.[(b)2] of this section;

3. Chief complaint;

4. Medical history including present illness, travel history, occupational history, past history, family history, and physical examination results;

5. Report of special examinations or procedures, which may include[such as] consultations, clinical laboratory tests, x-ray interpretations, or EKG interpretations[, etc.];

6. Provisional diagnosis or reason for admission;

7. Orders for diet, diagnostic tests, therapeutic procedures, and medications, including patient limitations, signed and dated by the medical staff member or other ordering personnel acting within the limits of his or her[their] statutory scope of practice;

8. Medical, surgical, or [and] dental treatment notes and

reports, signed and dated by a physician, dentist, **licensed practitioner,** or other ordering personnel acting within the limits of his or her[their] statutory scope of practice if [when] applicable, including records of all medication administered to the patient;

9. Complete surgical record signed by the attending surgeon[,] or oral surgeon, including the:

a.[to include] Anesthesia record signed by the anesthesiologist or **an advanced practice registered nurse who is a certified registered nurse** anesthetist;

b.[,] Preoperative physical examination and diagnosis;

c.[,] Description of operative procedures and findings;

d.[,] Postoperative diagnosis;[,] and

e. Tissue diagnosis by qualified pathologist on tissue surgically removed;

10. Patient care plan that[which] addresses the comprehensive care needs of the patient, including[to include] the coordination of the facility's service departments that have impact on patient care;

11. Nurses' observations and progress notes of a physician, dentist, **licensed practitioner,** or other ordering personnel acting within the practitioner's[their] statutory scope of practice;

12. Record of temperature, blood pressure, pulse, and respiration;

13. Final diagnosis using terminology in the current version of the International Classification of Diseases or the American Psychiatric Association's Diagnostic and Statistical Manual, if[as is] applicable;

14. Discharge summary, including:

a. Condition of patient on discharge;[,] and

b. Date of discharge; and

15. In case of death:

a. Autopsy findings, if performed; and

b. An indication that the patient has been evaluated for organ donation in accordance with hospital protocol.

(g)[(e)] Records shall be indexed according to disease, operation, and attending medical staff member using a[. Any] recognized indexing system [may be used].

1. The disease and operative indices shall:

a. Use recognized nomenclature;

b. Include each specific disease diagnosed and each operative procedure performed; and

c. Include essential data on each patient having that particular condition.[;]

2. The attending medical staff index shall include all patients attended or seen in consultation by each medical staff member.[;]

3. Indexing shall be current, within six (6) months following discharge of the patient.

(12) Organ donation.

(a) The hospital shall establish and maintain a written protocol regarding[for] organ procurement for transplant[,] in consultation with an organ procurement agency[, that encourages organ donation and identifies potential organ donors].

(b) If a patient has died or death is imminent, the patient's attending physician shall determine, in accordance with the hospital's protocol, whether the patient is a potential organ or tissue donor.

(c) The hospital protocol shall include:

1. Criteria[,] developed in consultation with the organ procurement agency[,] for identifying potential donors;

2. Procedures for obtaining consent for organ donation;

3. Procedures for the hospital administrator or the administrator's[his] designee to notify the organ procurement agency of a potential organ donor; and

4. Procedures by which the patient's attending physician or designee shall document in the patient's medical record[that]:

a. If the patient is a potential donor, that the organ procurement agency has been notified; or

b. The contraindications to donation. [5. Procedures for the hospital administrator or his designee to report to the Cabinet for Health Services, Office of the Inspector General, information about the possible sale, purchase, or brokering of a transplantable organ, as required by KRS 311.241(3).]

(d) A patient with impending or declared brain death or cardiopulmonary death, as determined pursuant to KRS 446.400, shall not be a potential donor if contraindications are identified and documented in the patient's medical record.

Section 4. Provision of Services. (1) Medical staff services.

(a) Medical care provided in the hospital shall be under the direction of a medical staff member in accordance with staff privileges granted by the governing authority.

(b) An[The] attending medical staff member shall assume[full] responsibility for diagnosis and care of his or her patient with respect to any medical or psychiatric problem that is present on admission or develops during hospitalization, subject to this paragraph:

1. If a patient is admitted by a practitioner identified in 42 C.F.R. 482.12(c)(4):

a. The patient shall be under the care of the practitioner for any condition that is specifically within the scope of practice of the practitioner as that scope is defined by the medical staff and permitted by state law; and

b. A doctor of medicine or doctor of osteopathy shall be responsible for care of the patient for any condition beyond the scope of the admitting practitioner's license.

2. If a patient is admitted by a**[non-physician]** licensed practitioner identified at 42 U.S.C. 1395u(b)(18)(C), a doctor of medicine or doctor of osteopathy shall be responsible for diagnosis and care of the patient.

(c) Other qualified personnel may:

1. Complete medical histories;

2.[,] Perform physical examinations; or

3.[,] Record findings[,] and compiler discharge summaries[,] in accordance with the:

a. Practitioner's[their] scope of practice; and

b.[the] Hospital's protocols and bylaws.

(d)[(c)] A complete history and physical examination shall be conducted according to the requirements of KRS 216B.175(2).

1. The history and physical examination shall include:

a. A description of the patient's chief complaint and[,] the major reason for hospitalization;

b. A history of the patient's:

(i) Present illness;

(ii) Past illnesses;

(iii) Surgeries;

(iv) Medications;

(v) Allergies;

(vi) Social history;

(vii) Occupational history;

(viii) Travel history; and

(ix) Immunizations;

c. A review of the patient's anatomical systems and level of function at the time of the exam;

d. The[A] patient's vital signs; and

e. A general observation of the patient's:

(i) Alertness;

(ii) Debilities; and

(iii) Emotional behavior.[;]

2. The results of the history and physical examination shall be:

a. Recorded;

b.[,] Reviewed for accuracy;[,] and

c. Signed by the practitioner conducting the examination.

(e)[(d)] The attending medical staff member shall:

1. State his or her final diagnosis;

2.[,] Assure that the discharge summary is completed; and

3. Sign the records within thirty (30) calendar days following the patient's discharge.

(f)[(e)] Physician services shall be available twenty-four (24) hours a day on at least an on-call basis.

(g)[(f)] There shall be sufficient medical staff coverage for all clinical services of the hospital, in keeping with their size and scope of activity.

(2) Nursing service.

(a) The hospital shall have a nursing department organized to meet the nursing care needs of the patients and maintain established standards of nursing practice.

(b) A registered nurse **with a bachelor of science degree in**

nursing[~~, preferably one who has a bachelor of science degree in nursing,~~] shall serve as director of the nursing department.

(c)[~~(b)~~] There shall be a registered nurse on duty at all times.

1. There shall be registered nurse supervision and staff nursing personnel for each service or nursing unit to insure the immediate availability of a registered nurse for all patients on a twenty-four (24) hour basis.

2. There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the service of a registered nurse.

3. There shall be additional registered nurses for surgical, obstetrical, emergency, and other services of the hospital, in keeping with their size and scope of activity.

4. Persons not employed by the hospital who render special duty nursing services in the hospital shall be under the supervision of the nursing supervisor of the department or service concerned.

(d)[~~(c)~~] The hospital shall have written nursing care procedures and written nursing care plans for patients.

(e) Patient care shall be carried out in accordance with:

1. Attending medical staff member's orders;

2.[~~,~~] Nursing process;[~~,~~] and

3. Nursing care procedures.

(f)[~~1.~~] The nurse shall evaluate the patient using standard nursing procedure.

(g)[~~2.~~] A registered nurse shall assign staff and evaluate the nursing care of each patient in accordance with the patient's need and the nursing staff available.

(h)[~~3.~~] Nursing notes shall be:

1. Written and signed on each shift by nursing staff[~~persons~~] rendering care to patients;

2.[~~. The notes shall be~~] Descriptive of the nursing care given; and

3.[~~shall~~] Include information and observations of significance that[~~which~~] contribute to the continuity of patient care.

(i)[~~4.~~] A medication shall be administered only by a:

1.[~~a.~~] Registered nurse;

2.[~~b.~~] Physician;

3.[~~c.~~] Dentist;

4.[~~d.~~] Physician's assistant;

5.[~~e.~~] Advanced practice registered nurse;

6.[~~f.~~] Licensed practical nurse under the supervision of a registered nurse;[~~or~~]

7.[~~g.~~] Paramedic acting within his or her statutory scope of practice[~~,~~] and in accordance with the hospital's operating policies and procedures; or

8. Nurse extern in accordance with 201 KAR 20:400.

(j)[~~5.~~] Except in a circumstance that requires a verbal order, a medication, diagnostic test, or treatment shall not be given without a written order signed by a physician, dentist, **licensed practitioner,** or other ordering personnel acting within his or her[~~their~~] statutory scope of practice.

(k)[~~a.~~] A verbal order for a medication shall be:

1. Given only to a licensed practical or registered nurse, paramedic, or pharmacist; and

2.[~~shall be~~] Signed by a member of the medical staff or other ordering practitioner[~~: (i)~~] as soon as possible after the order was given,[~~;~~] or [~~(ii)~~] if the patient was discharged prior to the order being authenticated, within thirty (30) calendar days of the patient's discharge.

(l)[~~b.~~]A verbal order for a diagnostic test or treatment order may be given to a licensed practitioner acting within his or her statutory scope of practice and the hospital's protocols.

(m)[~~c.~~] A person receiving a verbal order for medication, a diagnostic test, or treatment shall, at the time the order is received:

1.[~~(i)~~] Immediately transcribe the order;

2.[~~(ii)~~] Repeat the order to the person issuing the order; and

3.[~~(iii)~~] Annotate the order on the patient's medical record, as repeated and verified.

(n) A[~~6.~~] patient restraint[~~restraints~~] or protective device[~~devices~~], other than bed rails, shall not be used except:

1.[~~,~~] In an emergency until the attending medical staff member can be contacted;[~~,~~] or 2. Upon a written or telephone order[~~orders~~] of the attending medical staff member.

(o) If a patient restraint is necessary, the least restrictive form of protective device shall be used that[~~which~~] affords the patient the greatest possible degree of mobility and protection.

(p) A locking restraint shall not be used under any circumstances.

(q)[~~7.~~] Meetings of the nursing staff and other nursing personnel shall be held at least monthly to discuss patient care, nursing service problems, infection control, employee health policies, and administrative policies.

(r) Written minutes of all meetings shall be kept.

(3) Dietary services.

(a) The hospital shall have a dietary department[~~,~~] organized, directed, and staffed to provide quality food service and optimal nutritional care.

(b)[~~1.~~] The dietary department shall be directed on a full-time basis by an individual who[~~,~~] by education, or specialized training and experience, shall be[~~is~~] knowledgeable in food service management.

(c)[~~2.~~] The dietary service shall have at least one (1) registered[~~, certified~~] or registry-eligible dietician working full-time, part-time, or on a consultative basis[~~,~~] to supervise the nutritional aspects of patient care.

(d)[~~3.~~] Sufficient additional personnel shall be employed to perform assigned duties to meet the dietary needs of all patients.

(e)[~~4.~~] The dietary department shall have current written policies and procedures for food storage, handling, and preparation.

(f) Written dietary policy and procedure shall be available to dietary personnel.

(g)[~~5.~~] An in-service training program that includes[~~, which shall include~~] the proper handling of food, safety, and personal grooming[~~,~~] shall be given at least quarterly for new dietary employees.

(h)[~~(b)~~] Menus shall be planned, written, and rotated to avoid repetition.

(i) Nutritional needs shall be met in accordance with:

1. Recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences; and

2.[~~in accordance with~~] The medical staff member's orders.

(j) [~~(c)~~] Each meal shall correspond with the posted menu.

(k) If[~~When~~] a change is necessary, substitution shall provide equal nutritive value and the change shall be recorded on the menu.

(l) Each menu shall be kept on file for thirty (30) calendar days.

(m)[~~(d)~~] Every diet, regular or[~~and~~] therapeutic, shall be prescribed in writing, dated, and signed by the attending medical staff member or other ordering personnel acting within his or her[~~their~~] statutory scope of practice.

(n) Information on the diet order shall be specific and complete and[~~shall~~] include:

1. The title of the diet;

2.[~~,~~] Modifications in specific nutrients stating the amount to be allowed in the diet;[~~,~~] and

3. Specific problems that may affect the diet or eating habits.

(o)[~~(e)~~] Food shall be:

1. Prepared by methods that conserve nutritive value, flavor, and appearance;

2.[~~, and shall be~~] Served at the proper temperatures; and

3. Prepared in a form[~~,~~] such as cut, chopped, or ground[~~,~~] to meet individual needs.

(p)[~~(f)~~] If a patient refuses foods served, a nutritious substitution[~~substitutions~~] shall be offered.

(q)[~~(g)~~] At least three (3) meals or their equivalent shall be served daily with not more than a fifteen (15) hour span between a substantial evening meal and a breakfast unless otherwise directed by the attending medical staff member.

(r) Meals shall be served at regular times with between-meal or bedtime snacks of nourishing quality offered.

(s)[~~(h)~~] There shall be at least a three (3) day supply of food available in the facility at all times to prepare well-balanced palatable meals for all patients.

(t)[~~(i)~~] There shall be an identification system for patient trays[~~,~~]

and methods used to assure that each patient receives the appropriate diet as ordered.

(u)[~~(j)~~] The hospital shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005, the Kentucky[~~Retail~~] food code.

(4) Laboratory services.

(a) The hospital shall have a well-organized, adequately supervised laboratory with the necessary space, facilities, and equipment to perform services commensurate with the hospital's needs for its patients.

(b) Anatomical pathology services and blood bank services shall be available in the hospital or by arrangement with other facilities.

1.[~~(a)~~] Clinical laboratory. Basic clinical laboratory services necessary for routine examinations shall be available regardless of the size, scope, and nature of the hospital.

a.[~~1.~~] Equipment necessary to perform the basic tests shall be provided by the hospital.

b.[~~2.~~] Equipment shall be in good working order, routinely checked, and precise in terms of calibration.

c.[~~3.~~] Provision shall be made to carry out adequate clinical laboratory examinations including chemistry, microbiology, hematology, immunology, and immunohematology[~~serology, and clinical microscopy~~].

d.[~~a. Some~~] Services may be provided through arrangement with another licensed hospital that[~~which~~] has the appropriate laboratory facilities, or with an independent laboratory licensed pursuant to 42 C.F.R. Part 493[~~C.F.R. Part 405~~], KRS 333.030, and relevant administrative regulations.

e.[~~b.~~] The original report from a test performed by an outside laboratory shall be contained in the patient's medical record.

f.[4.] Laboratory facilities and services shall be available at all times.

g.[~~a.~~] Emergency laboratory services shall be available twenty-four (24) hours a day, seven (7) days a week, including holidays,[~~either~~] in the hospital or through[~~under~~] arrangement[~~,~~] as specified in clause d. of this subparagraph[~~3a of this paragraph~~].

h.[~~b.~~] The conditions, procedures, and availability of a service performed by an outside laboratory shall be in writing and available in the hospital.

i.[~~5.~~] There shall be a clinical laboratory director and a sufficient number of supervisors, technologists, and technicians to perform promptly and proficiently the tests requested of the laboratory.

j. The laboratory shall not perform a procedure or test outside the scope of training of the laboratory personnel.

k.[~~6.~~] Laboratory services shall be under the direction of a:

(i) Pathologist;

(ii)[~~or other~~] Doctor of medicine or osteopathy with training and experience in clinical laboratory services;[~~,~~] or

(iii)[~~a~~] Laboratory specialist with a doctoral degree in physical, chemical, or biological sciences, and training and experience in clinical laboratory services.

l.[~~7.~~] A [~~signed~~] report of each laboratory service provided shall be filed with the patient's medical record.

(i) A duplicate copy shall be kept in the department.

(ii) Each[~~a. The laboratory report shall be signed by the technologist who performed the test. b. Every~~] request for a laboratory test shall be ordered and signed by qualified personnel in accordance with his or her[~~their~~] scope of practice and the hospital's protocols and bylaws.

2.[~~(b)~~] Anatomical pathology. Anatomical pathology services shall be provided as indicated by the needs of the hospital, either in the hospital or under arrangement as specified in subparagraph 1.d.[~~paragraph (a)3a~~] of this paragraph[~~subsection~~].

a.[~~1.~~] Anatomical pathology services shall be under the direct supervision of a pathologist [~~on a~~] full-time,[~~regular~~] part-time, or on a[~~regular~~] consultative basis.

b. If the supervision is provided on a consultative basis,[~~If the latter pertains,~~] the hospital shall provide for at least monthly consultative visits by a pathologist.

c.[~~2.~~] The pathologist shall participate in staff, departmental, and clinicopathologic conference.

d.[~~3.~~] The pathologist shall be responsible for establishing the qualifications of staff and[~~for their~~] in-service training.

e.[~~4.~~] Except for exclusions listed in written policies of the medical staff, tissues removed at surgery shall be examined macroscopically, and if necessary, microscopically[~~examined~~] by the pathologist.

f.[~~a.~~] A list of tissues that[~~which~~] do not routinely require microscopic examination shall be developed in writing by the pathologist or designated physician with the approval of the medical staff.

g.[~~b.~~] A tissue file shall be maintained in the hospital.

h.[~~c.~~] In the absence of a pathologist, there shall be an established plan for sending tissue[~~requiring examination~~] to a pathologist outside the hospital if examination is required.

i.[~~5.~~] A signed report of a tissue examination shall be filed promptly with the patient's medical record.

j. A duplicate copy shall be kept in the department.

k.[~~a.~~] Each report of a macroscopic[~~macro~~] or microscopic examination performed shall be signed by the pathologist.

l.[~~b.~~] Examination results shall be filed promptly in the patient's medical record.

m. The medical staff member requesting the examination shall be notified promptly.

n.[~~c.~~] A duplicate copy of each examination report shall be filed in the laboratory in a manner that[~~which~~] permits ready identification and accessibility.

3.[~~(c)~~] The laboratory shall meet the proficiency testing and quality control provisions in accordance with the certification requirements of 42 C.F.R. Part 493[~~U.S.C. Part 263a~~].

4.[~~(d)~~] Blood bank. Facilities for procurement, safekeeping, and transfusion of blood and blood products shall be provided or shall be readily available.

a.[~~1.~~] The hospital shall maintain[~~, as a minimum,~~] proper blood storage facilities under adequate control and supervision of the pathologist or other authorized physician.

b.[~~2.~~] For emergency situations, the hospital shall:

(i)[~~a.~~] Maintain at least a minimum blood supply in the hospital at all times; and

(ii)[~~b.~~] Be able to obtain blood quickly from community blood banks or institutions.

c. If the hospital provides donor services, the hospital shall[~~; or c.~~] have an up-to-date list of donors and equipment necessary to obtain blood[~~from them~~].

d.[~~3.~~] If the hospital utilizes outside blood banks, there shall be a written agreement governing the procurement, transfer, and availability of blood products between the hospital and donor center.

e.[~~4.~~] There shall be a provision for:

(i) Prompt blood typing and cross-matching; and

(ii)[~~for~~] Laboratory investigation of transfusion reactions, either through the hospital or by arrangement with others on a continuous basis, under the supervision of a physician.

f.[~~5.~~] Blood storage facilities in the hospital shall have an adequate alarm system, which shall be:

(i) Regularly inspected and tested; and

(ii)[~~shall be otherwise~~] Safe and adequate. Inspections of the alarm system shall be documented.

g.[~~6.~~] Records shall be kept on file indicating the receipt and disposition of blood provided to patients in the hospital.

h.[~~7.~~] A committee of the medical staff, or its equivalent, shall:

(i) Review transfusions of blood or blood derivatives; and

(ii) [~~shall~~] Make recommendations concerning policies governing transfusion practices.

i.[~~8.~~] Samples of each unit of blood used at the hospital shall be retained[~~, according to the instructions of the committee indicated in subparagraph 7 of this paragraph,~~] for further testing if there was[~~in the event of~~] an adverse reaction.

j. Blood not retained that[~~which~~] has exceeded its expiration date shall be disposed of promptly.

k.[~~9.~~] The review committee shall:

(i) Investigate each transfusion reaction occurring in the hospital; and

(ii)[~~shall~~] Make recommendations to the medical staff regarding improvement in transfusion procedure.

(5) Pharmaceutical services.

(a) The hospital shall have adequate provisions for the handling, storing, recording, and distribution of pharmaceuticals in accordance with state and federal law.

(b)[~~1.~~] A hospital that maintains a pharmacy for compounding and dispensing of drugs shall provide pharmaceutical services under the supervision of a registered pharmacist on a full-time or part-time basis, according to the size and demands of the hospital.

(c)[~~a.~~] The pharmacist shall be responsible for supervising and coordinating the activities of the pharmacy department.

(d)[~~b.~~] Additional personnel competent in their respective duties shall be provided in keeping with the size and activity of the department.

(e)[~~2.~~] A hospital that does not maintain[~~not maintaining~~] a pharmacy shall have a drug room utilized only for the storage and distribution of drugs, drug supplies, and equipment.

1. Prescription medications shall be dispensed by a registered pharmacist elsewhere.

2. The drug room shall be operated under the supervision of a pharmacist employed at least on a consultative basis.

(f)[~~a.~~] The consulting pharmacist shall assist in drawing up correct procedures and directions for the distribution of drugs.

(g) The consulting pharmacist shall visit the hospital on a regularly scheduled basis in the course of his or her duties.

(h)[~~b.~~] The drug room shall be kept locked and the key shall be in the possession of a responsible person on the premises designated by the administrator.

(i)[~~(b)~~] Records shall be kept of the transactions of the pharmacy or drug room and[~~shall be~~] correlated with other hospital records if[~~where~~] indicated.

(j)[~~1.~~] The pharmacy shall establish and maintain a system of records and bookkeeping in accordance with accounting procedures and policies of the hospital for:

1. Maintaining adequate control over the requisitioning and dispensing of drugs and drug supplies; and

2.[~~for~~] Charging patients for drugs and pharmaceutical supplies.

(k)[~~2.~~] A record of the stock on hand and of the dispensing of every controlled substance shall be maintained to ensure[~~in such a manner~~] that the disposition of any particular item may be readily traced.

(l)[~~(c)~~] The medical staff in cooperation with the pharmacist and other disciplines, as necessary, shall develop policies and procedures that govern the safe administration of drugs, including:

1. The administration of medications only upon the order of an individual who has been assigned clinical privileges or who is an authorized member of the house staff;

2. Review of the original order[~~,~~] or a direct copy by the pharmacist dispensing the drugs;

3. The establishment and enforcement of automatic stop orders;

4. Proper accounting for, and disposition of, unused medications or special prescriptions returned to the pharmacy if[~~as a result of~~]:

a. The[~~discharge of the~~] patient is discharged; or

b. The medication or prescription does not meet requirements for sterility or labeling;

5. Emergency pharmaceutical services; and

6. Reporting adverse medication reactions to the:

a. Appropriate committee of the medical staff; and

b. Food and Drug Administration MedWatch Program.

(m)[~~(d)~~] Therapeutic ingredients of medications dispensed shall be favorably evaluated in the:

1. United States Pharmacopoeia;

2. National Formulary; or

3. United States Homeopath-Pharmacopoeia;[~~4. New drugs; or 5. Accepted dental remedies.~~] Other necessary medication shall be approved for use by the appropriate committee of the medical staff.

(n)[~~(e)~~] A pharmacist shall be responsible for determining specifications and choosing acceptable sources for drugs[~~,~~] with approval of the appropriate committee of the medical staff.

(o)[~~(f)~~] There shall be available a formulary or list of drugs accepted for use in the hospital, [~~which shall be~~] developed and amended as necessary[~~at regular intervals~~] by the appropriate committee of the medical staff.

(6) Radiology services.

(a) The hospital shall have:

1. Diagnostic radiology facilities currently licensed or registered pursuant to[~~the Kentucky Radiation Control Act of 1978 (~~]KRS 211.842 to 211.852[~~)~~];

2. At least one (1) fixed diagnostic x-ray unit capable of general x-ray procedures;

3. A radiologist on at least a consulting basis to:

a. Function as medical director of the department; and

b. Interpret films requiring specialized knowledge for accurate reading; and

4. Personnel adequate to supervise and conduct services, including one (1) certified radiation operator who shall be on duty or on call at all times.

(b) There shall be written policies and procedures governing radiologic services and administrative routines that support sound radiologic practices.

(c)[~~1.~~] Signed reports shall be filed in the patient's record and duplicate copies kept in the department.

(d)[~~2.~~] Radiologic services shall be performed only upon the written order of qualified personnel in accordance with the:

1. Professional's[~~their~~] scope of practice; and

2.[~~the~~] Hospital's protocols and bylaws.

(e)[~~, and~~] The written order shall contain a concise statement of the reason for the service or examination.

(f)[~~3.~~] Reports of interpretations shall be written or dictated and signed by the radiologist.

(g)[~~4.~~] Only an individual licensed pursuant to 201 KAR Chapter 46 and KRS Chapter 311B[~~a certified radiation operator~~], under the direction of medical staff members, if necessary, shall use any x-ray apparatus or material. Uses include application, administration, and removal of:

1. Radioactive elements;

2.[~~,~~] Disintegration products;[~~,~~] and

3. Radioactive isotopes.

(h) An individual licensed pursuant to 201 KAR Chapter 46 and KRS Chapter 311B[~~A certified radiation operator~~], under the direction of a physician, may administer medications allowed within:

1. The professional's[~~their professional~~] scope of practice; and

2.[~~the~~] Context of radiological services and procedures being performed.

(i)[~~(c)~~] The radiology department shall be free of hazards for patients and personnel.

(j) Proper safety precautions shall be maintained against:

1. Fire and explosion hazards;

2.[~~,~~] Electrical hazards; and

3. Radiation hazards.

(7) Physical restoration or rehabilitation service.

(a) If the hospital provides rehabilitation, work hardening, physical therapy, occupational therapy, audiology, or speech-language pathology services, the services shall be organized and staffed to insure the health and safety of patients.

(b)[~~(a)~~] A hospital that provides[~~in which~~] physical restoration or rehabilitation services[~~are available~~] shall provide individualized techniques intended[~~required~~] to:

1. Achieve maximum physical function normal to the patient; and

2. Prevent[~~while preventing~~] unnecessary debilitation and immobilization.

(c) The hospital shall develop[~~(b)~~] written policies and procedures[~~shall be developed~~] for each rehabilitation service provided.

(d) The hospital shall designate[~~(c)~~] a member of the medical staff[~~shall be designated~~] to coordinate restorative services provided to patients in accordance with their needs.

(e)[~~(d)~~] Therapeutic equipment shall be:

1. Adequate to meet the needs of the service; and

2.[~~shall be~~] In good condition.

(f)[~~(e)~~] Therapy services shall be provided only upon written

orders of qualified personnel in accordance with the practitioner's[their] scope of practice and according to the hospital's protocols and bylaws.

(g)[(f)] Therapy services shall be provided by or under the supervision of a licensed therapist, on a full-time, part-time, or consultative basis.

(h) The hospital shall maintain[(g)] a complete therapy record[shall be maintained] for each patient provided physical therapy services.

(i) The report shall be:

1. Signed by the therapist who prepared the report;[it] and

2. Maintained in[shall be a part of] the patient's medical record.

(8) Emergency services.

(a) A hospital shall develop written procedures for emergency patient care, including a requirement for:

1. Each patient requesting emergency care to be evaluated by a registered nurse;

2. At least one (1) registered nurse on duty to perform patient evaluation; and

3. A physician to be on call.

(b) A patient who[that] presents at[to] the hospital for[requesting] emergency services shall be triaged by a registered nurse or paramedic acting:

1. Within his or her[statutory] scope of practice;[,] and

2. In accordance with the hospital's formal operating policies and procedures.

(c) The medical staff of a hospital within an organized emergency department[of service] shall establish and maintain a manual of policy and procedures for emergency and nursing care provided in the emergency room.

(d)[1.] The emergency service shall be under the direction of a licensed physician.

(e) Medical staff members shall be available at all times for the emergency service, either on duty or on call.

(f) Current schedules and telephone numbers shall be posted in the emergency room.

(g)[2.] Nursing personnel shall be assigned to[,] or designated to cover[,] the emergency service at all times.

(h)[3.] Facilities shall be provided to assure prompt diagnosis and emergency treatment.

(i) A specific area of the hospital shall be utilized for patients requiring emergency care on arrival.

(j) The emergency area shall be:

1. Located in close proximity to an exterior entrance of the facility; and

2.[shall be] Independent of the operating room suite.

(k)[4.] Diagnostic and treatment equipment, drugs, and supplies shall be:

1. Readily available for the provision of emergency services; and

2.[shall be] Adequate in terms of the scope of services provided.

(l)[5.] Adequate medical records shall be:

1. Kept on every patient seen in the emergency room,[. These records shall be] under the supervision of the Medical Record Service; and

2. If[, where] appropriate,[shall be] integrated with inpatient and outpatient records.

(m) Emergency room records shall include at least:

1.[a.] A log listing the patient visits to the emergency room in chronological order, including:

a.[(i)] Patient identification;

b.[(ii)] Means of arrival;

c.[(iii)] Person transporting patient; and

d.[(iv)] Time of arrival;

2.[b.] History of present complaint and physical findings;

3.[c.] Laboratory and x-ray reports, if[where] applicable;

4.[d.] Diagnosis;

5.[e.] Treatment ordered and details of treatment provided;

6.[f.] Patient disposition;

7.[g.] Record of referrals;

8.[h.] Instructions to the patient or family for those not admitted to the hospital; and

9.[i.] Signatures of attending medical staff member, and nurse if [when] applicable.

(9) Outpatient services.

(a) A hospital with an organized outpatient department shall have written policies and procedures relating to the staff, functions of service, and outpatient medical records.

(b) The outpatient department shall be organized in sections[,] or clinics, the number of which shall depend on the:

1. Size and degree of departmentalization of the medical staff;

2.[, the] Available facilities;[,] and

3.[the] Needs of the patients the outpatient department[patient it] serves.

(c) The outpatient department shall have appropriate cooperative arrangements and communications with community agencies, which may include:

1.[such as] Home health agencies;

2.[,] The local health department;

3.[,] Social and welfare agencies;[,] and

4. Other outpatient departments.

(d) Each service offered by the outpatient department shall be under the direction of a:

1. Physician who shall be[is] a member of the medical staff; or

2. Licensed healthcare practitioner qualified by education, experience, and specialized training related to the specific type of service under the practitioner's direction if the hospital has a separate director for each outpatient service.

(e)[1.] A registered nurse shall be responsible for the nursing services of the outpatient department.

(f)[2.] The number and type of other personnel employed shall be determined by the:

1. Volume and type of services provided; and

2. Type of patient served in the outpatient department.

(g)[(e)] Necessary laboratory and other diagnostic tests shall be available through:

1. The hospital;

2. A laboratory in another licensed hospital; or

3. A laboratory licensed pursuant to KRS 333.030.

(h)[(f)] Medical records shall be maintained and if[, where] appropriate, coordinated with other hospital medical records.

(i)[1.] The outpatient medical record shall be filed in a location that [which] insures ready accessibility to the:

1. Medical staff members;

2.[,] Nurses;[,] and

3. Other personnel of the outpatient department.

(j)[2.] Information in the medical record shall be complete and sufficiently detailed relative to the patient's:

1. History;

2.[,] Physical examination;

3.[,] Laboratory and other diagnostic tests;

4.[,] Diagnosis;[,] and

5. Treatment.

(10) Surgery services.

(a) A hospital in which surgery is performed shall have an operating room and a recovery room supervised by a registered nurse qualified by training, experience, and ability to direct surgical nursing care.

(b)[1.] Sufficient surgical equipment, including suction facilities and instruments in good repair, shall be provided to assure safe and aseptic treatment of surgical cases.

(c)[2.] If flammable anesthetics are used, precautions shall be taken to eliminate hazards of explosions, including:

1. Use of shoes with conductive soles; and

2. Prohibition of garments or other items of silk, wool, or synthetic fibers that[which] accumulate static electricity.

(d)[(b)] There shall be effective policies and procedures regarding:

1. Surgical staff privileges;

2.[,] Functions of the service;[,] and

3. Evaluation of the surgical patient.

(e)[1.] Surgical privileges shall be delineated for each member of the medical staff performing[doing] surgery in accordance with the competencies of each staff member.

(f)[, and] A roster of medical staff specifying the surgical

privileges of each shall be maintained.

(g)[2.] Except in emergency[emergencies], a surgical operation or other hazardous procedure shall be performed only on written consent of the patient or the patient's[his] legal representative.

(h)[3.] The operating room register shall:

1. Be complete and up to date; and

2.[. It shall] Include the following:

a. Patient's name;

b. Hospital room number;

c. Preoperative and postoperative diagnosis;

d. Complications, if any;

e. Names of:

(i) Surgeon;

(ii)[,] First assistant;

(iii)[,] Anesthesiologist or **an advanced practice registered nurse who is a certified registered nurse** anesthetist; and

(iv)[,] Scrub and circulating nurse;

f. Operation performed; and

g. Type of anesthesia.

(i)[4.] There shall be a complete history and physical workup in the chart of each[every] patient prior to surgery.

(j) If the history and workup has been transcribed, but not yet recorded in the patient's chart, there shall be a statement to that effect and an admission note by the attending medical staff member in the chart.

(k) The chart shall:

1. Accompany the patient to the operating suite; and

2.[shall] Be returned to the patient's floor or room after the operation.

(l)[5.] An operative report describing the techniques and findings shall be:

1. Written or dictated immediately following surgery; and

2.[shall be] Signed by the surgeon.

(m)[6.] Tissues removed by surgery shall be:

1. Placed in suitable solutions;

2.[,] Properly labeled;[,] and

3. Submitted to the pathologist for macroscopic and, if necessary, microscopic examination.

(n)[7.] An infection of a clean surgical case shall be recorded and reported to the Infection Control Program[appropriate committee of the medical staff]. The program[committee] shall investigate[the matter] according to established procedures for investigation and review of surgical site infections[a procedure previously developed by the committee].

(o)[(c)] Rules and policies related to the operating rooms shall be available and posted.

(11) Anesthesia services.

(a) A hospital that provides surgical or obstetrical services shall have anesthesia services available.

(b) Anesthesia services shall be organized under written policies and procedures regarding:

1. Staff privileges;

2.[,] The administration of anesthetics;[,] and

3. The maintenance of safety controls.

(c)[(b)] A physician member of the medical staff shall be the medical director of anesthesia services.

(d) If possible, the director shall be a physician specializing in anesthesiology.

(e)[(c)] If anesthetics are not administered by an anesthesiologist, the medical staff shall designate an advanced practice[a medical staff anesthetist or a] registered nurse who is a certified registered nurse anesthetist qualified to administer anesthetics**[at the direction of the operating surgeon]**.

(f)[(d)] A qualified medical staff member **or licensed practitioner functioning within their scope of practice** shall perform a preanesthetic physical examination for every patient requiring anesthesia services.

(g) The following shall be recorded within forty-eight (48) hours of surgery:

1. Findings of the preanesthetic physical examination;

2. An anesthetic record on a special form; and

3. A postanesthetic follow-up, with findings recorded by the:

a. Anesthesiologist; or

b.[, Medical staff anesthetist, or] Advanced practice registered nurse who is a certified registered nurse anesthetist.

(h)[(e)] The postanesthetic follow-up note shall:

1. Be written:

a. Upon discharge from the postanesthesia recovery area; or

b. Within three (3) to twenty-four (24) hours after the procedure requiring anesthesia; and

2.[. The note shall] Include:

a.[1.] Blood pressure and pulse measurements;

b.[2.] Presence or absence of the swallowing reflex and cyanosis;

c.[3.] Postoperative abnormalities or complications; and

d.[4.] The patient's general condition.

(12) Obstetrics service.

(a) A hospital providing obstetrical care shall have:

1. Adequate space;

2.[,] Necessary equipment and supplies;[,] and

3. A sufficient number of nursing personnel to:

a. Assure safe and aseptic treatment of mothers and newborns; and

b.[to] Provide protection from infection and cross-infection.

(b)[1.] The obstetrics service shall be under the:

1. Medical direction of a physician; and

2.[under the] Supervision of a registered nurse qualified by training, experience, and ability to direct effective obstetrical and newborn nursing care.

(c) If a hospital has[with] an obstetrical caseload that does not justify a separate nursing staff, the hospital's obstetrical nurses shall be designated and[shall be] oriented to the specific needs of obstetrical patients.

(d)[2.] A registered nurse shall be on duty in the labor and delivery unit if a patient is in the unit.

(e) Each obstetrics patient shall be kept under close observation by professional personnel during the period of recovery after delivery, whether in the delivery room or in a recovery area, until the patient is transferred to the maternity unit.

(f)[3.] An on-call schedule or other suitable arrangement shall be provided to ensure that a physician who is experienced in obstetrics is readily available for consultation and for an obstetrical emergency.

(g)[4.] Patients in labor shall be cared for in adequately equipped labor rooms.

(h)[(b)] An adequate supply of prophylaxis for the prevention of infant blindness shall be kept on hand and administered within thirty (30) minutes after delivery, in accordance with 902 KAR 4:020.

(i)[(c)] The hospital shall comply with the provisions of KRS 214.155 and 902 KAR 4:030 in administering tests for inborn errors of metabolism and other inherited and congenital disorders [to infants].

(j)[(d)] The hospital shall have a method and procedure for the positive associative identification of the mother and infant.

(k) The identifiers shall be placed on mother and newborn in the delivery room at the time of birth and shall remain in place during the entire period of hospitalization.

(l)[(e)] An up-to-date register book of deliveries shall be maintained containing the following information:

1. Infant's full name, sex, date, time of birth, and weight;

2. Mother's full name, including maiden name, address, birthplace, and age at time of this birth;

3. Father's full name, birthplace, and age at time of this birth; and

4. Full name of attending physician or nurse midwife.

(m)[(f)] Each hospital providing maternity service shall provide a nursery[which shall] not[be] used for any other purpose.

(n) Specific routines for daily care of infants and their environment shall be prepared in writing and posted in the nursery workroom.

(o)[(g)] A policy shall be established for:

1. A delivery occurring outside the delivery room; and

2. A patient with an infectious disease.

(p)[(h)] Written policies and procedures shall be developed to cover alternative use of obstetrical beds.

(g)[~~(i)~~] The hospital shall comply with the provisions of KRS 214.175 by[~~in~~] participating in surveys conducted by the cabinet for the purpose of determining the prevalence[~~relating to the determination~~] of alcohol or other substance abuse among pregnant women and newborn infants.

(r)[(j)] The hospital shall comply with the provisions of KRS 216.2970 by providing an[~~in conducting~~] auditory screening[~~examinations~~] for all newborn infants.

(13) Pediatric services.

(a) A hospital providing pediatric care shall have proper facilities for the care of children apart from the newborn and maternity nursing services.

(b) If there is not a separate area permanently designated as the pediatric unit, there shall be an area within an adult care unit for pediatric patient care.

(c) There shall be available beds and other equipment that[~~which~~] are appropriate in size for pediatric patients.

(d)[~~(b)~~] There shall be proper facilities and procedures for the isolation of children with infectious, contagious, or communicable conditions.

(e) At least one (1) patient room shall be available for isolation use.

(f)[~~(c)~~] A physician with pediatric experience shall be on call at all times for the care of pediatric patients.

(g)[~~(d)~~] Pediatric nursing care shall be under the supervision of a registered nurse qualified by training, experience, and ability to direct effective pediatric nursing.

(h) Nursing personnel assigned to pediatric service shall be oriented to the special care of children.

(i)[~~(e)~~] Policies shall be established to cover conditions under which parents may stay with small children or "room-in" with their hospitalized child for moral support and assistance with care.

(14) Psychiatric services. A hospital with a psychiatric unit shall:

(a) Designate the location and number of beds to be licensed as psychiatric beds; and

(b)[~~shall~~] Meet the requirements of 902 KAR 20:180[~~for psychiatric hospital operations, services, and licensure administrative regulation~~].

(15) Chemical dependency treatment services. A hospital providing chemical dependency treatment services shall:

(a) Meet the requirements of 902 KAR 20:160, Sections 3 and 4;[~~,~~] and

(b)[~~shall~~] Designate the location and number of beds to be used for chemical dependency treatment services.

(16) Medical library.

(a) The hospital shall maintain appropriate medical library services according to the professional and technical needs of hospital personnel.

(b) The medical library shall be in a location accessible to the professional staff.

(c) **If printed resources are used,** the library collection shall be organized**[~~and available to the medical and nursing staff members at all times~~]**.

(d) The library collection may be composed of digital references, which shall be on line or accessible on a computer.

Section 5. Long-term Acute Inpatient Hospital Services. (1) A hospital licensed pursuant to this administrative regulation and seeking to qualify for available Title XVIII Medicare reimbursement may provide long-term acute inpatient hospital services pursuant to applicable federal law and in accordance with this section.

(2)[~~upon the following conditions: (a)~~] The area of the hospital designated to provide long-term acute inpatient hospital services shall provide services in compliance with:

(a)[~~1.~~] This administrative regulation; and

(b)[~~2.~~] 42 C.F.R.[~~C.F.R. Section~~] 412.22.

(3)[~~(b)~~] A hospital wishing to provide long-term acute inpatient hospital services shall[~~may~~] request authorization from the Office of Inspector General, Cabinet for Health and Family Services.

(4) The Office of Inspector General shall conduct a survey to determine if the requirements of this section are met and [~~shall~~] notify the hospital of the survey results by letter.

Section 6. Optional Designations. A hospital shall be designated as a:

(1) Primary stroke center if the hospital meets the criteria established in KRS 216B.0425(2); or

(2) SANE-ready hospital if the hospital meets the criteria established in KRS 216B.401(1)[~~(2) A hospital that establishes its authority to be reimbursed for Title XVIII Medicare for long-term care acute inpatient hospital services pursuant to this section, shall not receive Title XIX Medicaid reimbursement for the same services~~].

Section 7. Off-campus, Kentucky Hospital-Owned Freestanding Emergency Department (FSED). (1) A hospital licensed pursuant to this administrative regulation may provide off-campus emergency services in a hospital-owned FSED. For purposes of this section, "off-campus" shall mean a location:

(a) Off the campus of the parent hospital that owns the FSED; and

(b) At least thirty-five (35) miles from an existing hospital that is:

1. Licensed pursuant to this administrative regulation; and

2. Designated as a sole community hospital pursuant to 42 C.F.R. 412.92.

(2) If a Kentucky-licensed hospital owns and operates an ambulatory care clinic licensed under 902 KAR 20:073 prior to July 15, 2018, or holds a certificate of need for an ambulatory care clinic that is not licensed by that date, the hospital shall notify the cabinet no later than ninety (90) days from the effective date of this administrative regulation of the clinic's scope of operations. The hospital's notification shall inform the cabinet whether the clinic will:

(a) Operate as an FSED, in which case the facility shall:

1. Provide emergency services in accordance with Section 4(8) of this administrative regulation;

2. Be designated as provider-based pursuant to 42 C.F.R. 413.65;

3. Not be required to obtain a new certificate of need; and

4. Obtain a separate license under 902 KAR Chapter 20 for any existing service provided under the ambulatory care clinic license and covered under Section IV of the State Health Plan without being subject to a separate certificate of need; or

(b) Provide services that are limited to treatment for minor injury or illness, in which case the clinic shall not hold itself out to the public as an emergency treatment center or use similar terminology that expresses or implies that emergency medical service is offered at the clinic. This paragraph shall not prohibit the clinic from holding itself out to the public as an urgent treatment center.

(3) A Kentucky-licensed hospital that seeks to establish an FSED under circumstances not covered under subsection (2)(a) of this section shall obtain a certificate of need.

(4) An FSED shall:

(a) Be owned by an accredited Kentucky hospital licensed under this administrative regulation;

(b) Be included under the same license and accreditation as the parent hospital;

(c) Meet the requirements of and be certified by the Centers for Medicare and Medicaid Services as a provider-based entity under 42 C.F.R. 413.65;

(d) Pay a fee in the amount of $1,000 for the FSED location at the time of annual renewal of the hospital's license;

(e) Operate twenty-four (24) hours per day, seven (7) days per week;

(f) Comply with the provisions of Section 4(8) of this administrative regulation governing emergency services;

(g) Be under the direction of a licensed physician who is a member of the parent hospital's organized medical staff;

(h) Ensure that nursing personnel are assigned to or designated to cover the emergency service at all times;

(i) Comply with the Emergency Medical Treatment and Labor Act (42 U.S.C. 1395dd) and 42 C.F.R. 489.24;

(j) Have facilities sufficient to assure prompt diagnosis, treatment, and stabilization of injuries and trauma;

(k) Have a written patient transportation agreement with a local emergency medical services (EMS) provider; and

(l) Maintain compliance with applicable federal, state, and local laws.

(5) An FSED shall cease to operate under this administrative regulation if the:

(a) Cabinet finds that there has been substantial failure by the facility to comply with the provisions of KRS Chapter 216B or this administrative regulation; and

(b) Facility fails to submit and implement an acceptable plan of correction or amended plan of correction in accordance with 902 KAR 20:008, Section 2(13).

(6) If an FSED receives notice to cease operations in accordance with subsection (5) of this section, the parent hospital may file a request in writing for a hearing pursuant to KRS 216B.105.

STEVEN D. DAVIS, Inspector General
SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: February 15, 2018

FILED WITH LRC: February 15, 2018 at 11 a.m.

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ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(Amended After Comments)

505 KAR 1:120. Department of Juvenile Justice Policies and Procedures Manual: Health and Safety Services.

RELATES TO: KRS 15A.065, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095 and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policy and Procedures Manual: Health and Safety Services", **July 10[March 30]**, 2018[~~February 10, 2014~~], is incorporated by reference and includes the following:

400 **Health Services[~~Health Services~~]** Definitions (Amended 03/30/18[~~2/10/14~~])
400.1 Health Services (Amended **07/10/18[~~03/30/18~~]**[~~2/10/14~~])
401 Health Services Administration and Personnel (Amended 03/30/18[~~2/10/14~~])
402 Access to Treatment and Continuity of Care [~~Medical, Dental, and Mental Health~~] (Amended **07/10/18[~~03/30/18~~]** [~~2/10/14~~])
402.1 Continuity of Care and Medical Discharge (Amended 03/30/18[~~2/10/14~~])
403 Medical Records (Amended 03/30/18[~~2/10/14~~])
404.1 Admission Screening for Physical and **Behavioral Health[~~Mental~~]** Challenges (Amended **3/30/18[~~12/15/17~~]**[~~2/10/14~~])
404.2 Ectoparasite Control (Amended 03/30/18[~~10/11/13~~])
404.3 Health Assessment and Physical Examination (Amended 03/30/18[~~10/11/13~~])
404.4 Sick Call (Amended 03/30/18[~~10/11/13~~])
404.5 Access to Diagnostic Services (Amended 03/30/18[~~10/11/13~~])
404.6 Emergency **Medical** Services (Amended 03/30/18[~~10/11/13~~])
404.7 First Aid**, AED,** and First Aid Kits (Amended 03/30/18[~~10/11/13~~])
404.8 Hospital Care (Amended 03/30/18[~~2/10/14~~])
404.10 Special Needs Treatment Plans (Amended 03/30/18[~~10/11/13~~])
404.11 Perinatal Care (Amended 03/30/18[~~10/11/13~~])
404.12 Oral Screening and Oral Care (Amended 03/30/18[~~2/10/14~~])
404.13 Preventative Health Care (Amended 03/30/18[~~10/11/13~~])
404.14 Family Planning Services (Amended 03/30/18[~~2/10/14~~])
405 Behavioral[~~Mental~~] Health Services Administration and Personnel (Amended **07/10/18[~~03/30/18~~]** [~~10/11/13~~])
405.1 Behavioral[~~Mental~~] Health **Screening[~~Assessment~~]** and Evaluation (Amended 03/30/18[~~10/11/13~~])
405.2 Forced Psychotropic Medications (Amended **07/10/18[~~03/30/18~~]** [~~2/10/14~~])
405.3 Referral for Behavioral[~~Mental~~] Health Services (Amended **07/10/18[~~03/30/18~~]** [~~10/11/13~~])
405.4 Suicide Prevention and Intervention (Amended 03/30/18[~~2/10/14~~])
405.5 Behavioral[~~Mental~~] Health Emergencies (Amended **07/10/18[~~03/30/18~~]**[~~10/11/13~~])
405.6 Psychiatric Hospitalization (Amended 03/30/18[~~2/10/14~~])
406 Therapeutic Restraints (Amended 03/30/18[~~10/11/13~~])
407 Pharmaceuticals (Amended 03/30/18[~~10/11/13~~])
408.1 Forensic Information (Amended 03/30/18[~~10/11/13~~])
409 Substance Abuse and Chemical Dependency (Amended 03/30/18[~~10/11/13~~])
410 **Orthoses[~~Ortheses~~]**, Prostheses[~~Protheses~~] and Other Aids to Reduce the Effects of **Impairment[~~Impairments~~]** (Amended **07/10/18[~~03/30/18~~]**[~~10/11/13~~])
411 Notification in Emergencies (Amended 03/30/18[~~2/10/14~~])
414 Environmental Health and Safety (Amended 03/30/18[~~10/11/13~~])
415 Occupational Exposure to Bloodborne Pathogens (Amended 03/30/18[~~10/11/13~~])
416 HIV/AIDS/STI[~~STD~~] (Amended 03/30/18[~~10/11/13~~])
416.1 Infectious Communicable Disease (Amended 03/30/18[~~10/11/13~~])
424 Emergency**[~~Preparedness~~]** Plans (Amended 03/30/18[~~2/10/14~~])
424.1 Emergency Plans for Central Office (Amended 03/30/18[~~Added 10/11/13~~])
426 Dietary Services (Amended 03/30/18[~~2/10/14~~])
427 Maintenance (Amended 03/30/18[~~10/11/13~~])
427.1 Control and Use of Tools and Sharps (Amended 03/30/18[~~10/11/13~~])
428 Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials (Amended 03/30/18[~~2/10/14~~])
428.1 Control of Hazardous Materials in Central Office (Amended 03/30/18[~~10/11/13~~])
430 Pets and Domestic Animals (Amended 03/30/18[~~10/11/13~~])

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

CAREY D. COCKERELL, Commissioner

APPROVED BY AGENCY: July 9, 2018

FILED WITH LRC: July 10, 2018 at 11 a.m.

CONTACT PERSON: William Codell, Assistant General Counsel, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836, email William.Codell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: William Codell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the community operations of the Department of Juvenile Justice including the assessment, supervision and case management of juveniles probated or committed to the Department.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 15A.065 and KRS 15A.067.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation governs every aspect of the program services for the community population of the Department of Juvenile Justice.

(d) How this administrative regulation currently assists, or will assist, in the effective administration of the statutes: By providing clear and concise direction and information to the Department of Juvenile Justice employees and the community population as to their duties, rights, privileges, and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment shall bring the Department of Juvenile

Justice in to compliance to reflect actual practice of the agency and compliance.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.065 and 15A.067.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the Commissioner or her authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Department of Juvenile Justice.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will help the Department of Juvenile Justice to operate more efficiently.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 250 employees of the Department of Juvenile Justice, approximately 1100 youth in all programs, and all visitors and volunteers to Department of Juvenile Justice.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: All entities will meet the minimum standards as dictated by federal and state law, American Correctional Association (ACA).

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department of Juvenile Justice employees and volunteers will provide quality health care in accordance with standardized practice. The Department of Juvenile Justice youth shall receive health care prescribed by law and standardized by the American Correctional Association (ACA).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No monetary cost will be incurred by the youth, employees, or volunteers of the Department of Juvenile Justice.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Department will be accredited by the ACA and will provide all medical care prescribed by law. The Department youth shall receive quality health care and reside within a safe environment.

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

(a) Initially: No Additional funding will be required.

(b) On a continuing basis: No Additional funding will be required on an annual basis

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted for this 2016-2018 biennium.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as the Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Response: KRS 15A.065(1), 15A.067

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The revised administrative regulations will only impact the Department of Juvenile Justice. There are no anticipated expenditures for initial staff training or annual training thereafter.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Response: None.

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

(c) How much will it cost to administer this program for the first year? Response: The revised administrative regulations will only impact the Department of Juvenile Justice. No Additional funding will be required for the first year.

(d) How much will it cost to administer this program for subsequent years? Response: No Additional funding will be required for the first year.

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

Revenues (+/-): No revenue will be generated from this regulation.

Expenditures (+/-): Expenditures relate to training staff and auditing programs to ensure compliance.

Other Explanation: This regulation will provide a clear and concise policies and procedures for all youth receiving services from the Department of Juvenile Justice, and reflect the treatment and practice of the agency.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(Amended After Comments)

505 KAR 1:140. Department of Juvenile Justice Policies and Procedures Manual: detention services.

RELATES TO: KRS 15A.065, 15A.067, 15A.200-245, 15A.305, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095 and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policy and Procedures Manual: Detention Services", **July 10, 2018[~~March 30, 2018~~]**[~~July 15, 2005~~], is incorporated by reference and includes the following:

700 Definitions[~~Detention Services Delivery System~~] (Amended 03/30/18[~~7/15/05~~])

700.1 Detention Services Delivery System (Added 03/30/18)

701 Criteria for **Admissions[~~Admission~~]** (Amended 03/30/18[~~7/15/05~~])

702 Intake, Reception and Orientation (Amended **07/10/18[~~03/30/18~~]**[~~7/15/05~~])

703 Detention Risk Assessment (Amended 03/30/18[~~7/15/05~~])

704 Alternatives to Secure Detention (Amended **07/10/18[~~03/30/18~~]**[~~7/15/05~~])

704.1 Supervision of **Juveniles[~~Youth~~]** in Alternative **to Secure**

Detention Programs (Amended 03/30/18[~~7/15/05~~])
704.2 Revocation of **Juveniles[Youth]** in Alternative **to Secure** Detention Programs (Amended 03/30/18[~~7/15/05~~])
704.3 Juvenile Justice and Delinquency Prevention Act (Added 03/30/18)
705 Individual Client Records (Amended 03/30/18[~~7/15/05~~])
[~~705.1 Medical Records (Amended 7/15/05)~~]
705.2 Progress Notes (Amended 03/30/18[~~7/15/05~~])
706 Grievance Procedure (Amended 03/30/18[~~7/15/05~~])
707 Bed Capacities and Staffing of**[~~Regional~~]** Juvenile Detention **Centers[~~Facilities~~]** (Amended 03/30/18[~~7/15/05~~])
708 Classification of **Juveniles[~~Youth~~]** for Housing and Program Assignment (Amended 03/30/18[~~7/15/05~~])
709 Security and Control (Amended 03/30/18[~~7/15/05~~])
710 Shift and Log Reports (Amended 03/30/18[~~7/15/05~~])
711 Transportation of **Juveniles[~~Youth~~]** (Amended 03/30/18[~~7/15/05~~])
712 Escape/AWOL (Amended 03/30/18[~~7/15/05~~])
713 Restraints (Amended **07/10/18[~~03/30/18~~]**[~~7/15/05~~])
714 Searches (Amended 03/30/18[~~7/15/05~~])
715 **[~~Critical~~]** Incident Reports (Amended 03/30/18[~~7/15/05~~])
716 Behavior Management (Amended 03/30/18[~~7/15/05~~])
717 Discipline and Special Behavior Management (Amended 03/30/18[~~7/15/05~~])
718 Disciplinary Review (Amended **07/10/18[~~03/30/18~~]**[~~7/15/05~~])
720 Programs and Services (Amended 03/30/18[~~7/15/05~~])
720.1 Library Services (Amended 03/30/18[~~7/15/05~~])
720.2 Recreation and Structured Activities (Amended 03/30/18[~~7/15/05~~])
720.3 Religious Programs (Amended 03/30/18[~~7/15/05~~])
720.4 **Juveniles[~~Youth~~]** Work Details (Amended 03/30/18[~~7/15/05~~])
720.5 Social Services (Amended **07/10/18[~~03/30/18~~]**[~~7/15/05~~])
720.6 Family and Community Contact (Amended **07/10/18[~~03/30/18~~]**[~~7/15/05~~])
[~~723 Health Services (Amended 7/15/05)~~
~~724 Suicide Prevention and Intervention (Amended 7/15/05)~~]
725 Educational Programming and **Assessment[~~Instructional Services~~]** (Amended **07/10/18[~~03/30/18~~]**[~~7/15/05~~])
725.1 Instructional Staffing (Amended 03/30/18[~~7/15/05~~])
725.2 Education Records (Amended **07/10/18[~~03/30/18~~]** [~~7/15/05~~])
726 **[~~Day~~]** Leaves (Amended 03/30/18[~~7/15/05~~])
729 Release From Detention (Amended 03/30/18[~~7/15/05~~])
730 **[~~Annual~~]** Inspections of Secure Juvenile Detention Facilities**[~~, Juvenile Holding Facilities and Intermittent Holding Facilities~~]** (Amended 03/30/18[~~7/15/05~~])
731 Complaint Investigations of Secure Juvenile Detention **Centers and[~~Facilities,~~]** Juvenile Holding Facilities**[~~and Intermittent Holding Facilities~~]** (Amended 03/30/18[~~7/15/05~~])

(b) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

CAREY D. COCKERELL, Commissioner

APPROVED BY AGENCY: July 9, 2018

FILED WITH LRC: July 10, 2018 at 11 a.m.

CONTACT PERSON: William Codell, Assistant General Counsel, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836, email William.Codell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: William Codell

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(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 250 employees of the Department of Juvenile Justice, approximately 1100 youth in all programs, and all visitors and volunteers to Department of Juvenile Justice.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: All entities will meet the minimum standards as dictated by federal and state law, American Correctional Association (ACA).

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(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted for this 2016-2018 biennium.

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FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Response: KRS 15A.065(1), 15A.067

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The revised administrative regulations will only impact the Department of Juvenile Justice. There are no anticipated expenditures for initial staff training or annual training thereafter.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Response: None.

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(c) How much will it cost to administer this program for the first year? Response: The revised administrative regulations will only impact the Department of Juvenile Justice. No Additional funding will be required for the first year.

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

Revenues (+/-): No revenue will be generated from this regulation.

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Other Explanation: This regulation will provide a clear and concise policies and procedures for all youth receiving services from the Department of Juvenile Justice, and reflect the treatment and practice of the agency.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Operations and Support
(Amended After Comments)

910 KAR 2:030. Accounting provisions for adult guardianship.

RELATES TO: KRS 210.290(3), (4), (5), 387.500-387.990, 42 C.F.R. 483.10, 42 U.S.C. 1320b-20

STATUTORY AUTHORITY: KRS 387.600(1), 387.760, 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 387.600(1) authorizes the Cabinet for Health and Family Services to be appointed as limited guardian, guardian, limited conservator, or conservator to conduct an active guardianship or conservatorship program. KRS 387.760 authorizes reasonable compensation for services rendered and for reasonable and necessary expenses incurred in the exercise of guardianship or conservatorship duties and powers from the financial resources of the ward. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth. This administrative regulation establishes accounting provisions for adult guardianship.

Section 1. Definitions. (1) "Best interest" means a course of action that maximizes what is best for a ward and that includes consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of a ward.

(2) "Budget" means a financial spending plan that estimates revenues and expenditures of an individual for a stated period of time by examining and analyzing available financial information.

(3) "Division" means the Division of Operations and Support[~~Guardianship~~].

(4) "Emergency" means unexpected expenses such as:

(a) Medical needs not paid by Medicare or Medicaid;

(b) Home repair; or

(c) Transportation for a medical appointment.

(5) "Fiduciary Management[~~Services~~] Branch" means a central office branch under the Division of Operations and Support[~~Guardianship~~].

(6) "Field Services Branch" means a central office branch under the Division of Guardianship.

(7) "Order of appointment" means a type of guardianship appointment pursuant to KRS 387.590(6).

(8) "Ordinary and necessary expenses" means those expenses that are requested by a field services worker to maintain a ward's[~~client's~~] quality of life such as clothing, snacks, and non-medical transportation.

(9) "Personal needs" means an individual's need to purchase varied goods such as:

(a) Clothing;

(b) Personal care items; or

(c) Social support items such as:

1. A telephone;
2. Stationery;
3. Books;
4. Snacks; or
5. Occasional outings.

(10) "Personal spending accounts" means money maintained by the facility for the client's personal use in accordance with[~~is defined by~~] 42 C.F.R. 483.10.

(11) "Provider" means a facility or entity providing services for a ward such as:

(a) Self;

(b) Caretaker;

(c) Family,

(d) Group home placement;

(e) Hospital; or

(f) Psychiatric hospital.

(12) "Ward" is defined by KRS 387.510(15).

(13) "Work allowance" means a portion of a ward's wage check sent to the ward to use for personal spending.

Section 2. Budget. (1)[~~Within thirty (30) working days of placement,~~] The Field Services Branch[~~division~~] shall complete a budget upon receipt of the ward's funds or when the ward moves to a facility without an established rate[~~process for a ward~~].

(2) The Fiduciary Management Branch shall revise the budget once the guardianship compensation has been determined, pursuant to KRS 387.760.

(3) The budget[~~process~~] shall include:

(a) The ward's monthly income and expenses;

(b) Other expenses of the ward, including any applicable guardianship compensation that are on a monthly basis, to calculate a monthly amount;

(c) The ward's net amount; and

(d) Submission[~~Transfer~~] of the completed budget to the Fiduciary Management[~~Services~~] Branch for review and

processing[~~implementation~~].

Section 3. Bed Holds. (1) The facility, provider agency, or the Division of Guardianship shall notify the Fiduciary Management Branch, within twenty-four (24) hours, or if on a weekend or holiday by noon on the next business day, that a ward is leaving **or has left** the facility or placement.

(2) The Fiduciary Management Branch may:

(a) Give verbal authorization for the bed to be reserved, including the number of days; and

(b) Authorize bed hold days in excess of the period covered by Medicaid, or other funding source, only if the availability of the ward's funds has been verified.

(3) If authorizing a bed hold, the Fiduciary Management Branch shall:

(a) Verify the verbal authorization of a bed hold; and

(b) Provide written notification of the number of days approved **to the facility within twenty-four (24) hours of determination**.

(4) If a ward is in a public assistance eligible placement and moves to a temporary stay at a hospital, or a state or privately run psychiatric hospital, the ward may be entitled to retain the public assistance for ninety (90) days in accordance with 42 U.S.C. 1382(e)(1)(G) and 20 C.F.R. 416.212. Eligible placements include a:

(a) Licensed personal care home;

(b) Licensed family care home;

(c) Caretaker; or

(d) A private residence in accordance with Section 4(2)(d) of 921 KAR 2:015 supported by the community integration supplementation.

(5) In order to continue public assistance, the following requirements shall be met:

(a) A bed hold has been approved;

(b) A physician has certified in writing within ten (10) calendar days of admission that the recipient is unlikely to be confined for longer than ninety (90) full, consecutive days; and

(c) The Fiduciary Management Branch provides the Department for Community Based Services with the following:

1. Notification of the temporary admission; and

2. The physician statement as specified in paragraph (b) of this subsection.

(6) If the bed hold is not approved or a physician statement is not received within ten (10) calendar days, the ward shall lose eligibility for public assistance and all public assistance shall be returned by the Fiduciary Management Branch to the Kentucky State Treasury from the date of admission.

(7)(a) The Field Services Branch may only authorize a bed hold for a ward residing in other levels of care by verifying and documenting the availability of the ward's funds with the Fiduciary Management Branch.

(b) If funds are verified by the Fiduciary Management Branch, the Field Services Branch shall verify the verbal authorization of a bed hold as specified in subsection (3) of this section.

Section 4. Work Allowances. The Field Services Branch shall complete a budget for a ward based on individual needs, taking into account Social Security Administration work incentive rules, 42 U.S.C. 1320b-20.

Section 5[4]. Quarterly Reports and Personal Spending Accounts. (1)(a) Providers shall submit a quarterly report to the cabinet, which includes documentation of a ward's personal needs income and expenses[~~On quarterly basis, 42 C.F.R. 483.10 and 907 KAR 1:145 require an accounting report of a ward's personal needs income and expenses for Long Term Care and Supports for Community Living (SCL) providers~~].

(b) The maximum allowable balance to be held in a personal spending account shall be $100 on the last day of a calendar month.

(2) The division shall review the ward's account for a discrepancy and to ensure:

(a) The accounting report includes all personal needs income received on behalf of the ward;

(b) Receipts are attached to the accounting report including special requests that may have been initiated by the provider such as:

1. Clothing;

2. Furniture; and

3. Electronics;

(c) All personal needs expenditures incurred for that ward are ordinary and necessary; and

(d) The balance does not exceed $100.

(3) If no discrepancies are found, the Fiduciary Management[~~Field Services~~] Branch shall[~~:~~

~~(a)~~] ensure the balance is in compliance and that appropriate backup receipts are attached to the accounting report[~~; and~~

~~(b) Sign, date, and write "approved" on the accounting report~~].

(4) If a discrepancy is found, the Fiduciary Management[~~Field Services~~] Branch shall[~~:~~

~~(a) Sign, date, and write disapproved on the accounting report with the reason the statement is not approved; and~~

~~(b)~~] contact the provider to resolve the issue.

(5) Upon completion, the Field Services Branch shall provide [~~mail~~] the review to the Fiduciary Management[~~Services~~] Branch for final review and processing.

(6) The[~~Field Services Branch shall notify the~~] Fiduciary Management[~~Services~~] Branch with input from the Field Services Branch, may:

(a)[~~to~~] Request a refund;[~~,~~]

(b) Modify the amount;[~~,~~]

(c) Suspend the disbursement of funds;[~~,~~] or

(d) Resume the disbursement of personal needs funds for the ward[~~as necessary.~~

~~(7) If the Field Services Branch indicates a refund is appropriate, Fiduciary Services Branch shall generate a letter to the provider asking that any funds over $100 be refunded to the cabinet for the ward by the end of the month~~].

Section 6[~~5~~]. Negotiable Checks. (1) The Field Services Branch shall promptly forward all checks and money orders received on behalf of a ward to the Fiduciary Management[~~Services~~] Branch [~~by certified mail~~].

(2) Any cash received on behalf of a ward shall be converted to a money order or cashier's check as allowable by the banking institution,[~~by the Field Services Branch~~] and forwarded to the Fiduciary Management[~~Services~~] Branch as specified in subsection (1) of this section.

(3) Each field services office shall have and maintain a tracking system for cash and checks received on behalf of a ward.

Section 7[~~6~~]. Personal Checking Accounts of a Ward. (1) Establishment of a checking account for a ward shall be at the direction of the court.

(2) The Field Services Branch shall ensure that the facility where the ward resides is aware that:

(a) An individual savings or checking account shall not be established for the ward unless the account is listed in the provider's name for the benefit of the ward; and

(b) The ward shall not legally write or endorse checks from this account unless directed by the court.

Section 8[~~7~~]. Checks Sent to a Ward as Payee. (1) The Field Services Branch shall ensure that a ward of the cabinet does not receive or endorse checks made payable directly to the ward unless:

(a) The court has directed that the ward may receive and endorse checks; or

(b) The order of appointment is for a limited type of appointment that does not specify that the ward cannot execute instruments or enter into a contractual relationship.

(2) Unless the ward can endorse a check through an AOC-775, Order of Appointment of Guardianship that is issued by the Administrative Office of the Courts[~~Court~~] and available at www.courts.ky.gov, the division shall ensure that no payment requests with the ward as payee is made.

Section 9[~~8~~]. Requests for Payments and Supporting Documentation. A ward's expenses shall be paid through a payment request system that has been developed by the Fiduciary Management[~~Services~~] Branch to meet accounting internal control best practice and reporting required by the courts.

Section 10[~~9~~]. Medical Payments and Medical Spend Downs, Pharmacy and Health Insurance Premium Payments. (1) The Fiduciary Management Branch shall review for payment[~~For~~] a ward's expenses such as medical, medical spend down, pharmacy and health insurance premium payments[~~, the Field Services Branch shall forward an expense statement to The Fiduciary Services Branch for review and payment~~].

(2) The[~~Field Services Branch shall submit to the~~] Fiduciary Management[~~Services~~] Branch shall arrange payments when the ward has financial means to pay[~~a request for~~] medical expenses not reimbursable or covered by insurance, such as:

(a) Glasses;

(b) Diabetic shoes; or

(c) Dental services.

Section 11[~~10~~]. Provider Payments.[~~(1)~~] The Fiduciary Management[~~Field Services~~] Branch shall:

(1)[~~(a)~~] Review a provider statement received; and

(2)[~~(b)~~] Ensure that the provider statement does not include inappropriate expenses such as medical, medical co-payments, pharmacy charges, or personal needs [~~unless these expenses had been pre-approved by the Field Services Branch.~~

~~(2) After reviewing a statement for a provider payment, the Field Services Branch shall forward the statement on behalf of a ward to the Fiduciary Services Branch for review and payment~~].

Section 12[~~11~~]. General Expenses. (1)[~~General expense payments may include:~~

~~(a) Additional personal needs such as:~~

~~1. Birthday;~~

~~2. Christmas; and~~

~~3. Change in seasonal needs; and~~

~~(b) Other items such as:~~

~~1. Furniture;~~

~~2. Vacation;~~

~~3. Outing;~~

~~4. Utilities;~~

~~5. Cable television; and~~

~~6. Household item.~~

~~(2) For all general expense statements, the Field Services Branch shall analyze the request or statement to ensure:~~

~~(a) It is an expense of the ward;~~

~~(b) The expense is in the best interest of the ward; and~~

~~(c) The expense reflects what was requested by the ward through:~~

~~1. Self;~~

~~2. Case manager of the ward; or~~

~~3. The Field Services Branch.~~

~~(3)~~](a) Extra personal needs shall be personal needs that exceed the budgeted or regulatory personal needs such as for personal care in accordance with 921 KAR 2:015[~~and Long Term Care facilities already being sent on a monthly basis in accordance with 907 KAR 1:655~~].

(b) The Field Services Branch may request the extra personal needs specified in paragraph (a) of this subsection at any time.

(c) The Field Services Branch shall follow the procedures for requests for payment and supporting documentation in accordance with Section 9[~~8~~] of this administrative regulation.

(2)[~~(4)~~] The Fiduciary Management[~~Services~~] Branch shall review and approve any payment request[~~exceeding $500 dollars or over~~].

(3)[~~(5)~~] The Fiduciary Management[~~Services~~] Branch shall approve or disapprove a payment request based on if:

(a)[~~If~~] Funding is available; and

(b)[~~If the back-up documentation supporting~~] The request indicates that the expense is supported through documentation, when required, including:

1. Utility bills; or

2. House hold items[~~ordinary and necessary~~].

Section 13[~~12~~]. Burial Policies and Related Issues. (1) If funds are available beyond providing for the ward's needs, a[~~the Field Services Branch shall establish~~] preneed burial may be arranged[~~arrangements~~] for the ward.

(2) Prior to purchasing a burial policy or making any other funeral arrangements, the Field Services Branch shall:

(a) Request a[~~Confirm that funds in the ward's account are available for~~] burial policy by contacting the Benefits Management[~~Fiduciary Services~~] Branch;

(b) Take into consideration a ward's desires and cultural and religious views, if known;

(c) Review a ward's records to:

1. Assess what burial policies or arrangements have previously been acquired; and

2. Ensure the[~~use of the~~] same funeral home is listed on all policies[~~;~~

~~3. Determine the value of an existing policy so the total value does not exceed Medicaid and Social Security Administration (SSA) standards; and~~

~~4. Review the adequacy of the arrangements, and if the arrangements are not adequate verify with the Fiduciary Services Branch that the ward has funds available to:~~

~~a. Add to the burial policy;~~

~~b. Procure a monument or plot; or~~

~~c. Make any other necessary burial arrangements;~~

~~(d) Determine that all needs of the ward are being met and that a minimum of fifty (50) dollars in the ward's account is available for an emergency; and~~

~~(e) Review the ward's accounts to ensure bills have been paid~~].

(3) The Field Services Branch may discuss with the ward, relative, or other individual with knowledge of the ward's[~~client's~~] wishes concerning burial arrangements.

(4) If the Field Services Branch is unable to obtain information regarding a burial preference from the ward, relative, or other individual with knowledge of the ward's[~~client's~~] wishes, the Field Services Branch shall:

(a) Examine the ward's record for information pertaining to burial;[~~and~~]

(b) Decide the location for the burial and the funeral director who will handle the arrangements; and

(c) Submit burial request information to the Benefits Management Branch for determining purchase of a burial policy.[~~(5) If purchasing a burial contract, the Field Services Branch shall:~~

~~(a) Contact a funeral director to initiate the process of establishing a burial contract;~~

~~(b) Submit the contract to the Fiduciary Services Branch to ensure that the contract meets Medicaid and SSA standards;~~

~~(c) Upon receipt of a check from the Fiduciary Services Branch, forward the check and contract signed by the Field Services Branch on behalf of the ward, to the funeral home; and~~

~~(d) Send a copy of the signed and completed contract to the Fiduciary Services Branch.~~

~~(6) If a ward has lost any body part due to amputation or surgery and it is appropriate to bury this body part with the ward, arrangements shall be made by the Field Services Branch with the funeral home selected to ensure the body part is preserved for burial with the ward's body at the time of death.~~]

SHANNON GADD, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 6, 2018

FILED WITH LRC: July 11, 2018 at 9 a.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Phyllis W. Sosa, email Phyllis.sosa@ky.gov, phone (502) 564-6930; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the accounting provisions for wards of the state when the cabinet is appointed as conservator or limited conservator of an individual.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the provisions of KRS 387.680-720 and 42 C.F.R.483.10,42 U.S.C. 1320b-20. The CHFS is responsible for accounting for the ward's personal assets, benefits and liabilities and to ensure the ward's assets are utilized for the best interest of the ward.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the requirements for staff to establish budgets for wards and the processes to account for the ward's assets.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the accounting process for the ward's assets and liabilities.

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

(a) How the amendment will change this existing administrative regulation: This amendment will place the accounting provisions for adult guardianship under the correct division within the Department for Aging and Independent Living. Establishes that the ward's budget is completed when the ward's funds are received or when the ward moves to a facility without an established rate, and revised when the guardianship compensation has been determined pursuant to KRS 387.760. This amendment establishes requirements for bed holds when a ward must temporarily leave the current facility. This amendment also clarifies quarterly reports and personal spending accounts with providers, medical payments and medical spend down requirements, provider payments, general expenses and purchasing of burial policies and related issues.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to meet the requirements of the authorizing statues and the appointment orders issued by the district courts. This amendment also adds the provisions of KRS 387.760 which allows the CHFS to take a guardianship fee from the assets of those individuals appointed a ward of the state. The CHFS needs to enact this provision as the guardianship program as it currently exists is not sustainable. The number of new appointments exceeds the number of individuals that expire or are resigned monthly and there is no additional funding to continue to increase staff to keep up with the demands of the program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through modification of the accounting processes and fee determination.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of statutes through conformity with KRS 387.680-720, 387.760, and 42 C.F.R.483.10,42 U.S.C. 1320b-20. The amendment clarifies requirements and will assist in offsetting the program deficit.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects individuals that have been adjudicated dependent by the district court and appointed the CHFS as conservator. As of January 2018 there are 4,429 wards of the state that the CHFS has responsibility for their financial affairs. The number of wards fluctuates daily due to deaths and new appointments with an average of seventy (70) new wards per month. Wards with assets will be subject to the fees allowed pursuant to KRS 387.760.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities affected by this administrative regulation will not have any additional requirements placed upon them.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The average fee per ward would be $50.35 a month. This amount is based on the current income of the 4,429 wards. The actual amount per ward will vary depending on the income, and assets of each individual.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this amended regulation wards of the state will have a quicker response to their needs as the collection of fees will allow additional staffing to be hired. Providers will be paid faster when bills are submitted and more oversight of the personal needs allowance funds will ensure wards don't lose their benefits and jeopardize placements and services.

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

(a) Initially: There is no cost associated with the implementation of this administrative regulation.

(b) On a continuing basis: There is no ongoing cost associated with amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no funding associated with the implementation of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in the fees that are already allowed to be collected pursuant to KRS 387.760 but this administrative regulation as amended sets forth the provisions for collecting the fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There is no new fee associated with the amendment of 910 KAR 2:030 as language from 910 KAR 2:050 has been added to this administrative
regulation with amendments, due to the repeal of 910 KAR 2:050. The amendment allows the CHFS to obtain the fees allowed under KRS 387.760(2) to those individuals appointed a state guardian that have funds available.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Aging and Independent Living.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutes that authorize the action taken by this administrative regulation are KRS 194A.050; 387.500-387.990 and 42 C.F.R. 483.10, 42 U.S.C. 1320b-20.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate an estimated $2,712,000.00 for the CHFS in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate an estimated $2,712,000.00 for the CHFS in subsequent years. This is dependent upon the total number of wards appointed to the cabinet and the income of each individual.

(c) How much will it cost to administer this program for the first year? The Guardianship program currently operates with an $8,000,000.00 budget.

(d) How much will it cost to administer this program for subsequent years? The program has to operate within the designated budget of $8,000,000.00 which does not allow the program to keep up with the growing population and additional staffing needed. The fees will assist in helping the program to add the needed staffing to keep caseloads at a more workable level.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS

FINANCE AND ADMINISTRATION CABINET
Executive Branch Ethics Commission
(Amendment)

9 KAR 1:015. Preadministrative proceedings.

RELATES TO: KRS 11A.080
STATUTORY AUTHORITY: KRS 11A.110(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 11A.110(3) provides that the Executive Branch Ethics Commission promulgate administrative regulations to implement KRS Chapter 11A. KRS 11A.080(1) requires the commission to investigate violations of KRS Chapter 11A, upon complaint or its own motion, and establishes procedures for the filing of complaints and commission investigations. This administrative regulation establishes procedures, not established in KRS 11A.080, relating to investigations.

Section 1. Definitions. (1) "Commission" is the Executive Branch Ethics Commission created by KRS 11A.060.
(2) "Complaint" is the "complaint signed under penalty of perjury by any person" as stated in KRS 11A.080(1). A complaint does not include a referral of information to the commission that is provided without being under penalty of perjury.

Section 2. Complaint. (1) A complaint shall state the:
(a) Full name and address of the:
1. Complainant;
2. Complainant's attorney, if an attorney has been retained;
(b) Name of each person alleged to have violated KRS Chapter 11A;
(c) Employment of each alleged violator, if known;
(d) Alleged facts that are the basis of the complaint; and
(e) Statute alleged to have been violated, if known.
(2) The statement that the complaint is signed under penalty of perjury shall appear above the signature of the complainant.
(3) Appearing after the complainant's signature shall appear a line for a Notary Public to sign, the date of Notary Public signature, and the date of expiration of Notary Public commission.
(4) Appearing after the Notary Public's signature, the complainant's attorney, if any retained, shall sign the complaint.
(5) A complaint that does not contain the following shall not be accepted as properly filed with the commission:
(a) The signature of the complainant;
(b) The signature of a valid Notary Public;
(c) The name of a person alleged to have violated KRS Chapter 11A over which the commission maintains jurisdiction; and
(d) Facts that, if true, would indicate a violation of KRS Chapter 11A.
(6) The complaint shall be part of the records of a preliminary investigation pursuant to KRS 11A.080 and shall remain confidential pursuant to KRS 11A.080(2) until such time as final action is taken by the commission pursuant to KRS 11A.100(3).

Section 3[2]. Answer to Complaint. (1) The documents specified in KRS 11A.080(1)(c) shall be sent, by certified mail, return receipt requested, at the last known address, or by personal service to the person alleged to have violated KRS Chapter 11A.
(2) Within twenty (20) days of receiving a copy of the complaint, a person against whom a complaint is filed may[~~shall~~]:
(a) File with the commission a written, signed response to the complaint; and
(b) Mail a copy of the response to the complainant.
(3) The answer, if any, shall be part of the records of the preliminary investigation pursuant to KRS 11A.080 and shall remain confidential pursuant to KRS 11A.080(2) until such time as final action is taken by the commission pursuant to KRS 11A.100(3).

Section 4[3]. Meeting During Preliminary Investigation. (1) At any time during the course of a preliminary investigation pursuant to KRS 11A.080(1)(a), a[~~The~~] person being investigated may[~~, at any time during the course of the preliminary investigation~~]:
(a) Request a meeting with the commission's attorney and the complainant, if any; and
(b) Have an attorney represent him at this meeting.
(2) The commission's attorney shall use reasonable efforts to schedule a meeting if one has been requested.
(3) Nothing in this section shall be construed to prohibit the commission's attorney,[~~attorney~~] or an investigator acting on behalf of the commission,[~~commission~~] from initiating contact with the person being investigated, or the person's attorney,[~~attorney~~] if he or she has retained counsel.

Section 5[4]. Dismissal of Complaint. (1) The commission may dismiss a complaint if it determines that the facts stated in the complaint, or facts known to the commission upon a preliminary investigation, fail to establish a violation of KRS Chapter 11A.
(2) The commission may dismiss a complaint if the complainant or his or her attorney at any time before the commission takes final action pursuant to KRS 11A.100(3), publicly reveals that the complaint has been filed with the commission or that the commission opened a preliminary investigation based upon the complaint, which may interfere with the preliminary investigation remaining confidential pursuant to the requirements of KRS 11A.080(2).

WILLIAM G. FRANCIS, Chair
APPROVED BY AGENCY: JULY 10, 2018
FILED WITH LRC: July 11, 2018 at 1 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2018, at 10:00 a.m., at Executive Branch Ethics Commission, 1025 Capital Center Drive, Suite 105, Shared Conference Room, 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 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 through August 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: Kathryn H. Gabhart, Executive Director, Executive Branch Ethics Commission, 1025 Capital Center Drive, Suite 104, Frankfort, Kentucky 40601, phone (502) 564-7954, fax (502) 696-5939, email Katie.gabhart@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn H. Gabhart
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation provides procedures for filing of complaints under penalty of perjury with the commission, the procedures for the answering to those complaints, and procedures for the conduct of preliminary investigations.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the requirements of KRS 11A.080(1) to the conduct of preliminary investigations.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation implements KRS 11A.080.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently provides guidance for the implementation of KRS 11A.080 in relation to preliminary investigations and will continue to do so.

(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 resolves some issues that were presented by the current version of the regulation specifically related to the definition of "under penalty of perjury" and requiring the preliminary investigation to remain confidential as required by KRS 11A.080(2).

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is needed to ensure that individuals desiring to file a complaint are aware of the procedures that they must follow and ensure that the Commission's investigations remain confidential pursuant to KRS 11A.080.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment to the administrative regulation conforms to the provisions established by KRS 11A.080 and KRS 11A.110(3) by providing guidance and directives to those wishing to file complaints with the commission while maintaining the confidentiality of the commission's preliminary investigations.

(d) How the amendment will assist in the effective administration of the statues: This amendment to the administrative regulation will assist in the administration of KRS 11A.080 by providing guidelines to ensure its implementation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals desiring to file complaints with the commission and public servants under the jurisdiction of the commission.

(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: Individuals desiring to file complaints with the commission and public servants will have to ensure that they follow the guidance when in the regulation when filing complaints or submitting answers to those complaints.

(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 have to follow the guidance when filing complaints or submitting answers to those complaints.

(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 known cost associated with this amended administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals desiring to file complaints with the commission and public servants will have guidance and clarity to the provisions of KRS 11A.080 and to ensure the commission's process is successful.

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

(a) Initially: Minimal costs to the Executive Branch Ethics Commission associated with the publication of training materials and conducting education already provided in the Commission's budget.

(b) On a continuing basis: Minimal costs to the Executive Branch Ethics Commission associated with the ongoing publication of training materials and conducting education already provided in the Commission's budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Commission's existing 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: This administrative regulation will not require an increase in any fees or funding.

(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.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all affected individuals.

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 Executive Branch of state government.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 11A.110(3) and 11A.080.

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

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

(c) How much will it cost to administer this program for the first year? $500 for publications and training; funds already included in the Executive Branch Ethics Commission's budget.

(d) How much will it cost to administer this program for subsequent years? $500 for publication and training; funds already included in the Executive Branch Ethics Commission's budget.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Executive Branch Ethics Commission
(Amendment)

9 KAR 1:030. Administrative proceedings.

RELATES TO: KRS 11A.080, 11A.100

STATUTORY AUTHORITY: KRS 11A.080, 11A.100, 11A.110(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 11A.080(4)(b) authorizes the commission to initiate an administrative hearing to determine whether there has been a violation of KRS Chapter 11A. This administrative regulation establishes the procedures governing administrative proceedings. KRS 11A.100(1) provides that the commission is exempted from the provisions of KRS 13B.030(2)(b). This administrative regulation provides the procedures for the designation of hearing officers for the commission. KRS 100(1) provides that the commission is exempted from the provisions of KRS 13B.050(1), (2), and (3) when a party fails to file an answer or otherwise participate. The administrative regulation establishes procedures to govern when a party fails to participate in an administrative proceeding. KRS 11A.110(3) provides that the Executive Branch Ethics Commission promulgate administrative regulations to implement KRS Chapter 11A.

Section 1. Definitions. (1) "Commission" is the Executive Branch Ethics Commission established by KRS 11A.060.

(2) "Commission Secretary" means the employee of the commission designated pursuant to KRS 11A.070 to designate hearing officers.

(3) "Executive Director" means the executive director appointed by the commission pursuant to KRS 11A.070.

(4) "Initiating Order" means the document issued by the commission to initiate an administrative proceeding to determine

whether there has been a violation as provided by KRS 11A.080(4)(b).

Section 2. Initiating Order. (1) To initiate an administrative proceeding, the commission shall issue an initiating order to the alleged violator, who shall be referred to as the respondent during the course of the administrative proceeding.

(2) The initiating order shall:

(a) Be served on the respondent by certified mail, return receipt requested, or registered mail sent to the last known address of the respondent, or by personal service. Service by certified or registered mail shall be complete upon the date on which the commission receives the return receipt or the returned notice;

(b)[(1)] Include the information required by KRS 13B.050(3), except for the information required in KRS 13B.050(3)(a) and (b);

(c)[(2)]State that all material submitted to the commission by the respondent or his attorney shall be addressed to the commission[Executive Branch Ethics Commission];[and]

(d) State the deadline for submitting an answer and the ramifications of failing to file an answer as provided in Section 4 of this administrative regulation; and

(e) State that the procedural schedule for the proceedings will be set by a subsequent order after the designation of a hearing officer[(3) Establish the procedural schedule for the proceeding or state that it will be set by subsequent order].

Section 3[2]. Answer. (1) The respondent shall file a written answer to the initiating order[shall be filed] with the commission within twenty (20) days of service of the initiating order.

(2) The answer shall be filed[,] by the:

(a) Respondent, if he has not retained counsel; or

(b) Respondent's attorney, if he has retained counsel.

(3)[(2)] The answer shall be signed[verified] by the respondent or by counsel for respondent.

(4) The respondent may request additional time in which to file an answer. The executive director may grant the respondent an additional twenty (20) days in which to file an answer.

(5) If the respondent requests additional time to file an answer beyond the additional twenty (20) days, the request shall be reviewed by the commission at its next regularly scheduled meeting. The commission may grant additional time to file an answer with good cause shown.

Section 4. Default. (1) If the respondent fails to file a timely answer, then the commission may:

(a) Accept the failure to answer as an admission of the allegations in the Initiating Order;

(b) Find by clear and convincing evidence pursuant to KRS 11A.100(3) that the respondent has engaged in the alleged conduct in violation of KRS Chapter 11A;

(c) Enter a final order of default against the respondent; and

(d) Levy the appropriate possible penalty allowed under KRS 11A.100(3).

Section 5[3].Counsel. (1) If a respondent has retained counsel, the attorney shall file an entry of appearance with the commission.

(2) If a respondent has retained counsel, notices, correspondence, and orders relating to the administrative proceeding shall thereafter be transmitted to the attorney instead of the respondent.

Section 6. Assignment of a Hearing Officer. (1) If the respondent files a timely answer, then the commission shall designate a hearing officer.

(2) The commission shall designate a roster of hearing officers as provided pursuant to KRS 13B.030(2)(a) and as dictated by the requirements of KRS Chapter 45A.

(3) A person qualified to serve as a hearing officer for the commission shall:

(a) Maintain the qualifications required by KRS 13B.040;

(b) Be an attorney in good standing with the Kentucky Bar Association or otherwise have approval by the Kentucky Bar Association to practice law in the Commonwealth of Kentucky;

(c) Demonstrate knowledge of KRS Chapter 11A by having served as an ethics officer, having previously served as a member or staff of the commission, or attending or participating in trainings offered by the commission on the requirements of KRS Chapter 11A;

(d) Not be a current member or staff of the commission; and

(e) Not be under the jurisdiction of the commission.

(4) Once the roster of hearing officers is established, the Commission Secretary shall randomly assign administrative proceedings initiated by the commission pursuant to KRS 11A.080(4)(b) to a hearing officer from the roster of hearing officers, unless otherwise directed by the commission.

Section 7. Hearing Officer. (1) After the hearing officer is designated by the commission, the hearing officer shall within ten (10) days of the designation send notice to the parties of the date and time of the first telephonic prehearing conference.

(2) The hearing officer shall follow the requirements of KRS Chapter 13B for the conduct of administrative hearings, except as provided in KRS 11A.100 for the burden of proof where the higher standard of proof is required as dictated by KRS 13B.050(7).

Section 8[4]. Settlement. (1) At any time during the proceedings, the commission's counsel may enter into mediation or informal proceedings pursuant to KRS 13B.070 with the respondent[after charges have been initiated].

(2) An agreed order or settlement reached through this process shall be reviewed by the commission and, upon approval by the commission, shall be signed by the commission and the respondent.

(3) The commission shall not approve a settlement that provides for the confidentiality of:

(a) The existence of the settlement; or

(b) Any of the terms of the settlement.

Section 9[5].Ex Parte Communications. Once an administrative proceeding has commenced, the commission, its executive director, commission counsel, the respondent, respondent counsel or other person acting on behalf of the respondent shall not initiate, participate in, or consider ex parte communications concerning the subject matter of a hearing or an issue of fact or law related thereto, except upon notice and opportunity for all parties to participate.

Section 10[6].Record to be Maintained. (1) The hearing shall be transcribed by a court stenographer or by means of electronic media, such as videotaping.

(2)[(a)] A transcript or electronic media copy of the testimony taken during the hearing shall:

(a) Be kept by the commission;[.]

(b) Be[Upon request and payment of the appropriate fee, a copy of the transcript or copy of the electronic media recording of the hearing shall be] available to the respondent upon request and payment of the appropriate fee; and[from the:

1. Court stenographer; or

2. Commission, if the stenographer is unable to furnish a copy.]

(c) Be[A copy of the transcript of the hearing or copy of the electronic media recording of the hearing shall be] available to all commission members.

(3)[(d)] Any documents or exhibits introduced into evidence shall be kept with the transcript or copy of the electronic media recording of the hearing or as ordered by the hearing officer.

WILLIAM G. FRANCIS, Chair

APPROVED BY AGENCY: JULY 10, 2018

FILE WITH LRC: July 11, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2018, at 10:00 a.m., at Executive Branch Ethics Commission, 1025 Capital Center Drive, Suite 105, Shared Conference Room, 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 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 through August 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: Kathryn H. Gabhart, Executive Director, Executive Branch Ethics Commission, 1025 Capital Center Drive, Suite 104, Frankfort, Kentucky 40601, phone (502) 564-7954, fax (502) 696-5939, email Katie.gabhart@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn H. Gabhart

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides procedures for the conduct of administrative proceedings for matters involving violations of KRS Chapter 11A.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the requirements of KRS 11A.080(4)(b) and KRS 11A.100 for the conduct administrative proceedings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation implements KRS 11A.080(4)(b) and KRS 11A.100(1).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently establishes procedures for administrative hearings.

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

(a) How the amendment will change this existing administrative regulation: This amendment is consistent with the newly established requirements of SB 150 enacted by the 2018 General Assembly and signed by the Governor on April 26, 2018 that will took effect on July 14, 2018.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is needed to ensure that the new language of KRS 11A.100(1), KRS 13B.020(7), and KRS 13B.090(7) enacted by SB 150 is implemented.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment to the administrative regulation conforms to the provisions established by KRS 11A.100(1), KRS 13B.020(7), and KRS 13B.090(7) by providing procedures for the filing of timely answers, orders of default, the assigning of hearing officers, and the conduct of administrative proceedings.

(d) How the amendment will assist in the effective administration of the statues: This amendment to the administrative regulation will assist in the administration of KRS 11A.080(4)(b), KRS 11A.100(1), KRS 13B.020(7), and KRS 13B.090(7) by providing guidelines to ensure its implementation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The staff and members of the Executive Branch Ethics Commission and individuals under the jurisdiction of the commission.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The commission and individuals subject to the jurisdiction of the commission will have to ensure that they follow the procedures established by the regulation.

(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: Individuals under the commission's jurisdiction will have to follow the procedures when filing answers with the commission. The commission will have to follow the procedures when designating hearing officers. The hearing officers will have to follow the procedures in conducting administrative hearings.

(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 known cost associated with this amended administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The commission and individuals subject to the commission's jurisdiction will have a consistent process to follow.

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

(a) Initially: Minimal costs to the Executive Branch Ethics Commission associated with the publication of training materials and conducting education already provided in the Commission's budget.

(b) On a continuing basis: Minimal costs to the Executive Branch Ethics Commission associated with the ongoing publication of training materials and conducting education already provided in the Commission's budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Commission's existing 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: This administrative regulation will not require an increase in any fees or funding.

(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.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all affected individuals.

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 Executive Branch of state government.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 11A.080(4)(b), KRS 11A.100(1), KRS 13B.020(7), and KRS 13B.090(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? The amendment to 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? This administrative regulation will not generate any revenue? The amendment to the administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? $500 for publications and training; funds already included in the Executive Branch Ethics Commission's budget.

(d) How much will it cost to administer this program for subsequent years? $500 for publication and training; funds already included in the Executive Branch Ethics Commission's budget.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation:

AGRICULTURAL EXPERIMENT STATION
(Amendment)

12 KAR 2:006. Definitions for 12 KAR Chapter 2.

RELATES TO: KRS 250.491-250.631
STATUTORY AUTHORITY: KRS 250.501(4), 250.571(1)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1)(a) requires the Director of the Agricultural Experiment Station to promulgate an administrative regulation adopting the official definitions of feed ingredients and official feed terms adopted by the Association of American Feed Control Officials. KRS 250.501(4) defines "commercial feed" and authorizes the director to promulgate an administrative regulation exempting commodities meeting established criteria. This administrative regulation incorporates by reference the definitions adopted by the Association of American Feed Control Officials and exempts certain commodities from the definition of commercial feed.

Section 1. The names and definitions for commercial feeds shall be the "Official Definition of Feed Ingredients" adopted by the Association of American Feed Control Officials and published in its Official Publication, except as exempted by this[~~an~~] administrative regulation[~~promulgated by the director~~].

Section 2. The terms used in reference to commercial feeds shall be the official feed terms adopted by the Association of American Feed Control Officials and published in its Official Publication, except as exempted by this[~~an~~] administrative regulation[~~promulgated by the director~~].

Section 3. Pursuant to KRS 250.501(4), the following commodities shall be exempt from the definition of commercial feed: raw meat; and hay, straw, stover, silages, cobs, husks, and hulls when unground if the ingredient is not:
(1) Mixed or intermixed with other materials; or
(2) Adulterated within the meaning of KRS 250.541(1).

Section 4. "Quantity statement" means the net weight (mass), net volume (liquid or dry), or count.

Section 5. Incorporation by Reference. (1) "Official Publication", 2018[~~1996~~] Edition, Association of American Feed Control Officials, is incorporated by reference.
(2) This material[~~It~~] 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. ROBERT HOUTZ, Director
APPROVED BY AGENCY: July 5, 2018
FILED WITH LRC: July 5, 2018
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 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 August 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, email 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: Defines what is considered a commercial feed.
(b) The necessity of this administrative regulation: Definition of commercial feed is necessary to determine what will be regulated by our Division.
(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 250.501(1)(a) the Director of the Agricultural Experiment Station is required to promulgate an administrative regulation to define official feed ingredients and feed terms.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation defines official feed ingredients and feed terms.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment updates usage of the Official Publication of the American Association of Feed Control Officials (AAFCO) from the 1996 Edition to the 2018 edition. This publication is used to define official feed ingredients and terms.
(b) The necessity of the amendment to this administrative regulation: The feed ingredient and feed terms defined in the Official Publication of AAFCO needed to be updated from a 19 year old version to a more modern version.
(c) How the amendment conforms to the content of the authorizing statutes: Updates terms and definitions used to regulate the feed industry.
(d) How the amendment will assist in the effective administration of the statues: These updates are beneficial to both the regulatory body and the regulated industry as it brings in new terms and definitions that have been developed since 1996.
(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: 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 associated with this amendment.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This will broaden the definitions and terms available to the industry.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No cost
(b) On a continuing basis: No cost
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Regulatory Services regular annual 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.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in 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 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 effect

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No fiscal impact.

AGRICULTURAL EXPERIMENT STATION
(Amendment)

12 KAR 2:011. Label format.

RELATES TO: KRS 250.491-250.631

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 the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. This administrative regulation[~~regulation~~] establishes a uniform format for presentation of labeling to the purchaser of animal feeds.

Section 1. A commercial feed, other than customer formula feed, shall be labeled with the information prescribed in this administrative regulation on the principal display panel of the product and in the following format:

(1) Product name and brand name, if any, in conformance with 12 KAR 2:016;

(2) If a drug is used, the word "medicated" shall appear directly following and below the product name in type size no smaller than one-half (1/2) the type size of the product name;

(3) Product purpose statement as required by 12 KAR 2:017;

(4) If a drug is used:

(a) The purpose of medication (claim statement); and

(b) An active drug ingredient statement listing the active drug ingredients by their established names[~~name~~] and the amounts in accordance with 12 KAR 2:021, Section 4;

(5) The guaranteed analysis of the feed as required by KRS 250.521(1)(b) and 12 KAR 2:018;

(6) The listing of feed ingredients as required by 12 KAR 2:026;

(7) Directions for use and precautionary statements as required by 12 KAR 2:031 and 12 KAR 2:036;

(8) Name and principal mailing address of the manufacturer or person responsible for distributing the feed. The principal mailing address shall include the street address, city, state, and zip code; however, the street address may be omitted if it is shown in the current city directory or telephone directory of the city or county where[~~wherein~~] the manufacturer or distributor maintains his principal place of business; and

(9) The quantity statement of the net weight, net volume, or count.

Section 2. (1) The information required by Section 1 of this administrative regulation shall appear in its entirety on one (1) side of the label or container, except the information required by Section 1(7) of this administrative regulation may be placed on a different side of the label or container if it is displayed in a prominent place on the label or container. If the information is placed on a different side, it shall be referenced on the front side with a statement indicating where the information is located.

(2) The information required by Section 1 of this administrative regulation shall not be subordinated or obscured by other statements or designs.

Section 3. Customer-formula feed shall be accompanied by a label, invoice, delivery ticket, or other shipping document bearing the following information:

(1) The name and address of the manufacturer;

(2) The name and address of the purchaser;

(3) The date of sale or delivery;

(4) The customer-formula feed name and brand name, if any;

(5) The product name and net quantity of each registered commercial feed and each other ingredient used in the mixture;

(6) The directions for use and precautionary statements as required by 12 KAR 2:031 and 12 KAR 2:036; and

(7) If a drug-containing product is used:

(a) The purpose of the medication (claim statement); and

(b) The established name of each active drug ingredient and the level of each drug used in the final mixture as required by 12 KAR 2:021.

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: July 5, 2018

FILED WITH LRC: July 5, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 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 August 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, email 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 presentation of labeling to the purchaser of animal feeds.

(b) The necessity of this administrative regulation: To establish a uniform format for labeling of feeds to allow consumers to evaluate nutritional quality.

(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 criteria for proper labeling of feeds.

(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: Updated language only (changed a “wherein” to a “where”).

(b) The necessity of the amendment to this administrative regulation: Use proper terms in regulation

(c) How the amendment conforms to the content of the authorizing statutes: Updates language in existing regulation.

(d) How the amendment will assist in the effective administration of the statues: Corrects wording in regulation.

(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 have to make sure their labeling conforms to our standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing additional. This is already being done.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Labels across companies will be uniform in format.

(5) Provide an estimate of how much it will cost 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: 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 new fees.

(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.

(a) How much 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 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 2:016. Brand and product names.

RELATES TO: KRS 250.491-250.631

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 the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. This administrative regulation establishes uniformity in the use of brand and product names to inform and not mislead the purchaser.

Section 1. The brand or product name shall be appropriate for the intended use of the feed and shall not be misleading. If the name indicates the feed is made for a specific use, the character of the feed shall conform to that use.

Section 2. Commercial, registered brand, or trade names:

(1) Shall not be used in guarantees or ingredient listings; and

(2) May be used in the product name of a feed produced by, for, or with the permission of[~~for~~] the firm holding the rights to the name.

Section 3. (1) The name of a commercial feed shall not:

(a) Be derived from one (1) or more ingredients of a mixture to the exclusion of other ingredients; and

(b) Represent a component of a mixture unless all components are included in the name.

(2) The name of an ingredient or combination of ingredients that is intended to impart a distinctive characteristic to the product that[~~which~~] would be of significance to a purchaser may be used as a part of the brand name or product name if:

(a) The ingredient or combination of ingredients is quantitatively guaranteed in the guaranteed analysis; and

(b) The brand name or product name is not otherwise false or misleading.

Section 4. The word "protein" shall not be used in the product name of a feed that contains added non-protein nitrogen.

Section 5. (1) If the name carries a percentage value, the percentage value shall signify the protein or equivalent protein content, and the name may explicitly modify the percentage with the word "protein".

(2) If another percentage value is used, the value shall be followed by the proper description without false or misleading labeling.

(3) If a figure is used in the brand name (except in mineral, vitamin, or other products where the protein guarantee is nil or unimportant), it shall be preceded by the word "number" or some other suitable designation.

(4) A digital number shall not be used in a manner that is misleading or confusing to the purchaser.

Section 6. A single ingredient feed shall have a product name that conforms to the definitions of feed ingredients in 12 KAR 2:006.

Section 7. The word "vitamin," a contraction thereof, or word

suggesting vitamin may be used in the name of a feed that[~~which~~] is:

(1) Represented to be a vitamin supplement; and

(2) Labeled with the minimum content of each vitamin declared, as specified in 12 KAR 2:021, Section 3.

Section 8. (1) The term "mineralized" shall not be used in the name of a feed, except for "trace mineralized salt."

(2) A product including "trace mineralized salt" in its name shall contain significant amounts of trace minerals that[~~which~~] are recognized as essential for animal nutrition by an authority on animal nutrition such as the National Research Council.

Section 9. The term "meat" or "meat by-products" shall designate the animal from which the meat or meat by-products is derived unless the meat or meat by-products are from cattle, swine, sheep, and goats.

Section 10. If the commercial feed consists of raw milk, the words, "Raw (blank) Milk" shall appear conspicuously on the principal display panel. (The blank shall be completed by using the species of animal from which the raw milk is collected.)

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: July 5, 2018

FILED WITH LRC: July 5, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 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 August 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, email 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 uniformity in the use of brand and product names to inform and not mislead the purchaser.

(b) The necessity of this administrative regulation: Provide proper information to consumers that purchase commercial feeds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary to enforce 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 the use of brand and product names.

(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: Clarifies use of commercial, registered brand or trade names. Adds clarification on the use of raw milk as a feed ingredient.

(b) The necessity of the amendment to this administrative regulation: Adds clarification on labeling.

(c) How the amendment conforms to the content of the authorizing statutes: Provides further clarification on labeling.

(d) How the amendment will assist in the effective administration of the statues: Makes the rules clearer.

(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 labels that match these changes.

(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): Fairer labeling of commercial feeds.

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

(a) Initially: Nothing

(b) On a continuing basis: Nothing

(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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No

(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? None

(c) How much will it cost to administer this program for the first year? Nothing

(d) How much will it cost to administer this program for subsequent years? Nothing

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

Revenues (+/-): $0.00

Expenditures (+/-): $0.00

Other Explanation:

AGRICULTURAL EXPERIMENT STATION
(Amendment)

12 KAR 2:017. Product purpose statement.

RELATES TO: KRS 250.491-250.631
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 the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. This administrative regulation establishes uniformity in the product purpose statement that is a required part of the label for commercial feed.

Section 1. The statement of purpose shall contain the specific species and animal class[~~class(es)~~] for which the feed is intended as defined in 12 KAR 2:018.

Section 2. The manufacturer may describe in more specific and common language the defined animal class, species, and purpose if the description is consistent with the category of animal class established in 12 KAR 2:018, including the weight range[~~range(s)~~], sex, or ages of the animal[~~animal(s)~~] for which the feed is manufactured.

Section 3. The purpose statement may be excluded from the label if the product name includes a description of the species and animal class[~~class(es)~~] for which the product is intended.

Section 4. The indication for animal class[~~class(es)~~] and species[~~specie(s)~~] may be omitted on single ingredient products if the ingredient is not intended, represented, or defined for a specific animal class[~~class(es)~~] or species[~~specie(s)~~].

Section 5. The purpose statement of a premix for the manufacture of feed may exclude the animal class and species and state "For Further Manufacture of Feed" if:
(1) The nutrients contained in the premix are guaranteed and sufficient for formulation into various animal species feeds; and
(2) Premix specifications are provided by the end user.

Section 6. The purpose statement of a single purpose ingredient blend, including a blend of animal protein products, milk products, fat products, roughage products, or molasses products may exclude the animal class and species and state "For Further Manufacture of Feed" if the label guarantees of the nutrients contained in the single purpose nutrient blend are sufficient to provide for formulation into various animal species feeds.

Section 7. [~~The purpose statement of a direct fed microbial product shall state "Contains a Source of Live (Viable) Naturally Occurring Microorganisms". This statement may appear elsewhere on the label provided it is sufficiently conspicuous as to render it easily read by the purchaser.~~

~~Section 8.~~] The purpose statement of a product shall include a statement of enzyme functionality if enzymatic activity is represented.

DR. ROBERT HOUTZ, Director
APPROVED BY AGENCY: July 5, 2018
FILED WITH LRC: July 5, 2018 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 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 August 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, email 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 uniformity in the product purpose statement that is the required part of a label for a commercial feed.
(b) The necessity of this administrative regulation: Helps define for the consumer the intended usage of a commercial feed.
(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 how a manufacturer shall develop a purpose statement for a commercial feed.
(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: Removes section on direct fed microbial products which is already covered in 12 KAR 2:041.
(b) The necessity of the amendment to this administrative regulation: Removes a duplicative section already covered in another more appropriate regulation.
(c) How the amendment conforms to the content of the authorizing statutes: Is another statute dealing with proper labeling of commercial feeds.
(d) How the amendment will assist in the effective administration of the statues: Removes duplication.
(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: None
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Makes the commercial feed regulations clearer.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Nothing
(b) On a continuing basis: Nothing
(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 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.

(a) How much 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 2:018. Guaranteed analysis.

RELATES TO: KRS 250.491-250.631

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 the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. KRS 250.521(1)(b) requires that a commercial feed label contain a guaranteed analysis stated in terms the director by administrative regulation determines are required to advise the user of the composition of the feed or to support claims made in the labeling. This administrative regulation establishes a uniform format for the nutritional guarantees required as a part of the commercial feed label.

Section 1. The nutritional guarantees shall be listed in the following order: crude protein, equivalent crude protein from nonprotein nitrogen, amino acids, crude fat, crude fiber, acid detergent fiber, neutral detergent fiber, calcium, phosphorus, salt, and sodium. Other guarantees shall follow in a general format with the units of measure used to express guarantees (percentage, parts per million, international units, etc.) listed in a sequence that provides a consistent grouping of the units of measure.

Section 2. Required Guarantees for Swine Formula Feeds. (1) The animal classes for swine shall be:

(a) Prestarter - two (2) to eleven (11) pounds;

(b) Starter - eleven (11) to forty-four (44) pounds;

(c) Grower - forty-four (44) to 110 pounds;

(d) Finisher – 110 pounds to[~~242 pounds or~~] market weight;

(e) Gilts, sows, and adult boars; and

(f) Lactating gilts and sows.

(2) The guaranteed analysis for swine complete feeds and supplements (all animal classes) shall include the:

(a) Minimum percentage of crude protein;

(b) Minimum percentage of lysine;

(c) Minimum percentage of crude fat;

(d) Maximum percentage of crude fiber or acid detergent fiber (ADF);

(e) Minimum and maximum percentage of calcium;

(f) Minimum percentage of phosphorus;

(g) Minimum and maximum percentage of salt (if added);

(h) Minimum and maximum percentage of total sodium, if the total sodium exceeds that furnished by the maximum salt guarantee; and

(i) Minimum selenium in parts per million (ppm)[~~; and~~
~~(j) Minimum zinc in parts per million (ppm)~~].

Section 3. Required Guarantees for Formula Poultry Feeds (Chicken and Turkey). (1) The animal classes for layer chickens that are grown to produce eggs for food shall be:

(a) Starting/[~~and~~] growing - from day of hatch to approximately ten (10) weeks of age;

(b) Finisher - from approximately ten (10) weeks of age to time first egg is produced (approximately twenty (20) weeks of age);

(c) Laying - chickens from time first egg is laid throughout the time of egg production; and

(d) Breeders - chickens that produce fertile eggs to hatch replacement layers that produce eggs for food.

(2) The animal classes for broiler chickens that are grown for human food shall be:

(a) Starting/[~~and~~] growing - from day of hatch to approximately five (5) weeks of age;

(b) Finisher - from approximately five (5) weeks of age to market, (forty-two (42) to fifty-two (52) days); and

(c) Breeders - hybrid strains of chickens whose offspring are grown for human food (broilers), any age and either sex.

(3) The animal classes for breeder chickens whose offspring (broilers) are grown for human food shall be:

(a) Starting/[~~and~~] growing - from day of hatch until approximately ten (10) weeks of age;

(b) Finishing - from approximately ten (10) weeks of age to time first egg is produced, approximately twenty (20) weeks of age; and

(c) Laying - fertile egg producing chickens (broilers/roasters) from day of first egg throughout the time fertile eggs are produced.

(4) The animal classes for turkeys shall be:

(a) Starting/[~~and~~] growing - turkeys that are grown for human food from day of hatch to approximately thirteen (13) weeks of age (females) and sixteen (16) weeks of age (males);

(b) Finisher - turkeys that are grown for human food, females from approximately thirteen (13) weeks of age to approximately seventeen (17) weeks of age, males from sixteen (16) weeks of age to twenty (20) weeks of age, or desired market weight;

(c) Laying - female turkeys that are producing eggs, from time first egg is produced, throughout the time they are producing eggs; and

(d) Breeder - turkeys that are grown to produce fertile eggs, from day of hatch to time first egg is produced (approximately thirty (30) weeks of age), both sexes.

(5) The guaranteed analysis for poultry complete feeds and supplements (all animal classes) shall include the:

(a) Minimum percentage of crude protein;

(b) Minimum percentage of lysine;

(c) Minimum percentage of methionine;

(d) Minimum percentage of crude fat;

(e) Maximum percentage of crude fiber or acid detergent fiber (ADF);

(f) Minimum and maximum percentage of calcium;

(g) Minimum percentage of phosphorus;

(h) Minimum and maximum percentage of salt (if added); and

(i) Minimum and maximum percentage of total sodium, if the total sodium exceeds that furnished by the maximum salt guarantee.

Section 4. Required Guarantees for Beef Cattle Formula Feeds. (1) The animal classes for beef cattle shall be:

(a) Calves (birth to weaning);

(b) Cattle on pasture (may be specific as to production stage; e.g., stocker, feeder, replacement heifers, brood cows, bulls, etc.); and

(c) Feedlot cattle.

(2) The guaranteed analysis for beef complete feeds and supplements (all animal classes) shall include the:

(a) Minimum percentage of crude protein;

(b) Maximum percentage of equivalent crude protein from non-protein[~~nonprotein~~] nitrogen (if added);

(c) Minimum percentage of crude fat;

(d) Maximum percentage of crude fiber or acid detergent fiber (ADF);

(e) Minimum and maximum percentage of calcium;

(f) Minimum percentage of phosphorus;

(g) Minimum and maximum percentage of salt (if added);

(h) Minimum and maximum percentage of total sodium, if the total sodium exceeds that furnished by the maximum salt guarantee;

(i) Minimum percentage of potassium; and

(j) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(3) The guaranteed analysis for beef mineral feeds (if added) shall include the:

(a) Minimum and maximum percentage of calcium;

(b) Minimum percentage of phosphorus;

(c) Minimum and maximum percentage of salt;

(d) Minimum and maximum percentage of total sodium, if the total sodium exceeds that furnished by the maximum salt guarantee;

(e) Minimum percentage of magnesium;

(f) Minimum percentage of potassium;

(g) Minimum copper in parts per million (ppm);

(h) Minimum selenium in parts per million (ppm);

(i) Minimum zinc in parts per million (ppm); and

(j) Minimum vitamin A, other than precursors of vitamin A, in international units per pound.

Section 5. Required Guarantees for Dairy Formula Feeds. (1) The animal classes for dairy cattle shall be:

(a) Veal milk replacer - milk replacer fed to calves for veal production;

(b) Herd milk replacer - milk replacer fed to calves for herd replacement and other uses;

(c) Starter - calf from approximately three (3) days to three (3) months of age;

(d) Non-lactating dairy cattle: replacement dairy heifers, dairy bulls, and dairy calves[~~Growing heifers, bulls and dairy beef:~~

~~1. Grower 1 - three (3) months to twelve (12) months of age; and~~

~~2. Grower 2 - more than twelve (12) months of age~~];

(e) Lactating dairy cows[~~cattle~~]; and

(f) Dry dairy cows[~~Nonlactating dairy cattle~~].

(2) The guaranteed analysis for veal and herd milk replacer shall include the:

(a) Minimum percentage of crude protein;

(b) Minimum percentage of crude fat;

(c) Maximum percentage of crude fiber;

(d) Minimum and maximum percentage of calcium;

(e) Minimum percentage of phosphorus; and

(f) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(3) The guaranteed analysis for dairy cattle complete feeds and supplements shall include the:

(a) Minimum percentage of crude protein;

(b) Maximum percentage of equivalent crude protein from non-protein[~~nonprotein~~] nitrogen (NPN) (if added);

(c) Minimum percentage of crude fat;

(d) Maximum percentage of crude fiber;

(e) Maximum percentage of acid detergent fiber (ADF);

(f) Minimum and maximum percentage of calcium;

(g) Minimum percentage of phosphorus;

(h) Minimum selenium in parts per million (ppm); and

(i) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(4) The guaranteed analysis for dairy mixing and pasture mineral (if added) shall include the:

(a) Minimum and maximum percentage of calcium;

(b) Minimum percentage of phosphorus;

(c) Minimum and maximum percentage of salt;

(d) Minimum and maximum percentage of total sodium, if the total sodium exceeds that furnished by the maximum salt guarantee;

(e) Minimum percentage of magnesium;

(f) Minimum percentage of potassium;

(g) Minimum selenium in parts per million (ppm); and

(h) Minimum vitamin A, other than the precursors of vitamin A, in international units per pound.

Section 6. Required Guarantees for Equine Complete Feeds and Supplements (All Classes). (1) The equine animal classes shall be:

(a) Growing[~~Foal~~];

(b) Broodmare[~~Mare~~];

(c) Maintenance[~~Breeding~~]; and

(d) Performance (including stallions)[~~Maintenance~~].

(2) The guaranteed analysis for equine complete feeds and supplements (all animal classes) shall include the:

(a) Minimum percentage of crude protein;

(b) Minimum percentage of crude fat;

(c) Maximum percentage of crude fiber;

(d) Maximum percentage of Acid Detergent Fiber (ADF);

(e) Maximum percentage of Neutral Detergent Fiber (NDF);

(f) Minimum and maximum percentage of calcium;

(g)[~~(e)~~] Minimum percentage of phosphorus;

(h)[~~(f)~~] Minimum copper in parts per million (ppm) (if added);

(i)[~~(g)~~] Minimum selenium in parts per million (ppm);

(j)[~~(h)~~] Minimum zinc in parts per million (ppm); and

(k)[~~(i)~~] Minimum vitamin A, other than the precursors of vitamin A, in international units per pound (if added).

(3) The guaranteed analysis for equine mineral feed shall include the:

(a) Minimum and maximum percentage of calcium;

(b) Minimum percentage of phosphorus;

(c) Minimum and maximum percentage of salt (if added);

(d) Minimum and maximum percentage of total sodium, if the total sodium exceeds that furnished by the maximum salt guarantee;

(e) Minimum copper in parts per million (ppm) (if added);

(f) Minimum selenium in parts per million (ppm);

(g) Minimum zinc in parts per million (ppm); and

(h) Minimum vitamin A, other than the precursors of vitamin A, in international units per pound (if added).

Section 7. Required Guarantees for Goat[~~Goats and Sheep~~] Formula Feeds. (1) The animal classes for goats[~~and sheep~~] shall be:

(a) Starter;

(b) Grower;

(c) Finisher;

(d) Breeder; and

(e) Lactating.

(2) The guaranteed analysis for goat[~~and sheep~~] complete feeds and supplements (all animal classes) shall include the:

(a) Minimum percentage of crude protein;

(b) Maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) (if added);

(c) Minimum percentage of crude fat;

(d) Maximum percentage of crude fiber;

(e) Maximum percentage of acid detergent fiber;

(f) Minimum and maximum percentage of calcium;

(g)[~~(f)~~] Minimum percentage of phosphorus;

(h)[~~(g)~~] Minimum and maximum percentage of salt (if added);

(i)[~~(h)~~] Minimum and maximum percentage of total sodium, if

the total sodium exceeds that furnished by the maximum salt guarantee;

(j)[~~(i)~~] Minimum and maximum copper in parts per million (ppm) (if added[~~, or if total copper exceeds twenty (20) ppm~~]);

(k)[~~(j)~~] Minimum selenium in parts per million (ppm); and

(l)[~~(k)~~] Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

Section 8. Required Guarantees for Sheep Formula Feeds. (1) The animal classes for sheep shall be:

(a) Starter;

(b) Grower;

(c) Finisher;

(d) Breeder; and

(e) Lactating.

(2) The guaranteed analysis for sheep complete feeds and supplements (all animal classes) shall include the:

(a) Minimum percentage of crude protein;

(b) Maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) (if added);

(c) Minimum percentage of crude fat;

(d) Maximum percentage of crude fiber or acid detergent fiber (ADF);

(e) Minimum and maximum percentage of calcium;

(f) Minimum percentage of phosphorus;

(g) Minimum and maximum percentage of salt (if added);

(h) Minimum and maximum percentage of total sodium, if the total sodium exceeds that furnished by the maximum salt guarantee;

(i) Minimum and maximum copper in parts per million (ppm) (if added, or total copper exceeds 20 ppm);

(j) Minimum selenium in parts per million (ppm); and

(k) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

Section 9. Required Guarantees for Ducks and Geese Formula Feeds. (1) The duck animal classes shall be:

(a) Starter - zero to three (3) weeks of age;

(b) Grower - three (3) to six (6) weeks of age;

(c) Finisher - six (6) weeks to market;

(d) Breeder developer - eight (8) to nineteen (19) weeks of age; and

(e) Breeder - twenty-two (22) weeks to end of lay.

(2) The geese animal classes shall be:

(a) Starter - zero to four (4) weeks of age;

(b) Grower - four (4) to eight (8) weeks of age;

(c) Finisher - eight (8) weeks to market;

(d) Breeder developer - ten (10) to twenty-two (22) weeks of age; and

(e) Breeder - twenty-two (22) weeks to end of lay.

(3) The guaranteed analysis for duck and geese complete feeds and supplements (for all animal classes) shall include the:

(a) Minimum percentage of crude protein;

(b) Minimum percentage of crude fat;

(c) Maximum percentage of crude fiber or acid detergent fiber (ADF);

(d) Minimum and maximum percentage of calcium;

(e) Minimum percentage of phosphorus;

(f) Minimum and maximum percentage of salt (if added); and

(g) Minimum and maximum percentage of total sodium, if the total sodium exceeds that furnished by the maximum salt guarantee.

Section 10[~~9~~]. Required Guarantees for Fish Complete Feeds and Supplements. (1) The following animal species shall be declared in lieu of an animal class:

(a) Trout;

(b) Catfish; and

(c) Species other than trout or catfish.

(2) The guaranteed analysis for all fish complete feeds and supplements shall include the:

(a) Minimum percentage of crude protein;

(b) Minimum percentage of crude fat;

(c) Maximum percentage of crude fiber or acid detergent fiber (ADF); and

(d) Minimum percentage of phosphorus.

Section 11[~~10~~]. Required Guarantees for Rabbit Complete Feeds and Supplements. (1) The rabbit animal classes shall be:

(a) Grower - four (4) to twelve (12) weeks of age; and

(b) Breeder - twelve (12) weeks of age and over.

(2) The guaranteed analysis for rabbit complete feeds and supplements (all animal classes) shall include the:

(a) Minimum percentage of crude protein;

(b) Minimum percentage of crude fat;

(c) Minimum and maximum percentage of crude fiber or acid detergent fiber (ADF) (the maximum[~~crude fiber~~] shall not exceed the minimum by more than five (5.0) units);

(d) Minimum and maximum percentage of calcium;

(e) Minimum percentage of phosphorus;

(f) Minimum and maximum percentage of salt (if added);

(g) Minimum and maximum percentage of total sodium, if the total sodium exceeds that furnished by the maximum salt guarantee; and

(h) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

Section 12[~~11~~]. The required guarantees of grain mixtures and formula feeds and ingredients that are not specifically described in Sections 2 through 11[~~10~~] of this administrative regulation, or exempted under Section 13[~~12~~] of this administrative regulation, shall include the following items in the order listed:

(1) Minimum percentage of crude protein;

(2) Minimum or maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) as required in 12 KAR 2:021 (if added);

(3) Minimum percentage of crude fat;

(4) Maximum percentage of crude fiber or acid detergent fiber (ADF);

(5) Minerals in formula feeds in the following order:

(a) Minimum and maximum percentage of calcium;

(b) Minimum percentage of phosphorus;

(c) Minimum and maximum percentage of salt (if added);

(d) Minimum and maximum percentage of total sodium, if the total sodium exceeds that furnished by the maximum salt guarantee; and

(e) Other minerals;

(6) Minerals in feed ingredients as specified by the official definition of the Association of American Feed Control Officials;

(7) Vitamins in the terms required by 12 KAR 2:021;

(8) Total sugars as invert on dried molasses products or products being sold primarily for their sugar content;

(9) Viable lactic acid producing microorganisms when used in silage products and direct fed microbial products guaranteed in terms specified in 12 KAR 2:021; and

(10)[~~Enzymatic activity for enzyme products and formula feeds represented as a source of enzymes guaranteed in terms specified in 12 KAR 2:021; and~~

~~(11)~~] If the item is a commercial feed (e.g., vitamin and mineral premix, base mix, etc.) intended to provide a specialized nutritional source for use in the manufacture of other feeds, its intended purpose and guarantee of those nutrients relevant to the stated purpose.

Section 13[~~12~~]. Exemptions. (1) A mineral guarantee for feed, excluding those feeds manufactured as complete feeds and for feed supplements intended to be mixed with grain to produce a complete feed for swine, poultry, fish, and veal and herd milk replacers, shall not be required if:

(a) The feed or feed ingredient is not intended or represented or does not serve as a principle source of that mineral to the animal; or

(b) The feed or feed ingredient is intended for nonfood producing animals and contains less than six and five-tenths (6.5) percent total mineral.

(2) Guarantees for vitamins shall not be required if the

commercial feed is neither formulated for nor represented as a vitamin supplement.

(3) Guarantees for crude protein, crude fat and crude fiber shall not be required if the commercial feed is intended for purposes other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, such as a Type A drug article, mineral or vitamin supplements, and molasses.

(4) Guarantees for microorganisms and enzymes shall not be required if the commercial feed is intended for a purpose other than to furnish these substances or they are of minor significance relating to the primary purpose of the product and no specific label claims are made.

(5) The indication for animal class and species is not required on single ingredient products if the ingredient is not intended, represented, or defined for a specific animal class or species.

Section 14[~~13~~]. Incorporation by Reference. (1) "Official Publication", 2018[~~1996~~] Edition, Association of American Feed Control Officials, is incorporated by reference.

(2) This material[~~It~~] 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. ROBERT HOUTZ, Director

APPROVED BY AGENCY: July 5, 2018

FILED WITH LRC: July 5, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 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 August 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, email 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 regulations establishes the nutrient guarantees that must be provided by species on product labeling for commercial feeds.

(b) The necessity of this administrative regulation: Helps clarify for the consumer if this is the proper feed for the animals they are feeding.

(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 nutrient guarantees by species that must be provided on the product label.

(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 commercial feeds 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 statues: 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 additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): More uniformity in labeling requirements across multiple states.

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

(a) Initially: Nothing

(b) On a continuing basis: Nothing

(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 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.

(a) How much 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 2:021. Expression of guarantees.

RELATES TO: KRS 250.491-250.631

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 the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. KRS 250.521(1)(b) requires that a commercial feed label contain a guaranteed analysis stated in terms the director by administrative regulation determines are required to advise the user of the composition of the feed or to support claims made in the labeling. This administrative regulation establishes a uniform format for the expression of nutritional guarantees required as a part of the commercial feed label.

Section 1. The guarantees for crude protein, equivalent crude protein from nonprotein nitrogen; lysine, methionine, and other amino acids; crude fat; crude fiber; and acid detergent fiber shall be in terms of percentage.

Section 2. Mineral Guarantees. (1) If the calcium, salt, and sodium guarantees are given in the guaranteed analysis, the guarantee shall be stated and conform to the following:

(a) If the minimum is below two and one-half (2.5) percent, the maximum shall not exceed the minimum by more than one-half (0.5) percentage point.

(b) If the minimum is two and one-half (2.5) percent but five (5) percent, the maximum shall not exceed the minimum by more than one (1) percentage point.

(c) If the minimum is above five (5) percent, the maximum shall not exceed the minimum by more than twenty (20) percent of the minimum and in no case shall the maximum exceed the minimum by more than five (5) percentage points.

(2) If stated, guarantees for minimum and maximum total sodium and salt; minimum potassium, magnesium, sulfur, and phosphorus; and maximum fluoride shall be stated in terms of percentage. Other minimum mineral guarantees shall be stated in parts per million (ppm) if the concentration is less than 10,000 ppm and in percentage if the concentration is 10,000 ppm (one (1) percent) or greater.

(3) Products labeled with a quantity statement (e.g. tablets, capsules, granules, or liquids) shall state mineral guarantees in milligrams (mg) per unit (e.g. tablets, capsules, granules, or liquids) consistent with the quantity statement and directions for use.

Section 3. Guarantees for minimum vitamin content of commercial feeds shall be listed in the[~~following general~~] order specified and stated in mg/lb. or in units consistent with those employed for the quantity statement unless otherwise specified in this section[~~in the unit of measure per weight specified or expressed in terms of a quantity (tablets, capsules, granules or liquid volume) consistent with the quantity statement and directions for use shall be stated~~]:

(1) Vitamin A, other than precursors of vitamin A, shall be stated in International Units per pound.

(2) Vitamin D3, in products offered for poultry feeding, shall be stated in International Chick Units per pound.

(3) Vitamin D for other uses shall be stated in International Units per pound.

(4) Vitamin E shall be stated in International Units per pound.

(5) Concentrated oils and feed additive premixes containing vitamins A, D, or E may, at the option of the distributor, be stated in units per gram instead of units per pound.

(6) Vitamin B-12 shall be stated in milligrams or micrograms per pound.

(7)[~~(6)~~] All other vitamin guarantees shall express the vitamin activity in milligrams per pound for the following: menadione, riboflavin, d-pantothenic acid, thiamine, niacin, vitamin B-6, folic acid, choline, biotin, inositol, p-amino benzoic acid, ascorbic acid and carotene[~~, except that concentrate feed additive sources used for further manufacturing purposes may, at the option of the distributor, express the vitamin guarantee in grams per pound or other unit of weight when this expression is more meaningful and consistent with its use.~~

~~(7) Concentrated oils and feed additive premixes containing vitamin A, vitamin D or vitamin E may, at the option of the distributor, state guarantees in international units per gram~~].

Section 4. Guarantees for drugs shall be stated in terms of percent by weight, except:

(1) Antibiotics present at less than 2,000 grams per ton (total) of commercial feed shall be stated in grams per ton of commercial feed.

(2) Antibiotics present at 2,000 or more grams per ton (total) of commercial feed shall be stated in grams per pound of commercial feed.

(3) The term "milligrams per pound" may be used for drugs or antibiotics if a dosage is given in "milligrams" in the feeding directions.

Section 5. Commercial feeds containing added non-protein nitrogen shall be labeled as follows:

(1) For ruminants:

(a) Complete feeds, supplements, and concentrates containing added non-protein nitrogen and containing more than five (5) percent protein from natural sources shall be guaranteed as follows: Crude Protein, minimum ____percent (this includes not more than ____percent equivalent protein from non-protein nitrogen.

(b) Mixed feed concentrates and supplements containing five (5) percent or less protein from natural sources shall be guaranteed as follows: Equivalent Crude Protein from Non-protein Nitrogen, minimum ____percent.

(c) Ingredient sources of non-protein nitrogen including Urea, Diammonium[~~Di-Ammonium~~] Phosphate, Ammonium Polyphosphate Solution, Ammoniated Rice Hulls, or other basic non-protein nitrogen ingredients defined by the Association of American Feed Control Officials shall be guaranteed as follows: Nitrogen, minimum ____percent. Equivalent Crude Protein from Non-protein Nitrogen, minimum ____percent.

(2) For non-ruminants:

(a) Complete feeds, supplements and concentrates containing crude protein from all forms of non-protein nitrogen, added as such[~~from ammonium polyphosphate solution, diammonium phosphate, or monoammonium phosphate~~], shall be labeled as follows:

Crude protein, minimum ____percent.

(This includes not more than ____percent equivalent crude protein which is not nutritionally available to (species of animal for which feed is intended).

(b) Premixes, concentrates or supplements intended for non-ruminants containing more than 1.25 percent equivalent crude protein added from all forms of non-protein nitrogen, added as such, shall contain adequate directions for use and this prominent statement:

WARNING: This feed must be used only in accordance with directions furnished on the label.

Section 6. Mineral phosphatic materials for feeding purposes shall be labeled with the guarantee for minimum and maximum percentage of calcium (if present), the minimum percentage of phosphorus, and the maximum percentage of fluorine.

Section 7. Guarantees for microorganisms shall be stated in colony forming units per gram (CFU/g) if directions are for using the product in grams, or in colony forming units per pound (CFU/lb) if directions are for using the product in pounds. A parenthetical statement following the guarantee shall list each species in order of predominance.

Section 8[~~7~~]. Guarantees for enzymes shall be stated in units of enzymatic activity per unit weight or volume, consistent with label directions. The source organism for each type of enzymatic activity shall be specified in the format followed in this example: Protease (Bacillus subtilis) five and five-tenths (5.5) mg amino acids liberated/min./milligram. If two (2) or more sources have the same type of activity, they shall be listed in order of predominance based on the amount of enzymatic activity provided.

Section 9. Guarantees for Dietary Starch, Sugars, and Fructans for Commercial Feeds, Other than Customer-formula Feed, Pet Food, and Specialty Pet Food Products. (1) A commercial feed that bears on its labeling claim in any manner for levels of "dietary starch," "sugars," "fructans," or words of similar designation, shall include on the label:

(a) Guarantees for maximum percentage of dietary starch and maximum percentage sugars, in the Guaranteed Analysis section immediately following the last fiber guarantee; and

(b) A maximum percentage guarantee for fructans immediately following sugars, if the feed contains forage products.

(2) When such guarantees for dietary starch, sugars, or fructans for commercial feeds appear on the label, feeding directions shall indicate the proper use of the feed product and a recommendation to consult with veterinarian or nutritionist for a recommended diet.

Section 10. The guaranteed analyses that appear upon the label of a commercial feed shall adequately inform the consumer of the actual nutrient content of a product. The Division of Regulatory Services shall use the 2018 Table of Kentucky Analytical Variations to determine those analytes that fall outside of acceptable ranges.

Section 11. Incorporation by Reference. (1) "2018 Table of Kentucky Analytical Variations", January 2018, Division of Regulatory Services, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, University of Kentucky, 103 Regulatory Services Building, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.[~~8. Mineral phosphatic materials for feeding purposes shall be labeled with the guarantee for minimum and maximum percentage of calcium (when present), the minimum percentage of phosphorus, and the maximum percentage of fluorine.~~]

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: July 5, 2018

FILED WITH LRC: July 5, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 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 August 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, email 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 how nutrient guarantees shall be expressed on product labeling.

(b) The necessity of this administrative regulation: Provides uniformity in expression of nutrient guarantees on product labeling so consumers can clearly compare them.

(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: Gives precise ways that nutrient guarantees are to be expressed to allow fair comparison of 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 the expression of guarantees to those more commonly acceptable today.

(b) The necessity of the amendment to this administrative regulation: This amendment modernizes the expression of guarantees on product labeling.

(c) How the amendment conforms to the content of the authorizing statutes: Updates the existing statute.

(d) How the amendment will assist in the effective administration of the statues: Nutrients guaranteed have changed since the last update of these statutes in 1999 and this amendment brings this statute up to date.

(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 that expresses nutrient guarantees as defined in this statute. This would only apply to labeling submitted after these amendments are accepted.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will provide uniformity to all companies on how they are supposed to express nutrient guarantees on their labeling.

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

(a) Initially: Nothing.

(b) On a continuing basis: Nothing.

(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 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.

(a) How much 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 2:026. Ingredients.

RELATES TO: KRS 250.491-250.631

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 the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. 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 the 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 requirements for listing the ingredients on the commercial feed label.

Section 1. Commercial feeds, other than customer formula feeds, shall have an ingredient statement listing the feed ingredients, collective terms for the grouping of feed ingredient, or other appropriate statement as provided by[~~under provisions of~~] KRS 250.521(1)(c). (1) The name of each ingredient or collective term for the grouping of ingredients, if required to be listed, shall be the name as defined in the "Official Common and Usual Names and Definitions of Feed Ingredients" as published in the Official Publication of the Association of American Feed Control Officials, the common or usual name, or one approved by the director.

(2) The ingredient statement may list the collective terms for the grouping of feed ingredients as defined in the official definitions of feed ingredients published in the Official Publication of the Association of American Feed Control Officials rather than the individual ingredients.

(a) If a collective term for a group of ingredients is used on the label, individual ingredients within that group shall not be listed on the label.

(b) The manufacturer shall provide the Director of Regulatory Services, upon written or oral request, with a listing of individual ingredients within a defined group that are or have been used in manufacturing facilities distributing in Kentucky. The manufacturer shall be specific in its response when the request is made of a particular facility or production.

Section 2. The name of each ingredient shall be shown in letters or type of the same size.

Section 3. A reference to quality or grade of an ingredient shall not appear in the ingredient statement of a feed.

Section 4. The term "dehydrated" may precede the name of a product that has been artificially dried.

Section 5. A single ingredient product defined by the Association of American Feed Control Officials shall not be required to have an ingredient statement.

Section 6. Tentative definitions for ingredients shall not be used until adopted as official by the Association of American Feed Control Officials unless an official definition does not exist or the ingredient has a common accepted name that requires no definition, (i.e. sugar).

Section 7.[~~Commercial, registered brand or trade names shall not be permitted in the ingredient listing.~~

~~Section 8. The percentage of rice hulls shall be listed in the ingredient statement of a formula feed intended to supply energy to the animal if the amount added exceeds three (3) percent by weight. This shall not apply to feed products where rice hulls are used as a carrier including in dried molasses products, Type A medicated articles, vitamins, trace mineral and other premix additives. The percentage of rice hulls contributed from carrier sources shall be excluded from the determination of percentage of rice hulls in formula feeds.~~

~~Section 9. A product that is labeled, represented or intended to provide a substantial amount of magnesium to cattle shall be formulated utilizing magnesium ingredients with a biological value of seventy (70) percent or greater when compared to standard reference of feed grade magnesium oxide with a biological value of 100 percent; however, dolomitic limestone shall not be an acceptable source of magnesium unless data substantiates the source of dolomitic limestone has a biological value of seventy (70) percent or greater.~~

~~Section 10.~~] If the word "iodized" is used in connection with a feed ingredient, the feed ingredient shall contain not less than 0.007 percent iodine, uniformly distributed.

Section 8[~~11~~]. Incorporation by Reference. (1) "Official Publication", 2018[~~1996~~] Edition, Association of American Feed Control Officials, is incorporated by reference.

(2) This material[~~It~~] 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. ROBERT HOUTZ, Director

APPROVED BY AGENCY: July 5, 2018

FILED WITH LRC: July 5, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 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 August 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, email 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 how ingredients are to be expressed on the labeling of commercial feeds.

(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: Removes outdated information in regards to rice hulls and magnesium sources. 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 statues: Allows our division to more effectively evaluate labeling since we were still using 1999 ingredient tables and many changes have occurred since then.

(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 increased cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clearer definition of what ingredients are acceptable on labeling since many changes have occurred since last update.

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

(a) Initially: Nothing.

(b) On a continuing basis: Nothing.

(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 cost.

(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.

(a) How much 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 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 2:031. Directions for use and precautionary statements[~~for feed containing additives~~].

RELATES TO: KRS 250.501, 250.531, 250.551(1), (2), 21 C.F.R. 225.80, 225.180

STATUTORY AUTHORITY: KRS 250.521(2)(e), (f), 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 the efficient enforcement of KRS 250.490 to 250.631. This administrative regulation requires that directions for feeding and precautionary statements be provided with feed containing additives to ensure safe and effective use of the product.

Section 1. Directions for use and precautionary statements on the labeling of a commercial feed and customer-formula feed containing additives[~~an additive~~], such as a drug, a special purpose additive, or nonnutritive additive shall:

(1) Be adequate to enable[~~stated in a manner that informs of the~~] safe and effective use for the intended purposes by users with no special knowledge of the purpose and use of the articles[~~of the product for its intended purpose~~]; and

(2) Include, at a minimum, all information prescribed by:

(a) Applicable federal regulations under the Federal Food, Drug and Cosmetic Act, which is codified as 21 U.S.C. 301 to 397; and

(b) 12 KAR 2:036, for feed containing non-protein[~~nonprotein~~] nitrogen.

Section 2. Adequate directions and precautionary statements necessary for safe and effective use shall be placed on commercial feeds distributed to supply particular dietary needs or for supplementing or fortifying the usual diet or ration with a vitamin, mineral, or other dietary nutrient or compound.

Section 3. Raw milk distributed as commercial feed shall bear the following statement: "WARNING: NOT FOR HUMAN CONSUMPTION – THIS PRODUCT HAS NOT BEEN PASTEURIZED AND MAY CONTAIN HARMFUL BACTERIA." 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-≤100 in.^{2}	3/16 in.
>100-≤400 in.^{2}	1/4 in.
>400 in.^{2}	1/2 in.

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: July 5, 2018

FILED WITH LRC: July 5, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 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 August 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, email 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 describes how manufacturers are to include "directions for use" and "precautionary statements" on their product labeling.

(b) The necessity of this administrative regulation: Provides consumers with information they need to feed a commercial feed properly.

(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 instructions for correct and effective labeling of commercial feeds.

(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: Clarifies some points and adds section on directions if raw milk is an ingredient in the product.

(b) The necessity of the amendment to this administrative regulation: Adds clarity and new section that was not in current statute that will further protect consumers.

(c) How the amendment conforms to the content of the authorizing statutes: Updates the current regulation.

(d) How the amendment will assist in the effective administration of the statues: Provides clarity and further consumer protection.

(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 will need to comply with these changes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Requirements will be similar to those in other states. This makes it easier for those companies selling products in several states.

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

(a) Initially: Nothing

(b) On a continuing basis: Nothing

(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.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in 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 2:036. Non-protein[~~Nonprotein~~] nitrogen.

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, regarding commercial feeds. This administrative regulation establishes requirements for the safe use of non-protein[~~nonprotein~~] nitrogen in commercial feeds[~~ruminant ration~~].

Section 1. Urea and other non-protein[~~nonprotein~~] nitrogen products defined in the Official Publication of the Association of American Feed Control Officials shall be acceptable ingredients in commercial feeds for ruminant animals as a source of equivalent crude protein. If the commercial feed contains more than 8.75 percent of equivalent crude protein from all forms of non-protein nitrogen, added as such, or the equivalent crude protein from all forms of non-protein nitrogen, added as such, exceeds one-third of the total crude protein, the label shall bear adequate directions for the safe use of feeds and precautionary statement: "CAUTION USE AS DIRECTED." The directions for use and the caution statement shall be in type of such size so paced on the label that they will be read and understood by ordinary persons under customary conditions of purchase and use.

Section 2.[~~A label shall bear adequate directions for the safe use of a feed and the precautionary statement "Caution: Use as Directed", if:~~
~~(1) The commercial feed contains more than 8.75 percent of equivalent crude protein from all forms of nonprotein nitrogen; or~~
~~(2) The equivalent crude protein from all forms of nonprotein nitrogen exceeds one-third (1/3) of the total crude protein.~~

~~Section 3.~~] Non-protein[~~Nonprotein~~] nitrogen defined in the Official Publication of the Association of American Feed Control Officials, if so indicated, shall be acceptable ingredients in commercial feeds distributed to non-ruminant[~~nonruminant~~] animals as a source of nutrients other than equivalent crude protein. The maximum equivalent crude protein from non-protein[~~nonprotein~~] nitrogen sources when used in non-ruminant[~~nonruminant~~] rations shall not exceed 1.25 percent of the total daily ration.

Section 3[~~4. The directions for use and the caution statement shall be typed and placed on the label in a manner that can be read and understood by ordinary persons under customary conditions of purchase and use.~~

~~Section 5~~]. On labels such as those for medicated feeds that bear adequate feeding directions or warning statements, the presence of added non-protein[~~nonprotein~~] nitrogen shall not require a duplication of the feeding directions or the precautionary statements if those[~~the~~] statements include sufficient information to ensure the safe and effective use of this product due to the presence of non-protein[~~nonprotein~~] nitrogen.

DR. ROBERT HOUTZ, Director
APPROVED BY AGENCY: July 5, 2018
FILED WITH LRC: July 5, 2018 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 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 August 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, email 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 how non-protein nitrogen is to be handled on labeling for commercial feeds.
(b) The necessity of this administrative regulation: Makes consumers aware of feeds containing non-protein nitrogen and the appropriate caution statements needed with the use of non-protein nitrogen.
(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: Clearly states how non-protein nitrogen is to be handled on 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 how non-protein nitrogen is to be handled on labeling. The American Association of Feed Control Officials (AAFCO) has a "model bill" to encourage states to have similar wording in their regulations to make enforcement more similar across states. These updates conform to suggestions in the model bill.
(b) The necessity of the amendment to this administrative regulation: Updates our regulation to match that in the AAFCO model bill which makes it easier for industry to label 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 statues: Makes it easier to review labels as wording is more consistent with other 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: Labeling submitted after acceptance of this amendment will need to comply with these changes.
(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): More uniform labeling across states makes it easier to label products.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Nothing
(b) On a continuing basis: Nothing
(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 cost.

(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.

(a) How much 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 2:041. Drug and feed 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. 570.3(1), 570.30, 582, 21 U.S.C. 151-158, 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 the efficient enforcement of KRS 250.491 to 250.631 regarding commercial feeds. KRS 250.541 provides that a commercial feed or a material exempted from the definition of commercial feed shall be considered adulterated if it meets the conditions established in KRS 250.541. KRS 250.551(1) and (2) prohibit the manufacture or distribution of an adulterated product as animal feed. This administrative regulation establishes the requirements to ensure the safe and effective use of commercial feeds containing additives.

Section 1. Before approval of a registration application or approval of a label for a commercial feed containing an additive, including a drug, another special purpose additive, or non-nutritive[~~nonnutritive~~] additive, the distributor shall, upon request by the director, submit evidence to prove the safe and effective use of the commercial feed when used according to the directions furnished on the label.

Section 2. Satisfactory evidence of safe and effective use of a commercial feed shall be one (1) of the following:

(1) When the commercial feed contains such additives, the use of which conforms to the requirements of the applicable regulation in Title 21, Code of Federal Regulations, or which are "prior sanctioned" or "informal review sanctioned" or "generally recognized as safe" for such use[~~The use of an additive that:~~

~~(a) Conforms to the requirements of 21 C.F.R. 570.3(1), 570.30, or Part 582; or~~

~~(b) Is considered prior sanctioned, informal review sanctioned, or generally recognized as safe (GRAS) by the Food and Drug Administration~~];

(2) A commercial feed that is a drug as defined in KRS 250.501(7) and[~~if it:~~

~~(a)~~] is generally recognized by the Food and Drug Administration as safe and effective for its labeled use[~~according to 21 C.F.R. 570.30 and Part 582;~~] or [~~(b)~~] is marketed subject to an application approved by the Food and Drug Administration under Section 512 of the Federal Food, Drug, and Cosmetic Act[~~21 U.S.C. 360(b)~~];

(3) When one (1) of the purposes for a commercial feed is[~~used~~] to impart immunity (that is to act through some immunological process) the constituents imparting immunity[~~if the constituents~~] have been approved for the[~~that~~] purpose through the Federal Virus, Serum and Toxins Act of 1913 as amended[~~, which is codified as 21 U.S.C. 151 to 158~~];

(4) When the commercial feed is a direct-fed microbial product and[~~if~~]:

(a) The product is defined as a fermentation product in the Official Publication of the Association of American Feed Control Officials; and

(b) The microbial content statement:

1. Appears on the label; and

2. States "Contains a source of live (viable), naturally occurring microorganisms"; and

3. The source is stated with a corresponding guarantee expressed in accordance with 12 KAR 2:021, Section 7; or

(5) When the commercial feed is an enzyme product and[~~if the product~~] is:

(a) Defined as an enzyme in the Official Publication of the Association of American Feed Control Officials; and

(b) Guaranteed according to the provisions of 12 KAR 2:021, Section 8[~~12 KAR 2:018~~].

Section 3. 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. ROBERT HOUTZ, Director

APPROVED BY AGENCY: July 5, 2018

FILED WITH LRC: July 5, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 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 August 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, email 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 requirements to ensure the safe and effective use of commercial feeds containing additives.

(b) The necessity of this administrative regulation: Provides clarification on the proper way to label commercial feeds.

(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 proper labeling of feeds containing drugs or other feed additives.

(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 American Association of Feed Control Officials (AAFCO) has a "model bill" to encourage states to have similar wording in their regulations to make enforcement more similar across states. These updates conform to suggestions in the model bill.

(b) The necessity of the amendment to this administrative regulation: Updates our regulation to match that in the AAFCO model bill which makes it easier for industry to label 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 statues: Makes it easier to review labels as wording is more consistent with other 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: Labeling submitted after acceptance of this amendment will need to comply with these changes.

(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): More uniform labeling across states.

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

(a) Initially: Nothing

(b) On a continuing basis: Nothing

(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 cost

(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.

(a) How much 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 2:046. Poisonous or deleterious substances.

RELATES TO: KRS 250.501(4), (5), (6), (7), (8), (24), 250.541, 250.551(1), (2), (3)

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 the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. This administrative regulation establishes the requirements for the safe use of substances that might have deleterious effects if not fed according to the following standards.

Section 1. For the purpose of KRS 250.541(1)(a), poisonous or deleterious substances[~~include~~] shall <u>include but are not limited to the following</u>:

(1) Fluorine and a mineral or mineral mixture that is fed directly to a domestic animal if the fluorine exceeds:

(a) 0.20 percent for breeding or dairy cattle;

(b) 0.30 percent for slaughter cattle;

(c) 0.30 percent for sheep;

(d) 0.35 percent for lambs;

(e) 0.45 percent for swine; and

(f) 0.60 percent for poultry.

(2) A fluorine-bearing ingredient if used in an amount that raises the fluorine content of the total ration, excluding roughage, above:

(a) 0.004 percent for breeding or dairy cattle;

(b) 0.009 percent for slaughter cattle;

(c) 0.006 percent for sheep;

(d) 0.01 percent for lambs;

(e) 0.015 percent for swine; and

(f) 0.03 percent for poultry.

(3) A fluorine-bearing ingredient mixed in feed that:

(a) Is fed directly to cattle, sheep, or goats that consume roughage regardless of the amount of grain consumed; and

(b) Results in a daily intake of more than fifty (50) milligrams of fluorine per 100 pounds of body weight.

(4) Soybean meal, flakes or pellets or another vegetable meal, flake, or pellet that have been extracted with trichloroethylene or other chlorinated solvent.

(5) Sulfur dioxide, sulfurous acid, and salts of sulfurous acid that are used in or on feeds or feed ingredients that are considered or labeled a significant source of vitamin B_1 (thiamine).

Section 2. A screening or by-product of grains and seeds containing weed seeds used in commercial feed or sold as commercial feed to the ultimate consumer shall be ground fine enough or otherwise treated to destroy the viability of the weed seeds so the finished product contains:

(1) No viable prohibited noxious weed seeds; and

(2) Not more than 480 viable restricted weed seeds per pound.

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: July 5, 2018

FILED WITH LRC: July 5, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 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 August 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, email 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 requirements for the safe use of substances that might have deleterious effects if not fed according to described standards.

(b) The necessity of this administrative regulation: Protect animals from consuming toxic substances.

(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 standards for safe levels of poisonous or deleterious substances in commercial feeds.

(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: Establishes that there could be more deleterious or poisonous substances than just those we have listed.

(b) The necessity of the amendment to this administrative regulation: Allows for new poisonous or deleterious substances that may come along.

(c) How the amendment conforms to the content of the authorizing statutes: Provides for potential of more toxic compounds being discovered.

(d) How the amendment will assist in the effective administration of the statues: Allows for potential of new toxic substances that may need to be regulated as to the amounts allowed in commercial feeds.

(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: None unless new poisonous or deleterious substances are recognized that require limits on how much can be in the feed.

(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): Protection against producing products that may be toxic to animals.

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

(a) Initially: Nothing

(b) On a continuing basis: Nothing

(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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in 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 2:051. Manufacturing conditions.

RELATES TO: KRS 250.501, 250.511, 250.541, 250.551, 250.581(1), 21 C.F.R. 225.1-225.202, 226.1-226.115

STATUTORY AUTHORITY: KRS 250.541(c), 250.571(1), 21 C.F.R. 225.1-225.202, 226.1-226.115

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, regarding commercial feeds. KRS 250.541(2)(c) requires the promulgation of an administrative regulation that establishes the current good manufacturing practices for the manufacturing, processing, and packaging of commercial feed. This administrative regulation establishes current good manufacturing practices, hazard analysis, and risk-based preventive controls for facilities engaged in holding and distribution of animal feed[~~for feeds containing drugs or antibiotics~~].

Section 1. The current good manufacturing practices published in the Code of Federal Regulations for Type B and Type C medicated feeds are governed by 21 C.F.R. 225.1 through 225.202[~~:~~

~~(1) 21 C.F.R. Part 225.1, Subpart A, 51 Federal Register 7389, March 3, 1986;~~

~~(2) 21 C.F.R. Part 225.10, Subpart A, 42 Federal Register 12426, March 4, 1977;~~

~~(3) 21 C.F.R. Parts 225.20, 225.30, 225.35, Subpart B, 41 Federal Register 52618, November 30, 1976;~~

~~(4) 21 C.F.R. Part 225.42, Subpart C, 41 Federal Register 52618, November 30, 1976;~~

~~(5) 21 C.F.R. Part 225.58, Subpart C, 55 Federal Register 11577, March 29, 1990;~~

~~(6) 21 C.F.R. Part 225.65, Subpart C, 41 Federal Register 52618, November 30, 1976;~~

~~(7) 21 C.F.R. Part 225.80, Subpart D, 41 Federal Register 52618, November 30, 1976;~~

~~(8) 21 C.F.R. Parts 225.102 and 225.110, Subpart E, 41 Federal Register 52618, November 30, 1976;~~

~~(9) 21 C.F.R. Part 225.115, Subpart E, 57 Federal Register 6475, February 25, 1992;~~

~~(10) 21 C.F.R. Parts 225.120, 225.130 and 225.135, Subpart F, 41 Federal Register 52618, November 30, 1976;~~

~~(11) 21 C.F.R. Parts 225.142, 225.158 and 225.165, Subpart G, 41 Federal Register 52618, November 30, 1976;~~

~~(12) 21 C.F.R. Part 225.180, Subpart H, 51 Federal Register 7390, March 3, 1986; and~~

~~(13) 21 C.F.R. Part 225.202, Subpart I, 51 Federal Register 7390, March 3, 1986~~].

Section 2. The current good manufacturing practices published in the Code of Federal Regulations for Type A medicated articles are governed by 21 C.F.R. 226.1 through 226.115.

Section 3.The current good manufacturing practices, hazard analysis, and risk-based preventive controls for food for animals published in the Code of Federal Regulations for facilities engaged in the holding and distribution of animal food are governed by 21 C.F.R. 507.1 through 507.215[~~:~~

~~(1) 21 C.F.R. Parts 226.1 and 226.10, Subpart A, 40 Federal Register 14031, March 27, 1975;~~

~~(2) 21 C.F.R. Parts 226.20 and 226.30, Subpart B, 40 Federal Register 14031, March 27, 1975;~~

~~(3) 21 C.F.R. Parts 226.40 and 226.42, Subpart C, 40 Federal Register 14031, March 27, 1975;~~

~~(4) 21 C.F.R. Part 226.80, Subpart D, 40 Federal Register 14031, March 27, 1975; and~~

~~(5) 21 C.F.R. Parts 226.102, 226.110 and 226.115, Subpart E, 40 Federal Register 14031, March 27, 1975~~].

DR. ROBERT HOUTZ, Director
APPROVED BY AGENCY: July 5, 2018
FILED WITH LRC: July 5, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 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 August 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, email 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 current good manufacturing practices, hazard analysis, and risk-based preventive controls for facilities engaged in holding and distribution of animal feed.

(b) The necessity of this administrative regulation: Establishes good manufacturing practices for companies manufacturing commercial feeds.

(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 proper manufacturing practices for the safe manufacture of commercial feeds.

(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: Establishes proper manufacturing practices based on the Food Safety Modernization Act that was put forth in 2011.

(b) The necessity of the amendment to this administrative regulation: Updates standards previously established in this regulation.

(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 statues: Brings this regulation up to current 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: They will need to follow good manufacturing practices as established in the Food Safety Modernization Act (FSMA)

(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 current good manufacturing practices.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It will depend on how much they have to do to meet the new requirements established by FSMA.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will meet federal standards and be sure of producing safe products.

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

(a) Initially: Depends on how much needs to be done.

(b) On a continuing basis: Minimal once standards are met.

(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.

(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 effects

(a) How much 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 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 2:056. List of manufacturers.

RELATES TO: KRS 250.491-250.631

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 the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. This administrative regulation establishes[~~To provide~~] a current listing of facilities manufacturing commercial feed in the state to[~~. This will~~] aid in the exchange of correspondence and collections of official feed samples.

Section 1. For the purpose of maintaining current files of feed manufacturers under KRS 250.511(1) of the Kentucky Feed Law, the list of manufacturers on file shall[~~will~~] be evaluated quarterly and[~~purged on January 1 of each year of all~~] facilities not having current tonnage reports shall be removed.

Section 2. Firms removed shall[~~purged will~~] be notified at the address of record and shall[~~will~~] be given the opportunity of being reinstated if the division is notified that reinstatement is desired.

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: July 5, 2018

FILED WITH LRC: July 5, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 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 August 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, email 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 criteria for keeping the list of manufacturers of commercial feed current.

(b) The necessity of this administrative regulation: To maintain a current list of manufacturers.

(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: Keeps list of manufacturers subject to these statutes current.

(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 annual evaluation of the list of manufacturers to quarterly evaluation.

(b) The necessity of the amendment to this administrative regulation: Helps us utilize new software to keep list of manufacturers more current than in the past.

(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 statues: Keeps list of manufacturers more current.

(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 change.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing additional.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Reduces the likelihood that they will receive a notice of inspection fees due when they are no longer doing business in Kentucky.

(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

(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? 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 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 2:061. Registration.

RELATES TO: KRS 250.501, 250.511(3), 250.521(2), 250.561(3)

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 the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. KRS 250.511(1) and (2) require a manufacturer or distributor of commercial feed in Kentucky to register with the director each facility that manufactures customer-formula feed and each commercial feed except customer-formula feed. This administrative regulation establishes the procedure for the registration of commercial feed and manufacturers of customer-formula feed and the requirements for an exemption.

Section 1. (1) Except as provided in subsection (2) of this section, a manufacturer shall submit a completed Application for Registration of Commercial Feeds to register each feed other than a customer-formula feed.

(2) The director shall grant an exemption to the registration requirement if the owner or other responsible individual with authority to register feed for the manufacturer:

(a) Has a record of satisfactory compliance with the labeling requirements established in KRS 250.521 and 12 KAR 2:011; and

(b) Submits to the director a notarized affidavit certifying the following:

1.a. Name and mailing address of the manufacturer; and

b. A statement acknowledging the manufacturer's responsibility to comply with KRS 250.491 to 250.631 including payment of the inspection fee required by KRS 250.561(1);

2.a. That the person requesting the exemption has knowledge of the labeling requirements of KRS 250.521 and 12 KAR 2:011; or

b. That a qualified individual is employed to ensure that commercial feed is labeled according to KRS 250.521 and 12 KAR 2:011. The name and address of the person responsible for product labeling shall be provided, if different than the affiant;

3. A commercial feed distributed in Kentucky is suitable for its intended purpose in accordance with the requirements established in 12 KAR 2:066, Sections 1, 2, and 6;

4. Within thirty (30) days of notification the affiant agrees to provide a label for each commercial feed, a specifically designated feed or feed type distributed in Kentucky for the purpose of determining compliance with the labeling requirements established in KRS 250.521 and 12 KAR 2:011. The request and compliance with the request shall not be construed as a registration process; and

5. That the affiant agrees to resume registration of each commercial feed if notified by the director of unsatisfactory compliance with the labeling requirements of KRS 250.521 and 12 KAR 2:011 or of the failure to provide a requested label within thirty (30) days. The manufacturer shall have thirty (30) days from receipt of the notice to complete registration of a commercial feed product offered for sale in Kentucky. During this period the affiant may request a meeting with the director to resolve a labeling violation or seek reinstatement or modification of registration exemption.

Section 2. A registration exemption shall not prevent the enforcement of KRS 250.491 to 250.631. A manufacturer granted a registration exemption shall be considered registered for a commercial feed, other than a customer-formula feed.

Section 3. A distributor of customer-formula feed shall register as a customer-formula feed distributor by submitting a completed Registration of Customer-Formula Feed Distributor Form. Registration as a customer-formula feed distributor shall be dependent upon agreement by the manufacturer to:

(1) Abide by the labeling requirements of KRS 250.521(2); and

(2) Maintain at the facility where customer-formula feed is manufactured, a file of customer-formula mixes.

Section 4. Registration of a customer-formula feed distributor shall be subject to cancellation under the same conditions established for registered feeds under KRS 250.511(3) and 250.561(3).

Section 5. For commercial feed that is distributed to the final purchaser exclusively in an immediate container package weight of ten (10) pounds or less, the person whose name appears on the label as the guarantor or distributor shall provide the director with:

(1) The name of each product by submitting a completed

Application for Registration of Commercial Feeds before distribution within Kentucky; and

(2) Pay the fee required by KRS 250.561(1)(d).

Section 6. Incorporation by Reference. (1) "Application for Registration of Commercial Feeds", 2018[~~March 1999~~], Division of Regulatory Services, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, University of Kentucky, 103 Regulatory Services Building, Lexington, Kentucky 40546[~~40545~~]-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: July 5, 2018

FILED WITH LRC: July 5, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 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 August 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, email 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 procedure for the registration of commercial feed and manufacturers of customer-formula feed and the requirements for an exemption

(b) The necessity of this administrative regulation: Establishes procedures for registration of feed manufacturers.

(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 registration procedures 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: Just updates registration form used.

(b) The necessity of the amendment to this administrative regulation: Updates registration form from 1999 version to 2018 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 statues: Modernizes registration form used.

(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 change.

(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): Updated registration form is only change.

(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 new or increased fees. No additional funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No change.

(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? No increased revenue.

(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:

AGRICULTURAL EXPERIMENT STATION
(Amendment)

12 KAR 2:066. Suitability.

RELATES TO: KRS 250.541(2)(e)

STATUTORY AUTHORITY: KRS 250.541(2)(e), 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 the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. This administrative regulation establishes

criteria that commercial feed shall meet in order to be suitable for its intended purpose and establishes the procedure for an affidavit attesting to the nutritional adequacy of a commercial feed.

Section 1. The nutritional content of commercial feed shall be as stated by its labeling. The feed, its labeling and stated use shall be suitable for the intended purpose of the product.

Section 2. (1) Commercial feed for swine, poultry, or fish or milk replacer for veal or herd replacement calves, if fed according to directions, shall meet the applicable nutrient requirements established by the National Research Council, and incorporated by reference in this administrative regulation.

(2) A signed affidavit of suitability attesting to the nutritional adequacy of the feed based upon valid scientific evidence shall be submitted to the director upon request as established in Section 6 of this administrative regulation.

Section 3. An affidavit of suitability certifying that the feed sponsor has valid scientific knowledge assuring suitability of the nutritional content of the feed shall be submitted to the director if the suitability of the feed is challenged.

Section 4. Submission of a completed Affidavit of Suitability shall serve as proof of suitability. The feed sponsor shall not be required to provide scientific information nor a reference thereto unless the director has reason to believe that the feed is not suitable for its intended use. The director shall have the authority to conduct a hearing requiring the feed sponsor to produce sufficient scientific evidence of the feed's suitability.

Section 5. Upon receipt by the director of a complete Affidavit of Suitability, the feed sponsor may continue to market the product. If an affidavit is not properly submitted, the director may pursuant to KRS 250.091(1) or 250.601(2) place or continue a stop-sale order on the feed and order its removal from the marketplace as well as all other feeds manufactured or distributed under the same product name.

Section 6. The Affidavit of Suitability shall contain the following information:

(1) The feed manufacturer's name;[~~.~~]

(2) The feed's product name;[~~.~~]

(3) The name and title of the affiant submitting the document;[~~.~~]

(4) The statement that the affiant has knowledge of the nutritional content of the feed and is familiar with the nutritional requirements of the animal species and animal class for which the product is intended, as established by the National Research Council of the National Academy of Sciences;[~~.~~]

(5) The statement that the affiant has knowledge of valid scientific evidence that supports the suitability for the intended animal species and animal class[~~class(es)~~] for which the feed is intended. If the manufacturer states on the label a nutrient guarantee below the minimum National Research Council nutrient recommendation, the manufacturer shall specify in the Affidavit of Suitability scientific evidence demonstrating that a feed with that nutrient content is suitable for its intended purpose;[~~.~~]

(6) The date of submission; and[~~.~~]

(7) The signature of the affiant notarized by a notary public.

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

(a) Nutrient Requirements of Swine, Eleventh[~~Tenth~~] Revised Edition, 2012[~~1998~~], National Research Council;

(b) Nutrient Requirements of Dairy Cattle, Seventh[~~Sixth~~] Revised Edition, 2001[~~1988~~], National Research Council;

(c) Nutrient Requirements of Fish, 1993, National Research Council; and

(d) Nutrient Requirements of Poultry, Ninth Revised Edition, 1994, National Research Council.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, University of Kentucky, 103 Regulatory Services Building, Lexington, Kentucky 40546[~~40545~~]-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: July 5, 2018

FILED WITH LRC: July 5, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 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 August 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, email 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 criteria that commercial feed shall meet in order to be suitable for its intended purpose and establishes the procedure for an affidavit attesting to the nutritional adequacy of a commercial feed.

(b) The necessity of this administrative regulation: It insures that feeds meet the nutritional needs of the animals they are intended for.

(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 suitability of feeds for their intended purpose.

(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 reference material.

(b) The necessity of the amendment to this administrative regulation: The reference material cited had not been changed since 1999 and many have been updated since then.

(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 statues: Updates regulation to use more pertinent reference material.

(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: Firms will need to make sure their products are nutritionally suitable based on most recent reference material.

(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 as companies already meet these requirements if they are to be competitive in the market place.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Their products will be appropriate for the animals consuming them.

(5) Provide an estimate of how much it will cost 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: 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 fees or increases.

(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 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:

Council on Postsecondary Education
(Amendment)

13 KAR 2:020. Guidelines for admission to the state-supported postsecondary education institutions[~~in Kentucky~~].

RELATES TO: KRS 156.160, 158.6451, 158.6453, 164.001, 164.020(5), (8), 164.030

STATUTORY AUTHORITY: KRS 164.020(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.020(8) requires the Council on Postsecondary Education[~~council~~] to set the minimum qualifications for admission to the state-supported postsecondary education institutions. KRS 164.020(29) requires the council to promulgate administrative regulations governing its powers, duties, and responsibilities as described in KRS 164.020.[~~It is the intent of the council that all prospective students have available to them an opportunity for postsecondary education appropriate to their interests and abilities.~~] This administrative regulation establishes the minimum qualifications related to admission at state-supported postsecondary education institutions.

Section 1. Definitions. (1) "Academic Readiness" means the student has demonstrated the requisite ability to succeed in credit-bearing coursework by meeting or exceeding the college readiness benchmarks adopted by the Council. An institution shall not determine academic readiness using scores received from exams taken more than four (4) years prior.

(2) "Accelerated pathway" means a high school program of study that is designed for students to be able to graduate in (3) three years or less from high school, before age eighteen (18) and prepare for transition to college.

(3) "Certified, non-public school" means a Kentucky non-public school that has been granted certification by the Kentucky Board of Education.

(4) "Corequisite course" means a course that includes enhanced academic supports, such as additional hours of instruction, tutoring, mentoring, or advising that awards credit toward a credential or degree.

(5) "Council" is defined by KRS 164.001(8).

(6) "Credit for prior learning" means college credit for the college-level knowledge and skills gained from non-college instructional programs or life experiences:

(a) Such as credit awarded pursuant to 13 KAR 2:025 and KRS 164.2951(2)(e), employment, military experience, civic activities, and volunteer service; and

(b) That is evaluated through nationally standardized exams in specific disciplines, challenge exams for specific courses at individual institutions, evaluations of non-college training programs, and individualized assessments.

(7) "Curriculum pathway" means a specified series of courses or competencies needed to complete a credential or degree.

(8) "Developmental course" means a course that prepares a student for college-level study and does not award credit toward a credential or degree.

(9) "Dual credit course" is defined by KRS 164.002(5) and does not include developmental education courses.

(10) "Institution" means a state-supported postsecondary education institution as defined in KRS 164.001(12).

(11) "KCTCS" means the Kentucky Community and Technical College System as defined in KRS 164.001(13).

(12) "Learning contract" means a student success document signed by the student and a designated institution representative after a personal consultation that sets forth the:

(a) Advising, mentoring, tutoring and support services expectations for both the student and the institution;

(b) Student learning goals and expectations;

(c) Student participation requirements in a financial literacy program;

(d) Process by which student progress will be monitored; and

(e) Specified length of the learning contract.

(13) "Pre-college curriculum" means completion of:

(a)1. The Kentucky minimum high school graduation requirements; or

2. Other approved course of study established in 704 KAR 3:305; and

(b)1. Two (2) units of a single world language; or

2. Demonstration of a world language proficiency.

Section 2. Admission Requirements for All Institutions. (1) Each institution shall develop and publish in its catalog or other appropriate publications specific policy and procedures for admission of students into programs or courses with enrollment limitations or specialized curricula.

(2) An institution shall not determine academic readiness using scores received from exams taken more than four (4) years prior to the application.

Section 3. Minimum Requirements for Undergraduate

Admission to a Degree Program at Kentucky Public Universities. (1) Graduates of a public or certified non-public Kentucky high school applying for admission shall:

(a) Meet the Kentucky Minimum High School Graduation Requirements related to 704 KAR 3:305;

(b) 1. Meet the precollege curriculum requirements; and

2. If an applicant has not met the pre-college curriculum requirements, as defined in Section 1(13)(b), complete the world language requirements established by the institution as part of their college curriculum;

(c) Take the established college admission or academic readiness assessments established by the Kentucky Department of Education; and

(d) Have a minimum unweighted high school GPA of:

1. 2.5 on a 4.00 scale; or

2. a. 2.0 to 2.49 on a 4.0 scale; and

b. Enter into a learning contract with the university prior to enrollment.

(2) Graduates of public or certified non-public non-Kentucky high schools applying for admission shall meet criteria for admission established by the institution that is commensurate with the minimum criteria established in Section 3(1).

(3) Applicants with Nonimmigrant Visas not graduating from a public or certified non-public high school shall meet admission criteria established by the institution that include requirements that meet national best practice for the admission of these student and assure academic readiness commensurate to the pre-college curriculum requirements.

(4) Applicants who have earned a state issued high school equivalency diploma or are graduates of a Kentucky based non-certified non-public high school, including a home school, shall meet the admission criteria established by the university, which shall include taking the appropriate admissions exams to assess college readiness.

(5) Notwithstanding sections (1) through (4), an applicant transferring to a university with twenty-four (24) or more semester credit hours applicable to a baccalaureate degree with a grade point average (GPA) of at least 2.00 on a 4.00 scale shall meet the minimum requirements for admission to a degree program.

(6) Each institution shall develop and publish in the catalog or other appropriate publications policies and procedures for the readmission of students that have sat out three (3) or more semesters from the admitting institution.

Section 4. Admission of Non-Degree Seeking Students. An institution may admit a person who does not meet the minimum entrance requirements established by the institution for the purpose of enrolling in a college course or courses as a non-degree seeking student.

Section 5. Admission to a KCTCS Institution. KCTCS institutions shall develop admission criteria for all programs and courses offered consistent with the type of course or program and its mission set forth in KRS 164.580, such as providing accessible education and training to support the lifelong learning needs of Kentucky citizens.

Section 6. Minimum Requirements for Dual Credit and Early College Admission. (1) Students admitted to any Kentucky public postsecondary institution in an accelerated pathway or in dual credit courses in general education shall have an unweighted high school GPA of at least 2.5 on a 4.00 scale and meet any college course prerequisites established by the institution.

(2) Students shall be granted admission into a career and technical education dual credit course if they meet the course prerequisite requirements established by the institution.

(3) Dual credit courses shall not include developmental education courses.

Section 7. College Course Placement. (1) A student demonstrating academic readiness shall be placed in credit-bearing courses in their respective curriculum pathway. The student shall not be required to enroll in a developmental course.

(2) A student who does not demonstrate academic readiness shall be administered an academic readiness placement exam only in the area in which the student does not meet the benchmark.

(3) A degree-seeking student admitted to a college within the KCTCS system may be required to enroll in no more than one (1) developmental course in the curriculum pathway in areas for which the student has not met the academic readiness standards. A student shall have access to a corequisite or credit-bearing content course in the curriculum pathway of study within the first academic year of enrollment.

(4) An undergraduate degree-seeking student enrolled in a public university shall be placed in a corequisite course in the curriculum pathway in any areas for which the student has not met the academic readiness standards. A student admitted to a public university shall not be required to enroll in or complete a developmental course in any academic readiness area.

(5) Each institution shall develop and publish any course prerequisite requirements for all courses taught at any degree level. Institutions shall develop policies and procedures that maximize the award of credit for prior learning consistent with any applicable state, federal, or accreditation standards which shall assist in appropriate placement of students.

Section 8. Publication. All policies and procedures established pursuant to this administrative regulation shall be published in the institution's catalog and any other appropriate admission and placement materials.[~~Section 1. Definitions. (1) "Adult learner" means a student who is twenty-one (21) years of age or older.~~

~~(2) "Certified, non-public school" means a Kentucky non-public school that has been granted certification by the Kentucky Board of Education.~~

~~(3) "Council" is defined by KRS 164.001(8).~~

~~(4) "Developmental course" means a college or university class or section that prepares a student for college-level study and does not award credit toward a degree.~~

~~(5) "Institution" means a state-supported postsecondary education institution as defined in KRS 164.001(12).~~

~~(6) "KCTCS" means the Kentucky Community and Technical College System as defined in KRS 164.001(13).~~

~~(7) "Pre-college curriculum" means completion of:~~

~~(a)1. The Kentucky minimum high school graduation requirements; or~~

~~2. Other approved course of study established in 704 KAR 3:305; and~~

~~(b)1. Two (2) units of a single world language; or~~

~~2. Demonstration of a world language proficiency.~~

~~(8) "Student eligible to pursue a GED®" means a student who has met the federal ability to benefit guidelines established in 34 C.F.R. 668.141 to 668.156 pursuant to 20 U.S.C. 1091(d).~~

~~(9) "Supplemental course or program" means a college or university class, additional class hours, tutoring, or mentoring beyond that required for a student who meets the system-wide standards for readiness.~~

~~(10) "System-wide standard" means an ACT Assessment sub-score of eighteen (18) in English, nineteen (19) in mathematics, or twenty (20) in reading.~~

~~Section 2. Minimum Qualifications for Institutional Admission as a First-time Student to a State-supported University. (1)(a) Except as provided by paragraph (b) of this subsection, an applicant who is a resident of Kentucky and who seeks admission to a Kentucky state-supported university shall have fulfilled the minimum requirements for admission to a baccalaureate degree program if the applicant has met the admission criteria established by the institution and:~~

~~1. Graduated from a public high school or a certified non-public high school;~~

~~2. Completed the pre-college curriculum; and~~

~~3. Taken the ACT Assessment.~~

~~(b) An applicant who has earned a high school general equivalency diploma (GED®) or who is a graduate of a Kentucky based non-certified non-public high school, including a home school, shall have fulfilled the requirements for admission to a~~

~~baccalaureate program by meeting the admission criteria established by a university, in writing, and by taking the ACT Assessment and by scoring at levels established by the university.~~

~~(c) Notwithstanding the provisions of paragraphs (a) and (b) of this subsection, a university may substitute the SAT for the ACT Assessment. A university may substitute the ACT RESIDUAL, ASSET Testing Program, COMPASS Testing Program, KYOTE Testing Program, or ACCUPLACER Testing Program for the ACT Assessment requirement for an adult learner.~~

~~(2) A non-resident shall have fulfilled the minimum requirements for admission to a baccalaureate degree program at a university if the applicant has met the admission criteria established by the institution and:~~

~~(a) Completed a college preparatory curriculum comparable to Kentucky's pre-college curriculum; and~~

~~(b) Taken the ACT Assessment or the SAT Assessment.~~

~~(3)(a) A university may admit a student who has not met the testing requirements of subsection (1)(a)(3), (1)(b), or (2)(b) of this section if the university has a written policy defining the circumstances that authorize the testing to be delayed.~~

~~(b) A university admitting a student under paragraph (a) of this subsection shall satisfy the provisions of subsection (1)(a)(3), (1)(b), or (2)(b) of this section during the first semester of enrollment.~~

~~(4) Except as provided in subsection (5) or (6) of this section, the requirement to complete the pre-college curriculum shall apply to:~~

~~(a) A first-time university student pursuing a baccalaureate degree with or without a declared major;~~

~~(b) A university student who is already enrolled and who is converting from non-degree status to baccalaureate degree status;~~

~~(c) A student changing from certificate or associate degree status to baccalaureate degree status; or~~

~~(d) A student transferring from another institution who has been admitted to baccalaureate degree status by a state-supported university.~~

~~(5) A university shall accept a waiver of a pre-college curriculum course if:~~

~~(a) A student is unable to complete the course because of a physical handicap;~~

~~(b) The school district superintendent or designee verifies that a student's handicapping condition prevents the student from completing the course in question; and~~

~~(c) The student completes a course substituted by the local school in accordance with 704 KAR 3:305, Section 3(2).~~

~~(6) The requirement to complete the pre-college curriculum as established in subsection (1)(a)2. of this section shall not apply to:~~

~~(a) An adult learner;~~

~~(b) A student entering baccalaureate degree status with twenty-four (24) or more semester credit hours applicable to a baccalaureate degree with a grade point average (GPA) of at least 2.00 on a 4.00 scale;~~

~~(c) Active duty military personnel, their spouses, and their dependents;~~

~~(d) A student enrolled in a community or technical college or a community college type program at a university;~~

~~(e) A non-resident student subject to the provisions of subsection (2) of this section; or~~

~~(f) An international student.~~

~~(7) A university may establish, in writing, additional admission criteria to supplement these minimum requirements.~~

~~(8) An applicant granted early admission to a university shall be exempt from the requirement of meeting the pre-college curriculum as set forth in subsection (1)(a)2. of this section.~~

~~(9) A university may admit a person who does not meet the entrance requirements established in this section for the purpose of enrolling in a college course or courses as a non-degree student.~~

~~(10) A state-supported university that admits a student in an associate or baccalaureate degree program who does not meet the system-wide standards of readiness for English, mathematics, or reading shall use a placement exam to place the student in the proper course. If the student scores below the system-wide standard of readiness in English, mathematics, or reading as outlined in the College Readiness Indicators document incorporated by reference, a university shall place the student in an:~~

~~(a) Appropriate developmental course in the relevant discipline within two (2) semesters following a student's initial enrollment; or~~

~~(b) Appropriate entry-level college course within two (2) semesters following a student's initial enrollment, if the course is a supplemental course or program.~~

~~(11)(a) A student shall not be required to enroll in a developmental or supplemental course in English if the student has:~~

~~1. A sub-score on the ACT Assessment of eighteen (18) or higher;~~

~~2. Met an English benchmark placement score outlined in the College Readiness Indicators document;~~

~~3. Successfully completed a high school English transitional course or intervention program and met the system-wide English benchmark for readiness outlined in the College Readiness Indicators document; or~~

~~4. Successfully completed a developmental or supplemental English course at a public postsecondary education institution if the course meets the system-wide learning outcomes identified in the College Readiness Indicators document.~~

~~(b) A student shall not be required to enroll in a developmental or supplemental mathematics course if the student is enrolling in a liberal arts mathematics course, and has:~~

~~1. A sub-score on the ACT Assessment of nineteen (19) or higher;~~

~~2. Met a liberal arts mathematics benchmark placement score outlined in the College Readiness Indicators document;~~

~~3. Successfully completed a high school mathematics transitional course or intervention program and met the system-wide mathematics benchmark for readiness for a mathematics liberal arts course outlined in the College Readiness Indicators document; or~~

~~4. Successfully completed a developmental or supplemental mathematics course at a state-supported postsecondary education institution that meets the system-wide learning outcomes identified in the College Readiness Indicators document.~~

~~(c) A student shall not be required to enroll in a developmental or supplemental course in college algebra if the student has:~~

~~1. A sub-score on the ACT Assessment of twenty-two (22) or higher in mathematics;~~

~~2. Met a college algebra mathematics benchmark placement score outlined in the College Readiness Indicators document; or~~

~~3. Successfully completed a developmental or supplemental mathematics course at a state-supported postsecondary education institution that meets the system-wide learning outcomes for college algebra identified in the College Readiness Indicators document.~~

~~(d) A student shall not be required to enroll in a developmental or supplemental course in reading if the student has:~~

~~1. A sub-score on the ACT Assessment of twenty (20) or higher;~~

~~2. Met a reading benchmark placement score outlined in the College Readiness Indicators document;~~

~~3. Completed twelve (12) hours of reading intensive work at a postsecondary education institution;~~

~~4. Successfully completed a high school reading transitional course or intervention program and met the system-wide English benchmark for readiness outlined in the College Readiness Indicators document; or~~

~~5. Successfully completed a developmental or supplemental reading course at a state-supported postsecondary education institution that meets the system-wide learning outcomes identified in the College Readiness Indicators document.~~

~~(e) A student who scores twenty-seven (27) or higher on the ACT Assessment in mathematics shall be permitted to enroll in a credit-bearing calculus course.~~

~~(f) A student who demonstrates a level of competence by achieving the standards established in the College Readiness Indicators document, and by achieving the scores contained in~~

~~paragraphs (a) through (e) of this subsection shall be guaranteed placement in credit-bearing course work.~~

~~(12) An adult learner who has been admitted without taking the ACT Assessment or the SAT shall be placed into an appropriate course based on the following tests:~~

~~(a) The ACT Residual Test~~

~~(b) The ASSET Testing Program;~~

~~(c) The COMPASS Testing Program;~~

~~(d) The KYOTE Testing Program;~~

~~(e) The ACCUPLACER Testing Program; or~~

~~(f) An institutional placement test.~~

~~(13) An institution shall be responsible for determining the remediation required including the number of developmental courses required.~~

~~(14) An institution shall enroll a student who scores below the state-wide readiness standards in an appropriate developmental or entry-level course until readiness for credit-bearing courses has been demonstrated. An institution shall ensure that a student who completes a developmental or supplemental course shall enroll in a credit-bearing course in that subject or discipline, or in the case of reading, in an appropriate course requiring college-level reading skills.~~

~~(15) A university shall report to the Council data that monitors the performance of first-time students in developmental and entry-level courses. The core elements of the first-time student performance monitoring system shall include:~~

~~(a) ACT or SAT scores;~~

~~(b) Institutional placement exam results;~~

~~(c) Information that identifies whether a course is developmental, entry-level, or entry-level with supplementary academic support provided; and~~

~~(d) Grades in developmental entry-level courses.~~

~~Section 3. Minimum Qualifications for Institutional Admission as a First-time Student to the Kentucky Community and Technical College System (KCTCS). (1) Except as provided by paragraph (b) of this subsection, an applicant who is a resident of Kentucky and who seeks admission to a community and technical college degree program established by the Kentucky Community and Technical College System may be admitted if the applicant has:~~

~~(a) Graduated from a public high school or certified non-public high school; or~~

~~(b) Earned a general equivalency diploma (GED®).~~

~~(2) A non-resident applicant who has earned a high school general equivalency diploma (GED®) or an applicant who is a graduate of a Kentucky based non-certified non-public high school, including a home school, shall have fulfilled the requirements for admission to a community or technical college by meeting the admission criteria established by KCTCS.~~

~~(3) KCTCS may waive the requirement to take the GED® as set forth in subsection (1)(b) of this section pursuant to a written policy published by KCTCS.~~

~~(4) KCTCS may admit a person who does not meet the entrance requirements established in this section for the purpose of enrolling in a college course or courses as a non-degree student.~~

~~(5) KCTCS, in admitting a student to a degree program who does not meet the system-wide standards of readiness for English, mathematics, or reading, shall use a placement exam to place the student in the proper course. If the student scores below the system-wide standard of readiness in English, mathematics, or reading as outlined in the College Readiness Indicators document incorporated by reference, the institution shall place the student in an:~~

~~(a) Appropriate developmental course or adult education course of study in the relevant discipline within two (2) semesters following a student's initial enrollment; or~~

~~(b) Appropriate entry-level college course within two (2) semesters following a student's initial enrollment, if the course is a supplemental course or program.~~

~~(6)(a) A student shall not be required to enroll in a developmental or supplemental course in English if the student has:~~

~~1. A sub-score on the ACT Assessment of eighteen (18) or higher;~~

~~2. Met an English benchmark placement score outlined in the College Readiness Indicators document;~~

~~3. Successfully completed a high school English transitional course or intervention program and met the system-wide English benchmark for readiness outlined in the College Readiness Indicators document; or~~

~~4. Successfully completed a developmental or supplemental English course at a state-supported postsecondary education institution if the course meets the system-wide learning outcomes identified in the College Readiness Indicators document.~~

~~(b) A student shall not be required to enroll in a developmental or supplemental mathematics course if the student is enrolling in a liberal arts mathematics course, and has:~~

~~1. A sub-score on the ACT Assessment of nineteen (19) or higher;~~

~~2. Met a liberal arts mathematics benchmark placement score outlined in the College Readiness Indicators document;~~

~~3. Successfully completed a high school mathematics transitional course or intervention program and met the system-wide mathematics benchmark for readiness for a mathematics liberal arts course outlined in the College Readiness Indicators document; or~~

~~4. Successfully completed a developmental or supplemental mathematics course at a state-supported postsecondary education institution that meets the system-wide learning outcomes identified in the College Readiness Indicators document.~~

~~(c) A student shall not be required to enroll in a developmental or supplemental course in college algebra if the student has:~~

~~1. A sub-score on the ACT Assessment of twenty-two (22) or higher in mathematics;~~

~~2. Met a college algebra mathematics benchmark placement score outlined in the College Readiness Indicators document; or~~

~~3. Successfully completed a developmental or supplemental mathematics course at a state-supported postsecondary education institution that meets the system-wide learning outcomes for college algebra identified in the College Readiness Indicators document.~~

~~(d) A student shall not be required to enroll in a developmental or supplemental course in reading if the student has:~~

~~1. A sub-score on the ACT Assessment of twenty (20) or higher;~~

~~2. Met a reading benchmark placement score outlined in the College Readiness Indicators document;~~

~~3. Completed twelve (12) hours of reading intensive work at a postsecondary education institution;~~

~~4. or intervention program and met the system-wide English benchmark for readiness outlined in the College Readiness Indicators document; or~~

~~5. Successfully completed a developmental or supplemental reading course at a state-supported postsecondary education institution that meets the system-wide learning outcomes identified in the College Readiness Indicators document.~~

~~(e) A student who scores twenty-seven (27) or higher on the ACT Assessment in mathematics shall be permitted to enroll in a credit-bearing calculus course.~~

~~(f) A student who demonstrates a level of competence by achieving the standards established in the College Readiness Indicators document, and by achieving the scores contained in paragraph (a) through (d) of this subsection shall be guaranteed placement in credit-bearing course work.~~

~~(7) An adult learner who has been admitted without taking the ACT Assessment or the SAT may be placed into an appropriate course based on the following tests:~~

~~(a) The ACT Residual Test;~~

~~(b) The ASSET Testing Program;~~

~~(c) The COMPASS Testing Program;~~

~~(d) The KYOTE Testing Program;~~

~~(e) The ACCUPLACER Testing Program; or~~

~~(f) An institutional placement test.~~

~~(8) An institution shall be responsible for determining the remediation required including the number of developmental courses required.~~

~~(9) An institution shall enroll a student who scores below the state-wide readiness standards in an appropriate developmental or entry-level course until readiness for credit-bearing courses has been demonstrated. An institution shall ensure that a student who completes a developmental or supplemental course shall enroll in a credit-bearing course in that subject or discipline, or in the case of reading, in an appropriate course requiring college-level reading skills.~~

~~(10) KCTCS may exempt students enrolled in selected occupational based certificate or diploma programs from an assessment and placement in English, mathematics, or reading. The list of certificate and diploma programs that exempt students from the required assessment and placement shall be published by KCTCS in the student catalog.~~

~~(11) KCTCS shall report to the Council data that monitors the performance of first-time students in developmental and entry-level courses. The core elements of the first-time student performance monitoring system shall include:~~

~~(a) ACT or SAT scores;~~

~~(b) Institutional placement exam results;~~

~~(c) Information that identifies whether a course is developmental, entry-level, or entry-level with supplementary academic support provided; and~~

~~(d) Grades in developmental entry-level courses.~~

~~Section 4. Transfer Students. (1) The council's General Education Transfer Policy and Implementation Guidelines, incorporated by reference, shall direct an institution's policy on the acceptance of transfer credits.~~

~~(2) An institution shall assure that a transferring student receives academic counseling concerning the transfer of credit among institutions.~~

~~(3) A university or the KCTCS, consistent with the provisions of subsection (1) of this section, shall accept a student's college credit earned when a course is taken both for high school credit and college credit. Credit earned through a dual enrollment arrangement shall be treated the same as credit earned in any other college course.~~

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

~~(a) "General Education Transfer Policy and Implementation Guidelines", 2011, Council on Postsecondary Education; and~~

~~(b) College Readiness Indicators, 2010.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

SHERRILL B. ZIMMERMAN, Chair
TRAVIS POWELL, General Counsel

APPROVED BY AGENCY: July 13, 2018

FILED WITH LRC: July 13, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2018 at 10:00 a.m. EST at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601 in Conference Room A. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: Travis Powell, General Counsel and Associate Vice President, Council on Postsecondary Education, 1024 Capital Center Dr., Suite 350, Frankfort, Kentucky 40601, phone 502.573.1555 ext. 142, fax 502.573.1535, email travis.powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Travis Powell

(1) Provide a brief summary of:

(a) What this administrative regulation does: Sets forth the minimum admission and placement standards for students who attend public postsecondary education institutions.

(b) The necessity of this administrative regulation: KRS 164.020(8) requires that the Council on Postsecondary Education set minimum admission standards for students who wish to enroll at public postsecondary education institutions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation conforms explicitly to the authorizing statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation advises prospective students, local school districts, and public postsecondary institutions on the minimum requirements for admission and course placement to facilitate transition into postsecondary education.

(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 simplifies the current structure for minimum admission criteria and related course placement by focusing on core state level policy objectives. It requires that traditional high school graduates admitted to a public university have a high school GPA of 2.5 on a 4.0 scale. Students with a 2.0 to 2.49 may enroll after signing a learning contract with the institution that specifies the advising, mentoring, tutoring and support services expectations for both the student and the institution, student learning goals and expectations, student participation requirements in a financial literacy program, the process by which student progress will be monitored, and the specified length of the learning contract. The amendment also mandates the implementation of the corequisite model for students needing remediation in core content areas. Corequisite courses include enhanced academic supports, such as additional hours of instruction, tutoring, mentoring, or advising and require the award of college credit upon their successful completion.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to assist in the simplifying college and university compliance in core areas of admission and placement criteria and providing flexibility institutions in these areas where they may be unique. Moving toward the corequiste model of remediation will assist students in progressing to a degree more quickly outside the traditional developmental model which is often more costly and ineffective in progressing students toward degree completion.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms with the requirements of KRS 164.020(8), which gives the Council the broad authority to set minimum qualifications for admission to the state postsecondary system.

(d) How the amendment will assist in the effective administration of the statutes: The clarification and simplification proposed in this amendment will assist the Council in ensuring institutional compliance by focusing only on those most important and impactful statewide objectives in the areas of admission and placement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The eight Kentucky public universities and sixteen community and technical colleges are affected along with any person seeking admission and enrolling in those institutions.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment,

including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Institutions will be required to review existing admission and course placement policies and adjust accordingly.

(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 require the most minimal amount of additional staff time to adjust internal admissions and placement policies accordingly. The move to a corequisite course model for developmental education will ensure students are paying for credit bearing courses in their program of study as opposed to development education courses which were often taken without the award of college credit.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The changes proposed in this amendment are designed to assist public colleges and universities in being more successful in retaining students and assisting them in completing their degrees in a more timely manner.

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

(a) Initially: See 4(b) above.

(b) On a continuing basis: See 4(b) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Any available sources of funding can be used, most likely general operating expenses.

(7) Provide an assessment of whether an 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. This regulation does not assess fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A. This regulation does not assess fees.

(9) TIERING: Is tiering applied? Yes, tiering is applied. Public universities have higher minimum admissions standards than community and technical colleges as these are open enrolling institutions. As for course placement, community and technical colleges are afforded more options for remediating students considering that open enrolling mission and the academic challenges some of those students bring.

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 public universities in Kentucky and Kentucky community and technical colleges.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.020(8).

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? In and of itself, this regulation will not generate any revenue, but generally it should lead to better retention and graduation of students which will result in increased tuition revenue and better outcomes in the performance funding model for distributing state general fund appropriations set forth in KRS 164.092,13 KAR 2:120 and 13 KAR 2:130.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See 3(a).

(c) How much will it cost to administer this program for the first year? No additional costs. Responsibilities borne out of the regulation will be subsumed by existing staff.

(d) How much will it cost to administer this program for subsequent years? See 4(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: See 3(a) and (c).

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 21, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 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 August 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 statues: 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. Failure of the State Board of Elections to receive request at least fourteen (14) days prior to Election Day is grounds for the State Board of Elections to 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 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) The State Board of Elections may deny the request to appoint emergency precinct officers 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.

(c) In the event the State Board of Elections denies a request for appointment of emergency precinct workers as provided in subsection (b) above, the State Board of Elections 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 of Elections 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 21, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 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 August 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.

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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 statues: 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:

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

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FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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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.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses.

RELATES TO: KRS 218A.172, 218A.205(3)(a), (b), 314.011(7), 314.011(8), 314.042, 314.193(2), 314.195, 314.196, National Transportation Safety Board Safety Recommendation 1-14-1

STATUTORY AUTHORITY: KRS 218A.205(3)(a), (b), 314.131(1), 314.193(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(a) and (b) require the Board of Nursing, in consultation with the Kentucky Office of Drug Control Policy, to establish by administrative regulation mandatory prescribing and dispensing standards for licensees authorized to prescribe or dispense controlled substances, and in accordance with the Centers for Disease Control and Prevention (CDC) guidelines, to establish a prohibition on a practitioner issuing a prescription for a Schedule II controlled substance for more than a three (3) day supply if intended to treat pain as an acute medical condition, unless an exception applies. KRS 314.131(1) authorizes the board to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.193(2) authorizes the board to promulgate administrative regulations establishing standards for the performance of advanced practice registered nursing to safeguard the public health and welfare. This administrative regulation establishes the scope and standards of practice for an advanced practice registered nurse.

Section 1. Definitions. (1) "Collaboration" means the relationship between the advanced practice registered nurse and a physician in the provision of prescription medication, including both autonomous and cooperative decision-making, with the advanced practice registered nurse and the physician contributing their respective expertise.

(2) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances" or "CAPA-CS" means the written document pursuant to KRS 314.042(10).

(3) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs" or "CAPA-NS" means the written document pursuant to KRS 314.042(8).

(4) "KASPER" means the Kentucky All Schedule Prescription Electronic Reporting system established in KRS 218A.202.

Section 2. (1) The practice of the advanced practice registered nurse shall be in accordance with the standards and functions defined in scope and standards of practice statements adopted by the board in subsection (2) of this section.

(2) The following scope and standards of practice statements shall be adopted:

(a) AACN Scope and Standards for Acute Care Nurse Practitioner Practice;

(b) AACN Scope and Standards for Acute Care Clinical Nurse Specialist Practice;

(c) Neonatal Nursing: Scope and Standards of Practice;

(d) Nursing: Scope and Standards of Practice;

(e) Pediatric Nursing: Scope and Standards of Practice;

(f) Psychiatric-Mental Health Nursing [~~2nd Edition~~]: Scope and Standards of Practice;

(g) Scope of Practice for Nurse Practitioners;

(h) Standards of Practice for Nurse Practitioners;

(i) Scope of Nurse Anesthesia Practice;

(j) Standards for Nurse Anesthesia Practice;

(k) Standards for Office Based Anesthesia Practice;

(l) Standards for the Practice of Midwifery;

(m) Statement on the Scope and Standards of Oncology Nursing Practice: Generalist and Advanced Practice;[~~and~~]

(n) The Women's Health Nurse Practitioner: Guidelines for Practice and Education; and

(o) Definition of Midwifery and Scope of Practice of Certified Nurse-Midwives and Certified Midwives.

Section 3. In the performance of advanced practice registered nursing, the advanced practice registered nurse shall seek consultation or referral in those situations outside the advanced practice registered nurse's scope of practice.

Section 4. Advanced practice registered nursing shall include prescribing medications and ordering treatments, devices, and diagnostic tests and performing certain procedures which are consistent with the scope and standards of practice of the advanced practice registered nurse.

Section 5. Advanced practice registered nursing shall not preclude the practice by the advanced practice registered nurse of registered nursing practice as defined in KRS 314.011(6).

Section 6. (1)(a) A CAPA-NS and a CAPA-CS shall include the name, practice address, phone number, and license number of both the advanced practice registered nurse and each physician who is a party to the agreement. It shall also include the population focus and[~~specialty~~] area of practice of the advanced practice registered nurse.

(b) Pursuant to KRS 314.196(2), an advanced practice registered nurse shall use the Common CAPA-NS Form.

(2)(a) To notify the board of the existence of a CAPA-NS pursuant to KRS 314.042(8)(b), the APRN shall file with the board the APRN Prescriptive Authority Notification Form[~~Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs (CAPA-NS)~~].

(b) To notify the board that the requirements of KRS 314.042(9) have been met and that the APRN will be prescribing nonscheduled legend drugs without a CAPA-NS, the APRN shall file the APRN Prescriptive Authority Notification Form[~~Notification to Discontinue the CAPA-NS After Four (4) Years~~].

(c) To notify the board of the existence of a CAPA-CS pursuant to KRS 314.042(10)(b), the APRN shall file with the board the APRN Prescriptive Authority Notification Form[~~Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS)~~].

(3) For purposes of the CAPA-NS and the CAPA-CS, in determining whether the APRN and the collaborating physician are qualified in the same or a similar specialty, the board shall be guided by the facts of each particular situation and the scope of the APRN's and the physician's actual practice.

(4)(a) An APRN with a CAPA-CS shall report all of his or her United States Drug Enforcement Agency (DEA) Controlled Substance Registration Certificate numbers to the board when issued to the APRN by mailing a copy of each registration certificate to the board within thirty (30) days of issuance.

(b) Any change in the status of a DEA Controlled Substance Registration Certificate, including a DEA-X Controlled Substance Registration Certificate, shall be reported in writing to the board within thirty (30) days.

(5) An APRN shall report any changes to a CAPA-CS in writing to the board within thirty (30) days.

(6) If the collaborating physician's license is suspended, the APRN shall follow the procedures set out in KRS 314.196 for a CAPA-NS. The APRN with a CAPA-CS shall cease prescribing controlled substances until the suspension is lifted or a new collaborating physician signs a new CAPA-CS.

(7) An APRN with a CAPA-NS or a CAPA-CS shall report a practice address to the Board. A change to the practice address shall be reported to the Board within thirty (30) days.

Section 7. Prescribing medications without a CAPA-NS or a CAPA-CS shall constitute a violation of KRS 314.091(1), except when a CAPA-NS has been discontinued pursuant to KRS 314.042(9) or the provisions of KRS 314.196(4)(b) apply.

Section 8. The board may make an unannounced[~~monitoring~~] visit to an advanced practice registered nurse to determine if the advanced practice registered nurse's practice is consistent with the requirements established by KRS Chapter 314 and 201 KAR Chapter 20, and patient and prescribing records shall be made available for immediate inspection.

Section 9. Prescribing Standards for Controlled Substances. (1)(a) This section shall apply to an APRN with a CAPA-CS if prescribing a controlled substance. It also applies to the utilization of KASPER.

(b) The APRN shall practice according to the applicable scope and standards of practice for the APRN's role and population focus. This section does not alter the prescribing limits set out in KRS 314.011(8).

(2) Prior to the initial prescribing of a controlled substance to a patient, the APRN shall:

(a) Obtain the patient's medical history and conduct an examination of the patient and document the information in the patient's medical record. An APRN certified in psychiatric/mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query KASPER for all available data on the patient and maintain all KASPER report identification numbers and the date of issuance of each KASPER report in the patient's record;

(c) Develop[~~Make~~] a written treatment plan stating the objectives of the treatment and further diagnostic examinations required; and

(d) Discuss with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate:

1. The risks and benefits of the use of controlled substances, including the risk of tolerance and drug dependence;

2. That the controlled substance shall be discontinued when the condition requiring its use has resolved; and

3. Document that the discussion occurred and obtain written consent for the treatment.

(3) The treatment plan shall include an exit strategy, if appropriate, including potential discontinuation of the use of controlled substances.

(4) For subsequent or continuing long-term prescriptions of a controlled substance for the same medical complaint, the APRN shall:

(a) Update the patient's medical history and document the information in the patient's medical record;

(b) Modify and document changes to the treatment plan as clinically appropriate; and

(c) Discuss the risks and benefits of any new controlled substances prescribed with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence.

(5) During the course of treatment, the APRN shall query KASPER no less than once every three (3) months for all available data on the patient before issuing a new prescription or a refill for a controlled substance. The APRN shall maintain all KASPER report identification numbers and the date of issuance of each KASPER report in the patient's record.

(6) These requirements may be satisfied by other licensed practitioners in a single group practice if:

(a) Each licensed practitioner involved has lawful access to the patient's medical record;

(b) Each licensed practitioner performing an action to meet these requirements is acting within the scope of practice of his or her profession; and

(c) There is adequate documentation in the patient's medical record reflecting the actions of each practitioner.

(7) If prescribing a controlled substance for the treatment of chronic, noncancer pain, the APRN, in addition to the requirements of this section, shall obtain a baseline drug screen or further random drug screens if the APRN:

(a) Finds a drug screen to be clinically appropriate; or

(b) Believes that it is appropriate to determine whether or not the controlled substance is being taken by the patient.

(8) If prescribing a controlled substance for the treatment of a mental health condition, the APRN shall meet the requirements of this section and the applicable statutory prescribing limitations.

(9) Prior to prescribing a controlled substance for a patient in the emergency department of a hospital that is not an emergency situation, the APRN shall:

(a) Obtain the patient's medical history, conduct an examination of the patient and document the information in the patient's medical record. An APRN certified in psychiatric/mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query KASPER for all available data on the patient and document the data in the patient's record;

(c) Develop[~~Make~~] a written treatment plan stating the objectives of the treatment and further diagnostic examinations required; and

(d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence, and document that the discussion occurred and that the patient consented to the treatment.

(10) For each patient for whom an APRN prescribes a controlled substance, the APRN shall keep accurate, readily accessible, and complete medical records, which include:

(a) Medical history and physical or mental health examination;

(b) Diagnostic, therapeutic, and laboratory results;

(c) Evaluations and consultations;

(d) Treatment objectives;

(e) Discussion of risk, benefits, and limitations of treatments;

(f) Treatments;

(g) Medications, including date, type, dosage, and quantity prescribed;

(h) Instructions and agreements;

(i) Periodic reviews of the patient's file; and

(j) All KASPER report identification numbers and the date of issuance of each KASPER report.

(11) The requirement to query KASPER shall not apply to:

(a) An APRN prescribing or administering a controlled substance immediately prior to, during, or within the fourteen (14) days following an operative or invasive procedure or a delivery if the prescribing or administering is medically related to the operative or invasive procedure or the delivery and the medication usage does not extend beyond the fourteen (14) days;

(b) An APRN prescribing or administering a controlled substance necessary to treat a patient in an emergency situation; or

(c) An APRN prescribing a controlled substance:

1. For administration in a hospital or long-term-care facility with an institutional account, or an APRN in a hospital or facility without an institutional account, if the hospital, long-term-care facility, or licensee queries KASPER for all available data on the patient or resident for the twelve (12) month period immediately preceding the query within twelve (12) hours of the patient's or resident's admission and places a copy of the query in the patient's or resident's medical records during the duration of the patient's stay at the facility;

2. As part of the patient's hospice or end-of-life treatment;

3. For the treatment of pain associated with cancer or with the treatment of cancer;

4. To assist a patient when submitting to a diagnostic test or procedure;

5. Within seven (7) days of an initial prescription pursuant to subsection (1) of this section if the prescriber[~~prescribing~~]:

a. Substitutes a controlled substance[~~Is done as a substitute~~] for the initial prescribing;

b. Cancels any refills for the initial prescription; and

c. Requires the patient to dispose of any remaining unconsumed medication;

6. Within ninety (90) days of an initial prescription pursuant to subsection (1) of this section if the prescribing is done by another licensee in the same practice or in an existing coverage arrangement, if done for the same patient for the same condition;

7. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federal-wide assurance number from the United States Department of Health and Human Services, Office for Human Research Protections if the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health;

8. During the effective period of any disaster or situation with mass casualties that have a direct impact on the APRN's practice;

9. As part of the administering or ordering of controlled substances to prisoners in a state, county, or municipal correctional facility;

10. That is a Schedule IV controlled substance for no longer than three (3) days for an established patient to assist the patient in responding to the anxiety of a nonrecurring event; or

11. That is classified as a Schedule V controlled substance.

(12) Federal regulation 21 C.F.R. 1306.12(b) concerning the issuance of multiple prescriptions for Schedule II controlled substances shall not apply to[~~be utilized by~~] APRNs in this state.

(13) No less than once every six (6) months, an APRN who has prescribed controlled substances shall review[~~may order~~] a reverse KASPER report to determine whether[~~review the APRN's prescribing practices and to verify~~] the information contained in KASPER is correct. If the information is incorrect, the APRN shall comply with 902 KAR 55:110 and take the necessary steps to seek correction of the information:

(a) By first contacting the reporting pharmacy;

(b) In the case of suspected fraudulent activity, by contacting law enforcement; or

(c) By contacting the Drug Enforcement Professional Practices Branch, Office of the Inspector General, Cabinet for Health and Family Services.

(14) An APRN shall not issue a prescription for hydrocodone combination products for more than a three (3) day supply if the prescription is intended to treat pain as an acute medical condition, with the following exceptions:

(a) The APRN, in his or her professional judgment, believes that more than a three (3) day supply of hydrocodone combination products is medically necessary to treat the patient's pain as an acute medical condition and the APRN adequately documents the acute medical condition and lack of alternative treatment options which justifies deviation from the three (3) day supply limit on the

patient's medical records;

(b) The prescription for hydrocodone combination products is prescribed to treat chronic pain;

(c) The prescription for hydrocodone combination products is prescribed to treat pain associated with a valid cancer diagnosis;

(d) The prescription for hydrocodone combination products is prescribed to treat pain while the patient is receiving hospice or end-of-life treatment;

(e) The prescription for hydrocodone combination products is prescribed as part of a narcotic treatment program licensed by the Cabinet for Health and Family Services;

(f) The prescription for hydrocodone combination products is prescribed to treat pain following a major surgery, which is any operative or invasive procedure or a delivery, or the treatment of significant trauma; or

(g) Hydrocodone combination products are administered directly to an ultimate user in an inpatient setting.

(15) Prescriptions written for hydrocodone combination products pursuant to subsection (14)(a) through (g) of this section shall not exceed thirty (30) days without any refill.

(16) An APRN may prescribe electronically pursuant to KRS 218A.171.

(17) For any prescription for a controlled substance, the prescribing APRN shall discuss with the patient the effect the patient's medical condition and medication may have on the patient's ability to safely operate a vehicle in any mode of transportation.

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

(a) "AACN Scope and Standards for Acute Care Nurse Practitioner Practice", 2017[~~2012~~] Edition, American Association of Critical-Care Nurses;

(b) "AACN Scope and Standards for Acute Care Clinical Nurse Specialist Practice", 2014 Edition, American Association of Critical-Care Nurses;

(c) "Neonatal Nursing: Scope and Standards of Practice", 2013 Edition, American Nurses Association/National Association of Neonatal Nurses;

(d) "Nursing: Scope and Standards of Practice", 2015 Edition, American Nurses Association;

(e) "Pediatric Nursing: Scope and Standards of Practice", 2015 Edition, American Nurses Association/Society of Pediatric Nursing/National Association of Pediatric Nurse Practitioners;

(f) "Psychiatric-Mental Health Nursing[~~2nd Edition~~]: Scope and Standards of Practice", 2014, American Nurses Association/American Psychiatric Nursing Association;

(g) "Scope of Practice for Nurse Practitioners", 2015[~~2013~~] Edition, American Association of Nurse Practitioners;

(h) "Standards of Practice for Nurse Practitioners", 2013 Edition, American Association of Nurse Practitioners;

(i) "Scope of Nurse Anesthesia Practice", 2013 Edition, American Association of Nurse Anesthetists;

(j) "Standards for Nurse Anesthesia Practice", 2013 Edition, American Association of Nurse Anesthetists;

(k) "Standards for Office Based Anesthesia Practice", 2018[~~2015~~] Edition, American Association of Nurse Anesthetists;

(l) "Standards for the Practice of Midwifery"; 2011 Edition, American College of Nurse-Midwives;

(m) "Statement on the Scope and Standards of Oncology Nursing Practice: Generalist and Advanced Practice", 2013 Edition, Oncology Nursing Society;

(n) "The Women's Health Nurse Practitioner: Guidelines for Practice and Education", 2014 Edition, Association of Women's Health, Obstetric and Neonatal Nurses/Nurse Practitioners in Women's Health;

(o) "Definition of Midwifery and Scope of Practice of Certified Nurse-Midwives and Certified Midwives", 2011 Edition, American College of Nurse-Midwives;

(p) "APRN Prescriptive Authority Notification Form", 6/2018, Kentucky Board of Nursing;[~~"Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS)", 12/2014, Kentucky Board of Nursing;~~

~~(p) "Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs (CAPA-NS)", 12/2014, Kentucky Board of Nursing;~~

~~(q) "Notification to Discontinue the CAPA-NS After Four (4) Years", 8/2015, Kentucky Board of Nursing;~~] and

(q)[~~(r)~~] "Common CAPA-NS Form", 6/2015.

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

LEWIS PERKINS, President

APPROVED BY AGENCY: June 7, 2018

FILED WITH LRC: June 22, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2018 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m.) August 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 429-1248, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the scope and standards of practice for Advanced Practice Registered Nurses (APRN).

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314 011 and KRS 314.042.

(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 setting the scope and standards of practice for APRNs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting the scope and standards of practice for APRNs.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates several national certifying organizations' standards of practice publications. It also cleans up some prescribing language to make it clearer. It also incorporates federal safety standards from the National Transportation Safety Board.

(b) The necessity of the amendment to this administrative regulation: The amendments were necessary to comply with federal law and to clean up some language.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to make these changes.

(d) How the amendment will assist in the effective administration of the statutes: By updating the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: APRNs, approximately 6000.

(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 have to follow the prescribing procedures set out in the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost imposed by the amendment.

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

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:490. Licensed practical nurse infusion[~~intravenous~~] therapy scope of practice.

RELATES TO: KRS 314.011(10)(a), (c)

STATUTORY AUTHORITY: KRS 314.011(10)(c), 314.131(1), 314.011(10)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.011(10)(c) authorizes the board to promulgate an administrative regulation to establish the scope of practice for administering medicine or treatment by a licensed practical nurse. KRS 314.011(10)(a) requires that licensed practical nurses practice under the direction of a registered nurse, advanced practice registered nurse, physician assistant, licensed physician, or dentist. This administrative regulation establishes the scope of that practice as it relates to infusion[~~intravenous~~] therapy.

Section 1. Definitions. (1) "Administration" means to initiate and maintain infusion[~~infuse intravenous~~] therapy.

(2) "Antineoplastic agent" means a medication that prevents the development, growth, or proliferation of malignant cells.

(3)[~~"Bolus" means a concentrated medication or solution given rapidly over a short period of time.~~

~~(4)~~] "Central venous access device" means a catheter inserted into a peripheral or centrally located vein with the tip residing in the superior or inferior vena cava[~~device that permits access to the central vascular system and is inserted with the tip residing in the lower one-third of the superior vena cava or above the level of the diaphragm in the inferior vena cava~~]. This includes peripherally inserted central catheters.

(4)[~~(5)~~] "Direction" means a communication of a plan of care that is based upon assessment of a patient by an advanced practice registered nurse, a registered nurse, physician assistant, licensed physician, or dentist that establishes the parameters for the provision of care or for the performance of a procedure.

(5)[~~(6) "Discontinuance" means to stop the infusion of the medication or fluid and does not include removal of the intravenous access device.~~

~~(7) "Fibrinolytic agent" means a pharmaceutical agent capable of dissolving blood clots.~~

~~(8) "Intravenous access device" means either a peripheral access device or a central venous access device.~~

~~(9) "Mix" or "mixing" means to combine two (2) or more medications or solutions, and includes reconstituting a powder into a liquid, and diluting a medication or solution.~~

~~(10) "Moderate sedation" means the administration of intravenous medications to produce a state that intentionally results in a depressed level of consciousness in a patient.~~

~~(11)~~] "Peripheral access device" means a peripherally-inserted intravenous catheter or needle that is less than or equal to three (3) inches in length.

(6)[~~(12)~~] "Pharmacology" means information on the classification of intravenous drugs, indications for use, pharmacological properties, monitoring parameters, contraindications, dosing, clinical mathematics, anticipated side effects, potential complications, antidotal therapy, compatibilities, stabilities, specific considerations for select intravenous drugs, and administration of intravenous medications to pediatric, adult, and geriatric populations.

(7)[~~(13)~~] "Procedural sedation" means the administration of intravenous medications to produce a decreased[~~state that allows a patient to tolerate unpleasant procedures and results in a depressed~~] level of consciousness.[~~(14) "Push" means administration of medication under pressure via a syringe.~~]

(8)[~~(15)~~] "Supervision" means the provision of guidance by a registered nurse, advanced practice registered nurse, physician assistant, licensed physician or dentist for the accomplishment of a nursing task with periodic observation and evaluation of the performance of the task including validation that the nursing task has been performed in a safe manner.

(9)[~~(16)~~] "Supervisor" means the registered nurse, advanced practice registered nurse, physician assistant, licensed physician or dentist who provides supervision of the licensed practical nurse's practice as defined in[~~subsection (15) of~~] this section.

(10)[~~(17)~~] "Therapeutic phlebotomy" means removal of a

specific volume of blood from a patient as ordered for the treatment of a specific condition or disease[a clinical procedure whereby blood volume is reduced to achieve a therapeutic outcome].

(11) "Unstable" means inconsistent, unpredictable, or consistently fluctuating[(18) "Titration" means adjustment of a medication dosage or rate of solution infusion as prescribed within a therapeutic range that is based on the assessment of a patient.

(19) "Vesicant" means an agent capable of causing injury if it escapes from the intended vascular pathway into surrounding tissue].

Section 2. Education and Training Standards. (1) Prior to performing infusion[intravenous (IV)] therapy, the licensed practical nurse (LPN) shall have completed education and training related to the scope of infusion[IV] therapy for an LPN. This education and training shall be obtained through:

(a) A prelicensure program of nursing for individuals admitted to the program after September 15, 2019[2004]; or

(b) An institution, practice setting, or continuing education provider that has in place a written instructional program and a competency validation mechanism that includes a process for evaluation and documentation of an LPN's demonstration of the knowledge, skills, and abilities related to the safe administration of infusion[IV] therapy. The LPN shall receive and maintain written documentation of completion of the instructional program and competency validation.

(2) The education and training programs recognized in subsection (1) of this section shall be based on "Policies and Procedures for Infusion Nursing" and "Infusion Therapy[Nursing]: Standards of Practice" and shall include the following components:

(a) Legal considerations and risk management issues[Technology and clinical applications];

(b) Related anatomy and physiology including fluid and electrolyte balance;

(c) Principles of pharmacology as related to infusion therapy[Pharmacology and vesicants];

(d) Infusion equipment and preparation[Infection control];

(e) Principles and procedures for administration of solutions and medications via intravenous route including transfusion therapy and parenteral nutrition[Transfusion therapy];

(f) Principles and procedures for peripheral venous access device and central venous access site maintenance;[Parenteral nutrition; and]

(g) Assessment of and appropriate interventions for complications related to infusion therapy; and[Legal aspects based on KRS Chapter 314 and this administrative regulation.]

(h) Demonstration and validation of competency for infusion therapy procedures.

Section 3. Supervision Requirements. (1) An LPN performing infusion[IV] therapy procedures shall be under the direction and supervision of a registered nurse (RN), advanced practice registered nurse (APRN), physician assistant, licensed physician, or dentist.

(2) For a patient whose condition is determined by the LPN's supervisor to be stable and predictable, and rapid change is not anticipated, the supervisor may provide supervision of the LPN's provision of infusion[IV] therapy without being physically present in the immediate vicinity of the LPN, but shall be readily available.

(3) In the following cases, for the LPN to provide infusion[IV] therapy, the LPN's supervisor shall be physically present in the immediate vicinity of the LPN and immediately available to intervene in the care of the patient:

(a) If a patient's condition is or becomes[critical, fluctuating,] unstable[, or unpredictable];

(b)[If IV medications or fluids are administered by push or bolus administration, except for saline or heparinized saline to maintain patency of an IV access device;

(c) If a patient has developed signs and symptoms of an IV catheter-related infection, venous thrombosis, or central line catheter occlusion;

(d)] If a patient is receiving blood, blood components, or plasma volume expanders; or

(c)[(e)] If a patient is receiving peritoneal dialysis or hemodialysis.

Section 4. Standards of Practice. (1) An LPN shall perform only those infusion[IV] therapy acts for which the LPN possesses the knowledge, skill, and ability to perform in a safe manner, except as limited by Section 5[6] of this administrative regulation and under supervision as required by Section 3 of this administrative regulation.

(2) An LPN shall consult with an RN or physician, physician assistant, dentist, or advanced practice registered nurse and seek guidance as needed if:

(a) The patient's care needs exceed the licensed practical nursing scope of practice;

(b) The patient's care needs surpass the LPN's knowledge, skill, or ability; or

(c) The patient's condition becomes unstable[or imminent assistance is needed].

(3) An LPN shall obtain instruction and supervision as necessary if implementing new or unfamiliar nursing practices or procedures.

(4) An LPN shall follow the written, established policies and procedures of the facility that are consistent with KRS Chapter 314.

Section 5.[Functions That May Be Performed. An LPN who has met the education and training requirements of Section 2 of this administrative regulation may perform the following IV therapy functions, except as limited by Section 6 of this administrative regulation and under supervision as required by Section 3 of this administrative regulation:

(1) Calculation and adjustment of the flow rate on all IV infusions;

(2) Observation and reporting of subjective and objective signs of adverse reactions to any IV administration and initiate appropriate interventions;

(3) For all IV access devices:

(a) Administration of IV fluids and medications via central venous and peripheral access devices as permitted by this section and not prohibited by Section 6 of this administrative regulation;

(b) Performance of site care and maintenance that includes:

1. Monitor access site and infusion equipment;

2. Change administration set, including add-on device and tubing;

3. Flushing; and

4. Change site dressing;

(c) Discontinuance of a medication or fluid infusion; and

(d) Conversion of a continuous infusion to an intermittent infusion;

(4) Insertion or removal of a peripheral access device;

(5) Administration, monitoring, and discontinuance of blood, blood components, and plasma volume expanders;

(6) Administration of IV medications and fluids that are mixed and labeled by an RN, APRN, physician, dentist, or pharmacist or are commercially prepared;

(7) Mixing and administration via push or bolus route of any of the following classifications of medications:

(a) Analgesics;

(b) Antiemetics;

(c) The antagonistic agents for analgesics;

(d) Diuretics;

(e) Corticosteroids; and

(f) Saline, heparinized saline, or Heplock solution to maintain patency of an IV access device;

(8) Administration of glucose to patients fourteen (14) years of age or older via direct push or bolus route;

(9) Administration, monitoring, and discontinuance of IV medications and fluids given via a patient controlled administration system;

(10) Administration, monitoring, and discontinuance of parenteral nutrition and fat emulsion solutions;

(11) Performance of dialysis treatment, including:

(a) Administering Heparin 1:1000 units or less concentration either to prime the pump, initiate treatment, or for administration

~~throughout the treatment, in an amount prescribed by a physician, physician's assistant, or advanced practice registered nurse. The licensed practical nurse shall not administer Heparin in concentrations greater than 1:1000; and~~

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

~~(12) Collection of blood specimens from a peripheral IV access device only at the time of initial insertion;~~

~~(13) Removal of a noncoring needle from an implanted venous port;~~

~~(14) Titration of intravenous analgesic medications for hospice patients;~~

~~(15) Administration of peripheral intravenous medications via a volumetric control device;~~

~~(16) Administration of intravenous medications or solutions via a ready-to-mix intravenous solution infusion system;~~

~~(17) Aspiration of a central venous catheter to confirm patency via positive blood return; and~~

~~(18) Administration of medications or fluids via:~~

~~(a) Peripherally inserted central catheters; or~~

~~(b) Implanted or tunneled central venous catheters.~~

~~Section 6.~~] Functions That Shall Not Be Performed. An LPN shall not perform the following infusion[~~IV~~] therapy functions:

(1) Administration of tissue plasminogen activators, except when used to declot any central venous access device[~~immunoglobulins, antineoplastic agents, or investigational drugs~~];

(2) Accessing of a central venous access device used for hemodynamic monitoring;

(3) Administration of medications or fluids via arterial lines or implanted arterial ports;

(4)[~~Administration of medications via push or bolus route except as permitted by Section 5(7) or (8) of this administrative regulation;~~

~~(5) Administration of a fibrinolytic agent to declot any IV access device;~~

~~(6) Administration of medications requiring titration, except as permitted by Section 5(14) of this administrative regulation;~~

~~(7) Insertion or removal of any IV access device, except as permitted by Section 5(4) or (13) of this administrative regulation;~~

~~(8)~~] Accessing or programming an implanted[~~IV~~] infusion pump;

(5)[~~(9)~~] Administration of infusion therapy[~~IV~~] medications for the purpose of procedural sedation[~~, moderate sedation,~~] or anesthesia;

(6)[~~(10)~~] Administration of fluids or medications via an epidural, intrathecal, intraosseous, or umbilical route, or via a ventricular reservoir;

(7)[~~(11)~~] Administration of medications or fluids via an arteriovenous fistula or graft, except for dialysis;

(8)[~~(12)~~] [~~Performance of the~~] Repair of a central venous access device;[~~(13) Mixing of any medications other than those listed in Section 5(7) of this administrative regulation;~~

~~(14) Insertion of noncoring needles into an implanted port;~~]

(9)[~~(15)~~] Performance of therapeutic phlebotomy;[~~(16) Administration of medications or fluids via a nontunneled, nonimplanted central venous catheter;~~]

(10)[~~(17)~~] Aspiration of an arterial line;[~~(18) Withdrawal of blood specimens via a central venous catheter; or~~]

(11)[~~(19)~~] Initiation and removal of a peripherally inserted central, midclavicular, or midline catheter; or

(12) Administration of immunoglobulins, antineoplastic agents, or investigational drugs.

Section 6[~~7~~]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Policies and Procedures for Infusion Nursing", Fifth Edition, 2016[~~Fourth Edition, 2011~~]; and

(b) "Infusion Therapy[~~Nursing~~]: Standards of Practice", 2016[~~2011~~].

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

LEWIS PERKINS, President

APPROVED BY AGENCY: June 7, 2018.

FILED WITH LRC: June 22, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2018 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m.) August 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 429-1248, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the scope of practice for Licensed Practical Nurses (LPN) to do infusion (or also called intravenous or IV) therapy.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314 011 and KRS 314.051.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting the scope of practice for LPNs to do IV therapy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting the scope of practice for LPNs.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the language of the administrative regulation. The section on permitted activities has been deleted since if it is not prohibited, it is permitted.

(b) The necessity of the amendment to this administrative regulation: The amendments were necessary to clean up some language.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to make these changes.

(d) How the amendment will assist in the effective administration of the statutes: By updating the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: LPNs, approximately 15,000.

(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 have to follow the provisions of the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost imposed by the amendment.

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

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT
Board of Physical Therapy
(Amendment)

201 KAR 22:020. Eligibility and credentialing procedure.

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

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

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

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

(1) Examination;

(2) Endorsement; or

(3) Reinstatement.

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

(a) Have successfully completed the academic and clinical requirements of a physical therapy program accredited by CAPTE;

(b) Submit certification of completion by the educational administrator of that program;

(c) Have successfully completed the Jurisprudence Exam;

(d) Submit a complete Application for Credentialing that includes a photo taken within one (1) year;

(e) Submit the correct, nonrefundable fee as required in 201 KAR 22:135;

(f) If applicable, submit on an Applicant Special Accommodations Request Form a request for a reasonable accommodation in testing due to a documented disability;

(g) Register for the NPTE examination; and

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

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

(a) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE; and

(b) Complete the requirements of subsection (1)(b) through (h) of this section.

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

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

(1) Meet the eligibility requirements of Section 2 of this administrative regulation; and

(2) Register with the FSBPT Score Transfer Service to have results submitted to Kentucky.

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

(1) Meet the qualifications of Section 2 or 3 of this administrative regulation, except for the retake provisions in Section 2(3) of this administrative regulation;

(2) Complete a Supervisory Agreement for Applicant with Temporary Permit with one (1) or more physical therapists; and

(3) Have not failed either the physical therapist or physical therapist assistant examination in any jurisdiction.

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

(a) Has practiced in Kentucky for more than one (1) year; and

(b) Has an unrestricted license.

(2) A supervising physical therapist:

(a) Shall be on-site at all times during the practice of the applicant with a temporary permit;

(b) Shall be responsible for the practice of physical therapy by the applicant with a temporary permit;

(c) Shall review, approve, date, and co-sign all physical therapy documentation by the applicant with a temporary permit;

(d) May designate an alternate supervising physical therapist who meets the qualifications of subsection (1)(a) and (b) of this section. The alternate supervising physical therapist shall sign and date written documentation of the acceptance of the responsibility as identified in paragraph (a) through (c) of this subsection; and

(e) Shall notify the board immediately if the supervisory relationship is terminated.

(3) The applicant with a temporary permit shall:

(a) Disclose the applicant's temporary credential status to all patients prior to initiating treatment;

(b) Sign documentation with temporary permit number and designation as defined in 201 KAR 22:053, Section 5(5)(a) or (b); and

(c) Notify the board immediately if the supervisory relationship is terminated.

(4) The temporary permit shall expire the earlier of:

(a) Six (6) months from the date of issuance; or

(b) Notice of exam results received by the board. A temporary permit holder who is registered for the examination in another jurisdiction shall register with the FSBPT Score Transfer Service to have results submitted to Kentucky within forty-eight (48) hours of the release of the exam results.

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

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

(1) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE;

(2) Meet the requirements established in Section 2(1)(b) through (e) of this administrative regulation;

(3) Have successfully completed the NPTE or its equivalent, predecessor examination and register with the FSBPT Score Transfer Service to have results submitted to Kentucky:

(a) A passing score in Kentucky for the person who took the NPTE prior to July 1, 1993, shall be at least equal to the national average raw score minus one and five-tenths (1.5) standard deviation set equal to a converted score of seventy-five (75); or

(b) After July 1, 1993, a passing score shall be the criterion referenced passing point recommended by the FSBPT set equal to a scaled score of 600;

(4) Have an active credential in this profession in another jurisdiction; and

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

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

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

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

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

(a) "Application for Credentialing", December 2011;

(b) "Supervisory Agreement for Applicant with Temporary Permit", January 2017; and

(c) "Applicant Special Accommodations Request Form", December 2012.

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

LOUIS D. KELLY, General Counsel

APPROVED BY AGENCY: July 11, 2018

FILED WITH LRC: July 11, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 2018, at 1:00 p.m. (EST) at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142, email ScottD.Majors@ky.gov; and Louis D. Kelly, Esq., General Counsel, Board of Physical Therapy, Adams, Stepner, Woltermann & Dusing, 40 W. Pike Street, P.O. Box 861, Covington, Kentucky 41012, phone (859) 394-6200, fax (859) 392-7239, email lkelly@aswdlaw.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Scott D. Majors, and Louis D. Kelly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the eligibility and credentialing procedure for physical therapists and physical therapist assistants in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS 327.050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It establishes the eligibility and credentialing procedure for physical therapists and physical therapist assistants in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the eligibility and credentialing procedure for physical therapists and physical therapist assistants in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds a requirement that temporary permit holders who are registered for the examination in another jurisdiction must register with the FSBPT Score Transfer Service to have results submitted to Kentucky.

(b) The necessity of the amendment to this administrative regulation: To ensure that the Board of Physical Therapy receives exam results from temporary permit holders who have taken the national physical therapy or physical therapist assistant exam for purposes of terminating a temporary permit.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment ensures that individuals are not allowed to practice under a temporary permit after receiving results from the national physical therapy or physical therapist assistant exam.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will ensure that the

Board of Physical Therapy receives exam results from temporary permit holders who have taken the national physical therapy or physical therapist assistant exam for purposes of terminating a temporary permit.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 5,600 physical therapists and physical therapist assistants.

(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: Temporary permit holders who have taken the national physical therapy or physical therapist assistant exam for purposes of terminating a temporary permit.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The FSBPT Score Transfer Service is administered by FSBPT currently costs approximately $80 for all associated fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals will not be able to practice under a temporary permit after the Board receives results from the national physical therapy and physical therapist assistant exam.

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

(a) Initially: No cost to the board.

(b) On a continuing basis: No cost to the board.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Applicants will have to pay fees charged by FSBPT to register with the Score Transfer Service.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 327.040 and 327.050.

(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. 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? None.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT
Board of Physical Therapy
(Amendment)

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

RELATES TO: KRS 164.772, 327.050(8), (9), 327.070

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

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

Section 1. A credential shall be renewed upon:

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

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

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

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

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

(a) Meeting the requirements of Section 1(2) of this administrative regulation for the current renewal period;

(b) Verification of having obtained within two (2) years prior to the date of submission of the completed Renewal Application or Reinstatement Application:

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

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

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

(d) Effective six (6) months after the board receives an Originating Agency Identification Number from the Federal Bureau of Investigation, submitting to the board a completed nationwide criminal background check as required by KRS 327.310 with the background investigation completed no later than six (6) months prior to the date of the filing of the Reinstatement Application[~~application~~]. A criminal background check is not required if the Reinstatement Application is filed on or before May 15 of the same odd numbered year the applicant's credential lapsed.

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

Section 4. A credential holder who has a credential that has

lapsed may, more than three (3) years of the lapsed date, reinstate upon:

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

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

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

(a) Submission of evidence of professional competency;

(b) An agreement to practice physical therapy under direct supervision not to exceed six (6) months;

(c) Successful completion of the board-approved examination; or

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

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

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

(b) "Reinstatement Application", July 2015.

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

LOUIS D. KELLY, General Counsel

APPROVED BY AGENCY: July 11, 2018.

FILED WITH LRC: July 11, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 2018, at 1:00 p.m. (EST) at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142, email ScottD.Majors@ky.gov; and Louis D. Kelly, Esq., General Counsel, Board of Physical Therapy, Adams, Stepner, Woltermann & Dusing, 40 W. Pike Street, P.O. Box 861, Covington, Kentucky 41012, phone (859) 394-6200, fax (859) 392-7239, email kelly@aswdlaw.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Scott D. Majors, and Louis D. Kelly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements and procedures for the renewal and reinstatement of credentials.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS Chapter 327.050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the requirements and procedures for renewal and reinstatement of credentials.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the requirements and procedures for renewal and reinstatement of credentials.

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

(a) How the amendment will change this existing administrative regulation: The amendment provides that an applicant for reinstatement is not required to obtain a criminal background check if the Reinstatement Application is filed on or before May 15 of the same odd numbered year the credential holder's license lapsed.

(b) The necessity of the amendment to this administrative regulation: To ensure that credential holders do not have to incur unnecessary expenses if applying for reinstatement within 45 days of having their credential lapse.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment makes the regulation consistent with the requirements of KRS 327.310.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides that an applicant for reinstatement is not required to obtain a criminal background check if the Reinstatement Application is filed on or before May 15 of the same odd numbered year the credential holder's license lapsed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 5,600 physical therapists and physical therapist assistants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An applicant for reinstatement is not required to obtain a criminal background check if the Reinstatement Application is filed on or before May 15 of the same odd numbered year the credential holder's license lapsed.

(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): Assuming all other criteria is met, applicants for reinstatement will be granted a credential to work as a physical therapist or physical therapist assistant in the Commonwealth of Kentucky.

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

(a) Initially: No cost to the board.

(b) On a continuing basis: No cost to the board.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Physical therapists and physical therapists assistants credentialed by the Board.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 327.040, 327.050, 327.310.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT
Board of Physical Therapy
(Amendment)

201 KAR 22:170. Physical Therapy Compact Commission.

RELATES TO: KRS 327.300(12)

STATUTORY AUTHORITY: KRS 327.300(12)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.300(12) requires the Board of Physical Therapy to review any rule adopted by the Physical Therapy Compact Commission within sixty (60) days of adoption for the purpose of filing the rule as an emergency administrative regulation pursuant to KRS Chapter 13A.190 and for filing the rule as an accompanying ordinary administrative regulation, following the requirements of KRS Chapter 13A. This administrative regulation sets forth[~~incorporated by reference~~] the Rules [~~and bylaws~~] adopted by the Physical Therapy Compact Commission[~~on November 5, 2017~~].

Section 1. The Kentucky Board of Physical Therapy shall comply with all bylaws, rules, and administrative regulations of the Physical Therapy Compact Commission, which includes the Physical Therapy Compact Commission Rules and Bylaws[~~as of November 2017~~].

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

(a) "Physical Therapy Compact Commission Rules", June 2018[~~November 2017~~]; and

(b) "Physical Therapy Compact Commission Bylaws", November 2017.

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

(b) This material may be obtained on the Kentucky Board of Physical Therapy's Web site at https://pt.ky.gov.

(3) This material may also be obtained at:

(a) The Physical Therapy Compact Commission, 124 West Street South, Third Floor, Alexandria, Virginia, 22314; or

(b) http://www.ptcompact.org.

LOUIS D. KELLY, General Counsel

APPROVED BY AGENCY: July 11, 2018.

FILED WITH LRC: July 11, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 2018, at 1:00 p.m. (EST) at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142, email ScottD.Majors@ky.gov; and Louis D. Kelly, Esq., General Counsel, Board of Physical Therapy, Adams, Stepner, Woltermann & Dusing, 40 W. Pike Street, P.O. Box 861, Covington, Kentucky 41012, phone (859) 394-6200, fax (859) 392-7239, email kelly@aswdlaw.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Scott D. Majors, and Louis D. Kelly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the rules for the Physical Therapy Compact Commission.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS Chapter 327.300(12).

(c) How this administrative regulation conforms to the content of the authorizing statutes: It promulgates the rules established by the Physical Therapy Compact Commission as administrative regulations pursuant to KRS 327.300(12).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It complies with the requirement that any rule adopted by the Physical Therapy Compact Commission receive appropriate oversight.

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

(a) How the amendment will change this existing administrative regulation: The Physical Therapy Compact Rules more clearly defined full implementation requirements for criminal background checks before member states can issue compact privileges.

(b) The necessity of the amendment to this administrative regulation: The amendment to the Physical Therapy Compact Rules is necessary to comport with the criminal background requirements of KRS 327.300 and 327.310.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to the Physical Therapy Compact Rules is necessary to comport with the criminal background requirements of KRS 327.300 and 327.310.

(d) How the amendment will assist in the effective administration of the statutes: The Physical Therapy Compact Rules more clearly defined full implementation requirements for criminal background checks before member states can issue compact privileges.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Physical Therapy.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Kentucky Board of Physical Therapy will have to fully implement criminal background checks as set forth in the Physical Therapy Compact Commission Rules prior to issuing compact privileges.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): Credentialed physical therapists and physical therapist assistants in Kentucky will be able to participate in the Physical Therapy Compact.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue Fund and funds derived from compact privilege applications from other states.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 327.300(12).

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:201. Taking of fish by traditional fishing methods.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area. KRS 150.470 authorizes the department to promulgate administrative regulations for creel and size limits for fish. This administrative regulation establishes fish size limits, daily creel limits, and possession limits for fishing.

Section 1. Definitions. (1) "Artificial bait" means a lure, bare hook, or fly made of wood, metal, plastic, feathers, preserved pork rind, or a similar inert material.

(2) "Chumming" means placing substances in the water for the purpose of attracting fish to a particular area.

(3) "Culling" means releasing a previously caught fish that an angler has kept as a part of a daily creel limit and replacing it with another fish of the same species.

(4) "Daily creel limit" means the maximum number of a particular species or group of species a person may legally take in one (1) calendar day while fishing.

(5) "Lake" means impounded waters from the dam upstream to the first riffle on the main stem river and tributary streams.

(6) "Possession limit" means the maximum number of unprocessed fish a person may hold after two (2) or more days of fishing.

(7) "Processed fish" means a fish that has been gutted, with the head removed.

(8) "Release" means to return a fish to the water from which it was taken immediately after removing the hook.

(9) "Shad" means a live gizzard shad or threadfin shad.

(10) "Single hook" means a hook with no more than one (1) point.

(11) "Size limit" means the minimum legal length of a fish that is measured by laying the fish flat on a ruler with the mouth closed and tail lobes squeezed together.

(12) "Slot limit" means a size range of a fish species that shall be released by an angler.

(13) "Traditional fishing methods" means the act of taking or attempting to take for noncommercial purposes any freshwater fish species using:

(a) Hook and line in hand; or

(b) Rod in hand.

(14) "Unprocessed fish" means the whole fish prior to being processed.

Section 2. Statewide Limits and Requirements. (1) A person taking fish from public or private waters using traditional fishing methods shall observe the daily creel limits and size limits established in paragraphs (a) through (k)[~~(j)~~] of this subsection, except as established in Sections 3 through 8[~~7~~] of this administrative regulation or pursuant to 301 KAR 1:180:

(a) Black bass daily creel limit, six (6).

1. Largemouth bass and smallmouth bass size limit, twelve (12) inches.

2. Kentucky bass and Coosa bass, no size limit;

(b) Rock bass daily creel limit, fifteen (15);

(c) Sauger, walleye, and any hybrid thereof daily creel limit, singly or in combination, six (6);[~~walleye and walleye hybrids~~] size limit, fourteen (14)[~~fifteen (15)~~] inches;[~~no size limit for sauger;~~]

(d) Muskellunge daily creel limit, one (1); size limit, thirty (30) inches;

(e) Chain pickerel daily creel limit, five (5); no size limit;

(f) White bass and hybrid striped bass daily creel limit, singly or in combination, fifteen (15); size limit, no more than five (5) fish in a daily creel limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer;

(g) Striped bass daily creel limit, five (5); size limit, fifteen (15) inches;

(h) Crappie daily creel limit, twenty (20); no size limit;

(i) Trout.

1. No culling statewide.

2. Rainbow trout daily creel limit, eight (8); no size limit.

3. Brown trout daily creel limit, one (1); size limit, sixteen (16) inches.

4. Brook trout, catch and release only;[~~and~~]

(j) Redear sunfish daily creel limit, twenty (20); no size limit; and

(k) Paddlefish daily creel limit, two (2); no size limit.

(2) The possession limit shall be two (2) times the daily creel limit, except as established in Section 3 of this administrative

regulation.

(3) A person shall release grass carp caught from a lake owned or managed by the department.

(4) A person shall release any:

(a) Lake sturgeon; or

(b) Alligator gar.

(5) A person shall release fish:

(a) Below the minimum size limits established by this administrative regulation;

(b) Within a protected slot limit established by this administrative regulation; or

(c) Of a particular species if a person already possesses the daily creel limit for that species.

(6) A person shall not possess more than one (1) daily creel limit of processed or unprocessed fish while:

(a) Fishing;

(b) On the shoreline; or

(c) On the water.

(7) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily creel limit of tournament caught fish:

(a) At the weigh-in site;

(b) At the release site; or

(c) While transporting live fish from a remote weigh-in site back to the water body of origin for release.

(8) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily creel limit of unprocessed tournament caught fish that expired at the sites established in subsection (7) of this section for subsequent disposal by one (1) of the methods established in paragraphs (a) through (c) of this subsection:

(a) Bagged, sealed, and placed in a garbage dump;

(b) Donated to a charity for the purpose of human consumption; or

(c) Transferred to a conservation officer or another agent of the department.

(9) A person shall not remove the head or tail of any fish for which a size limit or daily creel limit exists while:

(a) Fishing;

(b) On the shoreline; or

(c) On the water.

(10) A person may possess sport fish below the size limit or beyond the possession limit if the person:

(a) Obtains the fish from a licensed fish propagator or other legal source; and

(b) Retains a receipt or other written proof that the fish were legally acquired.

(11) A person shall release all caught trout unless the person:

(a) Has a valid trout permit;

(b) Is exempted from trout permit requirements pursuant to KRS 150.170(2); or

(c) Is fishing in a licensed pay lake stocked with trout by the lake operator.

(12) A person fishing in an artificial bait-only area shall not attach any of the items established in paragraphs (a) through (h) of this subsection to the artificial bait:

(a) An insect;

(b) Minnow;

(c) Fish egg;

(d) A worm;

(e) Corn;

(f) Cheese;

(g) Cut bait; or

(h) A similar organic bait substance including dough bait and putty or paste-type bait designed to attract fish by taste or smell.

(13) The fishing season shall be open year-round.

Section 3. Exceptions. All other provisions of this administrative regulation shall apply to the bodies of water listed in this section, with the exceptions established in subsections (1) through (70)[~~(77)~~] of this section. (1) Bad Branch, Letcher County. A person shall only fish with artificial bait with a single hook;

(2) Barkley Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, ten (10) inches[~~.~~

~~(c) Sauger size limit, fourteen (14) inches~~];

(3) Barren River Lake.

(a) Crappie size limit, nine (9) inches.

(b) Largemouth and smallmouth bass size limit, fifteen (15) inches, except that a person may keep one (1) bass under fifteen (15) inches within a daily creel limit.

(c) Blue and channel catfish aggregate daily creel limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.

(d) Barren River Lake shall extend up:

1. Barren River to the Highway 100 bridge;

2. Long Creek to the Highway 100 bridge;

3. Beaver Creek to the Highway 1297 bridge;

4. Skaggs Creek to the Mathews Mill Road bridge; and

5. Peter Creek to the Peter Creek Road bridge;

(4) Beaver Lake, Anderson County.

[~~(a) Channel catfish size limit, twelve (12) inches.~~

~~(b)~~] A person shall not possess shad or use shad as bait;

(5) Beech Fork Reservoir, Powell County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Bluegill daily creel limit, fifteen (15);

(6) Bert Combs Lake, Clay County. A person shall not possess shad or use shad as bait;

(7)[~~Beshears Lake, Caldwell County. Channel catfish size limit, twelve (12) inches;~~

~~(8)~~] Boltz Lake, Grant County.[~~(a)~~] A person shall not possess shad or use shad as bait[~~.~~

~~(b) Channel catfish size limit, twelve (12) inches~~];

(8)[~~(9)~~] Briggs Lake, Logan County. A person shall not possess shad or use shad as bait;

(9) [~~(10)~~] Buckhorn Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Muskellunge size limit, forty (40)[~~thirty-six (36)~~] inches.

(c) Crappie size limit, nine (9) inches;

(10)[~~(11) Bullock Pen Lake, Grant County. Channel catfish size limit, twelve (12) inches;~~

~~(12)~~] Carnico Lake, Nicholas County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Sunfish daily creel limit, fifteen (15);

(11)[~~(13) Carpenter Lake, Daviess County. A person shall not possess shad or use shad as bait;~~

~~(14)~~] Carr Creek Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, nine (9) inches;

(12)[~~(15)~~] Carter Caves State Park Lake, Carter County.

(a) Fishing shall be during daylight hours only.

(b) Largemouth bass.

1. There shall be a slot limit between twelve (12) and fifteen (15) inches.

2. The daily creel limit shall not include more than one (1) fish greater than fifteen (15) inches.

(c) A person shall not possess shad or use shad as bait;

(13)[~~(16)~~] Cave Run Lake.

(a) Largemouth bass. There shall be a slot limit between thirteen (13) and sixteen (16) inches.

(b) Smallmouth bass size limit, eighteen (18) inches.

(c) Muskellunge size limit, thirty-six (36) inches;

(14)[~~(17)~~] Cedar Creek Lake, Lincoln County.

[~~(a)~~] Largemouth bass size limit, twenty (20) inches; daily creel limit, one (1)[~~.~~

~~(b) Channel catfish size limit, twelve (12) inches~~];

(15)[~~(18)~~] Chimney Top Creek, Wolfe County. Brown trout size limit, sixteen (16) inches; daily creel limit, one (1); artificial bait only;

(16)[~~(19)~~] Corinth Lake, Grant County.[~~(a)~~] A person shall not possess shad or use shad as bait[~~.~~

~~(b) Channel catfish size limit, twelve (12) inches~~];

(17)[~~(20)~~] Cumberland Lake.

(a)1. Largemouth bass size limit, fifteen (15) inches.

2. Smallmouth bass size limit, eighteen (18) inches.

3. Striped bass size limit, twenty-two (22) inches; daily creel limit, two (2).

4. Crappie size limit, ten (10) inches.

(b) Cumberland Lake shall extend up:

1. The Cumberland River to Cumberland Falls;

2. The Big South Fork to Devil's Jump;

3. The Rockcastle River to The Narrows; and

4. The Laurel River to Laurel River Dam;

(18)[~~(21) Cumberland River downstream from Barkley Lake Dam. Sauger size limit, fourteen (14) inches;~~

~~(22)~~] Cumberland River from Wolf Creek Dam downstream to the Kentucky-Tennessee state line and tributaries, except Hatchery Creek in Russell County as established in subsections (33)[~~(38)~~] and (34)[~~(39)~~] of this section.

(a) Brown trout size limit, twenty (20) inches; daily creel limit, one (1).

(b) Brook trout size limit, fifteen (15) inches; daily creel limit, one (1).

(c) Rainbow trout. There shall be a slot limit between fifteen (15) and twenty (20) inches; daily creel limit, five (5), which shall not include more than one (1) fish greater than twenty (20) inches.

(d) A trout permit shall be required in order to fish the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.

(e) Chumming shall not be permitted in the Cumberland River below Wolf Creek Dam to the Tennessee state line, including the Hatchery Creek and all other tributaries upstream to the first riffle;

(19)[~~(23)~~] Dale Hollow Lake.

(a) Smallmouth bass. There shall be a slot limit between sixteen (16) and twenty-one (21) inches. The daily creel limits shall not include more than one (1) fish less than sixteen (16) inches long and one (1) fish greater than twenty-one (21) inches long.

(b) Walleye and walleye hybrids, daily creel limit, five (5); size limit, sixteen (16) inches.

(c) Sauger daily creel limit, ten (10); size limit, fourteen (14) inches.

(d) Rainbow trout and brown trout, no size limit; daily creel limit, seven (7), singly or in combination.

(e) Largemouth bass size limit, fifteen (15) inches.

(f) Black bass aggregate daily creel limit, five (5), no more than two (2) of which shall be smallmouth bass.

(g) Crappie size limit, ten (10) inches; daily creel limit, fifteen (15);

(20)[~~(24)~~] Dewey Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Blue and channel catfish aggregate creel limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.

(c) Muskellunge size limit, thirty-six (36) inches;

(21)[~~(25)~~] Dix River for two (2) miles downstream from Herrington Lake Dam. A person shall only fish with artificial bait;

(22)[~~(26)~~] Doe Run Lake, Kenton County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait;

(23)[~~(27)~~] Dog Fork, Wolfe County. A person shall only fish with an artificial bait with a single hook;

(24)[~~(28)~~] Elkhorn Creek, downstream from the confluence of the North and South forks to the first shoal located 3,400 feet above its confluence with the Kentucky River, as posted with signs. Largemouth bass and smallmouth bass.

(a) There shall be a slot limit between twelve (12) and sixteen (16) inches.

(b) The daily creel limit shall not include more than two (2) fish greater than sixteen (16) inches;

(25)[~~(29)~~] Elmer Davis Lake, Owen County.

(a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.

(b)[~~Channel catfish size limit, twelve (12) inches.~~

~~(c)~~] A person shall not possess shad or use shad as bait;

(26)[~~(30)~~] Fishtrap Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, nine (9) inches.

(c) Blue and channel catfish aggregate daily limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches;

(27)[~~(31)~~] Floyd's Fork Creek, from Highway 60 downstream to Bardstown Road in Jefferson County. Largemouth and smallmouth bass size limit, fifteen (15) inches; daily creel limit, one (1);

(28)[~~(32)~~] Golden Pond at the Visitors' Center at Land Between the Lakes. Channel catfish daily creel limit, five (5); size limit, fifteen (15) inches;

(29)[~~(33)~~] General Butler State Park Lake, Carroll County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait;

(30)[~~(34)~~] Grayson Lake. Largemouth bass and smallmouth bass size limit, fifteen (15) inches;

(31)[~~(35)~~] Greenbo Lake, Greenup County.

(a) A person shall not possess shad or use shad as bait.

(b) Bluegill and sunfish daily creel limit, fifteen (15) fish;

(32)[~~(36)~~] Green River Lake.

(a) Crappie size limit, nine (9) inches.

(b) Muskellunge size limit, thirty-six (36) inches;

(33)[~~(37) Guist Creek Lake, Shelby County. Channel catfish size limit, twelve (12) inches;~~

~~(38)~~] Hatchery Creek, upper section as established by signs, Russell County. Rainbow trout, brown trout, and brook trout, no size limit; daily creel limit, five (5), singly or in combination;

(34)[~~(39)~~] Hatchery Creek, lower section as established by signs, Russell County. A person fishing for trout shall:

(a) Only use artificial bait; and

(b) Release all trout;

(35)[~~(40)~~] Jericho Lake, Henry County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad as bait;

(36)[~~(41)~~] Kentucky Lake and the canal connecting Kentucky and Barkley lakes.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, ten (10) inches[~~.~~

~~(c) Sauger size limit, fourteen (14) inches~~];

(37)[~~(42)~~] Kentucky River WMA, Boone Tract, Benjy Kinman Lake.

[~~(a) Largemouth bass. Catch and release only.~~

~~(b)~~] Catfish daily creel limit, four (4);

(38)[~~(43)~~] Kentucky River WMA, Boone Tract, excluding Benjy Kinman Lake.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1).

(b) Crappie daily creel limit, fifteen (15).

(c) Sunfish daily creel limit, fifteen (15).

(d) Catfish daily creel limit, four (4);

(39)[~~(44) Kincaid Lake, Pendleton County. Channel catfish size limit, twelve (12) inches;~~

~~(45)~~] Lake Blythe, Christian County. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

(40)[~~(46)~~] Lake Chumley, and the department-owned property surrounding the lake, Boyle and Lincoln counties. Closed to public access from one-half (1/2) hour after sunset through one-half (1/2) hour before sunrise;

(41)[~~(47)~~] Lake Malone, Muhlenberg and Logan counties.[~~(a)~~] Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches[~~.~~

~~(b) Channel catfish size limit, twelve (12) inches~~];

(42)[~~(48)~~] Lake Mingo, Jessamine County. A person shall not possess shad or use shad as bait;

(43)[~~(49)~~] Lake Reba, Madison County.[~~(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches; daily creel limit, three (3).~~

~~(b) Channel and blue catfish size limit, twelve (12) inches.~~

~~(c)~~] A person shall not possess shad or use shad as bait;

(44)[~~(50)~~] Lake Shelby, Shelby County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait;

(45)[~~(51)~~] Laurel River Lake.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Smallmouth bass size limit, eighteen (18) inches; daily creel limit, two (2).

(c) Crappie size limit, nine (9) inches; daily creel limit, fifteen (15);

(46)[~~(52)~~] Lebanon City Lake (Fagan Branch), Marion County. Largemouth bass and smallmouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

(47)[~~(53)~~] Lincoln Homestead Lake, Washington County.

(a) A person shall not fish except during daylight hours.

(b) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(c) Channel catfish daily creel limit, four (4).

(d) A person shall not possess shad or use shad as bait;

(48)[~~(54)~~] Marion County Lake.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad as bait;

(49)[~~(55)~~] McNeely Lake, Jefferson County.[~~(a) Channel and blue catfish size limit, twelve (12) inches.~~

~~(b)~~] A person shall not possess shad or use shad as bait;

(50)[~~(56)~~] Mill Creek Lake, Powell County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) A person shall not possess shad or use shad as bait;

(51)[~~(57)~~] New Haven Optimist Lake, Nelson County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait;

(52)[~~(58)~~] Nolin River Lake shall extend up Bacon Creek to Highway 178 and to Wheelers Mill Road Bridge on the Nolin River.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches, except that the daily creel limit may contain one (1) bass under fifteen (15) inches.

(b) Crappie size limit, nine (9) inches;

(53)[~~(59)~~] Ohio River.

(a)[~~Walleye, sauger, and any hybrid thereof, no size limit; daily creel limit, ten (10), singly or in combination.~~

~~(b)~~] White bass, striped bass, and any hybrid thereof, daily creel limit, thirty (30); no more than four (4) in the daily creel limit shall be fifteen (15) inches or greater.

(b)[~~(c)~~] The blue catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be thirty-five (35) inches or longer.

(c)[~~(d)~~] The channel catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be twenty-eight (28) inches or longer.

(d)[~~(e)~~] The flathead catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be thirty-five (35) inches or longer;

(54)[~~(60)~~] Otter Creek, Meade County.

(a) Smallmouth and largemouth bass. There shall be a slot limit between twelve (12) and sixteen (16) inches.

(b) Daily limit shall not include more than one (1) smallmouth or largemouth bass over sixteen (16) inches;

(55)[~~(61)~~] Paint Creek, between upper Highway 460 Bridge and Highway 40 Bridge, Johnson County. Trout size limit, sixteen (16) inches; daily creel limit, one (1); artificial bait only;

(56)[~~(62)~~] Paintsville Lake. [~~(a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.~~

~~(b)~~] Smallmouth bass size limit, eighteen (18) inches;

(57)[~~(63)~~] Parched Corn Creek, Wolfe County. A person shall only fish with an artificial bait with a single hook;

(58)[~~(64)~~] Pikeville City Lake, Pike County. A person shall release largemouth bass;

(59)[~~(65)~~] Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 932. A person shall only fish with an artificial bait with a single hook;

(60) Rockcastle River WMA, all ponds collectively, Pulaski County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1).

(b) Bluegill and sunfish daily creel limit, ten (10).

(c) Catfish daily creel limit, four (4).

(d) Crappie daily creel limit, fifteen (15);[~~(66) Reformatory Lake, Oldham County. Channel and blue catfish size limit, twelve (12) inches;~~]

(61)[~~(67)~~] Rough River Lake.

(a) Crappie size limit, nine (9) inches.

(b) Largemouth bass and smallmouth bass size limit, fifteen (15) inches, except that the daily creel limit may contain one (1) bass under fifteen (15) inches;

(62)[~~(68)~~] Shanty Hollow Lake, Warren County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b)[~~Channel catfish size limit, twelve (12) inches.~~

~~(c)~~] A person shall not possess shad or use shad as bait;

(63)[~~(69)~~] Shillalah Creek, Bell County, outside the Cumberland Gap National Park. A person shall only fish with an artificial bait with a single hook;

(64)[~~(70)~~] Spurlington Lake, Taylor County. A person shall not possess shad or use shad as bait;

(65)[~~(71)~~] Sympson Lake, Nelson County. Largemouth bass size limit, fifteen (15) inches;

(66)[~~(72)~~] Taylorsville Lake, including the impounded waters of the lake to Dry Dock Road Bridge on the Salt River.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Blue and channel catfish:

1. Aggregate daily creel limit of fifteen (15); and

2. Only one (1) fish of either species in the aggregate daily creel limit shall be longer than twenty-five (25) inches.

(c) Crappie size limit, ten (10) inches; daily creel limit, fifteen (15);

(67)[~~(73) Tennessee River downstream from Kentucky Lake Dam. Sauger size limit, fourteen (14) inches;~~

~~(74)~~] Trammel Creek, Allen County.

(a) Brown trout size limit, sixteen (16) inches; daily creel limit, one (1).

(b) Rainbow trout daily limit, five (5);

(68)[~~(75)~~] Willisburg Park Pond, Washington County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1).

(b) Catfish daily creel limit, four (4).

(c) Sunfish daily creel limit, fifteen (15);

(69)[~~(76)~~] Wood Creek Lake. Largemouth and smallmouth bass size limit, fifteen (15) inches; and

(70)[~~(77)~~] Yatesville Lake. Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

Section 4. Creel and Size Limits for Waters Containing Rockcastle Strain Walleye. (1) Rockcastle Strain Walleye Waters.

(a) Barren River and tributaries upstream from Lock and Dam 1, including Barren River Lake;

(b) Cumberland River and tributaries above Cumberland Falls;

(c) Kentucky River and tributaries upstream from Lock and Dam 14;

(d) Middle Fork Kentucky River and tributaries;

(e) North Fork Kentucky River and tributaries, including Carr Fork below Carr Creek Lake;

(f) South Fork Kentucky River and tributaries;

(g) Levisa Fork River and tributaries upstream from Fishtrap Lake, including Fishtrap Lake;

(h) Martins Fork Lake; and

(i) Wood Creek Lake.

(2) There shall be a slot limit between eighteen (18) and twenty-six (26) inches and a daily creel limit of two (2) for walleye in the waters established in subsection (1) of this section.

Section 5. Seasonal Catch and Release for Trout. (1) There shall be a catch and release trout season from October 1 through March 31 for the bodies of water established in subsection (3) of this section.

(2) A person shall:

(a) Only use artificial bait; and

(b) Release all trout.

(3) The streams established in paragraphs (a) through (n) of this subsection shall be open for the catch and release trout season:

(a) Bark Camp Creek in Whitley County;

(b) Beaver Creek from Highway 90 Bridge upstream to Highway 200 Bridge in Wayne County;

(c) Big Bone Creek within Big Bone Lick State Park in Boone County;

(d) Cane Creek in Laurel County;

(e) Casey Creek in Trigg County;

(f) Clear Creek from mouth upstream to 190 Bridge in Bell County;

(g) East Fork of Indian Creek in Menifee County;

(h) Elk Spring Creek in Wayne County;

(i) Floyd's Fork Creek in Jefferson County from Highway 60 downstream to Bardstown Road;

(j) Left Fork of Beaver Creek in Floyd County from Highway 122 Bridge upstream to the headwater;

(k) Middle Fork of Red River in Natural Bridge State Park in Powell County;

(l) Otter Creek in Meade County on the Fort Knox Reservation and Otter Creek Park;

(m) Rock Creek from the Bell Farm Bridge to the Tennessee state line in McCreary County; and

(n) Trammel Creek in Allen County.

(4) There shall be a seasonal catch and release trout season for Swift Camp Creek in Wolf County from October 1 through May 31.

Section 6. Special Limits for Fishing Events. (1) The commissioner may establish special limits for fishing events including:

(a) Size limits for selected species;

(b) Daily creel limits for selected species;

(c) Eligible participants; and

(d) Dates and times of special limits.

(2) An event sponsor shall post signs informing anglers of any special limits for a minimum of twenty-four (24) hours before the event.

Section 7. Creel and Size Limits for Special Lakes and Ponds. (1) The requirements established in paragraphs (a) through (e) of this subsection shall apply to all bodies of water established in the Special Lakes and Ponds list.[~~subsection (2) of this section:~~]

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1);

(b) Catfish daily creel limit, four (4);

(c) Sunfish or bream daily creel limit, fifteen (15);

(d) Rainbow trout daily creel limit, five (5); and

(e) A person shall not possess shad or use shad as bait.[~~(2) Special lakes and ponds:~~

~~(a) Alexandria Community Park Lake, Campbell County;~~

~~(b) Anderson County Community Park Lake, Anderson County;~~

~~(c) Bloomfield Park Lake, Nelson County;~~

~~(d) Bob Noble Park Lake, Nelson County;~~

~~(e) Brickyard Pond, Knox County;~~

~~(f) Camp Ernst, Boone County;~~

~~(g) Carlson Lake, Meade County in Fort Knox;~~

~~(h) Cherokee Park Lake, Jefferson County;~~

~~(i) Easy Walker Park Pond, Montgomery County;~~

~~(j) Fisherman's Park lakes, Jefferson County;~~

~~(k) Flemingsburg Old Reservoir, Fleming County;~~

~~(l) Jacobson Park Lake, Fayette County;~~

~~(m) James D. Beville Park Lake, Grayson County;~~

~~(n) Kentucky Horse Park lakes, Fayette County;~~

~~(o) Kess Creek Park Lake, Graves County;~~

~~(p) Kingdom Come State Park Lake, Harlan County;~~

~~(q) Lake Mingo, Jessamine County;~~

~~(r) Lake Pollywog, Grant County;~~

~~(s) Leary Lake, Grant County;~~

~~(t) Logan Hubble Park Lake, Lincoln County;~~

~~(u) Lower Sportsman's Lake, Franklin County;~~

~~(v) Lusby Lake, Scott County;~~

~~(w) Madisonville City Park lakes, Hopkins County;~~

~~(x) Maysville-Mason County Recreation Park Lake, Mason County;~~

~~(y) Middleton Mills Long Pond, Kenton County;~~

~~(z) Middleton Mills Shelterhouse Pond, Kenton County;~~

~~(aa) Mike Miller Park Lake, Marshall County;~~

~~(bb) Miles Park lakes, Jefferson County;~~

~~(cc) Millennium Park Pond, Boyle County;~~

~~(dd) Panther Creek Park Lake, Daviess County;~~

~~(ee) Prisoner's Lake, Kenton County;~~

~~(ff) Rotary Park Lake, Hickman County;~~

~~(gg) Scott County Park Lake, Scott County;~~

~~(hh) Southgate Lake, Campbell County;~~

~~(ii) Three Springs Lake, Warren County;~~

~~(jj) Tom Wallace Park Lake, Jefferson County;~~

~~(kk) Upper Sportsman's Lake, Franklin County;~~

~~(ll) Waverly Park Lake, Jefferson County;~~

~~(mm) Waymond Morris Park Lake, Daviess County;~~

~~(nn) Whitehall Park Lake, Madison County; and~~

~~(oo) Yellow Creek Park Lake, Daviess County.~~]

Section 8. Special Catfish Size Limit Lakes. All lakes established in the Special Catfish Size Limit Lakes list shall have a twelve (12) inch size limit on catfish.

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

(a) "Special Catfish Size Limit Lakes", 2018 edition; and

(b) "Special Lakes and Ponds", 2018 edition.

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

FRANK JEMLEY III, Acting Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: July 6, 2018

FILED WITH LRC: July 12, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2018 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through August 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 size limits, daily creel limits,

and possession limits for sport fishing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to properly manage the sport fish populations of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area. KRS 150.470 authorizes the department to establish creel and size limits for fish.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by limiting the number and size of fish that may be taken from Kentucky's waters. This will ensure that Kentucky's valuable sport fish populations are maintained at high levels.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the statewide size and creel limits on walleye, sauger, and their hybrids, change the largemouth bass size and creel limits at Paintsville and Benjy Kinman lakes to statewide limits, change the black bass size and creel limit at Lake Reba to the statewide limit, raise the muskie size limit at Buckhorn Lake, create a 15-fish creel limit for sunfish at Lake Carnico, set new creel and size limits for largemouth bass, sunfish, catfish, and crappie at the newly acquired Rockcastle River WMA ponds, create a creel and possession limit for paddlefish when utilizing traditional fishing gear, allow the use of live shad for bait at Carpenter Lake, add the Southland Christian Church lakes to the list of Special Lakes and Ponds and incorporate this list by reference, and create a list of "Special Catfish Size Limit Lakes" which will all have a 12 inch size limit on catfish and be incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to add or adjust size and creel limits at several lakes in order to provide a better number and size of fish available to anglers. In addition, live shad will be allowed for use as bait in Carpenter Lake since they already exist in the lake and paddlefish will now be protected with a creel and possession limit.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All anglers fishing at the water bodies and for the species identified in 2(a) above 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: Anglers will need to comply with the regulation changes identified in 2(a).

(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 incurred by the anglers identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anglers who fish at the water bodies and for the species identified in 2(a) above will benefit in the long run from a higher quality sport fishery and improved angling opportunities.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals fishing in Kentucky are treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The department's Divisions of Fisheries and Law Enforcement will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) and 150.470.

(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 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? There will be no direct revenue generated in subsequent years, and it is unknown if fishing license sales will be indirectly increased because of this amendment.

(c) How much will it cost to administer this program for the first year? There will be no initial 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 in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE
Department of Fish and Wildlife
(Amendment)

301 KAR 1:410. Taking of fish by nontraditional fishing methods.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.235, 150.445, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.440, 150.470, 235.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. KRS 150.440 requires the department to promulgate administrative regulations for establishing open seasons and creel limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 requires the department to promulgate administrative regulations for bag or creel limits for fish. KRS 235.280 requires the department to

promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state. This administrative regulation establishes the procedures for taking sport and rough fish by nontraditional fishing methods.

Section 1. Definitions. (1) "Angler" means a person holding a valid resident or nonresident fishing license and includes those persons who are license exempt pursuant to KRS 150.170.

(2) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(3) "Asian carp" means bighead carp, silver carp, black carp, and grass carp.

(4) "Bow fishing" means shooting rough fish with an arrow with a barbed or retractable style point that has a line attached to it for retrieval with archery equipment, a crossbow, or a pneumatic arrow launching device.

(5) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without the aid from an archer.

(6) "Cull" means to release a previously caught fish that an angler has kept as a part of a daily creel limit and replace it with another fish of the same species.

(7) "Pneumatic arrow launching device" means a device designed to fire an arrow through the use of a compressed air cartridge.

(8) "Possession limit" means the maximum number of unprocessed fish a person may hold after two (2) or more days of fishing.

(9) "Temporary aquatic area" means an area temporarily inundated from, but still connected to, a stream, river, or reservoir and that persists only for the duration of the elevated water levels.

(10)[~~(9)~~] "Temporary pool" means an area temporarily inundated from, but not connected to, a stream, river, or reservoir.

Section 2. General Provisions. (1) The possession limit for paddlefish shall be two (2) times the daily creel limit.

(2) A person shall release any:

(a) Lake sturgeon; or

(b) Alligator gar.

Section 3. Skin Diving, Scuba Diving, and Underwater Spear Fishing. (1) Skin diving or scuba diving shall be prohibited in all lakes owned by the department, except as established in subsections (2), (3), and (4) of this section.

(2) Skin diving and scuba diving shall be allowed in salvage operations if the diver receives prior written permission from:

(a) The department's Division of Law Enforcement; or

(b) The local conservation officer who is assigned to the particular department-owned lake.

(3) Skin diving or scuba diving shall be permitted anytime without prior authorization in cases of emergency involving the possibility of saving human life or in the recovery of a drowning victim.

(4) Skin diving and scuba diving shall be allowed in Greenbo Lake:

(a) In a designated cove marked with signage and buoys;

(b) From April 1 through October 31; and

(c) From 10:00 a.m. to 6:00 p.m. daily.

(5) A person who is skin diving or scuba diving in a designated cove pursuant to subsection (4) of this section shall display an international diving flag pursuant to 301 KAR 6:030.

(6) Recreational boating and angling shall be prohibited in the designated cove marked with signage and buoys during the times open to skin diving and scuba diving as established in subsection (4) of this section if an international diving flag is present in the cove.

(7) Underwater spearing of fish with a hand held spear or mechanically-propelled spear shall be legal throughout the year in lakes 1,000 acres in size or larger, as measured at the normal summer pool level as established in paragraphs (a) and (b) of this subsection.

(a) A participant who is spearing fish shall:

1. Be completely submerged in the water where spearing takes place;

2. Possess a valid Kentucky fishing license or be license exempt pursuant to KRS 150.170; and

3. Only spear rough fish.

(b) The daily limit shall be fifteen (15) rough fish, no more than five (5) of which shall be catfish.

Section 4[~~3~~]. Sport Fishing Trotlines, Jugging, and Setlines. (1) Each sport fishing trotline, jug line, or setline shall be permanently labeled or tagged with the customer identification number found on the current sport fishing license of the person using it.

(2) Each trotline, jug line, or setline shall be checked by the owner at least once every twenty-four (24) hours, at which time the owner shall:

(a) Bait all hooks; and

(b) Remove all caught fish.

(3) A trotline, setline, or jug line shall be confiscated if it is not:

(a) Properly labeled or tagged; or

(b) Checked or baited at least once every twenty-four (24) hours.

(4) An angler shall not use more than:

(a) Two (2) sport fishing trotlines;

(b) Twenty-five (25) setlines; or

(c) Fifty (50) jug lines.

(5) Multiple anglers in one (1) boat shall not use more than fifty (50) jug lines per boat.

(6) A person using a sport fishing trotline shall:

(a) Set the trotline at least three (3) feet below the water's surface;

(b) Not have more than fifty (50) single or multi-barbed hooks; and

(c) Have all hooks at least eighteen (18) inches apart on the trotline.

(7) A person shall not use a jug line or setline with more than one (1) single or multi-barbed hook.

(8) A sport fishing trotline, jug line, or setline shall not be used in the waters established in paragraphs (a) through (d) of this subsection:

(a) In the Tennessee River within 700 yards of Kentucky Dam;

(b) In the Cumberland River below Barkley Dam to the Highway 62 bridge;

(c) In any lake less than 500 surface acres owned or managed by the department, except:

1. Ballard Wildlife Management Area lakes, Ballard County;

2. Peal Wildlife Management Area lakes, Ballard County; and

3. Swan Lake Wildlife Management Area lakes, Ballard County; or

(d) In the areas of the Ohio River established in subparagraphs 1. through 8. of this paragraph:

1. Smithland Dam downstream to a line perpendicular to the end of the outer lock wall;

2. J. T. Meyers Dam downstream to a line perpendicular to the end of the outer lock wall and that portion of the split channel around the southern part of Wabash Island from the fixed weir dam to the first dike;

3. Newburgh Dam downstream to a line perpendicular to the end of the outer lock wall;

4. Cannelton Dam downstream to a line perpendicular to the end of the outer lock wall;

5. McAlpine Dam downstream to the K & I railroad bridge;

6. Markland Dam downstream to a line perpendicular to the end of the outer lock wall;

7. Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall; or

8. Greenup Dam downstream to a line perpendicular to the end of the outer lock wall.

(9) An angler using a trotline, jug line, or setline shall follow all sport fish daily creel limits and size limits pursuant to 301 KAR 1:201.

Section 5[4]. Temporary Aquatic Areas and Temporary Pools. (1) The department, with consent of the landowner, may delineate

temporary aquatic areas and temporary pools where rough fish may be taken by any method except:

(a) Poison;

(b) Electrical devices;

(c) Firearms; or

(d) Explosives.

(2) The department shall be authorized to establish the exact dates and times when rough fish may be taken in temporary aquatic areas and temporary pools.

(3) A person shall be required to possess a valid Kentucky fishing license or be license exempt pursuant to KRS 150.170.

(4) A person with a valid commercial fishing license may use nets and seines if the nets and seines are appropriately tagged, as established in[~~pursuant to~~] 301 KAR 1:146.

(5) A person shall first obtain the permission of the landowner before taking rough fish from a temporary pool.

Section 6[~~5~~]. Gigging and Snagging. (1) Gigging and snagging season shall be February 1 through May 10, except as established in subsections (7) and (9) of this section.

(2) A person shall not:

(a) Gig or snag a sport fish, as established in[~~pursuant to~~] 301 KAR 1:060, except as established in subsections (7) and (9) of this section;

(b) Gig or snag from a platform;

(c) Gig from a boat in a lake with a surface area of less than 500 acres;

(d) Gig at night from a boat; or

(e) Snag from a boat.

(3) A snagging rod shall be equipped with:

(a) Line;

(b) Guides;

(c) A reel; and

(d) One (1) single hook or treble hook attached to the line, except that five (5) hooks, either single or treble, may be used while snagging in:

1. The Green River and its tributaries; or

2. The Rolling Fork River and its tributaries.

(4) A person who accidentally gigs or snags a sport fish shall immediately return the fish to the water, except as established in subsections (7) and (9) of this section.

(5) A person shall not gig or snag in the areas or bodies of water established in paragraphs (a) through (f) of this subsection:

(a) The Cumberland River below Wolf Creek Dam downstream to the Tennessee line, including Hatchery Creek;

(b) Any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream;

(c) The Middle Fork of the Kentucky River, from Buckhorn Lake Dam downstream to the Breathitt County line in Perry County;

(d) The Rough River, below Rough River Lake Dam downstream to the State Highway 54 bridge in Breckinridge and Grayson Counties;

(e) Cave Run Lake; or

(f) Within 200 yards of any dam on a river or stream, except as established in subsection (7) of this section.

(6) A person shall not gig in the Tennessee River below Kentucky Lake Dam.

(7) A person may snag sport fish or rough fish in the Tennessee River below the Kentucky Lake Dam to the U.S. 62 bridge:

(a) For twenty-four (24) hours a day from January 1 through May 31; and

(b) From sunset to sunrise from June 1 through December 31.

(8) A person shall not snag in that section of the Tennessee River from the U.S. 62 bridge to the Interstate 24 bridge.

(9) A person may snag sport fish or rough fish year-round in the section of the Tennessee River from the Interstate 24 bridge to the Ohio River.

(10) A person shall not snag on the Tennessee River:

(a) Under the U.S. 62 bridge;

(b) Under the P & L Railroad bridge; or

(c) From the fishing piers located below the U.S. 62 bridge.

(11) There shall not be a daily creel limit for rough fish except:

(a) The daily creel limit for rough fish in the Cumberland River below Barkley Lake Dam shall be eight (8), except there shall not be a creel limit on Asian Carp;

(b) The daily aggregate creel limit for snagging of rough and sport fish in the Tennessee River below Kentucky Lake Dam shall be eight (8), except there shall not be a creel limit on Asian Carp; and

(c)1. The statewide daily creel limit for paddlefish shall be two (2), in all areas outside those established in paragraphs (a) and (b) of this subsection; and

2. In an area established in paragraph (a) or (b) of this subsection, up to eight (8) paddlefish may be taken.

(12) A person shall immediately retain, and not release or cull, any gigged or snagged paddlefish.

(13) All snagged fish in the Tennessee River below Kentucky Lake Dam shall be immediately retained, and not released or culled, except for Asian carp, shad, or herring.

(14) All gigged or snagged rough fish in the Cumberland River below Barkley Lake Dam shall be immediately retained, and not released or culled, except for Asian carp, shad, or herring.

(15) A person shall immediately cease snagging if:

(a) A daily limit of paddlefish is reached; or

(b) A daily limit of sport fish has been caught in the Tennessee River below Kentucky Lake Dam, even if the creel limit for that sport fish is less than eight (8).

Section 7[~~6~~]. Grabbing. (1) The grabbing season for rough fish shall be June 1 to August 31 during daylight hours.

(2) Grabbing shall be permitted in all waters.

(3) The daily creel limit for grabbing shall be fifteen (15) fish, no more than five (5) of which may be catfish, except anglers grabbing at Barren River Lake, Dewey Lake, Fishtrap Lake, or Taylorsville Lake, may only harvest one (1) blue or channel catfish over twenty-five (25) inches.

Section 8[~~7~~]. Bow Fishing. (1) An angler using archery equipment, a crossbow, or a pneumatic arrow launching device shall not take:

(a) Sport fish;

(b) Alligator gar;

(c) More than five (5) catfish daily;[~~or~~]

(d) More than two (2) paddlefish daily; or

(e) Lake sturgeon.

(2) Any paddlefish or catfish shot with archery equipment, a crossbow, or a pneumatic arrow launching device shall:

(a) Be immediately retained, and not released or culled; and

(b) Count toward a person's daily limit.

(3) Bow fishing shall be open statewide, except:

(a) In the Cumberland River below Wolf Creek Dam downstream to the Tennessee line including Hatchery Creek;

(b) In any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line, from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream; or

(c) From a boat in restricted areas below navigation, power generating, or flood control dams.

FRANK JEMLEY III, Acting Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: July 6, 2018

FILED WITH LRC: July 12, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2018 at 11:00 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 August 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 procedures for taking sport and rough fish by nontraditional fishing methods.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the fish populations of Kentucky and to provide for reasonable recreational fishing opportunities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. KRS 150.440 requires the department to promulgate administrative regulations for establishing open seasons and creel limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 requires the department to promulgate administrative regulations for bag or creel limits for fish. KRS 235.280 requires the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by authorizing the methods used to take fish, the areas open for such take, and the seasons and limits to be used when taking fish by nontraditional methods.

(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 set the possession limit for paddlefish to two times the daily limit for all non-traditional fishing methods, will require the release of all caught lake sturgeon, which are part of a re-establishment project, and will limit all people hand grabbing for catfish to only harvest one blue or channel catfish over 25 inches per day in their creel at Barren River, Dewey, Fishtrap, and Taylorsville lakes.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide better protection of several fish species in Kentucky waters.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all anglers using nontraditional fishing methods.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Anglers using non-traditional fishing methods will be required to follow the new regulations listed in (2)(a).

(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).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Several species will be better protected, allowing for enhanced fishing opportunities in the future.

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

(a) Initially: There will be no initial cost to the department to implement this administrative regulation.

(b) On a continuing basis: There will be no cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees were established for this program either directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering is not applied because all anglers using nontraditional fishing methods 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's Fisheries and Law Enforcement Divisions will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1), 150.440, 150.470, and 235.280.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional costs incurred for the first year.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Office of the Secretary
(Amendment)

400 KAR 1:001. Definitions for 400 KAR Chapter 1.

RELATES TO: KRS 146.200 - 146.360, 146.450, 146.530, 146.990, 149.344, 149.346, 149.348, 151.125, 151.182, 151.184, 151.297, 151.990, Chapters 223, 224, 350.028, 350.0301, 350.0305, 350.032, 350.070, 350.085, 350.090, 350.093, 350.130, 350.255, 350.465, 350.610, 350.990, 351.315, 351.345, 351.350, 353.060, 353.200, 353.590, 353.5901, 353.620, 353.630, 353.640, 353.700, 30 C.F.R. Parts 724, 730, 731, 732, 733, 735, 917, 30

U.S.C. 1253, 1255

STATUTORY AUTHORITY: KRS 146.270, 146.450, 146.990, 149.344, 149.346, 151.125, 151.182, 151.184, 151.186, 151.297, 223.200, 223.991, 224.10-100, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.40-310, 224.60-120, 350.020, 350.028, 350.0301, 350.0305, 350.255, 350.465, 350.610, 351.315, 351.345, 351.350, 353.700, 30 C.F.R. Parts 724, 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapters 146, 149, 151, 223, 224,[~~and~~] 350, 351, and 353 authorize the cabinet to conduct administrative hearings and authorize the cabinet to promulgate administrative regulations to regulate the administrative hearing process. This administrative regulation establishes definitions for certain essential terms used in 400 KAR Chapter 1.

Section 1. Definitions. (1) "Administrative hearing" means a formal adjudicatory hearing conducted before the cabinet pursuant to KRS Chapters 146, 149, 151, 223, 224,[~~or~~] 350, 351.315 to 351.375, or 353, except for those conducted by the Kentucky Oil and Gas Conservation Commission pursuant to KRS 353.500 to 353.720.

(2) "Cabinet" is defined by KRS 149.330(2), 151.100(2), 223.400(3), 224.1-010(9), [~~and~~] 350.010(10), and 353.510(43).

(3) "Chief hearing officer" means the individual duly qualified and designated by the secretary as the chief hearing officer of the office.

(4) "Day" means calendar day unless otherwise specified to be a working day.

(5) "Final order" means final order of the secretary.

(6) "Hearing officer" means the individual duly qualified and assigned as presiding officer to conduct an administrative hearing and includes the chief hearing officer.

(7) "Individual" means a natural person.

(8) "Initiating document" means a petition for administrative hearing, an administrative complaint, a show cause order or other document that commences an administrative proceeding.

(9) "Interim report" means statements made by a hearing officer in written form that are not intended to be considered by the secretary and that are not subject to judicial review.

(10) "Office" means the office of administrative hearings.

(11) "Party" means:

(a) The named person whose legal rights, duties, privileges, or immunities are being adjudicated in the administrative hearing;

(b) Any other person who is duly granted intervention in the administrative hearing; and

(c) Any agency named as a party to the adjudicatory proceeding or entitled or permitted by law to participate fully in the administrative hearing.

(12) "Person" is defined by KRS 149.330(7), 151.100(15), 223.400(5), 224.1-010(17),[~~and~~] 350.010(9), and 353.510(5).

(13) "Petitioner" means the party filing an initiating document in an action before the office.

(14) "Pleading" means an initiating document, answer, motion, response, supporting memorandum, brief, notice, and any other document authorized to be filed by a hearing officer or by administrative regulation.

(15) "Record" means:

(a) The electronic recording or transcript of a proceeding;

(b) Each hearing officer ruling;

(c) Any pleading;

(d) Documentary and physical evidence received or considered;

(e) A statement of any matter officially noticed;

(f) Each question and offer of proof;

(g) Each objection;

(h) Any legal brief;

(i) A proposed finding and recommended order;

(j) Any exception and response; and

(k) Final order.

(16) "Respondent" means any person against whom a claim is made in any action filed in the office and includes any person so designated in the caption of an initiating document.

(17) "Responsive pleading" means the answer or any document required or authorized by administrative regulation or a hearing officer to be filed in response to a pleading.

(18) "Secretary" is defined by KRS 146.210(7), 151.100(16), 223.400(6), 224.1-010(24), and 350.010(11).

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 3, 2018

FILED WITH LRC: July 13, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 2018 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions for certain terms used in 400 KAR Chapter 1.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish essential terms used in the administrative hearings regulations that relate to the cabinet's administrative hearing process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapters 146, 149, 151, 223, 224, and 350 authorize the cabinet to conduct administrative hearings and authorize the cabinet to promulgate administrative regulations to regulate the administrative hearing process. This regulation defines essential terms found in the regulations implementing those KRS Chapters, specifically 400 KAR Chapter 1.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes essential terms used in the administrative hearings regulations that relate to the cabinet's administrative hearing process found in 400 KAR Chapter 1.

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

(a) How the amendment will change this existing administrative regulation: This amendment is necessary to include appropriate citations to terms defined in KRS 353.510. The amendment also clarifies that the term "administrative hearing" does not include hearings conducted related oil and gas deep wells.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that the terms used in the cabinet's administrative hearings regulations are adequately defined in a clear manner and include all citations applicable to oil and gas shallow wells.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment defines essential terms of the administrative regulations governing the cabinet's administrative hearing process. The administrative hearing process ensures the cabinet can effectively administer the cabinet's programs related to oil and gas shallow wells.

(d) How the amendment will assist in the effective

administration of statutes: This amendment will decrease possible conflict and delay by clarifying definitions to more specifically define terms as used by the cabinet through the administrative hearing process. Citations to KRS Chapter 353 have been added to ensure proper understanding of applicable administrative regulations in 400 KAR Chapter 1.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This regulation establishes definitions that apply to all individuals, businesses, organizations, or state and local governments that either initiate or become subject to an administrative proceeding in the cabinet's Office of Administrative Hearings. However, the amendment will only apply to oil and gas operators in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment is a clarifying amendment that adds citations for the oil and gas program that are subject to the cabinet's administrative hearings process due to the passage of SB 249. As a definitions administrative regulation, no requirements or actions are included in the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As a definitions administrative regulation, no requirements or actions are included that are associated with costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a definitions administrative regulation, no requirements or actions are included in the amendment, therefore, no specific benefits will accrue as a result of specific compliance by the entities.

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

(a) Initially: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's current operating budget will be used for the implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering was not used. The definitions found in the administrative regulation will apply equally to all parties of an administrative adjudication in the Cabinet's Office of Administrative Hearings.

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 will continue to hold administrative hearings to as needed concerning matters covered by KRS Chapters 146, 149, 151, 223, 224, 350, and 353. State and local government will only be impacted insofar as they are parties of an administrative adjudication with the cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 146.270, 146.450, 146.990, 149.344, 149.346, 151.125, 151.182, 151.184, 151.186, 151.297, 223.200, 223.991, 224.10-100, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.40-310, 224.60-120, 350.020, 350.028, 350.0301, 350.0305, 350.255, 350.465, 350.610, 351.315, 351.345, 351.350, 353.700, 30 C.F.R. Parts 724, 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255.

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

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

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

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET
Office of the Secretary
(Amendment)

400 KAR 1:040. Administrative discovery.

RELATES TO: 146.200-146.360, 146.990, 151.182, 151.184, 151.297, 151.990, Chapter 223, 224, 350.028, 350.070, 350.085, 350.093, 350.130, 350.465, 350.990, 351.315, 351.345, 351.350, 353.060, 353.200, 353.590, 353.5901, 353.620, 353.630, 353.640, 353.700, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

STATUTORY AUTHORITY: KRS 151.125, 224.10-100, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.40-310, 350.028, 350.255, 350.465, 351.315, 351.345, 351.350, 353.700, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapters 146, 151, 223, 224, [and] 350, 351, and 353 authorize the cabinet to conduct administrative hearings and investigations concerning a wide variety of matters. This administrative regulation establishes procedures for discovery.

Section 1. General Provisions Governing Discovery. (1) Discovery methods. Parties to administrative hearings may obtain discovery by one (1) or more of the following methods:

(a) Depositions upon oral examination or written questions;

(b) Written interrogatories;

(c) Production of documents or things or, for parties other than the cabinet, permission to enter upon land or other property, for inspection and other purposes; and

(d) Requests for admission. Unless the hearing officer orders otherwise under subsection (3) of this section, the frequency of use of these methods is not limited.

(2) Scope of discovery.

(a) In general. Parties may obtain discovery regarding any matter, not privileged or confidential under KRS 224.10-210, 224.10-212, 353.660, 353.6603 through 353.6606, or under any

other privilege recognized by statute or at common law, whether it relates to a claim or defense of the party seeking discovery or to a claim or defense of any other party, which is relevant to the subject matter involved in the administrative hearing, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information sought will be inadmissible at the administrative hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(b) Insurance agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(c) Hearing preparation: materials.

1. Subject to the provisions of paragraph (d) of this subsection, a party may obtain discovery of documents and tangible things otherwise discoverable under subsection (1) of this section and prepared in anticipation of the administrative hearing by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the hearing officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

2. A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for an order of the hearing officer. For purposes of this paragraph, a statement previously made is a written statement signed or otherwise adopted or approved by the person making it, or a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(d) Hearing preparations: experts. Discovery of facts known and opinions held by experts, otherwise discoverable under this administrative regulation and acquired or developed in anticipation of or preparation for the administrative hearing, may be obtained only as follows:

1. A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at the administrative hearing, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. Upon motion, the hearing officer may order further discovery by other means, subject to those restrictions as to scope as the hearing officer may deem appropriate.

2. A party may discover facts known or opinions held by an expert who has been retained or employed by another party in anticipation of or preparation for an administrative hearing and who is not expected to be called as a witness at the administrative hearing, only upon a showing of exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(3) Protective orders.

(a) Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without administrative action, and for good cause shown, the hearing officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one (1) or more of the following:

1. That the discovery not be had;

2. That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

3. That the discovery may be had only by a method of discovery other than selected by the party seeking discovery;

4. That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

5. That discovery be conducted with no one present except persons designated by the hearing officer;

6. That a deposition after being sealed be opened only by order of the cabinet; or

7. That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.

(b) If the motion for a protective order is denied in whole or in part, the hearing officer may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Section 10(1)(c) of this administrative regulation apply to the award of expenses incurred in relation to the motion.

(4) Sequence and timing of discovery. Unless the hearing officer upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(5) Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement that response to include information thereafter acquired, except as follows:

(a) A party is under a duty seasonably to supplement a response with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, or the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

(b) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which the party knows that the response was incorrect when made, or the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(c) A duty to supplement responses may be imposed by order of the hearing officer, agreement of the parties, or at any time prior to the hearing through new requests for supplementation of prior responses.

Section 2. Persons before Whom Depositions may be Taken. Depositions shall be taken before an examiner; a judge, clerk, commissioner or official reporter of a court; a notary public; or before such other persons and under such other circumstances as shall be authorized by law.

Section 3. Stipulations Regarding Discovery Procedure. Unless the hearing officer orders otherwise, the parties may, by agreement, provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and modify the procedures provided by this administrative regulation for other methods of discovery.

Section 4. Depositions Upon Oral Examination. (1) When depositions may be taken. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. The attendance of witnesses may be compelled by subpoena. The deposition of a person confined in prison may be taken only by leave of a court having appropriate jurisdiction and on such terms as the court prescribes.

(2) General requirements.

(a) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every

other party to the administrative hearing. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, the matter upon which each person will be examined, and the name or descriptive title and address of the person before whom the deposition is to be taken. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(b) The hearing officer may for cause shown enlarge or shorten the time for taking the deposition.

(c) The hearing officer may upon motion order that the testimony at a deposition be recorded by other than stenographic means, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at the party's own expense.

(d) The notice to a party deponent may be accompanied by a request made in compliance with Section 8 of this administrative regulation for the production of documents and tangible things at the taking of the deposition. The procedure of Section 8(2) of this administrative regulation shall apply to the request.

(e) A party may in the notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one (1) or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This paragraph does not preclude taking a deposition by any other procedure authorized in this administrative regulation.

(3) Examination and cross-examination.

(a) Examination and cross-examination of witnesses may proceed as permitted at the administrative hearing. The person before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the person's direction and in the person's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subsection (2)(c) of this section. If requested by one (1) of the parties, the testimony shall be transcribed at that party's expense.

(b) All objections made at the time of the examination to the qualifications of the person taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the person taking the deposition upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and that party shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(4) Motion to terminate or limit examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the hearing officer may order the person conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Section 1(3) of this administrative regulation. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the hearing officer. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Section 10(1)(c) of this administrative regulation apply to the award of expenses incurred in relation to the motion.

(5) Submission to witness. Any party to an action may make a written request before the person taking a deposition therein that it be submitted to the witness. In such an event, when the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by the witness. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the person taking the deposition with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness unless the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the person before whom the deposition is taken shall sign it and state on the record the fact of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress the hearing officer holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(6) Certification and filing by person taking deposition.

(a) The person before whom the deposition is taken shall certify on the deposition that the witness was duly sworn by that person and that the deposition is a true record of the testimony given by the witness.

(b) Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that the person producing the materials may substitute copies to be marked for identification, if a fair opportunity is afforded all parties to verify the copies by comparison with the originals, and if the person producing the materials requests their return, the person before whom the deposition is taken shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition pending final disposition of the case.

(c) Upon payment of reasonable charges therefor, not to exceed those fixed by statute, the person taking the deposition shall furnish a copy of the deposition to any party or to the deponent.

(7) Failure to attend or to serve subpoena; expenses.

(a) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the hearing officer may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by the party and the party's attorney in so attending, including reasonable attorney's fees.

(b) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because the party expects the deposition of that witness to be taken, the hearing officer may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by the party and the party's attorney in so attending, including reasonable attorney's fees.

Section 5. Depositions Upon Written Questions. (1) Serving questions; notice.

(a) After service of the summons, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoenas. The deposition of a person confined in prison may be taken only by leave of court of appropriate jurisdiction on such terms as that court prescribes.

(b) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the

person belongs, and the name or description title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Section 4(2)(e) of this administrative regulation.

(c) The hearing officer may establish an expeditious schedule for the service of cross, redirect, and recross questions.

(2) The officer before whom the deposition is to be taken to take responses and prepare record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Section 4(3), (5) and (6) of this administrative regulation, to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions which were received. Neither party agent, or attorney shall be present at the examination of the witness.

Section 6. Use of Depositions in Administrative Hearings. (1) Use of depositions. At the administrative hearing any part or all of a deposition so far as admissible may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(b) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Section 4(2)(e) or 5(1)(b) of this administrative regulation to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the hearing officer finds that:

1. The witness is dead;

2. The party offering the deposition has been unable to procure the attendance of the witness by subpoena;

3. The witness is at a greater distance than 100 miles from the place of the administrative hearing or out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition;

4. The witness is the Governor, Secretary, Auditor or Treasurer of the state; or the witness is a judge or clerk of a court; or the witness is a postmaster; or the witness is a president, cashier, teller or clerk of a bank; or the witness is a practicing physician, dentist or lawyer; or the witness is a keeper, officer or guard of a penitentiary;

5. The witness is of unsound mind, having been of sound mind when his deposition was taken;

6. The witness is prevented from attending the trial by illness, infirmity, or imprisonment;

7. The witness is in the military service of the United States or of this state; or

8. The hearing officer finds that such circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally at the administrative hearing, to allow the deposition to be used.

(d) If only a part of a deposition is offered in evidence by a party, an adverse party may require introduction of any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

(e) Substitution of parties does not affect the right to use depositions previously taken.

(2) Objections to admissibility. Objection may be made at the administrative hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(3) Effect of taking or using depositions. The taking of a deposition or the questioning of a deponent shall not make evidence admissible which is otherwise incompetent or constitute a waiver of objections to its admissibility.

(4) Effect of errors and irregularities.

(a) As to notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(b) As to disqualification of person before whom deposition is to be taken. Objection to taking a deposition because of disqualification of the person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(c) As to taking of deposition.

1. Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one (1) which might have been obviated or removed if presented at that time.

2. Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

3. Objections to the form of written questions are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within three (3) days after service of the last questions authorized.

(d) As to completion and return of deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the person before whom the deposition was taken under this section and Section 5 of this administrative regulation are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

Section 7. Interrogatories to Parties. (1) Availability; procedures for use.

(a) Any party may serve upon any other party written interrogatories to be answered by the party served, or if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may be served upon any party at any time after the commencement of the action. A copy of the interrogatories, answers and all related pleadings shall be served upon all parties.

(b) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within thirty (30) days of service or within such other time as specified by the hearing officer or agreed upon. The party submitting the interrogatories may move for an order under Section 10(1) of this administrative regulation with respect to any objection to or other failure to answer an interrogatory.

(c) Each party may propound a maximum of thirty (30) interrogatories and thirty (30) requests for admission to each other party; for purposes of this section, each subpart of an interrogatory or request shall be counted as a separate interrogatory or request. The following interrogatories shall not be included in the maximum allowed:

1. A request for the names and addresses of persons answering the interrogatories;

2. A request for the names and addresses of the witnesses; and

3. A request as to whether the persons answering are willing to supplement their answers if information subsequently becomes available. Any party may move the hearing officer for permission to propound either interrogatories or requests for admission in excess

of the limit of thirty (30).

(2) Scope; use at administrative hearing.

(a) Interrogatories may relate to any matters which may be inquired into under Section 1(2) of this administrative regulation, and the answers may be used to the extent permitted by the rules of evidence.

(b) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the hearing officer may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

(3) Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

Section 8. Production of Documents and Things. (1) Scope. Any party may serve on any other party a request to produce and permit the party making the request, or someone acting on the party's behalf, to:

(a) Inspect and copy any designated documents, including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form; or

(b) Inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Section 1(2) of this administrative regulation and which are in the possession, custody or control of the party upon whom the request is served. However, this subsection shall not be construed so as to limit or impose additional requirements on the cabinet with respect to its authority to enter property or to conduct inspections authorized by law.

(2) Procedure. The request may be served on any party without leave of the hearing officer at any time after service of the summons. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The party upon whom the request is made shall serve written response within thirty (30) days or within such other time as specified by the hearing officer or agreed upon by the parties. The party submitting the request may move for an order under Section 10 of this administrative regulation with respect to any objection to or failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

Section 9. Requests for Admission. (1) A party may serve upon any other party a written request for admission, for purposes of the pending administrative hearing only, of the truth of any matters within the scope of Section 1(2) of this administrative regulation set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. The request may be served at any time after the commencement of the action. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying.

(2) Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty (30) days after service of the request, or within such shorter or longer time as the hearing officer may allow or the parties may agree, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that a reasonable inquiry has been made and that the information known or readily obtainable is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for the hearing may not, on that ground alone, object to the request; the party may deny the matter or set forth reasons why the matter cannot be admitted or denied.

(3) The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the objection is justified, the hearing officer shall order that an answer be served. If the hearing officer determines that an answer does not comply with the requirements of this section, the hearing officer may order either that the matter is admitted or that an amended answer be served. The hearing officer may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference. The provisions of Section 10(3) of this administrative regulation apply to the award of expenses incurred in relation to the motion.

(4) Effect of admission. Any matter admitted under this section is conclusively established unless the hearing officer on motion permits withdrawal or amendment of the admission. The hearing officer may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the hearing officer that withdrawal or amendment will prejudice the party in maintaining the action or defense on the merits. An admission made by a party under this section is for the purpose of the pending administrative hearing only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

Section 10. Failure to Make Discovery: Sanctions. (1) Motion for order compelling discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(a) Motion.

1. If a deponent fails to answer a question propounded or submitted under Section 4 or 5 of this administrative regulation or a corporation or other entity fails to make a designation under Sections 4(2)(e) or 5(1)(b) of this administrative regulation, or a party fails to answer an interrogatory submitted under Section 7 of this administrative regulation, or a party fails to allow examination under Section 8 of this administrative regulation, the discovering party may move for an order compelling an answer or a designation or an order compelling examination in accordance with the request. The motion shall include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without administrative action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

2. If the motion is denied in whole or in part, the hearing officer may make such protective order as the hearing officer would have been empowered to make on a motion made pursuant to Section 1(3) of this administrative regulation.

(b) Evasive or incomplete answer. For the purposes of this section an evasive or incomplete answer is to be treated as a failure to answer.

(c) Award of expenses of motion.

1. If the motion is granted the hearing officer shall, after opportunity for hearing, require the party or deponent whose

conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the hearing officer finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

2. If the motion is denied, the hearing officer shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the hearing officer finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

3. If the motion is granted in part and denied in part, the hearing officer may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(2) Failure to comply with order.

(a) Sanctions by the hearing officer. If a party or an officer, director, or managing agent of a party or a person designated under Section 4(2)(e) or 5(1)(b) of this administrative regulation to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subsection (1) of this section, the hearing officer may make such orders in regard to the failure as are just, and among others the following:

1. An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

2. An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing designated matters in evidence;

3. An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

(b) Expenses on failure to obey order. In lieu of any of the foregoing orders or in addition thereto, the hearing officer shall require the party failing to obey the order or the attorney advising the party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the hearing officer finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(3) Expenses on failure to admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Section 9 of this administrative regulation, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the hearing officer for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The hearing officer shall make the order unless it finds that the request was held objectionable pursuant to Section 9(1) of this administrative regulation, or the admission sought was of no substantial importance, or the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or there was other good reason for the failure to admit.

(4) Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection.

(a) If a party or an officer, director, or managing agent of a party or a person designated under Section 4(2)(e) or 5(1)(b) of this administrative regulation to testify on behalf of a party fails to appear before the officer who is to take his deposition, after being served with a proper notice, or to serve answers or objections to interrogatories submitted under Section 7 of this administrative regulation, after proper service of the interrogatories, or to serve a written response to a request for examination submitted under Section 8 of this administrative regulation, after proper service of the request, the hearing officer on motion may make such orders in regard to the failure as are just, and among others, the hearing officer may take any action authorized under subparagraphs 1, 2, and 3 of subsection (2)(a) of this section. In lieu of any order or in addition thereto, the hearing officer shall require the party failing to act to pay the reasonable expenses, including attorney's fees, caused by the failure unless the hearing officer finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(b) The failure to act described in this section may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided in Section 1(3) of this administrative regulation.

(5) Expenses against the Commonwealth. Expenses and attorney's fees are not to be imposed upon the Commonwealth under this section, except as otherwise provided in 400 KAR 1:110, Section 12.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 3, 2018

FILED WITH LRC: July 13, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 2018 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for administrative hearings discovery procedures.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish information and procedures related to discovery.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapters 146, 151, 223, 224, 350, and 353 authorize the cabinet to conduct administrative hearings and authorize the cabinet to promulgate administrative regulations to regulate the administrative hearing process. This regulation is necessary to establish information and procedures related to discovery.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administrative of the statutes by establishing information and procedures related to discovery.

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

(a) How the amendment will change this existing administrative regulation: This amendment is necessary to insert citations to statutes related to privileged or confidential information that is not subject to the discovery procedures listed in Section 1(2).

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that the discovery procedures covered by this administrative regulation does not affect the confidential protections provided by KRS 353.660, 353.6603 through 353.6606 related to oil and gas shallow wells.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 353.660, 353.6603 through 353.6606 authorizes the division to keep certain information confidential. This amendment provides citations to those statutes that are not subject to discovery during the administrative hearings process.

(d) How the amendment will assist in the effective administration of statutes: The amendment will assist in the effective administration of the statutes by including in the administrative regulation the citations to statutes that include confidential provisions and are not subject to discovery during the administrative hearings process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation applies to all individuals, businesses, organizations, or state and local governments that either initiate or become subject to an administrative proceeding in the cabinet's Office of Administrative Hearings. However, the amendment will only apply to oil and gas operators in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment is a clarifying amendment that adds citations for the oil and gas program that are subject to the cabinet's administrative hearings process due to the passage of SB 249. No additional action is needed from the regulated entity. The confidentiality protections already existed in statute but were inserted into the administrative hearings administrative regulations for completeness.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs tot eh regulated entities associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entity will not receive any additional benefit by compliance with this amendment. The confidentiality protections already exist in the cited statutory citations and therefore are part of the existing protections provided to the regulated entity.

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

(a) Initially: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's current operating budget will be used for the implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering was not used. The protections provided by the statutes listed regarding confidentiality apply equally to all oil and gas operators.

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? State and local government will only be impacted insofar as they are parties of an administrative adjudication with the cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 151.125, 224.10-100, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.40-310, 350.028, 350.255, 350.465, 351.315, 351.345, 351.350, 353.700, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

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

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

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

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET
Office of the Secretary
(Amendment)

400 KAR 1:090. Administrative hearings practice provisions.

RELATES TO: KRS 146.200-146.360, 146.450, 146.530, 146.990, 149.344, 149.346, 149.348, 151.125, 151.182, 151.184, 151.297, 151.990, Chapters 223, 224, 350.028, 350.029, 350.0301, 350.0305, 350.032, 350.060, 350.070, 350.085, 350.090, 350.093, 350.130, 350.240, 350.255, 350.300, 350.305, 350.465, 350.610, 350.990, 351.315, 351.345, 351.350, 353.060, 353.200, 353.590, 353.5901, 353.620, 353.630, 353.640, 353.700, 30 C.F.R. Parts 724, 730, 731, 732, 733, 735, 917, 39 C.F.R., 30 U.S.C. 1253, 1255

STATUTORY AUTHORITY: KRS 146.270, 146.450, 146.990, 149.344, 149.346, 151.125, 151.182, 151.184, 151.186, 151.297, 223.200, 223.991, 224.10-100, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.40-310, 224.60-120, 350.020, 350.028, 350.029, 350.0301, 350.0305, 350.240, 350.255, 350.300, 350.465, 350.610, 351.315, 351.345, 351.350, 353.700, 30 C.F.R. Parts 724, 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapters 146, 149, 151, 223, 224,[~~and~~] 350, 351, and 353 authorize the cabinet to conduct administrative hearings and authorize the cabinet to promulgate administrative regulations to regulate the administrative hearing process. This administrative regulation establishes procedures for conducting administrative hearings, administrative conferences, mediations, and issuance of final orders in regard to violations and final determinations of the cabinet made pursuant to KRS Chapters 146, 149, 151, 223, 224,[~~and~~] 350, and 353.

Section 1. Applicability. This administrative regulation establishes procedures for conducting an administrative hearing, administrative conference, mediation, and issuance of a final order in regard to a violation and a final determination of the cabinet

made pursuant to KRS Chapters 146, 149, 151, 223, 224,[~~and~~] 350, 351.315 to 351.375, and 353, except for those conducted by the Kentucky Oil and Gas Conservation Commission pursuant to KRS 353.500 to 353.720.

Section 2. Assignment of a Case Number and Caption. (1) Assignment of a case number.

(a) If the office receives an initiating document, filed in accordance with Section 3 of this administrative regulation by a person other than the cabinet, the office shall assign a case number to that document.

(b) If the initiating document is filed by the cabinet's Office of General Counsel, the Office of General Counsel shall assign the case number to the document at the time of filing.

(2) Caption requirements. Any person filing an initiating document, or pleading in the office shall state:

(a) The case number in accordance with subsection (1) of this section;

(b) The permit number if it relates to a permit;

(c) The noncompliance number if it relates to a notice of noncompliance and order for remedial measures as defined in 400 KAR 1:110, Section 1;

(d) The cessation order number if it relates to a cessation order as defined in 400 KAR 1:110, Section 1;

(e) The agency interest number, if known;

(f) The petitioner name;

(g) The respondent name; and

(h) Any intervenor name.

(3) Any person filing an initiating document in the office shall state in the caption of the document, the name and address of the person to be served on behalf of each respondent.

(4) Consolidated case caption. A pleading filed in a consolidated case shall list all consolidated case numbers. If a pleading filed in a consolidated case pertains to some, but not all, of the consolidated cases, the party filing the document shall indicate the case to which the document applies.

Section 3. Filing and Retention of a Pleading or Discovery Material. (1) Filing of a pleading.

(a) Any person filing a pleading in the office shall file the original pleading with the office.

(b) A pleading may be initially filed by facsimile or electronic mail pursuant to the requirements in subparagraphs 1. and 2. of this paragraph. A person filing by facsimile or electronic mail shall, after sending the document via facsimile or by electronic mail, file the original of the document with the office.

1. Facsimile.

a. A person filing a pleading in the office may file the pleading by facsimile at the facsimile number listed for the office.

b. The facsimile pleading shall be stamped filed according to the time and date stamp placed on the facsimile pleading by the office facsimile machine and shall be filed in the record upon retrieval from the office facsimile machine.

c. If the office facsimile machine malfunctions, the facsimile pleading shall be stamped as of the date actually received in the office.

2. Electronic mail.

a. A person filing a pleading in the office may file the pleading by electronic mail at the electronic mail address listed for the office, not the electronic mail address of the assigned hearing officer.

b. The pleading shall be filed as a searchable Portable Document Format (PDF). If the pleading is not electronically mailed in a Portable Document Format, it shall not be accepted by the office.

c. The electronic mail pleading shall be stamped filed according to the time and date placed on the electronic mail pleading as received by the office computer and shall be filed in the record upon retrieval from the office computer.

d. If the office electronic mail server fails, the document shall be stamped as of the date actually received in the office.

(c) The original pleading shall be file stamped on the date actually received by the office. The effective date of filing shall be the earlier date of the receipt in the office of either the facsimile, the electronic mail, or the original.

(d) Filing of discovery material.

1. Except as provided by subparagraph 3 of this paragraph, the following documents shall not be filed with the office unless the hearing officer issues an order otherwise:

a. Interrogatory;

b. Request for production or inspection; and

c. Request for admission.

2. The party responsible for the service of the discovery material shall retain the original and become the custodian. The custodian shall provide access to any party of record during the pendency of the action.

3. If a document listed in paragraph (d)1. of this section is to be used at the administrative hearing or in support of a pleading, then the document shall be filed in the office at the beginning of the administrative hearing or at the time the pleading is filed.

(2) Official record.

(a) Each pleading, book, record, paper, or map received in evidence in an administrative hearing or submitted for the record in a proceeding before the office shall be retained in the official record. The replacement of an original document with an accurate photocopy may be permitted while the case is pending upon terms and conditions as may be ordered by the hearing officer.

(b) If a final order of the secretary has been entered, the hearing officer may, upon request and after notice to each party, authorize the replacement of an original document with an accurate photocopy.

(3) Signature and record address.

(a) Contact information. A person who files a pleading in the record shall sign the document and shall state the person's:

1. Mailing address;

2. Electronic mail address, if available;

3. Facsimile number, if available; and

4. Telephone number.

(b) Change of contact information. If any of the information that is required to be provided in paragraph (a) of this subsection changes, the person shall within fourteen (14) days of the change, file a notice of change of information in the office identifying each case number in which the person has made a filing.

(4) Submission of authority. If a person filing a pleading relies upon a pertinent case decision or other legal authority in the pleading, the person may file with the pleading a copy of the case decision or other legal authority. If the person files a copy of authority, the person shall serve upon each party in the case a copy of the case decision or other legal authority with the pleading.

(5) Format requirements. Each pleading filed with the office shall conform to the requirements established in paragraphs (a) and (b) of this subsection.

(a) Paper size and binding. The pleading shall be on eight and one-half (8 1/2) inches by eleven (11) inches paper stock; and

(b) Type size and style. The document shall be typed in a twelve (12) point font.

(6) Electronic recording and transcript.

(a) An administrative hearing and proceeding before the office shall be electronically recorded.

(b) A digital copy of the electronic recording shall be provided by the office upon request.

(c) The cost of a transcript shall be borne by the requesting party and prepared by a certified court reporter pursuant to a contract between the reporter and the cabinet. The cost of the transcript shall be at the rate established by the contract.

(d) Requirement to file transcript with the office.

1. Any party who obtains a transcript of a proceeding before the office and who cites to, quotes from or otherwise relies upon that transcript in any pleading filed with the office, shall file a complete copy of the transcript in the record in the office, unless a copy of the transcript was previously filed in the record.

2. The transcript shall be filed no later than the date upon which the party first cites to, quotes from or relies upon the transcript in any pleading filed with the office.

3. If the party fails to file the transcript with the office that is cited, quoted, or otherwise relied upon in a pleading, the hearing officer may strike all or part of the pleading that refers to the

transcript.

Section 4. Time. (1) Computation.

(a) In computing any period of time prescribed or allowed by order of the hearing officer or administrative regulation, the day of the act, event, or default after which the designated period of time begins to run shall not be included.

(b) The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period shall run until the end of the next day that is not a Saturday, a Sunday, or a legal holiday.

(c) If the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

(d) If a person has the right or is required to perform an act within a period prescribed by order of the hearing officer or administrative regulation after the service of a notice or other pleading upon the party and the notice or pleading is served by mail, three (3) days shall be added to the prescribed period. This provision shall not apply to the service of administrative summons and an initiating document by mail.

(2) Extensions of time.

(a) A motion for an extension of time shall be filed within the time allowed for filing the pleading. The hearing officer, upon cause shown, may order the period extended. If the motion is made after the expiration of the time allowed for filing the pleading, the hearing officer may order the period extended if the failure to act was the result of excusable neglect.

(b) The hearing officer shall not extend the time for filing an initiating document pursuant to the applicable statute of limitations, or if the extension is contrary to any other law or administrative regulation.

Section 5. Administrative Summons and Service of Process. The provisions of this section shall not apply to hearings conducted pursuant to KRS Chapter 353. Information related to administrative summons and service of process for hearings conducted pursuant to KRS Chapter 353 shall be found in Section 24 of this administrative regulation. (1) Upon receipt of an initiating document, the office shall serve a copy of the initiating document upon each party designated on the initiating document to be served along with an administrative summons. The office shall serve the initiating document in accordance with the method designated on the initiating document and subsection (4) this section.

(2) The administrative summons shall:

(a) Notify the respondent that an initiating document has been filed against the respondent and unless a written defense is timely served, action adverse to the respondent's interest may be taken;

(b) Designate the date, time, and place of the prehearing conference or administrative hearing; and

(c) Include a statement of the legal authority for the administrative hearing and reference to the statutes and administrative regulations involved.

(3) Service shall be made pursuant to one of the methods in subparagraphs (a) through (k) of this subsection.

(a) Individual within the Commonwealth. Service shall be made upon an individual within the Commonwealth, other than an unmarried infant or person of unsound mind, by delivering a copy of the administrative summons and initiating document to the person or, if acceptance is refused, by offering personal delivery to the person, or by delivering a copy of the administrative summons and initiating document to an agent authorized by appointment or by law to receive service of process for the individual.

(b) Unmarried infant or person of unsound mind. Service shall be made upon an unmarried infant or a person of unsound mind by serving the person's resident guardian or committee if there is one (1) known to the initiating party or, if none; by serving either the person's father or mother within this state or, if none, by serving the person within this state having control of the individual. If there are no persons, application shall be made to the appropriate court to appoint a practicing attorney as guardian ad litem who shall be served. If any person directed by this section to be served is also an initiating party, the person who stands first in the order named who is not an initiating party shall be served.

(c) Partnership or unincorporated association. Service shall be made upon a partnership or unincorporated association subject to suit under a common name by serving:

1. A partner or managing agent of the partnership;

2. An officer or managing agent of the association; or

3. An agent authorized by appointment or by law to receive service on its behalf.

(d) Corporation. Service shall be made upon a corporation by serving an officer or managing agent thereof, or any other agent authorized by appointment or by law to receive service on its behalf.

(e) Person issued a permit, registration, or certification from the cabinet. Service shall be made at the address specified in the permit, registration, registration application, certification, or certification application, exploration notice or exploration application pursuant to 405 KAR 8:020 upon:

1. A person issued a permit, registration, or certification by the cabinet;

2. A person specified as an operator in the permit; or

3. The person's named agent for service stated in the permit, registration, registration application, certification, or certification application.

(f) Commonwealth or agency other than the cabinet. Service shall be made upon the Commonwealth or any agency other than the cabinet by serving the attorney general or any assistant attorney general.

(g) Cabinet. Service of a request for an administrative hearing shall be made upon the cabinet by serving the Executive Director of the Office of General Counsel.

(h) County, city, public board, or other administrative body except state agencies.

1. Service shall be made upon a county by serving the county judge or, if the judge is absent from the county, the county attorney.

2. Service shall be made upon a city by serving the chief executive officer of the city or an official attorney of the city.

3. Service on any public board or other administrative body, except state agencies, shall be made by serving a member.

(i) Nonresident. Service may be made upon a nonresident individual who transacts business through an office or agency in this state, or a resident individual who transacts business through an office or agency in any action growing out of or connected with the business of an office or agency, by serving the person in charge.

(j) Out of state individual. Service may be made upon an individual out of this state, other than an unmarried infant, a person of unsound mind or a prisoner, by any method stated in subsection (4) of this section.

(k) Unknown person. In an action against a person whose name is unknown to the initiating party, the person shall be described in the initiating document and administrative summons as unknown party. If the person's name or place of residence is discovered during the action, then the initiating document shall be amended accordingly.

(4) Methods of service. The office shall place a copy of the document to be served in an envelope and address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions provided by the initiating party. The office shall employ one (1) of the methods of service in paragraphs (a) through (c) of this subsection as directed by the petitioner on the initiating document in accordance with Section 2(3) of this administrative regulation.

(a) Certified mail.

1. The office shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested.

2. The office shall enter the fact of mailing in the record and make a similar entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record.

3. The office shall file the return receipt or returned envelope in

the record;

(b) Personal service.

1. The office shall cause the envelope to be transferred for service to a person authorized by the secretary or by a statute to deliver it, or to a person authorized to serve an action in a court of law who shall serve the initiating document.

2. The office shall enter the fact of delivery in the record and make a similar entry when the return receipt from the authorized person is received.

3. If the return receipt is returned with an endorsement showing failure of delivery, that fact shall be entered in the record. The return receipt shall be proof of the time and manner of service; or

(c) Other method allowed by law. Any other method of service authorized by statute, administrative regulation, or the civil rules for an action in a circuit court of the Commonwealth of Kentucky shall be supplemental to and shall be accepted as an alternative to any of the methods of service specified in subsections (3) or (4) of this section.

(5) Proof of service. The return receipt shall be proof of acceptance, refusal, inability to deliver, or failure to claim the document. The return receipt shall also be proof of the time, place, and manner of service. Service shall be effective upon:

(a) Acceptance of the summons by any person eighteen (18) years of age or older at the permanent address;

(b) Refusal to accept the summons by any person at the permanent address;

(c) The United States Postal Service's inability to deliver the certified mail containing the summons if properly addressed pursuant to Section (4) of this section;

(d) Failure to claim the certified mail containing the summons prior to its return to the cabinet by the United States Postal Service; or

(e) To the extent the United States postal regulations, 39 C.F.R., allow authorized representatives of local, state, or federal governmental offices to accept and sign for "addressee only" mail, signature by the authorized representative shall constitute service on the addressee.

Section 6. Service of a Pleading and Discovery Material. (1) Service is required. Except as provided in subsections (2) or (5) of this section, a party, including a person filing a motion for intervention, shall serve the following pleadings or other documents upon each party in the proceeding:

(a) Every order required by its terms to be served;

(b) Every pleading subsequent to the original initiating document; and

(c) Every document relating to discovery required to be served upon a party.

(2) Service requirement for a party in default. If a secretary's order of default has been entered against a party for failure to appear, then that party shall not be required to be served pursuant to subsection (1) of this section. The defaulting party shall only be given notice of a pleading asserting a new or additional claim for relief against the defaulting party by an initiating document and summons issued thereon.

(3) How service is made.

(a) If service is required pursuant to subsection (1) of this section or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the hearing officer.

(b) Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney's or party's last known address. Delivery of a copy shall include:

1. Handing it to the attorney or to the party;

2. Leaving it at the attorney's or party's office with the person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or

3. If the office is closed or the person to be served has no office, leaving it at the attorney's or party's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(c) Service by mail shall be complete upon mailing unless the serving party learns or has reason to know it did not reach the person to be served.

(4) Proof of service.

(a) Proof of the time and manner of service shall be filed in the office before the hearing officer or the party is required to take action.

(b) Proof may be by:

1. Certificate of a member of the bar;

2. Affidavit of the person who served the document; or

3. By any other proof satisfactory to the hearing officer.

(c) The certificate or affidavit shall identify by name the person served.

(5) Service on numerous respondents. If there are numerous respondents, the hearing officer may designate one (1) respondent for the service of each document.

Section 7. Hearing Officer. (1) Functions of a hearing officer. An independent hearing officer shall preside at the administrative hearing, shall keep order, and shall conduct the administrative hearing. The hearing officer shall:

(a) Administer oaths and affirmations;

(b) Issue subpoenas in accordance with Section 8 of this administrative regulation;

(c) Issue appropriate orders relating to discovery in accordance with 400 KAR 1:040;

(d) Rule on procedural requests or similar matters;

(e) Preside over prehearing conferences for settlement or simplification of the issues;

(f) Regulate the course of the administrative hearing;

(g) Rule on offers of proof and receive relevant evidence;

(h) Rule on a motion for summary disposition in accordance with Section 17 of this administrative regulation;

(i) Rule on a motion for directed recommendation in accordance with Section 18 of this administrative regulation;

(j) Issue an order for temporary relief in accordance with 400 KAR 1:110, Section 11 and 400 KAR 1:120, Section 7;

(k) Serve as a mediator in accordance with Section 23 of this administrative regulation;

(l) Take any other action authorized by KRS Chapters 146, 149, 151, 223, 224, 350, 351, 353, and the administrative regulations promulgated pursuant thereto; and

(m) Make or recommend decisions or reports in accordance with KRS Chapters 146, 149, 151, 223, 224, 350, 351, 353, and the administrative regulations promulgated pursuant thereto.

(2) No Authority to Grant Injunctive Relief or a Stay. Notwithstanding the right to grant temporary relief in accordance with 400 KAR 1:110, Section 11 and 400 KAR 1:120, Section 7, a hearing officer shall not have any independent authority to grant injunctive relief or a request for a stay of any statutory, regulatory, or permit requirement.

(3) Ex parte communication.

(a) Except to the extent required for the disposition of an ex parte matter as authorized by law, the hearing officer shall not discuss the merits of an administrative hearing or proceeding with a person identified in subparagraphs 1. through 3. of this paragraph, unless the communication, if oral, is made in the presence of each and every party or their representative, or, if written, is furnished to each party.

1. A party to the proceeding;

2. A person interested in the proceeding; or

3. A representative of a party.

(b) Office personnel involved or who may become involved in the decision making process of an administrative hearing shall not discuss the merits of an administrative hearing or proceeding with a person identified in paragraph (a)1. through 3. of this subsection, unless the communication, if oral, is made in the presence of every other party or their representative, or, if written, is furnished to every party.

(c) The hearing officer and office personnel may discuss the case status or provide advice concerning compliance with a procedural requirement with a person identified in paragraph (a)1. through 3. of this subsection, unless the area of inquiry is in fact an

area of controversy in the administrative hearing or proceeding over which the hearing officer is presiding.

(d) An oral communication made in violation of this subsection shall be reduced to writing in a memorandum by the person receiving the communication and shall be included in the record.

(e) A written communication made in violation of this administrative regulation shall be included in the record and a copy of the memorandum or communication shall be provided to each party, who shall be given an opportunity to respond in writing.

(4) Disqualification. The hearing officer shall withdraw from a case if, according to recognized canons of judicial ethics, the hearing officer deems it appropriate. If prior to a decision of the hearing officer, an affidavit of personal bias or disqualification with substantiating facts is filed, and the hearing officer concerned does not withdraw, the secretary shall determine the matter of disqualification.

Section 8. Subpoena. (1) If requested by a party, the hearing officer shall issue a subpoena requiring the attendance of a witness or production of a book, paper, document, or tangible thing designated therein, or both, at an administrative hearing or at the taking of a deposition.

(2) A subpoena shall be issued using OAH 100 or OAH 101.

(3) A subpoena may be served by:

(a) A person who is not less than eighteen (18) years of age; or

(b) Certified mail, return receipt requested.

(4) The original subpoena bearing a certificate of service shall be filed with the office.

(5) The return receipt if signed by the addressee's authorized agent shall constitute proof of service of the subpoena.

Section 9. De Novo Review. An administrative hearing shall be de novo as to all issues of fact and law. A previous final order on the merits shall be binding against each party or any party in privity with the original party to that action in regard to the issues determined by that final order.

Section 10. Right to Counsel, Entry of Appearance, and Notice of Withdrawal. (1) Right to counsel. A party to an administrative hearing may be represented by counsel. The hearing officer shall permit any party to represent his own interests, except a party that is a corporation or limited liability company shall only be represented by an attorney licensed to practice law in the Commonwealth of Kentucky. The failure of the corporation or limited liability company to appear by counsel, without good cause, shall be grounds for default.

(2) Filing of notice of entry of appearance.

(a) An attorney representing a party before the office shall file a written notice of entry of appearance in each case before the attorney may practice in that case before the office.

(b) The notice of entry of appearance shall set forth the current, complete and correct name, address, telephone number, and facsimile number, if any, and electronic mail address, if any.

(c) An attorney is not required to file a separate notice of entry of appearance if the attorney files a pleading on behalf of attorney's client.

(3) Withdrawal of representation. An attorney of record shall not withdraw from representation in a proceeding before the office without leave of the hearing officer. Leave shall be given unless the hearing officer determines that the withdrawal will result in substantial prejudice or will unduly delay the consideration and resolution of the case.

(4) Filing of notice of change of address. Each party or, if the party is represented, the party's counsel, shall notify the office of any change of address, telephone number, electronic mail address, or facsimile number by filing a notice of change of address in the record within fourteen (14) days of the change.

Section 11. Prehearing Conference. A hearing officer may order a prehearing conference to be held in person or by telephone to:

(1) Simplify and clarify the issue;

(2) Receive a stipulation and admission;

(3) Explore the possibility of agreement to dispose of any issue in dispute; and

(4) Address any motions.

Section 12. Motion Practice. (1) General provisions.

(a) A request for relief, which is not required to be made in a pleading, shall be in the form of a motion and shall indicate in the caption the nature of the motion.

(b) A motion filed with the office shall state precisely the relief requested, and include a citation to the record, the administrative regulations, or the law as appropriate.

(c) A written motion shall comply with the provisions of this section. Failure to comply with this section may be grounds for denying the motion.

(2) Supporting memorandum.

(a) A motion filed with the office, including a motion to dismiss, a motion for summary disposition, a motion to strike, and a motion on the pleadings, shall be accompanied by a memorandum setting forth the grounds for the motion and shall contain a citation to any authority relied upon.

(b) The memorandum shall be no longer than twenty-five (25) pages in length and may be filed in the office without prior leave of a hearing officer.

(3) Response. Any party served with a motion may file a response memorandum opposing the motion, with a citation to any supporting authority.

(a) A response memorandum shall be filed no later than fifteen (15) days of the date of service of a motion.

(b) The time for filing a response memorandum may be extended once, without leave of the hearing officer, for no more than thirty (30) additional days if each party enters into a written agreement that is filed in the office prior to the deadline for filing the initial response.

(c) A response memorandum longer than twenty-five (25) pages in length shall not be filed in the office without approval of a hearing officer.

(d) A response memorandum shall indicate in its caption that it is a response memorandum.

(4) Reply. Any party served with a response memorandum may file a reply memorandum addressing only the matter initially raised in the response.

(a) A reply memorandum shall be filed no later than five (5) days of the date of service of a response memorandum unless a different reply period is ordered by the hearing officer.

(b) The time for filing a reply memorandum may be extended once without leave of the hearing officer for no more than ten (10) additional days if each party enters into a written agreement that is filed in the office prior to the deadline for filing the initial reply.

(c) A reply memorandum longer than ten (10) pages in length shall not be filed in the office without prior leave of a hearing officer.

(d) A reply memorandum shall indicate in its caption that it is a reply memorandum.

(5) Failure to file supporting memorandum. The hearing officer may find or recommend entry of an order against a party failing to file a supporting memorandum in support of a motion, response or reply.

(6) Proposed order.

(a) A party who files a motion or response shall simultaneously tender a proposed order granting the requested relief or denying the motion.

(b) The office shall not accept for filing a motion or response unless accompanied by a tendered proposed order.

(c) The tendered order shall contain a service page listing the current, correct, and complete names and addresses of each party and counsel of record upon whom the office is required to serve the order.

(d) A party may submit a proposed order in electronic form if accompanied by a hard copy.

(7) Hearing on a motion.

(a) Any party making a motion may request that the motion be heard before the hearing officer.

(b) Upon receipt of the request for a hearing on a motion, the

hearing officer may schedule a hearing after the time for all responses and replies pursuant to this section has expired, if the hearing officer determines that oral arguments could provide additional information to form the basis of the ruling.

(c) Court reporter. Any party may arrange for a court reporter to record a hearing on a motion, as long as the party bears the costs.

(d) Failure to appear at hearing. A hearing officer may deny a motion for which the movant who requested the hearing fails to appear. A hearing officer may grant a motion for which a movant requests a hearing and the nonmovant fails to appear, upon proof by the movant filed in the record that the motion was served on the nonmoving party.

Section 13. Motion for Continuance of Formal Administrative Hearing. (1) The hearing officer shall not grant a motion for continuance unless good cause is shown.

(2) The hearing officer shall not grant a motion for continuance of an administrative hearing if filed within fifteen (15) days of the scheduled date for the administrative hearing unless compelling cause is shown.

Section 14. Motion for Intervention and Consolidation. (1) Who may file. A person may petition in writing for leave to intervene at any stage of a proceeding. A person shall set forth a statement describing the person's interest and, if required, a showing of why the interest is or may be adversely affected.

(2) Criteria to intervene.

(a) The hearing officer shall grant intervention if the person:

1. Had a statutory right to initiate the proceeding in which the person requests to intervene; or

2. Has an interest that is or may be adversely affected by the outcome of the proceeding.

(b) If the criteria set forth in paragraph (a) of this subsection does not apply, the hearing officer shall consider the following in determining if intervention is appropriate:

1. The nature of the issues;

2. The adequacy of representation of the person's interest which is provided by the existing parties to the proceeding;

3. The ability of the person to present relevant evidence and argument; and

4. The effect of intervention on the cabinet's implementation of its statutory mandate.

(3) Effect of ruling. A person granted leave to intervene in a proceeding may participate in the proceeding as a full party or in a limited capacity. The hearing officer shall determine the extent and terms of the participation, having due regard for the interests of justice and the orderly and prompt conduct of the proceeding. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceeding; and

(c) Requiring two (2) or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceeding.

(4) Consolidation. If proceedings involving the same parties or a common question of law or fact are pending before the office, the proceedings shall be subject to consolidation pursuant to a motion by a party or upon the initiative of the hearing officer.

Section 15. Dismissal for Failure to Prosecute. Once per year the office shall determine all cases in which no activity has been taken for one (1) year or more. The hearing officer to whom a case is assigned shall issue an order directing the petitioner to show cause why the case should not be dismissed. If the petitioner does not show good cause why the case should not be dismissed, the hearing officer shall recommend dismissal of the case with prejudice for failure to prosecute.

Section 16. Evidence. (1) Admissibility. Unless specifically excluded by subsection (2) this section, evidence that would otherwise not be admissible under the Kentucky Rules of Evidence may be admitted by the hearing officer, if determined by the hearing officer:

(a) To be necessary to ascertain facts not reasonably susceptible to proof under rules of evidence; and

(b) Is a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs.

(2) The hearing officer shall exclude:

(a) Irrelevant, immaterial, or unduly repetitious evidence from the record;

(b) Evidence designated as confidential by statute; and

(c) Evidence protected pursuant to a privilege recognized by law.

(3) An objection may be made by a party and shall be noted in the record by hearing officer.

(4) The hearing officer may require each party to submit any part of the evidence in written form if:

(a) An administrative hearing will be expedited; and

(b) The interests of each party will not be substantially prejudiced.

(5) Documentary evidence may be received in the form of a copy or excerpt. Upon request of any party, each party shall be given an opportunity to compare the copy with the original.

(6) A party may conduct cross-examination as required for a full and true disclosure of the facts.

(7) The hearing officer may take notice of generally recognized technical or scientific facts within the cabinet's specialized knowledge. The hearing officer shall notify each party of the material noticed either before or during the administrative hearing, or by reference in the report and recommended order. Each party shall be afforded an opportunity to contest the material so noticed by the hearing officer.

(8) The cabinet's experience, technical competence, and specialized knowledge may be utilized by the hearing officer in the evaluation of the evidence.

Section 17. Summary Disposition. At any time after a proceeding has begun, a party may move for a summary disposition of the whole or part of a case, in which event the following procedures shall apply:

(1) The moving party shall verify any allegation of fact with a supporting affidavit, unless the moving party is relying upon:

(a) A deposition,

(b) An answer to an interrogatory,

(c) An admission, or

(d) Any document produced upon request to verify such allegation.

(2) A hearing officer may grant a motion for summary disposition and render a report and recommended order to the secretary under this section if the record shows that:

(a) There is no genuine issue as to any material fact; and

(b) The moving party is entitled to a summary disposition as a matter of law.

(3) If a motion for a summary disposition is not granted for the entire case or for all the relief requested and an evidentiary hearing on some or all of the issues is necessary, the hearing officer shall and upon examination of all relevant documents and evidence, ascertain what material facts are actually and in good faith controverted. The hearing officer shall issue an interim report specifying the facts that appear without substantial controversy and direct further proceedings as deemed appropriate.

Section 18. Directed Recommendation. (1) At the close of the presentation of evidence by a party at an administrative hearing, the opposing party may move the hearing officer for a directed recommendation to the secretary.

(2) The moving party shall state the specific grounds in support of the request for a directed recommendation.

(3) The hearing officer shall consider all of the evidence presented at the administrative hearing by the nonmoving party and shall draw all inferences in favor of the nonmoving party.

(4) If the hearing officer determines that the nonmoving party

has failed to meet his burden of proof, the hearing officer shall:

(a) Grant the moving party's motion; and

(b) Recommend that the secretary deny the nonmoving party's request for relief.

(5) A motion for a directed recommendation is not a waiver of an administrative hearing.

(6) A party who moves for a directed recommendation may move forward and offer evidence to the same extent as if the motion had not been made and without having to reserve the right to offer the evidence.

Section 19. Orders to Abate and Alleviate. (1) Notice.

(a) If the secretary issues an order to abate or alleviate pursuant to KRS 224.10-410, the secretary shall file a copy of the order in the office.

(b) Upon filing an order to abate or alleviate, the office shall issue an administrative summons pursuant to Section 5 of this administrative regulation and shall set the time and place for an administrative hearing to be held within ten (10) days from the date the order to abate or alleviate was signed by the secretary.

(2) Response.

(a) The person named in the order to abate or alleviate shall prior to or at the administrative hearing file a response to the order that:

1. Specifically admits or denies the facts alleged in the order;

2. Sets forth other matters to be considered on review; and

3. Sets forth evidence, if any, that the condition or activity does not violate the provisions of KRS 224.10-410.

(b) In lieu of a response, the person named in the order to abate or alleviate may contact the office in writing or by other means and state that an administrative hearing is not needed, and that the person does not desire to contest the order.

(3) Hearing procedure. The administrative hearing shall be held in accordance with this administrative regulation.

(4) Burden of proof. The cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the abate and alleviate order. The person named in the abate and alleviate order shall have the ultimate burden of persuasion that the condition or activity does not violate KRS 224.10-410, or that the condition or activity has been discontinued, abated, or alleviated.

(5) Default. The hearing officer shall promptly prepare a report stating that the hearing has been waived and the order to abate or alleviate stands as issued if:

(a) The person named in the order to abate or alleviate notified the office that an administrative hearing is not needed; or

(b) Upon failure of the person to appear at the administrative hearing.

(6) Effect of the proceeding. The scheduling and holding of an administrative hearing pursuant to this section shall not operate to terminate or stay the order or the affirmative obligation imposed on a person by the order.

Section 20. Report and Recommended Order and Any Exception. (1) Time.

(a) With the exception of paragraph (b) and (c) of this subsection, the hearing officer shall make a report and recommended order to the secretary within thirty (30) days of the close of the record.

(b) In a hearing brought in accordance with 400 KAR 1:110, Section 8, permit determinations, the hearing officer shall make a report and recommended order within twenty (20) days of the close of the record.

(c) If the secretary finds upon written request of the hearing officer that additional time is needed to submit the report and recommended order, the secretary may grant an extension. If granted by the secretary, all parties shall be notified.

(2) Preponderance of the Evidence.

(a) The report and recommended order shall be based on a preponderance of the evidence appearing in the record as a whole and shall contain appropriate findings of fact and conclusions of law.

(b) The report and recommended order may depart from prior interpretations of the law by the cabinet if the hearing officer explicitly and rationally justifies the change of position.

(3) Civil Penalty Determination.

(a)The hearing officer shall recommend the amount of a civil penalty based on the record.

(b) The hearing officer may compute the amount of the penalty to be assessed irrespective of any computation offered by any party.

(c) In actions brought pursuant to 400 KAR 1:110, the hearing officer shall consider the same factors set forth in 400 KAR 1:110, Section 3(2) for consideration in recommending the penalty assessment.

(d) The hearing officer shall state with particularity the reasons, supported by the record, for the penalty recommended in the report and recommended order.

(4) Mailing. The report and recommended order shall be mailed, postage prepaid, to each party and the party's attorney of record.

(5) Exceptions. A party may file an exception and a response to the exception as allowed pursuant to KRS 149.346, 151.184, 224.10-440,[~~and KRS~~] 350.0301, and 353.700. There shall be no further submissions in the record.

(a) Each exception and response shall conform to the format for filing a document in Section 3 of this administrative regulation.

(b) A party filing an exception to a report and recommended order shall tender with the exception a draft recommended order for the secretary.

1. The excepting party's draft recommended order shall set out the relief the party requests in its exception.

2. The draft recommended order shall contain a service page listing the current, correct, and complete name and address of each party and counsel of record upon whom the office shall be required to serve the order.

3. A party may submit a draft recommended order in electronic form if accompanied by a hard copy.

(c) Good cause exception. The secretary may exempt a party from compliance with paragraphs (a) and (b) of this subsection upon a showing of good cause or undue hardship.

Section 21. Secretary's Order. (1) The secretary shall consider the hearing officer's report and recommended order, any exception filed, and response to any exception if permitted by statute, and decide the case within the time period required by statute.

(2) The secretary may:

(a) Remand the matter to the hearing officer;

(b) Adopt the report and recommended order of the hearing officer as a final order;

(c) Adopt part of the report and recommended order of the hearing officer and issue a final order; or

(d) Reject the report and recommended order of the hearing officer and issue a final order.

(3) The final order of the secretary shall be mailed postage prepaid to each party and the party's attorney of record.

(4) A final order of the secretary shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the secretary and the facts and law upon which the decision is based.

(5) The final order may depart from prior interpretations of the law by the cabinet if the secretary explicitly and rationally justifies the change of position.

Section 22. Agreed Order. An agreed order that resolves any claim or part of a claim in a case pending in the office shall be tendered to the hearing officer for acknowledgment by signature before being presented to the secretary.

Section 23. Mediation. (1) Referral to mediation.

(a) At any time prior to the conclusion of the final prehearing conference, a hearing officer may issue an order referring all or any part of any case to nonbinding mediation.

(b) A case shall not be referred for mediation if the cabinet advises the hearing officer that mediation would require a deviation from a statutory or regulatory requirement.

(2) Mediator.

(a) A case may be referred to any hearing officer employed by the office or a mediator approved by the chief hearing officer.

(b) The mediator shall notify the hearing officer in writing when a case is not accepted for mediation.

(c) Disqualification of a mediator.

1. Any party may move the hearing officer to enter an order disqualifying the mediator for good cause. Employment by the cabinet shall not constitute good cause for the disqualification.

2. If the hearing officer rules that a mediator is disqualified from mediating the case, the hearing officer shall enter an order referring the matter to another mediator.

3. Nothing in this provision shall preclude a mediator from disqualifying himself or refusing any assignment.

4. Unless the hearing officer orders otherwise, the time for mediation shall be tolled during any periods in which a motion to disqualify is pending.

(3) Statements not admissible. Statements or admissions made for the purpose of mediation shall not be:

(a) Subject to disclosure through discovery;

(b) Admitted in evidence at an administrative hearing; or

(c) Used by the hearing officer in making any report and recommended order.

(4) Proceeding not stayed. Unless otherwise ordered by the hearing officer or agreed to in writing by the parties, the mediation shall not operate as a stay of discovery or other prehearing proceeding.

(5) Mediation conference.

(a) Mediation status conference. In the mediation referral order, the hearing officer shall schedule a mediation status conference to be held within thirty (30) days from the entry of the mediation referral order unless otherwise agreed to in writing by the parties.

(b) Scheduling a Mediation Conference.

1. The mediator shall schedule a mediation conference within thirty (30) days of the mediation status conference unless otherwise agreed to by the parties.

2. The mediator may schedule as many conferences as are necessary to complete the process of mediation.

(c) Purpose of the mediation conference. The conference shall be conducted by the mediator to consider the possibility of settlement, the simplification of each issue, and any other matter that the mediator and each party determines may aid in the handling or the disposition of the proceeding.

(d) Appearance at mediation conference.

1. Each party or a representative of the party, having authority to negotiate on behalf of that party, shall attend the mediation.

2. Counsel may also be present.

(e) Production of a document and witness. The mediator may request that a party bring a document or witness, including an expert witness, to the mediation conference, but shall not have authority to order production.

(f) The mediation conference shall continue until:

1. A settlement is reached;

2. Any party is unwilling to proceed further; or

3. The mediator determines that further efforts would be of no avail.

(6) Reporting to the hearing officer.

(a) After the conclusion of the first mediation conference, any party may move the hearing officer to remove the case from mediation and to set the case for a prehearing conference or an administrative hearing.

(b) If any party is unwilling to proceed further or if the mediator determines that further efforts would be of no avail, then the mediator shall file a report to the hearing officer that the mediation process has ended. The report shall state the lack of an agreement and shall not make other comment or recommendation.

(c) If a case is settled prior to or during mediation, an attorney for one (1) of the parties shall:

1. Full Settlement.

a. Within ten (10) days of the conclusion of mediation, file with the office a joint statement that all issues have been resolved; and

b. Promptly prepare and submit to the hearing officer an agreed order reflecting the terms of the settlement in accordance with Section 22 of this administrative regulation.

2. Partial settlement.

a. If some but not all of the issues in the case are settled during mediation or if an agreement is reached to limit discovery or on any other matter, the attorney for one (1) party shall, within ten (10) days of the conclusion of mediation, file with the office a joint statement listing the issues that have been resolved and the issues that remain for an administrative hearing.

b. The hearing officer shall then return the matter to the active docket and promptly schedule a prehearing conference or an administrative hearing.

(7) This section shall not apply to mediations conducted pursuant to KRS 353.5901.

Section 24. Administrative Summons and Service of Process for Hearings Pursuant to KRS 353. (1) Upon receipt of an initiating document, the office shall serve a copy of the initiating document upon each party designated on the initiating document to be served along with an administrative summons. The office shall serve the initiating document in accordance with the method designated on the initiating document and subsection (4) this section.

(2) The administrative summons shall:

(a) Notify the respondent that an initiating document has been filed against the respondent and unless a written defense is timely served, action adverse to the respondent's interest may be taken;

(b) Designate the date, time, and place of the prehearing conference or administrative hearing; and

(c) Include a statement of the legal authority for the administrative hearing and reference to the statutes and administrative regulations involved.

(3) Service shall be made pursuant to one of the methods in subparagraphs (a) through (k) of this subsection and subsection (4).

(a) Individual within the Commonwealth. Service shall be made upon an individual within the Commonwealth, other than an unmarried infant or person of unsound mind, by mailing a copy of the administrative summons to the last known address of record with the Division of Oil and Gas.

(b) Unmarried infant or person of unsound mind. Service shall be made upon an unmarried infant or a person of unsound mind by serving the person's resident guardian or committee if there is one (1) known to the initiating party or, if none; by serving either the person's father or mother within this state or, if none, by serving the person within this state having control of the individual. If there are no persons, application shall be made to the appropriate court to appoint a practicing attorney as guardian ad litem who shall be served. If any person directed by this section to be served is also an initiating party, the person who stands first in the order named who is not an initiating party shall be served.

(c) Partnership or unincorporated association. Service shall be made upon a partnership or unincorporated association subject to suit under a common name by serving:

1. A partner or managing agent of the partnership;

2. An officer or managing agent of the association; or

3. An agent authorized by appointment or by law to receive service on its behalf.

(d) Corporation. Service shall be made upon a corporation by serving an officer or managing agent thereof, or any other agent authorized by appointment or by law to receive service on its behalf.

(e) Person issued a permit, license, or authorization from the cabinet. Service shall be made at the address specified in the permit application, license, or request for authorization upon:

1. A person issued a permit, license, or authorization by the cabinet;

2. A person specified as an operator in the permit application, license, or request for authorization; or

3. The person's named agent for service stated in the permit application, license, or request for authorization.

(f) Commonwealth or agency other than the cabinet. Service shall be made upon the Commonwealth or any agency other than

the cabinet by serving the attorney general or any assistant attorney general.

(g) Cabinet. Service of a request for an administrative hearing shall be made upon the cabinet by serving the Executive Director of the Office of Legal Services.

(h) County, city, public board, or other administrative body except state agencies.

1. Service shall be made upon a county by serving the county judge or, if the judge is absent from the county, the county attorney.

2. Service shall be made upon a city by serving the chief executive officer of the city or an official attorney of the city.

3. Service on any public board or other administrative body, except state agencies, shall be made by serving a member.

(i) Nonresident. Service may be made upon a nonresident individual who transacts business through an office or agency in this state, or a resident individual who transacts business through an office or agency in any action growing out of or connected with the business of an office or agency, by serving the person in charge or the authorized agent.

(j) Out of state individual. Service may be made upon an individual out of this state, other than an unmarried infant, a person of unsound mind or a prisoner, by the method stated in subsection (4) of this section.

(k) Unknown person. In an action against a person whose name is unknown to the initiating party, the person shall be described in the initiating document and administrative summons as unknown party. If the person's name or place of residence is discovered during the action, then the initiating document shall be amended accordingly. Any party to the action that was required to give notice to any unknown or nonlocatable owner pursuant to KRS 353, shall provide proof to the office that it gave notice consistent with the requirements of KRS 353.510(45).

(4) Method of service. The office shall place a copy of the document to be served in an envelope and address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions provided by the initiating party. The office shall employ certified mail as the method of service in accordance with Section 2(3) of this administrative regulation.

(a) The office shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested.

(b) The office shall enter the fact of mailing in the record and make a similar entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record.

(c) The office shall file the return receipt or returned envelope in the record;

(5) Proof of service. The return receipt shall be proof of acceptance, refusal, inability to deliver, or failure to claim the document. The return receipt shall also be proof of the time, place, and manner of service. The date of delivery shall be the earlier of the date shown on the certified mail return receipt or the date thirty (30) days after the date shown on the postal service proof of mailing. Service shall be effective upon:

(a) Acceptance of the summons by any person eighteen (18) years of age or older at the permanent address;

(b) Refusal to accept the summons by any person at the permanent address;

(c) The United States Postal Service's inability to deliver the certified mail containing the summons if properly addressed pursuant to Section (4) of this section;

(d) Failure to claim the certified mail containing the summons prior to its return to the cabinet by the United States Postal Service; or

(e) To the extent the United States postal regulations, 39 C.F.R., allow authorized representatives of local, state, or federal governmental offices to accept and sign for "addressee only" mail, signature by the authorized representative shall constitute service on the addressee.

Section 25. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Subpoena", OAH 100, November 2016; and

(b) "Subpoena Duces Tecum", OAH 101, November 2016.

(2) This material may be inspected, copied, or obtained, at the Office of Administrative Hearings, 211 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

(3) This material may also be obtained on the office Web site at www.oah.ky.gov.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 3, 2018

FILED WITH LRC: July 13, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 2018 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the administrative hearing practice provisions for the cabinet.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish administrative hearing practice provisions that relate to the cabinet's administrative hearing process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapters 146, 149, 151, 223, 224, and 350 authorize the cabinet to conduct administrative hearings and authorize the cabinet to promulgate administrative regulations to regulate the administrative hearing process. This regulation establishes procedures for conducting administrative hearings, administrative conferences, mediations and issuance of final orders in regard to violations and final determinations for the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statues by providing consistent provisions relating to the conduct of administrative hearings, administrative conferences, mediations and issuance of final orders in regard to violations and final determinations of the cabinet.

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

(a) How the amendment will change this existing administrative regulation: These amendments were primarily made to incorporate oil and gas administrative hearings into the administrative regulation in response to SB 249 from the 2018 Legislative Session. The amendment added a new Section 24 that relates to summons and service provisions for oil and gas shallow wells.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clearly implement the requirements of SB 249 from the 2018 Legislative Session.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides for summons and service provisions related to administrative hearings for oil and gas shallow well operators. The amendment also includes citations and conforming changes to allow hearings related to oil and gas shallow wells to be administered under the Office of Administrative Hearings procedures.

(d) How the amendment will assist in the effective administration of statutes: This amendment will decrease conflict and possible delays between the amendments to the authorizing statutes made by SB 249 from the 2018 Legislative Session and the current hearings process for oil and gas shallow wells.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This regulation establishes practice provisions that apply to all individuals, businesses, organizations, or state and local governments that either initiate or become subject to an administrative proceeding in the cabinet's Office of Administrative Hearings.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will be required to comply with slightly different summons and service provisions if they are oil and gas shallow well operators.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cabinet doesn't anticipate any additional costs associated with complying with the amendments to this administrative regulation. However, there might be a slight cost saving and expedited hearings process due to the removal of oil and gas shallow well hearings from the current method of KRS 13B administrative hearings into the less cumbersome Office of Administrative Hearings process.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will benefit from an effective, fair, and timely administrative hearing practice provisions.

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

(a) Initially: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's current operating budget will be used for the implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes, tiering was used. Generally, the provisions in this administrative regulation will apply equally to all parties of an administrative adjudication in the Cabinet's Office of Administrative Hearings. However, tiering was used to determine how service shall be made to different types of legal 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 cabinet will continue to hold administrative hearings to as needed concerning matters covered by KRS Chapters 146, 149, 151, 223, 224, 350, and 353. State and local government will only be impacted insofar as they are parties of an administrative adjudication with the cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 146.270, 146.450, 146.990, 149.344, 149.346, 151.125, 151.182, 151.184, 151.186, 151.297, 223.200, 223.991, 224.10-100, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.40-310, 224.60-120, 350.020, 350.028, 350.029, 350.0301, 350.0305, 350.240, 350.255, 350.300, 350.465, 350.610, 351.315, 351.345, 351.350, 353.700, 30 C.F.R. Parts 724, 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255.

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

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

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

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET
Office of the Secretary
(Amendment)

400 KAR 1:100. General administrative hearing practice provisions relating to matters brought under KRS Chapters 146, 149, 151, 223,[~~and~~] 224, and 353.

RELATES TO: KRS 146.200 - 146.360, 146.990, 149.344, 149.346, 149.348, 151.182, 151.184, 151.297, 151.990, Chapters 223, 224, 353

STATUTORY AUTHORITY: KRS 146.270, 149.344, 149.346, 151.125, 151.182, 151.184, 151.186, 151.297, 224.10-100, 224.10-410, 224.10-420, 224.10-440, 224.40-310, 353.660, 353.6603, 353.6604, 353.6605, 353.6606

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 146 relating to wild rivers, KRS Chapter 149 relating to timber harvesting, KRS Chapter 151 relating to water resources, KRS Chapter 223 relating to water plant operators and water well drillers, [~~and~~] KRS Chapter 224 relating generally to environmental protection, and KRS Chapter 353 related to oil and gas development authorize the cabinet to conduct administrative hearings and promulgate administrative regulations. This administrative regulation establishes procedures for conducting administrative hearings.

Section 1. Applicability. (1) This administrative regulation shall govern:

(a) The conduct by the cabinet of all administrative hearings

authorized by KRS Chapter 146 relating to wild rivers, KRS Chapter 149 relating to timber harvesting, KRS Chapter 151 relating to water resources, KRS Chapter 223 relating to water plant operators and water well drillers, and KRS Chapter 224 relating generally to environmental protection, including those matters initiated by a petition for hearing filed on or before August 4, 2017; and[.]

(b) The conduct by the cabinet of all administrative hearings authorized by KRS Chapter 353 relating to oil and gas development, except for those conducted by the Kentucky Oil and Gas Conservation Commission pursuant to KRS 353.500 to 353.720.

(2) This administrative regulation governs an administrative hearing, an order, and a final determination of the cabinet.

Section 2. Location of Administrative Hearing. An administrative hearing shall be held in Frankfort at the location designated by the hearing officer unless an alternative location is agreed to by each party or authorized by KRS 224.40-310(5)(e) or KRS Chapter 353.

Section 3. Administrative Hearing Initiated by the Cabinet. (1) Criteria for filing. The cabinet may initiate an administrative hearing and may seek a remedy identified in subsection (2) of this section if:

(a) The cabinet has reason to believe that a violation of:

1. KRS Chapters 146, 149, 151, 223, 224, 353;

2. KAR Titles 400, 401, 402, 805 Chapter 1;

3. An administrative regulation, a permit, registration, or certification condition has occurred or is occurring; or

(b) The cabinet has reason to believe a remedy should be sought or an order should be entered against any person to protect the environment or the health and safety of the public.

(2) Remedies. In an administrative hearing initiated by the cabinet, the cabinet may seek one (1) or a combination of the following:

(a) Permit revocation, termination, denial, modification, or suspension;

(b) Bond and other financial assurance forfeiture;

(c) Civil penalty;

(d) A determination, if expressly authorized by statute, that a person shall not be eligible to receive another permit or conduct future activity;

(e) Cost recovery if expressly authorized by statute; or

(f) Any other relief to which the cabinet may be entitled by KRS Chapters 146, 149, 151, 223, 224, 353, KAR Titles 400, 401,[and] 402, and 805 KAR Chapter 1.

(3) Procedure for an administrative hearing initiated by the cabinet.

(a) The cabinet shall initiate an administrative hearing by filing an administrative complaint with the office incorporating the following for each claim for relief:

1. A statement of facts entitling the cabinet to administrative relief;

2. A request for specific relief; and

3. A copy of any notice or order upon which relief is sought.

(b) Answer or responsive pleading.

1. The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the administrative complaint.

2. The answer shall contain:

a.(i) A statement specifically admitting or denying the facts stated in the administrative complaint or amended administrative complaint; or

(ii) If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

b. Any defense to each claim for relief; and

c. Any other matter to be considered on review.

3. Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of the defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in a responsive pleading.

4. An allegation in a pleading to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

5. An allegation in a pleading to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(c) Amendment.

1. An administrative complaint may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

2. The respondent shall have ten (10) days from the filing of an amended administrative complaint or the time remaining for filing an answer to the original complaint, whichever is longer, to file an answer or responsive pleading to the amended administrative complaint.

3. If the hearing officer grants a motion to amend the administrative complaint, the hearing officer shall set the time for an answer to be filed in the order granting the motion.

(4) Burden of proof.

(a) The cabinet shall bear the ultimate burden of persuasion.

(b) A respondent shall have the burden of persuasion to establish an affirmative defense.

(c) A respondent claiming an exemption shall have the burden of persuasion to establish qualification for the exemption.

(5) Default.

(a) If the person against whom the administrative complaint is filed fails to timely comply with a prehearing order of a hearing officer, the hearing officer may, on his own initiative or upon motion, issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why a report and recommended order adverse to the person shall not be referred to the secretary.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

(c) If the person against whom the administrative complaint is filed fails to appear at an administrative hearing, the person shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

Section 4. Review of a Cabinet Order and Final Determination. (1) Who may file. A person who considers himself aggrieved by an order or final determination of the cabinet may file a petition for review of the order or final determination. The petition for review shall be filed pursuant to this section. This section also applies to a petition for review of a draft permit for construction or expansion of a waste disposal facility, made pursuant to KRS 224.40-310(6), if the expansion results in substantial additional capacity.

(2) Time for filing.

(a) A person filing a petition for review under this section shall file in the office a petition within thirty (30) days after the person has had actual notice of the order or final determination complained of, or could reasonably have had notice.

(b) The hearing officer shall not grant an extension of time for filing a petition for review.

(c) If the hearing officer, upon motion or his own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall dismiss a petition that is not filed in accordance with subsection (2)(a) of this section stating that the person waived his right to an administrative hearing.

(3) Content of the petition. The petition for review shall contain:

(a) A statement of the facts entitling the person requesting review to administrative relief;

(b) An explanation of each specific alleged error in the cabinet's determination;

(c) A request for specific relief;

(d) If the petition challenges an order or final determination on a permit, the name of the permittee and the permit number; and

(e) If the petition challenges an order or final determination other than a permit, a copy of the order or final determination sought to be reviewed.

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or

b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of the defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in an answer or responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent shall have ten (10) days from the filing of an amended petition or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend the petition, the hearing officer shall set the time for an answer to be filed in the order granting the motion.

(6) Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's order or final determination pending completion of administrative review.

(7) Burden of proof.

(a) The petitioner shall bear the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the requested relief.

(b) A responding party shall have the burden of persuasion to establish an affirmative defense.

(c) A responding party claiming an exemption shall have the burden of persuasion to establish qualification for the exemption.

(8) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer may, at his discretion or upon motion, issue an order to show cause why the petitioner should not be deemed to have waived the right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order dismissing the petition since the petitioner waived the right to an administrative hearing.

(c) If the petitioner fails to appear at an administrative hearing, the petitioner shall be deemed to have waived his right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order dismissing the petition since the petitioner waived the right to an administrative hearing.

Section 5. Procedure for an Order for Remedy under KRS 151.297. (1) Notice.

(a) If the secretary issues an order for remedy pursuant to KRS 151.297, the secretary shall file a copy of the order for remedy in the office.

(b) Upon the filing of an order for remedy, the office shall issue an administrative summons pursuant to 400 KAR 1:090, Section 5 and shall set the time and place for an administrative hearing. The office may schedule the administrative hearing within five (5) working days from the date the order for remedy was signed by the secretary.

(2) Response.

(a) Unless paragraph (b) of this subsection applies, the person named in the order for remedy prior to or at the administrative hearing shall file a response to the order that:

1. Specifically admits or denies the facts alleged in the order;

2. Sets forth other matters to be considered on review; and

3. Sets forth evidence, if any, that the condition or activity does not violate the provisions of KRS 151.297.

(b) In lieu of a response, the person named in the order for remedy may contact the office in writing or by other means and state that an administrative hearing is not needed, and that the person does not desire to contest the order.

(3) Hearing procedure. The administrative hearing shall be held in accordance with 400 KAR 1:090.

(4) Burden of proof. The cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the order for remedy. The person named in the order for remedy shall have the ultimate burden of persuasion that the condition or activity does not violate KRS 151.297, or that the condition or activity has been discontinued, abated or alleviated.

(5) Default. The hearing officer shall prepare a report stating that the hearing was waived and the order for remedy stands as issued if:

(a) The person named in the order for remedy notified the office that an administrative hearing is not needed; or

(b) The person failed to appear at the administrative hearing.

(6) Effect of the proceeding. The scheduling and holding of an administrative hearing pursuant to this section shall not operate to terminate or stay the order for remedy or the affirmative obligations imposed on a person by the order.

Section 6. Judicial Review, Effect, and a Subsequent Proceeding. (1) Judicial review. Judicial review may be taken from a final order of the secretary to the appropriate circuit court of competent jurisdiction in accordance with KRS 151.186,[~~or~~] 224.10-470, 353.700, as applicable.

(2) Effect of final order pending judicial review. The commencement of a proceeding for judicial review of a final order of the secretary shall not operate as a stay of a final order, unless specifically ordered by a court of competent jurisdiction.

(3) Remand from a court. If a matter is remanded from a court for a further proceeding, and to the extent the court's directive and time limitations will permit, each party shall file with the office a report recommending the procedure to be followed in order to comply with the court's order. The hearing officer shall review each report and enter a special order governing the handling of the matter remanded for a further proceeding.

Section 7. Requirement to File Written Direct Testimony and Its Use in an Administrative Proceeding Subject to KRS 224.10-440. In proceedings subject to KRS 224.10-440:

(1) In addition to the provisions of 400 KAR 1:090, Section 16(4), pertaining to the admission of written testimony, the hearing officer may require the filing of the written testimony of a witness as if on direct examination, which shall be prepared and filed in the record in advance of the formal administrative hearing.

(2) The hearing officer may require written testimony to be supplemented by additional evidence.

(3) Written testimony shall be accompanied by an affidavit of the witness verifying that the written direct testimony is a true and accurate record of the witness' testimony as if given orally, and that the answers to the questions propounded to the witness are true.

(4) Any witness whose written testimony is prefiled shall appear at the formal administrative hearing unless all parties agree to waive the appearance of the witness.

(5) At the formal administrative hearing, the witness shall again verify that the written direct testimony is a true and accurate record of the witness' testimony as if given orally and that the answers to the questions propounded to the witness are true and the witness

shall be available for cross examination.

(6) If a witness fails to verify his written direct testimony or is not available for cross examination at the formal administrative hearing, the written testimony of that witness shall be excluded from the record, unless each party agrees otherwise.

(7) Written testimony shall be set forth in a "question and answer" format.

(8) If written testimony, that is based upon a separate document or writing is submitted into the record, that document or writing shall be authenticated and entered into the record as an accompanying exhibit to the written testimony.

(9) Each party shall have a reasonable opportunity prior to the formal administrative hearing to:

(a) Object to all or portions of any written testimony and any accompanying exhibit; and

(b) Obtain a ruling on objections to written testimony or exhibits prior to their introduction at the administrative hearing.

(10) Written testimony and accompanying exhibits shall be subject to the same standards of authentication and admissibility as all other testimony and exhibits offered in an administrative hearing.

Section 8. Administrative Proceedings Subject to KRS 224.10-440. (1) Waiver.

(a) In proceedings subject to KRS 224.10-440, if each party agrees to waive the deadline of KRS 224.10-440(3), a waiver agreement executed by each party or the party's counsel shall be filed in the office.

(b) Waiver of the KRS 224.10-440(3) deadlines shall not be subject to revocation by a party without consent of all parties and the approval of the hearing officer.

(2) Motion for extension of time.

(a) A party or hearing officer seeking an extension of the deadline for completion of the administrative hearing process set forth in KRS 224.10-440(3) shall file in the office a motion for extension that includes a proposed date certain by which the report and recommended order shall be completed.

(b) The motion for extension shall be filed forty-five (45) days prior to the deadline for the hearing officer to transmit the report and recommended order to the secretary, unless good cause is shown for not filing the motion prior to forty-five (45) days before the deadline.

(c) A party or hearing officer objecting to the extension shall file any response in opposition to the motion within seven (7) calendar days from receipt of the motion. The mail rule provisions set forth in 400 KAR 1:090, Section 4(1)(d) shall not be applicable in calculating the deadline for filing the response.

(d) Upon expiration of the time period for a motion and a response to the motion, the office shall tender the motion and any response to the secretary or the secretary's designee.

(e) The secretary or the secretary's designee shall rule on the motion within ten (10) days from expiration of the time period for filing an objection to any motion for extension.

Section 9. Confidentiality in Administrative Hearings Subject to KRS Chapter 353. In all proceedings conducted pursuant to KRS Chapter 353, the hearing officer may, upon motion by any party, order that evidence be filed in the record under seal. The hearing officer shall grant the motion only if the moving party makes a sufficient demonstration that the offered evidence qualifies for protection pursuant to KRS 353.660 or KRS 353.6603 to KRS 353.6606. (1) Disclosure of sealed evidence by any party to nonparties, including requests made pursuant to KRS 61.872, shall be prohibited. With the exception of the party which originally offered sealed material into evidence, any other party that causes the intentional disclosure of sealed evidence to nonparties may be subject to an action filed by the nondisclosing party in Franklin Circuit Court seeking recovery of reasonable expenses, including attorney's fees, caused by the disclosure.

(2) Upon request, any party to the proceeding may inspect the sealed evidence during the regular office hours of the office. The evidence shall not be removed from the premises and the duplication or transmittal of sealed materials is prohibited. Such inspections shall be at all times supervised and limited to authorized party representatives, legal counsel, and retained expert witnesses who have been previously identified in administrative filings by the party. The office shall keep a log of all persons who inspect such records, including a photocopy of the inspecting person's driver's license or other government issued identification card. If the record has been submitted on appeal, the reviewing party shall make appropriate arrangements with the court.

(3) The hearing officer shall later unseal the evidence when the applicable confidentiality period allowed under KRS 353.660 has expired, or if the evidence is determined to be a trade secret, it shall be unsealed pursuant to KRS 353.6604(3).

(4) Nothing in this section shall prevent the hearing officer, Secretary, Commission, or reviewing court from considering the entire record of a case before it, though sealed evidence must be viewed in camera and may not be unsealed unless:

(a) the confidentiality period has ended; or

(b) a court of law determines the application of KRS 353.660 or KRS 353.6603 to KRS 353.6606 to the evidence was erroneous.

(5) Testimony pertaining to evidence under seal shall be closed to the public and subject to the same confidentiality period as the evidence being discussed. The record of closed testimony shall be put under seal and kept separate from the public record until the confidentiality period expires.

(6) To the extent the hearing officer bases their findings and conclusions on sealed evidence, the hearing officer's report and recommended order shall sufficiently describe the nature of the evidence without disclosing confidential or proprietary information.

Section 10. Review of a Cabinet Determination Pursuant to KRS 353.060. (1) Who may file. An owner or coal operator who determines the proposed location of well will endanger the present or future use or operation of the workable coal bed. The petition for review shall be filed pursuant to this section.

(2) Time for filing.

(a) A person filing a petition for review under this section shall file in the office a petition within fifteen (15) days from the receipt of the plat by him and by the Department for Natural Resources for the proposed location of the well.

(b) The hearing officer shall not grant an extension of time for filing a petition for review.

(c) If the hearing officer, upon motion or his own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall dismiss a petition that is not filed in accordance with subsection (2)(a) of this section stating that the person waived his right to an administrative hearing.

(3) Content of the petition. The petition for review shall contain the specific objections to the proposed location of the well.

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(5) Determination by the hearing officer.

(a) At the hearing, the well operator and the coal operator or owner, in person or by a representative, shall consider the objections and either agree upon the location as proposed or change it so as to satisfy any or all objections and meet the approval of the department. Any new location thus selected and agreed upon shall be indicated on a plat in accordance with KRS 353.050 and thereupon the department shall issue to the well operator a drilling permit approving the location and authorizing the well operator to drill at the location.

(b) If the coal operator and well operator, or the owner and the well operator, are unable to agree, the hearing officer shall make a recommendation to the secretary, in view of the purposes and intent of KRS 353 and in compliance therewith, to fix a location on the tract as near the proposed location as possible.

(6) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer may, at his discretion or upon motion, issue an order to show cause why the petitioner

should not be deemed to have waived the right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order dismissing the petition since the petitioner waived the right to an administrative hearing.

(c) If the petitioner fails to appear at an administrative hearing, the petitioner shall be deemed to have waived his right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order dismissing the petition since the petitioner waived the right to an administrative hearing.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 3, 2018

FILED WITH LRC: July 13, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 2018 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation governs the conduct by the cabinet of all administrative hearings authorized by KRS Chapter 146 relating to wild rivers, KRS Chapter 149 relating to timber harvesting, KRS Chapter 151 relating to water resources, KRS Chapter 223 relating to water plant operators and water well drillers, and KRS Chapter 224 relating generally to environmental protection. This administrative regulation governs administrative hearings authorized by those chapters on violations of those chapters and administrative regulations promulgated pursuant thereto, and on orders and final determinations of the cabinet made under those chapters and the administrative regulations promulgated pursuant thereto.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish administrative hearing practice provisions that relate to the cabinet's administrative hearing process specifically involving matters brought under KRS Chapters 146, 149, 151, 223, and 224.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 146 relating to wild rivers, KRS Chapter 149 relating to timber harvesting, KRS Chapter 151 relating to water resources, KRS Chapter 223 relating to water plant operators and water well drillers, and KRS Chapter 224 relating generally to environmental protection authorize the cabinet to conduct administrative hearings and promulgate administrative regulations. This administrative regulation establishes procedures for conducting administrative hearings.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statues by providing consistent provisions relating to the conduct of administrative hearings specifically involving matters brought under KRS Chapters 146, 149, 151, 223, and 224.

(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 provides for the confidentiality of information related to oil and gas shallow wells as well as providing information on the process for coal objection hearings during oil and gas development.

(b) The necessity of the amendment to this administrative regulation: this amendment is necessary to provide the regulated community information related to confidentiality of information related to oil and gas shallow wells as well as providing information on the process for coal objection hearings during oil and gas development. These amendments were made to comply with the provisions of SB 249 from the 2018 Legislative Session.

(c) How the amendment conforms to the content of the authorizing statutes: SB 249 from the 2018 Legislative Session amended various statutes in KRS Chapter 353 related to shallow well administrative hearings. These amendments are necessary to implement that statutory provisions of SB 249 and ensure those changes match regulatory requirements.

(d) How the amendment will assist in the effective administration of statutes: The amendment will assist in the administration of the statutes by making the necessary changes to the Office of Administrative Hearings process in order to implement the statutory changes introduced by the passage of SB 249 from the 2018 Legislative Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This regulation establishes practice provisions that apply to all individuals, businesses, organizations, or state and local governments that either initiate or become subject to an administrative proceeding in the cabinet's Office of Administrative Hearings specifically involving matters brought under KRS Chapters 146, 149, 151, 223, 224, and 353.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will have to comply with the requirements for procedural processes included in the administrative hearing process included in the regulation, such as, location of the hearing, procedures for review of cabinet orders and final determination, use of written direct testimony, and waiver of time deadlines or motion for extensions. The regulated entity will be required to conform to a new more efficient administrative hearings process instead of the current KRS 13B administrative hearings 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 additional costs to the regulated entity associated with the amendments to this administrative regulation. However, there might be a slight cost saving and expedited hearings process due to the removal of oil and gas shallow well hearings from the current method of KRS 13B administrative hearings into the less cumbersome Office of Administrative Hearings process.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will benefit from effective, fair, and timely administrative hearing practice provisions.

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

(a) Initially: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's current operating budget will be used for the

implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering was not used. The provisions in this administrative regulation will apply equally to all parties of an administrative adjudication in the Cabinet's Office of Administrative Hearings.

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? The cabinet will continue to hold administrative hearings to as needed that specifically involve matters brought under KRS Chapters 146, 149, 151, 223, 224, and 353. State and local government will only be impacted insofar as they are parties of an administrative adjudication with the cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation.
KRS 146.270, 149.344, 149.346, 151.125, 151.182, 151.184, 151.186, 151.297, 224.10-100, 224.10-410, 224.10-420, 224.10-440, 224.40-310, 353.660, 353.6603, 353.6604, 353.6605, 353.6606

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

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

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

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET
Office of the Secretary
(Amendment)

400 KAR 1:110. Administrative hearings[~~and assessment conferences~~] relating to matters brought under KRS Chapter 350 or KRS Chapter 351.310 through 351.375[~~relating to surface coal mining and reclamation operations, and coal exploration operations~~].

RELATES TO: KRS 224.10-410, 350.010, 350.028, 350.0301, 350.070, 350.090, 350.093, 350.130, 350.255, 350.465, 350.990, 351.315, 351.345, 351.350, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.0301, 350.255, 350.465, 350.610, 351.315, 351.345, 351.350, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations and coal exploration operations. KRS Chapter 351 authorizes the cabinet to promulgate rules and regulations pertaining to explosives and blasting operations. This administrative regulation sets forth hearing, conference, notice, penalty assessment, and other procedural and due process provisions for the permanent regulatory program under KRS 350, and the hearing procedures pursuant to KRS 351.

Section 1. Definitions. (1) "Applicant" is defined by 405 KAR 7:001.

(2) "Application" is defined by 405 KAR 7:001. (3) "Cessation order" is defined by 405 KAR 7:001.

(4) "Coal" is defined by 405 KAR 7:001.

(5) "Coal exploration" is defined by 405 KAR 7:001.

(6) "Department" is defined by 405 KAR 7:001 and KRS 351.310.

(7) "Knowingly" is defined by 405 KAR 7:001.

(8) "Notice of noncompliance and order for remedial measures" is defined by 405 KAR 7:001.

(9) "Operations" is defined in KRS 350.010(6).

(10) "Operator" is defined in KRS 350.010(8).

(11) "Order for cessation and immediate compliance" is defined by 405 KAR 7:001.

(12) "Performance bond" is defined by 405 KAR 7:001.

(13) "Permit" is defined by 405 KAR 7:001.

(14) "Permit area" is defined by 405 KAR 7:001.

(15) "Permittee" is defined in KRS 350.010(21).

(16) "Reclamation" is defined in KRS 350.010(12).

(17) "Secretary" is defined in KRS 350.010(11).

(18) "Significant, imminent environmental harm" is defined by 405 KAR 7:001.

(19) "SMCRA" is defined by 405 KAR 7:001.

(20) "Surface coal mining and reclamation operations" is defined by KRS 350.010(1).

(21) "Transfer, assignment, or sale of permit rights" is defined by 405 KAR 7:001.

(22) "Willfully" and "willful violation" is defined by 405 KAR 7:001.

Section 2. Applicability. This administrative regulation shall govern:

(a) The conduct by the cabinet of all administrative hearings and conferences arising under KRS Chapter 350 relating to surface coal mining and reclamation operations and coal exploration operations, including those matters initiated by a petition for hearing filed on or before August 4, 2017.

(b) The conduct by the cabinet of all administrative hearings authorized by KRS Chapter 351 relating to explosives and blasting operations.

Section 3. Proposed Penalty Assessment and Request for Assessment Conference and Administrative Hearing. (1) Notification. The cabinet shall notify a person issued a notice of noncompliance and order for remedial measures or a cessation order in writing of the cabinet's proposed penalty assessment. The proposed penalty assessment shall be made by authorized personnel of the department.

(2) Criteria. The department, in determining the amount of the proposed penalty assessment, shall give consideration to:

(a) History of previous violations of the permittee or operator at the particular surface coal mining and reclamation operation;

(b) The seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public;

(c) Whether or not the permittee, operator, or person was

negligent; and

(d) The demonstrated good faith of the permittee, operator, or person in attempting to achieve rapid compliance after notification of the violation, except that good faith consideration shall not be applicable to any violation determined not to be correctable.

(3) Service method; time.

(a) The department shall serve the notice of proposed penalty assessment along with copies of applicable worksheets, to the person to whom the notice or order was issued within fifteen (15) working days after issuance of the final notice of inspection of noncompliance or final notice of inspection of cessation order.

(b) The department shall serve the notice of proposed penalty assessment by utilizing one (1) of the following:

1. Service methods authorized in 400 KAR 1:090, Section 5(3) and (4); or

2. By electronic mail pursuant to KRS 350.130.

(c) Service shall be deemed effective pursuant to 400 KAR 1:090, Section 5(5) or upon delivery of the notice of proposed penalty assessment with copies of worksheets to the recipient's inbox by electronic mail as electronically communicated to the department by an electronic registered receipt.

(d) Failure to serve the proposed penalty assessment within fifteen (15) working days after issuance of the final notice of inspection of noncompliance or final notice of inspection of cessation order shall not be grounds for dismissal of all or part of the assessment unless:

1. The person against whom the proposed penalty has been assessed proves actual and substantial prejudice as a result of the delay; and

2. The person makes a timely written objection to the delay on or before the last date to request an assessment conference under subsection (4)(b) of this section.

(4) Options of person issued notice of proposed penalty assessment.

(a) Waiver of rights to challenge proposed penalty assessment if no petition was filed challenging the fact of the violation.

1. The person shall notify the department that the person elects not to contest the proposed penalty assessment.

2. If the person did not file a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that:

a. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment;

b. The fact of the violation is deemed admitted; and

c. The proposed penalty is due and payable within thirty (30) days after the entry of the final order.

(b) Waiver of rights to challenge penalty assessment and the person filed a petition challenging the fact of the violation.

1. The person shall notify the department that the person elects not to contest the proposed penalty assessment.

2. If the person filed a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that:

a. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment; and

b. The proposed penalty is due and payable within thirty (30) days of the mailing of a final order affirming the fact of the violation.

(c) Request for an assessment conference. The person shall request in writing an assessment conference:

1. Within thirty (30) days of receipt of the notice of proposed penalty assessment; or

2. Within thirty (30) days from the date the notice of proposed penalty assessment is returned to the department as undeliverable, unclaimed or refused; or

(d) Petition for administrative hearing.

1. The person shall contest the proposed penalty assessment or the fact of the violation by submitting a petition for an administrative hearing in accordance with Section 6 or 7 of this administrative regulation, or contest both by filing a petition for an administrative hearing in accordance with Sections 6 and 7.

2. The fact of the violation shall not be contested if it has been adjudicated by a final order of the secretary pursuant to an administrative hearing commenced under Section 7 of this administrative regulation.

(5) Failure to Request a Penalty Assessment Conference. If a person issued a proposed penalty assessment fails to request in writing an assessment conference in a timely manner as set forth in subsection (4)(c) of this section or has not filed a timely petition in accordance with Section 6 of this administrative regulation, then the cabinet shall consider the failure to request an assessment conference a waiver of the person's right to a conference. The secretary shall enter a final order pursuant to paragraphs (a) or (b) of this subsection.

(a) If the person did not file a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment;

2. The fact of the violation is deemed admitted; and

3. The proposed penalty is due and payable within thirty (30) days after the entry of the final order.

(b) If the person filed a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment; and

2. The proposed penalty is due and payable within thirty (30) days of the mailing of a final order affirming the fact of the violation.

Section 4. Procedures for Assessment Conference. (1) Date and location of conference; failure to timely schedule; substantial prejudice.

(a) If an assessment conference is requested, the cabinet shall schedule the assessment conference within sixty (60) days after the cabinet's receipt of the request, unless all parties agree otherwise.

(b) An assessment conference shall be held in the department's regional office of the mine site subject to the proposed penalty assessment unless the parties agree otherwise.

1. If all the parties or their counsel request to participate by telephone or other electronic means, then the conference officer may hold the assessment conference telephonically or by any other electronic means agreed to by the parties.

2. Any person who attends the assessment conference in person at the department's regional office shall have access to the telephonic conference line or the electronic means utilized during the assessment conference.

(c) Failure by the cabinet to timely schedule an assessment conference shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed makes a timely objection on or before the date of the assessment conference and proves actual and substantial prejudice as a result of the delay.

(d) The scheduling of the assessment conference shall not operate as a stay of any notice of noncompliance and order for remedial measures or cessation order.

(2) Service; public participation.

(a) The cabinet shall serve notice of the assessment conference pursuant to 400 KAR 1:090, Section 5.

(b) The cabinet shall also send a copy of the notice of the assessment conference to any person who filed a report that led to the issuance of the notice of noncompliance and order for remedial measures or cessation order being contested.

(c) The cabinet shall post notice of the assessment conference

at the department's regional office of the mine site subject to the proposed penalty assessment at least five (5) days before the assessment conference.

(d) Any person shall have the right to attend and participate in the assessment conference.

(3) Conference officer; requirements for administrative hearings not applicable. The office shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by the requirements for administrative hearings in 401 KAR 1:090 or by the provisions of 400 KAR 1:040.

(4) Report of conference officer. The conference officer shall consider all relevant information pertaining to the proposed penalty assessment. Within thirty (30) days after the assessment conference is held, the conference officer shall issue a report recommending to the secretary to either affirm, raise, lower, or dismiss the proposed penalty assessment.

(5) Service of report; documentation. The conference officer's report shall be served by mail, postage prepaid, and shall include a worksheet if the penalty has been raised or lowered. The reasons underlying the conference officer's report shall be fully documented.

(6) Failure to attend; report to issue. If the person requesting an assessment conference fails to attend the scheduled assessment conference, the assessment officer shall within thirty (30) days of the date of the scheduled assessment conference issue a report to the secretary recommending that the proposed penalty assessment be affirmed.

(7) Statements not to be introduced at an administrative hearing. In any administrative hearing commenced under Sections 6 or 7 of this administrative regulation, no evidence as to statements made by a party at an assessment conference shall be introduced by another party as evidence or to impeach a witness.

(8) Challenge to conference officer's report.

(a) Any person issued a proposed penalty assessment may file a petition requesting an administrative hearing to contest the conference officer's recommended penalty pursuant to the requirements of Section 6 of this administrative regulation.

(b) The cabinet may file a petition to request under Section 5 of this administrative regulation an administrative hearing to contest the conference officer's recommended penalty.

(9) Failure to timely file a petition challenging the conference report. If a person issued a proposed penalty assessment fails to timely file a petition in accordance with Section 6 of this administrative regulation challenging the conference report, the secretary shall issue a final order pursuant to paragraphs (a) or (b) of this subsection.

(a) If the person also did not file a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of the administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment;

2. The fact of the violation is deemed admitted; and

3. The proposed penalty is due and payable within thirty (30) days after the entry of the final order.

(b) If the person filed a timely petition requesting an administrative hearing as to the fact of the violation pursuant to section 7 of the administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment; and

2. The proposed penalty is due and payable within thirty (30) days of the mailing of a final order affirming the fact of the violation.

Section 5. Administrative Hearing Initiated by the Cabinet. (1) Criteria for filing.

(a) The cabinet may initiate an administrative hearing if:

1. The cabinet has reason to believe that a violation of KRS Chapter 350; 405 KAR Chapters 7 through 24 has occurred or is occurring;

2. A violation of a permit condition has occurred or is occurring;

3. A permittee, operator, or person has failed to:

a. Pay a civil penalty assessed by the cabinet;

b. Undertake remedial measures mandated by an order of the cabinet; or

c. Abate violations the permittee, operator, or person was determined to have committed by an order of the cabinet;

4. The provisions of KRS 350.990(9) apply;

5. The cabinet has reason to believe additional remedies should be sought or an order should be entered against a person to protect the environment or the health and safety of the public; [~~or~~]

6. The criteria of 405 KAR 10:050, Section 3(2) or (3) apply;

7. The cabinet has determined that revocation of a license under KRS 351.345 is warranted; or

8. An explosive user or seller notified the cabinet pursuant to KRS 351.350 that they intend to challenge a citation issued under KRS 351.315 to 351.375.

(b) The cabinet may initiate an administrative hearing to contest a conference officer's recommended penalty and seek any combination of the relief set forth in subsection (2) of this section.

(c) The cabinet shall initiate an administrative hearing and shall seek revocation of the permit and forfeiture of the bond or suspension of the permit pursuant to KRS Chapter 350 if:

1. The permittee, operator, or person has willfully failed to comply with a cessation order; or

2. The criteria of 405 KAR 10:050, Section 3(1) apply.

(2) Remedies.

(a) In an administrative hearing pursuant to KRS Chapter 350 initiated by the cabinet or in a counter claim filed in response to a petition filed in accordance with Section 6, 7, 8, or 9, the cabinet may seek one (1) or a combination of the following:

1.[~~(a)~~] Permit suspension or revocation;

2.[~~(b)~~] Bond forfeiture;

3.[~~(c)~~] Civil penalty;

4.[~~(d)~~] A determination, pursuant to KRS 350.060, 350.085, and 350.130, that a person shall not be eligible to receive another permit or conduct future operations;

5.[~~(e)~~] A determination, pursuant to KRS 350.990(9), that any director, officer, or agent of a corporation willfully and knowingly authorized, ordered, or carried out a violation or failed or refused to comply with any final order; or

6.[~~(f)~~] Any other relief to which the cabinet may be entitled by KRS Chapter 350.

(b) In an administrative hearing pursuant to KRS Chapter 351 initiated by the cabinet, the cabinet may seek one (1) or a combination of the following:

1. Revocation of license or permit pursuant to KRS 351.345 or KRS 351.315; or

2. Civil penalty pursuant to KRS 351.350;

3. Any other relief to which the cabinet may be entitled by KRS 351.315 to 351.375.

(3) Procedure for an administrative hearing initiated by the cabinet.

(a) Filing of administrative complaint. The cabinet shall initiate an administrative hearing by filing an administrative complaint with the office incorporating the following for each claim for relief:

1. A statement of facts entitling the cabinet to administrative relief;

2. A request for specific relief;

3. A copy of any notice, order, citation, or determination upon which relief is sought; and

4. In a bond forfeiture action, the cabinet shall attach documentation to the petition that the cabinet contacted the bonding company or financial institution providing the bond, to determine if it wanted the right to perform the measures necessary to secure bond release in accordance with KRS 350.130.

(b) Answer or responsive pleading.

1. The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the administrative complaint.

2. The answer shall contain:

a.(i) A statement specifically admitting or denying the alleged facts stated in the administrative complaint or amended administrative complaint; or

(ii) If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

b. Any defense to each claim for relief; and

c. Any other matter to be considered on review.

3. Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of the defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in a responsive pleading.

4. An allegation in a pleading to which an answer or responsive pleading is not required or permitted shall be taken as denied or avoided.

5. An allegation in a pleading to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(c) Amendment.

1. An administrative complaint may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

2. The respondent shall have ten (10) days from the filing of an amended administrative complaint or the time remaining for filing an answer to the original complaint, whichever is longer, to file an answer or responsive pleading to the amended administrative complaint.

3. If the hearing officer grants a motion to amend the administrative complaint, the hearing officer shall set the time for an answer to be filed in the order granting the motion.

(4) Burden of proof.

(a) The cabinet shall have the ultimate burden of persuasion.

(b) A respondent shall have the burden of persuasion to establish an affirmative defense.

(c) A respondent claiming an exemption shall have the burden of persuasion to establish the qualification for the exemption.

(5) Default.

(a) If the person against whom the administrative complaint is filed fails to timely comply with a prehearing order of a hearing officer, the hearing officer may on his own initiative or upon motion, issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why a report and recommended order adverse to the person shall not be referred to the secretary.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

(c) If the person against whom the administrative complaint is filed fails to appear at an administrative hearing, the person shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

Section 6. Administrative Hearing for Review of Proposed Assessment. (1) Who may file. Any person issued a proposed penalty assessment may file with the office a petition for an administrative hearing to review the penalty.

(2) Filing petition; waiver.

(a) A person filing a petition for review of a proposed penalty assessment who did not make a request for a Penalty Assessment Conference pursuant to section 4 of this administrative regulation shall file the petition in the office within thirty (30) days of:

1. Receipt of the proposed penalty assessment; or

2. The return receipt date in the department of the notice of proposed penalty assessment, if the proposed penalty assessment is returned undeliverable, unclaimed or refused.

(b) If the person made a timely request for an assessment conference pursuant to Section 4 of this administrative regulation, the person shall file a petition for review in the office within thirty (30) days of:

1. Receipt of the conference officer's report; or

2. The return receipt date in the office of the conference officer’s report, if the conference officer’s report is returned undeliverable, unclaimed, or refused;

(c) The hearing officer shall not grant an extension of time for filing a petition for review of a proposed penalty assessment.

(d) If the hearing officer, upon motion or his own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall enter an order in accordance with Section 4(9)(a) or (b) of this administrative regulation.

(3) Content of the petition. The petition shall include:

(a) A short and plain statement indicating the reasons why the amount of the penalty is being contested;

(b) If the amount of penalty is being contested based upon a misapplication of the penalty formula, a statement indicating how the penalty formula contained in 405 KAR 7:095 was misapplied, along with a proposed penalty utilizing the penalty formula; and

(c) Identification by reference to the number for the notice of noncompliance and order for remedial measures or cessation order number.

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or

b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of such defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in an answer or responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent shall have ten (10) days from the filing of an amended petition or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend a petition, the hearing officer shall set the time for an answer to be filed shall be set forth in the order granting the motion.

(6) Burden of proof. The cabinet shall have the burden of going forward to establish a prima facie case as to the amount of the penalty assessment and the ultimate burden of persuasion as to the amount of the penalty assessment.

(7) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer, may at his discretion or upon motion, issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with Section 4(9)(a) or (b) of this administrative regulation.

(c) If the person against whom the proposed penalty is

assessed fails to appear at an administrative hearing, the person shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with Section 4(9)(a) or (b) of this administrative regulation.

(8) Hearing officer report; contents. If an administrative hearing is conducted, the hearing officer shall incorporate in his report and recommended order concerning a civil penalty, findings of fact on each of the four (4) criteria set forth in 405 KAR 7:095, Section 3 and conclusions of law.

Section 7. Administrative Review of a Notice of Noncompliance and Order for Remedial Measures and a Cessation Order. (1) Who may file. A person who considers himself aggrieved by the issuance of a notice of noncompliance and order for remedial measures or cessation order by the cabinet pursuant to the provisions of KRS Chapter 350 or administrative regulations may file a petition for review with the office.

(2) Time for filing.

(a) A person filing a petition for review under this section shall file in the office a petition within:

1. Thirty (30) days of the receipt of a notice of noncompliance and order for remedial measures or cessation order;

2. Thirty (30) days of receipt of notice of modification, vacation, or termination of the notice of noncompliance and order for remedial measures or cessation order; or

3. Thirty (30) days of the return receipt date in the department of the notice of noncompliance and order for remedial measures or cessation order if the notice of noncompliance and order for remedial measures or cessation order is returned as undeliverable, unclaimed or refused.

(b) The hearing officer shall not grant an extension of time for filing a petition for review.

(c) If the hearing officer, upon motion or his own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall dismiss a petition that is not filed in accordance with subsection (2)(a) of this section finding the person waived his right to an administrative hearing and affirming the notice of noncompliance and order for remedial measures or cessation order.

(3) Content of the petition. A person filing a petition for review shall incorporate in the petition regarding each claim for relief:

(a) A statement of facts entitling that person to administrative relief;

(b) A request for specific relief;

(c) An explanation of each specific alleged error in the cabinet's determination;

(d) A copy of the notice of noncompliance and order for remedial measures or cessation order sought to be reviewed; and

(e) A statement as to whether or not the person waives the opportunity for an evidentiary hearing;

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or

b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of the defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert those defenses in an answer or responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent shall have ten (10) days from the filing of a petition amended as a matter of right or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend a petition, the time for an answer to be filed shall be set forth in the order granting the motion.

(6) Requirement to file subsequent notice of noncompliance and order for remedial measures or cessation order.

(a) Within ten (10) days of receipt, a petitioner shall file a copy of any subsequent notice of noncompliance and order for remedial measures or cessation order which modifies, vacates, or terminates the notice of noncompliance and order for remedial measures or cessation order sought to be reviewed.

(b) Within ten (10) days of receipt, a petitioner shall file a copy of any subsequent cessation order for failure to timely abate the violation which is the subject to the notice sought to be reviewed.

(c) If a petitioner desires to challenge a subsequent notice of noncompliance and order for remedial measures or cessation order, the petitioner must file:

1. A separate petition for review in accordance with this section; or

2. A motion to amend a pending petition with the amended petition attached in accordance with this section and within the time requirements of subsection (2).

(d) A petition for review of a related notice of noncompliance and order for remedial measures or cessation order is subject to consolidation.

(7) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer may, at his discretion or upon motion, shall issue an order to show cause why the petitioner should not be deemed to have waived his right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order affirming the notice of noncompliance and order for remedial measures or cessation order and dismissing the petition.

(c) If the petitioner fails to appear at an administrative hearing, the person shall be deemed to have waived his right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order affirming the notice of noncompliance and order for remedial measures or cessation order and dismissing the petition.

(8) Burden of proof. In review of a notice of noncompliance and order for remedial measures or cessation order or the modification, vacation, or termination thereof under this section, the cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the notice of noncompliance and order for remedial measures or cessation order, or modification, vacation, or termination thereof. The ultimate burden of persuasion shall rest with the petitioner.

Section 8. Request for Review of Permit Determinations Pursuant to KRS Chapter 350. (1) Who may file. The permit applicant, permittee, or person having an interest which is or may be adversely affected by a permit determination of the cabinet may file a petition for review of the following:

(a) Application for a new permit;

(b) Application for a permit revision and amendment, permit renewal, and the transfer, assignment, or sale of rights granted under permit;

(c) Permit revision and amendment ordered by the cabinet, except challenges of permit revision ordered as a remedial measure in a notice of noncompliance shall be reviewed in an administrative hearing pursuant to Section 7 of this administrative

regulation; and

(d) Application for a coal exploration permit.

(2) Time to file; waiver.

(a) The permit applicant, permittee, or person having an interest that is or may be adversely affected by a permit determination of the cabinet shall file a petition for review with the office within thirty (30) days from the date the permit applicant, permittee, or person had actual notice of the determination or could reasonably have had notice.

(b) If the hearing officer, upon motion or his own initiative, finds that the permit applicant, permittee, or person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall enter an order stating that the permit applicant, permittee, or person waived his right to an administrative hearing.

(3) Content of the petition. The petition for review shall include:

(a) A clear statement of the facts entitling the person requesting review to administrative relief;

(b) An explanation of each specific alleged error in the cabinet's decision, including reference to the statutory and regulatory provisions allegedly violated;

(c) A request for specific relief; and

(d) A statement whether or not the person requests or waives the opportunity for an evidentiary hearing.

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or

b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of such defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in an answer or a responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent shall have ten (10) days from the filing of an amended petition or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend a petition, the hearing officer shall set the time for an answer to be filed in the order granting the motion.

(6) Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's determination pending completion of administrative review.

(7) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer may, at his discretion or upon motion, issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived his right to an administrative hearing and dismissing the petition.

(c) If the person requesting the administrative hearing fails to appear at a hearing, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived his right to an administrative hearing and dismissing the petition.

(8) Burden of proof.

(a) Petition to review application for a new permit.

1. If the permit applicant is seeking review, he shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that:

a. The permit application complies with the requirements of KRS Chapter 350 and administrative regulations; or

b. The permit terms or conditions are improper.

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that:

a. The permit application fails to comply with the requirements of KRS Chapter 350 or the administrative regulations; or

b. The cabinet should have imposed certain terms or conditions on the permit that were not imposed.

(b) Petition to review the approval or disapproval of an application for a permit renewal.

1. A party opposing the renewal of a permit shall have the burden of going forward to establish a prima facie case; and

2. The ultimate burden of persuasion that the permit renewal application should be disapproved or that the cabinet should have imposed certain terms or conditions on the renewal permit that were not imposed.

(c) Petition to review the approval or disapproval of an application for a permit revision or amendment, or an application for the transfer, assignment, or sale of rights granted under permit.

1. If the permit applicant is seeking review, the permit applicant shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application complies with the requirements of KRS Chapter 350 and administrative regulations.

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails to comply with the requirements of KRS Chapter 350 or the administrative regulations.

(d) Petition to review a permit revision or amendment ordered by the cabinet.

1.The cabinet shall have the burden of going forward to establish a prima facie case that the permit should be revised or amended; and

2. The permittee shall have the ultimate burden of persuasion that the revision or amendment is not appropriate.

(e) Petition to review a decision on an application for a coal exploration permit.

1. If the permit applicant is seeking review, he shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application complies with the requirements of KRS Chapter 350 and administrative regulations.

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails to comply with the requirements of KRS Chapter 350 or the administrative regulations.

Section 9. Review of a Cabinet Determination. (1) Who may file. A person who considers himself aggrieved by a determination of the cabinet made under KRS Chapter 350 for which an administrative hearing is not specifically provided in any other section of this administrative regulation may file a petition for review of the determination pursuant to this section.

(2) Time to file; waiver.

(a) A person filing a petition for review under this section shall file in the office a petition within thirty (30) days after the person has had actual notice of the determination complained of, or could reasonably have had notice.

(b) The hearing officer shall not grant an extension of time for filing a petition for review pursuant to this section.

(c) If the hearing officer, upon motion or his own initiative, finds

that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall enter an order stating that the person waived his right to an administrative hearing.

(3) Content of the petition. The petition for review shall contain:

(a) A statement of the facts entitling the person to administrative relief;

(b) An explanation of each specific alleged error in the cabinet's determination;

(c) A copy of the written determination to be reviewed if applicable; and

(d) A request for specific relief.

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or other responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or

b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of such defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in an answer or responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent shall have ten (10) days from the filing of an amended petition or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend a petition, the hearing officer shall set the time for an answer to be filed in the order granting the motion.

(6) Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's determination pending completion of administrative review.

(7) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer may, at his discretion or upon motion, issue an order to show cause why that person should not be deemed to have waived his right to an administrative hearing and why his petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived his right to an administrative hearing and dismissing the petition.

(c) If the petitioner fails to appear at an administrative hearing, the petitioner shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order finding that he has waived his right to an administrative hearing and dismissing the petition.

(8) Burden of proof. The petitioner shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the requested relief.

Section 10. Proceeding for the Suspension or Revocation of a Permit Pursuant to KRS Chapter 350 Because of a Pattern of Violations. (1) Initiation of the proceeding.

(a) A proceeding on a show cause order issued by the cabinet pursuant to KRS 350.028(4), 350.465(3)(f), and 405 KAR 12:020, Section 8, shall be initiated by the filing of a copy of the show cause order by the cabinet with the office at the same time the order is issued to the permittee.

(b) A show cause order shall set forth:

1. A list of the unwarranted or willful violations that contribute to a pattern of violations;

2. A copy of each order or notice that contains the violations listed as contributing to a pattern of violations;

3. The basis for determining the existence of a pattern of violations; and

4. A recommendation whether or not the permit should be suspended or revoked, including the length and terms of a suspension.

(2) Answer. The permittee shall have thirty (30) days from service of the show cause order within which to file an answer with the office, which shall state:

(a) The reasons in detail why a pattern of violations, as established in 405 KAR 12:020, Section 8, does not exist or has not existed including all reasons for contesting:

1. The fact of the violations alleged by the cabinet as constituting a pattern of violations;

2. The willfulness of the violations; or

3. Whether or not the violations were caused by the unwarranted failure of the permittee;

(b) Mitigating factors the permittee believes exist in determining the terms of the revocation or the length and terms of the suspension;

(c) Other alleged relevant facts; and

(d) Whether or not an evidentiary hearing on the show cause order is desired.

(3) Burden of proof. In a show cause proceeding, the cabinet shall have the burden of going forward to establish a prima facie case for suspension or revocation of the permit. The ultimate burden of persuasion that the permit should not be suspended or revoked shall rest with the permittee.

(4) Determination by the hearing officer.

(a) Upon a determination by the hearing officer pursuant to 405 KAR 12:020, Section 8, that a pattern of violations exists or has existed, the hearing officer shall recommend the permit either be suspended or revoked and the permittee be directed to complete necessary remedial measures and reclamation operations. In making the recommendation, the hearing officer need not find that all the violations listed in the show cause order occurred, but only that sufficient violations occurred to establish a pattern.

(b) If the permit is suspended, the hearing officer may recommend preconditions to be satisfied prior to the suspension being lifted.

(5) Default. If the permittee fails to timely file an answer or appear at the administrative hearing, the permittee shall be deemed to have waived his right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order containing the following:

(a) That each violation listed in the show cause order occurred;

(b) That the violations were caused by the permittee's unwarranted failure or were willfully caused;

(c) That a pattern of violations exists; and

(d) That the permit shall be suspended or revoked in accordance with the recommendation contained in the show cause order.

Section 11. Temporary Relief. (1) Temporary relief available. Pending the completion of the investigation and hearing provided for in this administrative regulation, a hearing officer may, subject to review by the secretary, grant temporary relief from a:

(a) Notice of noncompliance and order for remedial measures or a cessation order issued pursuant to KRS Chapter 350 or administrative regulations;[~~or~~]

(b) A permit or bond release decision of the cabinet; or[~~.~~]

(c) Any action taken by the cabinet pursuant to KRS Chapter 351.

(2) Temporary relief not available. A hearing officer shall not grant temporary relief for:

(a) The issuance of a permit if the cabinet made a determination to deny a permit in whole or in part; or

(b) The release of a bond if the cabinet made a determination to deny a bond release request.

(3) A hearing officer shall grant or deny temporary relief from a cessation order issued pursuant to KRS 350.130(1) or (4), or from a bond release decision within five (5) working days of receipt by the office of a temporary relief request, unless waived by the petitioner.

(4) Contents of the petition. A person shall file a written petition for relief with the office. The petition shall contain:

(a) The permit number, the name of the permittee, the date and number of the notice of noncompliance and order for remedial measures or cessation order from which relief is requested, if applicable, and the name and telephone number of the petitioner;

(b) A detailed statement setting forth reasons why such relief should be granted;

(c) Facts supporting a substantial likelihood that the person requesting the relief will prevail on the merits of the final determination of the proceeding;

(d) A statement that the relief sought will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources;

(e) If the petition relates to a cessation order issued pursuant to KRS 350.130(1) or (4) or a decision to release a bond, a statement of whether or not the person waives the requirement for the hearing officer to grant or deny the request for temporary relief within five (5) working days of receipt of the petition by the office; and

(f) A statement of the specific relief requested.

(5) Hearing process.

(a) In addition to the service requirements of 400 KAR 1:090, Section 5, the petitioner shall serve other parties with a copy of the petition simultaneously with the filing of the petition in the office. If service is accomplished by mail, the petitioner shall inform the other parties by telephone at the time of mailing that a petition is being filed in the office and the contents of the petition.

(b) The representative of the cabinet and any other party may indicate their objection to the application by communicating the objection to the hearing officer and the petitioner by telephone. Ex parte communication as to the merits of the proceeding shall not be conducted with the hearing officer. The representative of cabinet and any other party may simultaneously reduce their objections to writing. Written objections shall be immediately filed with the office and immediately served upon the petitioner.

(c) Scheduling a hearing.

1. Upon receipt of communication that there is an objection to the petition, the hearing officer shall immediately order a location, time, and date for the administrative hearing by communicating the information to the cabinet, any other party, and the petitioner by telephone.

2. The hearing officer shall reduce the communication to writing in the form of a memorandum to the file.

3. The administrative hearing on the request for temporary relief shall be held in the locality of the permit area, or at any other location acceptable to the cabinet, the petitioner, and any other person named in the action.

4. If the petitioner did not waive the requirement for the hearing officer to grant or deny temporary relief within five (5) working days of the office's receipt of the petition for temporary relief as set forth in subsections (3) and (4)(e) of this section, the hearing officer shall schedule the administrative hearing within (5) five days of the office's receipt of the petition for temporary relief.

(d) If an evidentiary hearing is held the hearing officer may require the parties to submit proposed findings of fact and conclusions of law to be considered at the evidentiary hearing, which may be orally supplemented on the record at the hearing.

(e) If at any time, the petitioner requests a delay or acts in a manner so as to frustrate the expeditious nature of the proceeding or fails to supply the information required by the hearing officer, the action shall constitute a waiver of the five (5) day requirement in subsection (3) of this section.

(6) Standard of review. A hearing officer may grant temporary relief if:

(a) The person requesting relief shows that there is substantial likelihood that the findings on the merits in an administrative hearing conducted by the cabinet will be favorable to the person; and

(b) The relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(7) Timing of hearing officer's determination.

(a) A hearing officer shall grant or deny relief expeditiously.

(b) If the petitioner did not waive the requirement for a hearing officer to grant or deny the request for temporary relief within five (5) days of the office's receipt of the petition as required in subsections (3) and (4)(e) of this section, the hearing officer shall either:

1. Orally rule on the request for temporary relief at the conclusion of the hearing stating the reasons for the decision and issue a written decision stating the reasons for the finding within three (3) working days; or

2. Within twenty-four (24) hours of completion of the administrative hearing issue a written decision stating the reasons for the finding.

(c) If the petitioner waived the requirement for a hearing officer to grant or deny the request for temporary relief within five (5) days of the office's receipt of the petition in accordance with subsections (3) and (4)(e) of this section, or the petitioner did not request temporary relief from a cessation order or a bond release hearing, then hearing officer shall either:

1. Orally rule on the request for temporary relief at the conclusion of the hearing stating the reasons for the decision and issue a written decision stating the reasons for the finding within twenty (20) working days; or

2. Within fifteen (15) days of completion of the administrative hearing issue a written decision stating the reasons for the finding.

Section 12. Petition for Recovery of Costs and Expenses. (1) Who may file and time to file.

(a) A person may file a petition for an award of costs and expenses, including attorneys' fees reasonably incurred, as a result of the person's participation in a proceeding held pursuant to this administrative regulation <u>for an action brought pursuant to KRS Chapter 350</u> that results in an order of the secretary.

(b) A person shall file, with the cabinet within forty-five (45) days of the date of entry of the final order, a petition for an award of costs and expenses, including attorneys' fees.

(c) Failure of a person to timely file the petition shall constitute a waiver of the person's right to an award.

(2) Content of the petition. A person shall include in the petition filed under this section the name of the party from whom costs and expenses are sought and the following:

(a) An affidavit setting forth in detail all costs and expenses including attorneys' fees reasonably incurred for, or in connection with, the person's participation in the proceeding;

(b) Receipts or other evidence of the costs and expenses; and

(c) If attorneys' fees are claimed, evidence concerning:

1. The hours expended on the case;

2.The customary commercial rate of payment for the services in the area; and

3. The experience, reputation, and ability of the individual or individuals performing the services.

(3) Answer.

(a) The respondent shall file with the office within thirty (30) days from service of the petition an answer or other responsive pleading.

(b) The answer shall contain:

1.a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or

b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative

defense in a required answer or responsive pleading may constitute a waiver of such defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in a responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(4) Criteria for awarding of costs.

(a) Appropriate costs and expenses including attorneys' fees may be awarded to a person from the permittee, if:

1. The person initiated an administrative proceeding reviewing an enforcement action, and a Secretary's Order was issued finding that, on or after May 18, 1982:

a. A notice of noncompliance and order for remedial measures or a cessation order was properly issued for violations of KRS Chapter 350, KAR Title 405 or a permit condition; or

b. An imminent hazard existed; or

2. The person participated in an administrative proceeding reviewing an enforcement action, and a Secretary's Order was issued finding that, on or after May 18, 1982:

a. A notice of noncompliance and order for remedial measures or a cessation order was properly issued for violations of KRS Chapter 350, KAR Title 405, or a permit condition; or

b. An imminent hazard existed; and

c. The hearing officer finds and the secretary concurs that the person made a substantial contribution to the full and fair determination of the issues.

(b) Appropriate costs and expenses including attorneys' fees may be awarded to a person other than a permittee or his representative from the cabinet, if:

1. The person initiated or participated in any proceeding under KRS Chapter 350; and

2. The hearing officer finds and the secretary concurs that the person made a substantial contribution to a full and fair determination of the issues.

(c) Appropriate costs and expenses including attorneys' fees may be awarded to a permittee from the cabinet if the permittee demonstrates that the cabinet initiated an administrative hearing or issued a notice of noncompliance and order for remedial measures or a cessation order:

1. In bad faith; and

2. For the purpose of harassing or embarrassing the permittee.

(d) Appropriate costs and expenses including attorneys' fees may be awarded to a permittee from a person if the permittee demonstrates that the person initiated an administrative hearing under this administrative regulation or participated in an administrative hearing or conference:

1. In bad faith; and

2. For the purpose of harassing or embarrassing the permittee.

(e) Appropriate costs and expenses including attorneys' fees may be awarded to the cabinet from a person if the cabinet demonstrates that:

1. A person applied for review pursuant to this administrative regulation in bad faith and for the purpose of harassing or embarrassing the cabinet or the Commonwealth; or

2. A party participated in an administrative hearing or conference in bad faith and for the purpose of harassing or embarrassing the cabinet or the Commonwealth.

(5) An award under this section may include reimbursement for costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred.

Section 13. Location of an Administrative Hearing. (1) An administrative hearing conducted in accordance with this administrative regulation shall be held at the location designated by the hearing officer unless a written request for a hearing at or close to the mine site is submitted with the initiating document or an answer.

(2) The department's regional office for the mine site shall be deemed reasonably close, unless a closer location is requested by a party to the case and agreed to by the hearing officer.

(3) An administrative hearing pursuant to KRS Chapter 351.315 to 351.375 shall be held in Frankfort at the location designated by the hearing officer.

Section 14. Judicial Review, Effect, and Subsequent Proceeding. (1) Judicial review. Judicial review may be taken from a final order of the secretary to the appropriate circuit court of competent jurisdiction in accordance with KRS 350.032 or 350.0305 as applicable.

(2) Effect of final order pending judicial review. The commencement of a proceeding for judicial review of a final order of the secretary shall not operate as a stay of a final order, unless specifically ordered by the court of competent jurisdiction.

(3) Remand from a court.

(a) If a matter is remanded from a court for a further proceeding, and to the extent the court's directive and time limitations will permit, each party shall be allowed an opportunity to submit to the hearing officer, a report recommending a procedure to be followed in order to comply with the court's order.

(b) The hearing officer shall review each report and enter a special order governing the handling of the matter remanded to it for further proceedings by a court.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 3, 2018

FILED WITH LRC: July 13, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 2018 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth hearing, conference, notice, penalty assessment, and other procedural and due process provisions for the surface coal mining permanent regulatory program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish hearing, conference, notice, penalty assessment, and other procedural and due process provisions for the surface coal mining permanent regulatory program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 authorizes the cabinet to conduct administrative hearings. This administrative regulation sets forth hearing, conference, notice, penalty assessment, and other procedural and due process provisions for the surface coal mining permanent regulatory program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth hearing, conference, notice,

penalty assessment, and other procedural and due process provisions for the surface coal mining permanent regulatory program and is authorized by KRS Chapter 350.

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

(a) How the amendment will change this existing administrative regulation: This amendment is necessary to include appropriate citations to KRS Chapter 351 related to explosives and blasting hearings. HB 261 from the 2018 Legislative Session moved explosives and blasting hearings from the KRS Chapter 13B process to the Office of Administrative Hearings process.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that provisions of HB 261 from the 2018 Legislative Session are incorporated into the cabinet's administrative hearings process.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes to ensure that provisions of HB 261 from the 2018 Legislative Session are incorporated into the cabinet's administrative hearings process.

(d) How the amendment will assist in the effective administration of statutes: This amendment ensure that provisions of HB 261 from the 2018 Legislative Session are incorporated into the cabinet's administrative hearings process as authorized in the amendments to KRS Chapter 351 as it relates to explosives and blasting.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This regulation establishes practice provisions that apply to all individuals, businesses, organizations, or state and local governments that either initiate or become subject to an administrative proceeding in the cabinet's Office of Administrative Hearings specifically involving matters brought under KRS Chapters 350 and 351.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will have to comply with the requirements for procedural processes included in the administrative hearing process included in the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to the regulated entity associated with the amendments to this administrative regulation. However, there might be a slight cost saving and expedited hearings process due to the removal of explosives and blasting hearings from the current method of KRS Chapter 13B administrative hearings into the less cumbersome Office of Administrative Hearings process.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will benefit from effective, fair, and timely administrative hearing practice provisions.

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

(a) Initially: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's current operating budget will be used for the implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering was not used. The provisions in this administrative regulation will apply equally to all parties of an administrative adjudication in the Cabinet's Office of Administrative Hearings.

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? The cabinet will continue to hold administrative hearings to as needed concerning matters covered by KRS Chapters 350 and 351. State and local government will only be impacted insofar as they are parties of an administrative adjudication with the cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 350.020, 350.028, 350.0301, 350.255, 350.465, 350.610, 351.315, 351.345, 351.350, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

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

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

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

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(Amendment)

503 KAR 1:110. Department of Criminal Justice Training basic training: graduation requirements; records.

RELATES TO: KRS 15.330(1)(c), (f), 15.386(1), 15.404(1), 15.440(1)(d)

STATUTORY AUTHORITY: KRS 15.330(1)(c), (f), (h), 15.334(4), 15.440(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(f) and (h) authorize the Kentucky Law Enforcement Council to approve law enforcement officers as having met the requirements for completion of law enforcement training and to promulgate administrative regulations to implement that requirement. This administrative regulation establishes requirements for graduation from the Department of Criminal Justice Training basic training course required for peace officer certification and participation in the Kentucky Law Enforcement Foundation Program Fund and for maintenance of basic training

records.

Section 1. Basic Training Graduation Requirements. To graduate from the department's basic training course, a recruit shall:

(1) Successfully complete a minimum of 800[~~888~~] hours of training, based upon the curriculum approved by the Kentucky Law Enforcement Council (KLEC) in accordance with KRS 15.330 and 503 KAR 1:090;

(2) Attain a minimum passing score on all assessments as outlined in the current KLEC-approved curriculum; and

(3) Successfully complete all other assignments, exercises, and projects included in the course. After-hours assignments may be required, and shall be successfully completed in order to pass the training segment for which they were assigned.

Section 2. Physical Training Requirements. A recruit who is required to complete basic training in order to fulfill the peace officer certification provisions established in KRS 15.380 to 15.404 shall meet the physical training entry and graduation requirements established in this section. (1) Physical training entry requirements.

(a) Within five (5) days from the first date of the basic training course, the recruit shall be tested in the following events, in the order listed, as instructed and evaluated by qualified department instructors:

1. Bench press;
2. Sit-ups;
3. 300 meter run;
4. Push-ups; and
5. One and five-tenths (1.5) mile run.

(b) A recruit shall pass the physical training entry requirements if he or she achieves a score of fifty (50) points or more, based upon the following scoring of the physical training events listed in paragraph (a) of this subsection:

1. Bench Press, based upon a percentage of the recruit's body weight:

a. 9 points - Recruit shall bench press at least fifty-five and three-tenths (55.3) percent of body weight;

b. 9.5 points - Recruit shall bench press at least fifty-nine and seven-tenths (59.7) percent of body weight;

c. 10 points - Recruit shall bench press at least sixty-four (64) percent of body weight;

d. 10.5 points - Recruit shall bench press at least sixty-eight and five-tenths (68.5) percent of body weight; and

e. 11 points - Recruit shall bench press at least seventy-three (73) percent or more of body weight;

2. Sit-ups:

a. 9 points - Recruit shall complete at least thirteen (13) repetitions in one (1) minute;

b. 9.5 points - Recruit shall complete at least sixteen (16) repetitions in one (1) minute;

c. 10 points - Recruit shall complete at least eighteen (18) repetitions in one (1) minute; and

d. 11 points - Recruit shall complete nineteen (19) repetitions or more in one (1) minute;

3. 300 meter run:

a. 9 points - Recruit shall complete in sixty-eight (68) seconds or less;

b. 9.5 points - Recruit shall complete in sixty-seven (67) seconds or less;

c. 10 points - Recruit shall complete in sixty-five (65) seconds; and

d. 11 points - Recruit shall complete in less than sixty-five (65) seconds;

4. Push-ups:

a. 9 points - Recruit shall complete at least fourteen (14) repetitions in two (2) minutes;

b. 9.5 points - Recruit shall complete at least seventeen (17) repetitions in two (2) minutes;

c. 10 points - Recruit shall complete at least twenty (20) repetitions in two (2) minutes;

d. 10.5 points - Recruit shall complete at least twenty-three (23) repetitions in two (2) minutes; and

e. 11 points - Recruit shall complete twenty-five (25) repetitions or more in two (2) minutes; and

5. One and five-tenths (1.5) mile run:

a. 9 points - Recruit shall complete in 1,076 seconds (17:56) or less;

b. 9.5 points - Recruit shall complete in 1,054 seconds (17:34) or less;

c. 10 points - Recruit shall complete in 1,032 seconds (17:12) or less;

d. 10.5 points - Recruit shall complete in 1,004 seconds (16:44) or less; and

e. 11 points - Recruit shall complete in 975 seconds (16:15) or less.

(c) A recruit shall:

1. Not be awarded more than eleven (11) points or less than nine (9) points in any one (1) of the five (5) physical ability events; and

2. Be deemed to have failed the physical ability test if he or she fails to achieve at least:

a. A total score of fifty (50) points; or

b. Nine (9) points on any one (1) physical training event.

(d) Retest.

1. A recruit that fails to meet the lowest performance level in a test event, thus earning a zero point value for that event, shall be granted a retest opportunity in that event without having to retest in the other events for which a point value was obtained, except that a retest shall not be granted unless the maximum value of eleven (11) points would allow the applicant to meet the required overall fifty (50) point minimum.

2. A recruit that obtains a point value for each event, but does not obtain an overall score of fifty (50), shall be retested on the physical training entry test again, in its entirety.

3. A retest shall not occur any sooner than forty-eight (48) hours or any later than seventy-two (72) hours from the date of the initial test attempt.

4. All failed events shall be retested on the same date.

5. If the recruit passes all previously failed events on the date of the retest, the recruit shall have met the physical training entry requirements.

6. If the recruit does not pass all previously failed events on the date of the retest, the recruit shall be unqualified to participate in the department's basic training course for which he is currently enrolled, and may reapply to participate in a future department basic training course. The recruit shall receive no credit for the part of the basic training course which he has completed.

(2) Physical training graduation requirements.

(a) In order to graduate, the recruit shall successfully complete each of the following physical ability requirements within five (5) days of graduation from law enforcement basic training, which, except for the entry test score requirements in subsection (1)(b) of this administrative regulation, shall be administered in the same order and in conformity with the KLEC Physical Fitness Testing Protocols, incorporated by reference in 503 KAR 1:140:

1. Bench press. One (1) repetition of maximum (RM) bench press equal to seventy-three (73) percent of the recruit's body weight;

2. Sit-ups. Eighteen (18) sit-ups in one (1) minute;

3. 300 meter run in sixty-five (65) seconds;

4. Push-ups. Twenty-five (25) push-ups; and

5. One and five-tenths (1.5) mile run in sixteen (16) minutes, fifteen (15) seconds.

(b) If a recruit passes all events when participating in the physical training graduation test, the recruit shall have met the physical training graduation requirements.

(c) Retest. If a recruit fails to pass all events when participating in the physical training graduation test:

1. The recruit shall retest in the failed events no earlier than forty-eight (48) hours after the date of the graduation test, but not later than the last scheduled date of the basic training course;

2. All failed events shall be retested on the same date;

3. If the recruit passes all previously failed events on the date of the retest, the recruit shall have met the physical training graduation requirements; and

4. If the recruit does not pass all previously failed events on the date of the retest, the recruit shall fail basic training.

(3) A physical training midpoint test shall be administered to the recruits at the midpoint of the basic training course for purposes of reporting their progress to their respective law enforcement agencies.

Section 3. Removal and Repetition of Basic Training. (1) Failure of training.

(a) A recruit that is removed from basic training due to a training segment failure pursuant to Section 5 of this administrative regulation shall:

1. Be removed from the basic training class;

2. Reenter basic training in a subsequent class that has the first available vacancy;

3. Start the training at the beginning of the training segment that the recruit did not successfully complete; and

4. Pay all applicable fees for the repeated basic training course in accordance with 503 KAR 3:030.

(b) Upon the recruit's return, the recruit shall attend and participate at the beginning of the segment failed.

1. In accordance with 503 KAR 3:030, Section 6(2), the recruit's hiring agency shall prepay to the department the full tuition, room, and board costs of repeating the training segment which was failed. The hiring agency may recover these costs of repeating the training segment from its recruit; and

2. If the training segment is successfully completed, the recruit shall continue with the remainder of the basic training course.

(c) A recruit who is permitted to return to basic training in accordance with this section and is removed due to failure a second time shall:

1. Be required to repeat basic training in its entirety; and

2. Pay all costs of repeating the entire basic training course in accordance with 503 KAR 3:030.

(2) Failure of the physical training graduation requirements. A recruit who fails the physical training graduation requirement in Section 2(2) of this administrative regulation:

(a) Shall not graduate with the recruit's basic training class;

(b) Shall be permitted to retest with the very next basic training class; and

(c) Upon successful completion, may graduate with that class.

(3) A recruit who is permitted to return to basic training in accordance with this section and is removed due to failure a second time shall:

(a) Be required to repeat basic training in its entirety; and

(b) Pay all costs of repeating the entire basic training course in accordance with 503 KAR 3:030.

Section 4. Basic Training Curriculum. (1) The basic training curriculum shall consist of training segments and topics listed in the current KLEC-approved curriculum. Each training segment shall at a minimum include one (1) or more of the topics listed in subsection (2) of this section. All topics listed in subsection (2) of this section shall be covered to qualify for graduation.

(2) Basic Training Topics.

(a) Legal subjects;

(b) Physical training;

(c) Defensive tactics;

(d) Patrol;

(e) Vehicle operations;

(f) Firearms;

(g) Criminal investigation;

(h) D.U.I./Field sobriety testing;

(i) Breath testing; or

(j) Practical evaluation/testing.

Section 5. Assessments. (1) Scheduled assessments shall be administered to recruits at the completion of each segment of basic training identified in the law enforcement basic training curriculum that is currently approved by the Kentucky Law Enforcement Council. Each segment shall include at a minimum one (1) or more of the topics listed in Section 4 of this administrative regulation.

(2) A recruit shall be permitted one (1) reassessment per assessment failed during basic training, but shall not exceed a total of five (5) reassessments during basic training.

(3) A recruit who fails an assessment shall not be reassessed:

(a) Earlier than forty-eight (48) hours from the original examination; or

(b) Later than:

1. Five (5) days after the original examination. A recruit may submit a written request to the training director or his designee for an additional five (5) days in which to take the reassessment; and

2. The last scheduled day of the basic training course.

(4) A recruit shall fail basic training if the recruit:

(a) Fails a reassessment in accordance with subsection (2) of this section; or

(b) Fails any six (6) assessments during basic training.

(5) A recruit is deemed to have failed a segment if a recruit fails any reassessment that is contained within a designated segment.

Section 6. Absence. (1) A recruit may have excused absences from the course with approval of the director of the certified school or his designee.

(2) An excused absence from the course which causes a recruit to miss any of the required hours of basic training shall be made up through an additional training assignment.

Section 7. Circumstances Preventing Completion of Basic Training. (1) If a recruit is prevented from completing the basic training course due to extenuating circumstances beyond the control of the recruit, including injury, illness, personal tragedy, or agency emergency, he shall be permitted to complete the unfinished areas of the course within 180 days immediately following the termination of the extenuating circumstance, if the:

(a) Extenuating circumstance preventing completion of basic training does not last for a period longer than one (1) year; and

(b) Failure to complete is not caused by a preexisting physical injury or preexisting physiological condition.

(2) If a recruit is prevented from completing the basic training course due to being called for active duty in the Kentucky National Guard or other branches of the United States Armed Forces, the recruit shall be permitted to complete the unfinished of the course within 180 days immediately following his or her return from active duty service.

Section 8. Termination of Employment while Enrolled. If, while enrolled in the basic training course, a recruit's employment as a police officer is terminated by dismissal, and the recruit is unable to complete the course, the recruit shall complete the remaining training within one (1) year of reemployment as an officer. The recruit shall repeat basic training in its entirety if:

(1) The break in employment exceeds one (1) year; or

(2) The termination of employment is a result, directly or indirectly, of disciplinary action taken by the department against the recruit while enrolled in the basic training course.

Section 9. Maintenance of Records. (1) At the conclusion of each basic training course, the department shall forward a final roster indicating the pass or fail status of each recruit to the council.

(2) All training records required for fund purposes shall be retained by the department, but a copy of pertinent facts shall be sent to the fund administrator upon written request.

(3) All training records shall be:

(a) Available to the council, the secretary, and the fund administrator for inspection or other appropriate purposes; and

(b) Maintained in accordance with applicable provisions of KRS Chapter 171.

KEITH CAIN, Chair

APPROVED BY AGENCY: May 10, 2018

FILED WITH LRC: June 27, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2018, at 9:00 a.m. at the Justice and Public Safety

Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 until August 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: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegsContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides graduation requirements for law enforcement officers attending basic training at the Department of Criminal Justice Training (DOCJT), and provides the Department of Criminal Justice Training's record keeping requirements for basic training classes.

(b) The necessity of this administrative regulation: KRS 15.404 requires that all peace officers employed or appointed after December 1, 1998, complete a basic training course, as established by KRS 15.440, at a school certified or recognized by the Kentucky Law Enforcement Council, within one year of appointment or employment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15.334 authorizes the Kentucky Law Enforcement Council (KLEC) to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.404 and prescribe qualifications for attendance and conditions for expulsion from law enforcement training schools. KRS 15.440(1)(d) allows the KLEC to set the number of hours for basic training by regulation. The amendment changes the number of hours required for basic academy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The amendment will modify the minimum number of training hours, as provided in KRS 440 (1)(d), to allow for an eight-hundred (800) hour basic training academy. This will allow the Department of Criminal Justice Training to meet the increasing demand for basic training courses, which must be completed within one year of an officer's hiring or appointment.

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

(a) How the amendment will change this existing administrative regulation: The amendment modifies the minimum number of hours for basic training courses via the mechanism for that modification which is set forth in KRS 15.440(1)(d)(2).

(b) The necessity of the amendment to this administrative regulation: The amendment will modify the minimum number of training hours, as provided in KRS 440 (1)(d), to allow for an eight-hundred (800) hour basic training academy. This will allow the Department of Criminal Justice Training to meet the increasing demand for basic training courses, which must be completed within one year of an officer's hiring or appointment.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require completion of basic training within the one year window, and provide the method by which the number or hours for basic training may be set.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will modify the minimum number of training hours, as provided in KRS 440 (1)(d), to allow for an eight-hundred (800) hour basic training academy. This will allow the Department of Criminal Justice Training to meet the increasing demand for basic training courses, which must be completed within one year of an officer's hiring or appointment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All law enforcement agencies that employ certified peace officers in the Commonwealth will have the benefit of quicker completion of basic training for new hires or appointments. In addition, the individual department's down time and per diem costs for officers attending basic training will be decreased.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: DOCJT has to have approval of the 800 hour curricula.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs to the Department of Criminal Justice Training will be similar to current costs for basic training courses, as the number of hours will minimally affect administrative costs. Costs for law enforcement agencies will be lower, as they will have decreased down time for officers in training, which should result in a lessened need for overtime pay, and lower per diem pay for officers attending training.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Department of Criminal Justice Training will be able to meet the demand for basic training classes in a timely manner, without sacrificing the quality of training. There is currently a large backlog of applicants for basic training. Costs for law enforcement agencies will be lower, as they will have decreased down time for officers in training, which should result in a lessened need for overtime pay, and lower per diem pay for officers attending training.

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

(a) Initially: Costs to the Department of Criminal Justice Training will be similar to current costs for providing basic training courses, as the number of hours will minimally affect administrative and staff costs. A cost decrease to the Department of Criminal Justice Training is possible, but is not currently known.

(b) On a continuing basis: Costs to the Department of Criminal Justice Training will be similar to current costs for providing basic training courses, as the number of hours will minimally affect administrative and staff costs. A cost decrease to the Department of Criminal Justice Training is possible, but is not currently known.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The current source of funds from the Kentucky Law Enforcement Foundation Program Fund will be the ongoing source of funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established.

(9) TIERING: Is tiering applied? Tiering is not applicable as training funds are statutorily provided through KLEFPF. The law enforcement officers eligible for the training by statute and budget bill receive the same benefits of this training.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Law enforcement agencies and the Department of Criminal Justice Training (DOCJT) will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

regulation. KRS 15.330, 15.404, 15.440.

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

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

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

(c) How much will it cost to administer this program for the first year? Costs for DOCJT are anticipated to be similar to current costs for providing basic training courses, as the number of hours will minimally affect administrative and staff costs. A cost decrease to DOCJT is possible, but is not currently known. Costs for law enforcement agencies will be lower, as they will have decreased down time for officers in training, which should result in a lessened need for overtime pay, and lower per diem pay for officers attending training.

(d) How much will it cost to administer this program for subsequent years? Costs for DOCJT are anticipated to continue to be similar to current costs for providing basic training courses, as the number of hours will minimally affect administrative and staff costs. A cost decrease to DOCJT is possible, but is not currently known. Costs for law enforcement agencies will be lower, as they will have decreased down time for officers in training, which should result in a lessened need for overtime pay, and lower per diem pay for officers attending training.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Insurance
(Amendment)

806 KAR 17:020. Disclosure of other coverage in application.

RELATES TO: KRS 304.14-120

STATUTORY AUTHORITY: KRS 304.2-110[~~, EO 2009-535~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the insurance commissioner[~~executive director of Insurance~~] to promulgate reasonable rules and 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 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 requires an applicant[~~that the applicant~~] for health insurance to disclose any[~~and all~~] health insurance policy currently in force in the name of the applicant.

Section 1. Application Requirements. (1) Every application form used by an insurer, electronically or otherwise, to solicit individually underwritten health insurance[~~which is to be individually underwritten~~], except group or accident insurance only, shall require the applicant to disclose all health insurance currently covering the applicant and any proposed insured.[~~include space requiring a listing by the applicant of all health insurance currently in force in the name of the proposed insured.~~] The applicant shall identify[~~current insurance shall only be identified by~~] the name of the insurer and the amount of insurance, if known.

(2) Every application, described in subsection (1), solicited personally by an agent shall have the applicant's signature and the agent shall certify that each question on the application was asked of the applicant and that the applicant's answers have been accurately recorded.

NANCY G. ATKINS, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: July 11, 2018

FILED WITH LRC: July 11, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2018 at 09:15 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 August 16, 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 August 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: This administrative regulation requires all applicants to disclose other currently in force health insurance. The disclosure is necessary to apply creditable coverage rules, assist in underwriting purposes, and advise the insurer of any potential coordination of benefit issues that may arise following the initiation of coverage. The amendment to the regulation simply clarifies the obligations of the applicant, and updates the language to include all applications solicited and submitted electronically.

(b) The necessity of this administrative regulation: The amendment is necessary to confirm the obligation of applicant to disclose any other applicable health insurance coverage on all applications for health insurance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.17-210, 304.17-220, and 304.17-230 provide insurers with a reduction in potential liability when applicants and insured do not inform insurers of other applicable insurance before a loss. In order to avoid any subsequent issues that may change the amount of insurance an individual believes is available, the regulation requires disclosure of other applicable coverage. Additionally, under KRS 304.17A-220 and 304.17A-230, insurers are subject to specific standards and requirements for pre-existing condition exclusions when an applicant is an eligible individual or satisfies the requirements for crediting previous coverage. The disclosure requirement informs the insurer of any applicable credit on the application to prevent subsequent denial issues.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation requires the disclosure of current health insurance to inform insurers of any limits on the use of pre-existing condition exclusions and coordination of benefits issues.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies the language to confirm

insurers must require the disclosure on any application regardless of the manner submitted. The amendment also simplifies the language used for easier comprehension of the administrative regulation's requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to promote clarity in the application of the administrative regulation and confirm the requirements for electronically submitted applications.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment simplifies the language utilized to require the disclosure of other applicable insurance, and clarifies that such requirements apply to electronic applications. The statutes require an insurer to process and certify creditable coverage, and apply their policy requirements in accordance with such certification. The requirement to disclose other insurance provides an insurer with the adequate information to correctly administer policy benefits.

(d) How the amendment will assist in the effective administration of the statues: The amendment clarifies the disclosure of other health insurance is required for those applications submitted electronically regardless of the use of an agent. It also simplifies the language to clearly state applicants shall disclose any other current health insurance. These disclosures are necessary to correctly administer policy benefits and potential exclusions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will impact all insurers licensed to offer health insurance plans to individuals. The amendment does not change any of the disclosure requirements, or require the disclosure of any additional information. Thus, all insurers and agents impacted by the administrative regulation will not have to change forms currently in use.

(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: Insurers and agents soliciting health insurance plans will not have to change their current process, unless an electronic application did not have the required disclosure section.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amended administrative regulation will not impose any cost on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will clearly understand the disclosure requirements.

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

(a) Initially: The Department does not anticipate that there is any cost to implement this amendment.

(b) On a continuing basis: The Department does not anticipate any continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is considered for the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as the requirements apply to all health insurance companies equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.17-210, 304.17-220, 304.17-230, 304.17A-220, and 304.17A-230 all include insurer requirements pertaining to administration of benefit when other applicable insurance is available. KRS 304.17A-230 specifically provides authority to develop administrative regulations related to the certification of coverage, and this administrative regulation simply requires applicants to disclose any other applicable coverage in the application process to aid in the certification and prevent issues with the administration of benefits.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to the administrative regulation will not generate any revenue for state or local government agencies in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to the administrative regulation will not generate any revenue for state or local government agencies in subsequent years.

(c) How much will it cost to administer this program for the first year? The amendment to the administrative regulation will not result in any costs for state or local government agencies in the first year.

(d) How much will it cost to administer this program for subsequent years? The amendment to the administrative regulation will not result in any costs for state or local government agencies in subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Department of Insurance
(Amendment)

806 KAR 17:300. Provider agreement and risk-sharing agreement filing requirements.

RELATES TO: KRS 304.17A-150, 304.17A-500, 304.17A-527, 304.17A-530, 304.17A-532, 304.17A-560, 304.17A-575, 304.17A-577, 304.17A-578, 304.17A-728, 304.17C-060, 304.99

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-527(1), 304.17C-060(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the executive director to promulgate reasonable administrative regulations necessary to the effectuation of any provision of the Kentucky Insurance Code[~~as defined in KRS 304.1-010~~]. KRS 304.17A-527(1) and KRS 304.17C-060(1) require[~~requires~~] the Department[~~office~~] to promulgate administrative regulations regarding the manner and form of required filings of sample copies of provider agreements.[~~EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as head of the department.~~] This administrative regulation establishes the filing requirements of provider agreements, subcontractor agreements,

and risk sharing arrangements.

Section 1. Definitions. (1)[~~"Commissioner" means the Commissioner of Insurance.~~

~~(2) "Covered person" is defined in KRS 304.17A-500(3).~~

~~(3) "Department" means the Department of Insurance.~~

~~(4) "Enrollee" is defined in KRS 304.17A-500(5).~~

~~(5) "Insurer" is defined in KRS 304.17A-500(8).~~

~~(6) "Managed care plan" is defined in KRS 304.17A-500(9).~~

~~(7) "Nonparticipating provider" is defined in KRS 304.17A-575(4).~~

~~(8) "Participating health care provider" is defined in KRS 304.17A-500(10).~~

~~(9)~~] "Provider agreement" means a contract between an insurer offering a managed care plan and a provider for the provision of health care services.[~~(10) "Risk sharing arrangement" is defined in KRS 304.17A-500(13).~~]

(2)[~~(11)~~] "Subcontract agreement" means a contract for the provision of health care services to:

(a) An enrollee, which is negotiated between a participating health care provider with a managed care plan and a nonparticipating provider with a managed care plan; or

(b) A covered person, which is negotiated between a risk sharing entity as identified in KRS 304.17A-500(13) and a provider.

Section 2. Filing Requirements. (1) An insurer, managed care plan, and limited health service benefit plan shall file a sample copy of the following[~~shall be filed~~] with the commissioner at least sixty (60)[~~ninety (90)~~] days before its use:

(a) Provider agreement;

(b) Risk sharing arrangement; and

(c) Subcontract agreement.

(2) A filing pursuant to subsection (1) of this section shall:

(a) Include:

1. A compensation arrangement, including a description of the:

a. Payment methodology; and

b. Payor as defined in the agreement;

2. Any attachment, exhibit, or addendum to the items listed in subsection (1) of this section;

3. A completed and signed Face Sheet and Verification Form HIPMC-F1, incorporated by reference in 806 KAR 17:005; and

4. A filing fee, including:

a. Twenty-five (25) dollars for a provider agreement or subcontract agreement filing; or

b. Fifty (50) dollars for a risk sharing arrangement filing.

(b)1. Not be considered complete until the information required by paragraph (a) of this subsection is received by the department; and

2. Be disapproved if a complete filing is not received within sixty (60) days of the date of filing.

(3) If a managed care plan, insurer, or limited health service benefit plan[~~managed care plan~~] amends an existing provider agreement, subcontract agreement, or risk sharing agreement,[~~provider agreement or subcontract agreement,~~] which was previously filed with the commissioner, affecting any requirements of this administrative regulation, the managed care plan shall submit:

(a) An amended filing at least sixty (60)[~~ninety (90)~~] days before its use; and

(b) A letter that[~~which~~] identifies and explains each amendment.

(4) The failure of a managed care plan, insurer, and limited health service benefit plan to file a sample copy of a provider agreement, subcontract agreement, or risk sharing agreement,[~~provider agreement or subcontract agreement, as required by subsections (1) and (3) of this section,~~] may result in imposition of a civil penalty in accordance with KRS 304.99.

(5) An insurer issuing, delivering, or renewing a limited health service benefit plan shall complete and attach Form HIPMC-F37, Limited Health Service Benefit Plan Summary Sheet - Form Filings (07/02), to each limited health service benefit plan filed with the commissioner[~~If an insurer amends an existing risk sharing arrangement or subcontract agreement that was previously filed with the commissioner, affecting any requirements of this administrative regulation, the insurer shall submit:~~

~~(a) An amended filing at least ninety (90) days before its intended use; and~~

~~(b) A letter that identifies and explains each amendment.~~

~~(6) The failure of an insurer to file a sample copy of a risk sharing arrangement or subcontract agreement, as required by subsections (1) and (5) of this section, may result in imposition of a civil penalty in accordance with KRS 304.99~~].

Section 3. Provider Agreement Requirements. (1) The[~~A~~] sample copy of a provider agreement for an insurer or managed care plan filed with the commissioner shall:

(a)[~~(1)~~] Comply with the requirements of KRS 304.17A-527(1);

(b)[~~(2)~~] Comply with the requirements of KRS 304.17A-728; and

(c)[~~(3)~~] Not include a:

1.[~~(a)~~] Most-favored nation provision in accordance with KRS 304.17A -560;

2.[~~(b)~~] Limitation on disclosure provision in accordance with KRS 304.17A-530;

3.[~~(c)~~] Condition of participation provision in accordance with KRS 304.17A-150(4); and

4.[~~(d)~~] Mandatory use of hospitalist provision in accordance with KRS 304.17A-532(2).

(2) The sample copy of a provider agreement for a limited health service benefit plan filed with the commissioner shall:

(a) Comply with the requirements of KRS 304.17C-060(1);

(b) Be governed by Kentucky law; and

(c) Not include a limitation on disclosure provision in accordance with KRS 304.17C-070.

Section 4. Subcontract Agreement Requirements. A sample copy of a subcontract agreement, which is part of a provider agreement or risk sharing arrangement shall:

(1) Be filed with the commissioner by the managed care plan, limited health service benefit plan, or insurer in conjunction with the provider agreement or risk sharing arrangement;[~~and~~]

(2) Meet[~~the~~] applicable requirements of Section 3 of this administrative regulation;[~~.~~] and

(3) Meet the requirements of KRS 304.17A-527(2) or 304.17C-060(3), as applicable.

Section 5. Risk Sharing Arrangement Requirements. (1) The[~~A~~] sample copy of a risk sharing arrangement filed with the commissioner[~~pursuant to Section 2 of this administrative regulation~~] shall:

(a) Meet the requirements of Section 3 of this administrative regulation;[~~and~~]

(b) Include a Risk Sharing Arrangement Information Sheet HIPMC-R1, incorporated by reference in 806 KAR 17:005;[~~.~~] and

(c) Meet the requirements of KRS 304.17A-527(2) or 304.17C-060(3), as applicable.

(2) On or before September 1 of each calendar year, an insurer, managed care plan, or limited health services benefit plan shall file with the commissioner the HIPMC-R1, incorporated by reference in 806 KAR 17:005, for each risk sharing arrangement currently effective.

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

(a) "Limited Health Service Benefit Plan Summary Sheet - Form Filings HIPMC-F37 (07/18)".

(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. Forms may also be obtained on the department's web site at http://insurance.ky.gov.

NANCY G. ATKINS, Commissioner
K. GAIL RUSSELL, Acting Secretary
APPROVED BY AGENCY: July 11, 2018
FILED WITH LRC: July 11, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2018 at 09:30 a.m. Eastern Time at the Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the Kentucky Department of Insurance in writing by August 16, 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 August 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: This administrative regulation establishes the process for all insurers offering health benefit plans and limited health service benefit plans to file with the Department of Insurance template provider agreements, risk sharing agreements, and subcontracts. It provides the advance filing requirements, any additional accompanying documentation, and prohibited provisions.

(b) The necessity of this administrative regulation: This administrative regulation is required under the statutory directive of KRS 304.17A-527(1) and KRS 304.17C-060 to establish the manner and form of the filing of these documents.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.17A-527(1) directs the Department to establish the form and manner for filing provider agreements, risk sharing agreement, and subcontractor agreements. This administrative regulation includes the time for filing such agreements before use, and the required documentation to be included with each filing. This administrative regulation also lists the prohibited items and conditions, included in various statutes, that the Department will review for and determine if approval is appropriate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation clarifies the form and manner filing requirements for these specific documents to ease insurer compliance and make the Department's review more efficient.

(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 incorporates the filing requirements for limited health service benefit plans into this administrative regulation. These organizations are under an identical filing requirement, so all entities can review one regulation to determine the form and manner of the filing requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to promote clarity in the application of the administrative regulation and make administration of these requirements easier for all regulated entities.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment does not add any additional requirements. Instead, it consolidates identical administrative regulations to streamline the compliance process for regulated entities.

(d) How the amendment will assist in the effective administration of the statues: The amendment eliminates duplicative administrative regulations, so regulated entities will only need to review one administrative regulation to determine the applicable requirements. Additionally, the prior notice time period was changed from ninety (90) to sixty (60) days to increase the flexibility of insurers use new contracts for these particular services.

(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 all insurers licensed to offer health insurance plans to individuals.

(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 need to take any affirmative action to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amended administrative regulation will not impose any cost on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will be able to employ new or revised agreements earlier, and will have to review only one administrative regulation for the applicable requirements.

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

(a) Initially: The department does not anticipate that there is any cost to implement this amendment.

(b) On a continuing basis: The department does not anticipate any continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: All funding for the review of these agreements is covered by the applicable filing established in the administrative regulation. The fee is not changed as a result of the amendment.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amended administrative regulation does not establish any new fees or increase any fees. The filing fee for these agreements is unchanged.

(9) TIERING: Is tiering applied? Tiering is not applicable as the requirements apply to all health insurance companies equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.17A-527 and KRS 304.17C-060 require the department to promulgate this 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 amendment to the administrative regulation will not generate any revenue for state or local government agencies in the first year.

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to the administrative regulation will not generate any revenue for state or local government agencies in subsequent years.

(c) How much will it cost to administer this program for the first year? The amendment to the administrative regulation will not result in any costs for state or local government agencies in the first year.

(d) How much will it cost to administer this program for subsequent years? The amendment to the administrative regulation will not result in any costs for state or local government agencies in subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Department of Insurance
(Amendment)

806 KAR 17:360. Prompt payment of claims.

RELATES TO: KRS 304.17A-005, 304.17A-700, 304.17A-702(1), 304.17A-704, 304.17A-706, 304.17A-708(1), 304.17A-720, 304.17A-730, 304.17C-090, 304.99-123[~~, 2008 Acts ch. 127, Part XII, sec. 18-20~~]

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-722(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner[~~executive director~~] to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code[~~, as defined in KRS 304.1-010~~]. KRS 304.17A-722(1) requires the office to promulgate administrative regulations establishing reporting requirements regarding the prompt payment of claims by insurers offering health benefit plans.[~~EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as the head of the department.~~] This administrative regulation establishes requirements for insurers offering health benefit plans and insurers offering limited health service benefit plans for the provision of dental-only benefits.

Section 1. Definition[~~Definitions~~]. (1)[~~"Clean claim" is defined in KRS 304.17A-700(3).~~

~~(2) "Commissioner" means Commissioner of Insurance.~~

~~(3) "Covered person" is defined in KRS 304.17A-700(5).~~

~~(4) "Department" means Department of Insurance.~~

~~(5) "Health benefit plan" is defined in KRS 304.17A-005(22).~~

~~(6)~~] "Health care clearinghouse" means an entity that converts health care transactions into standardized formats and forwards them to an insurer. [~~(7) "Health care provider" or "provider" is defined in KRS 304.17A-700(9), as amended by 2008 Ky Acts ch.127, Part XII, sec.18.~~

~~(8) "Health claim attachments" is defined in KRS 304.17A-700(10).~~

~~(9) "Insurer" is defined in KRS 304.17A-005(27).~~

~~(10) "Limited health service benefit plan" is defined in KRS 304.17C-010(5).~~]

Section 2. Requirements. (1) An attachment subject to the requirements of KRS 304.17A-706(2) shall be a standardized health claim attachment prescribed by 806 KAR 17:370.

(2) Pursuant to KRS 304.17A-704(4), an insurer response to a claim status inquiry by a provider shall either:

(a) Advise of no record of receiving the claim; or

(b) Provide the date the claim was received by an insurer, its agent, or designee, an insurer reference number for the claim, and one (1) of the following dated actions:

1. Claim is in process, but has not had a determination of denial, payment, contest, or suspension by the insurer;

2. Claim denial, in whole or in part, and reason for denial;

3. Determination to pay claim, in whole or in part;

4. Claim suspension, in whole or in part, and reason for suspension; or

5. Claim contest, in whole or in part, and reason for contest.

Section 3. Claim Payment Time Frame. (1) The payment date of a claim shall be:

(a) The posting date of an electronic payment to a provider account;

(b) The postmark date of a nonelectronic payment mailed to a provider; or

(c) The documented date of nonmailed delivery of a nonelectronic payment received by a provider.

(2) An insurer, its agent, or designee shall be required, as part of the acknowledgment process in accordance with KRS 304.17A-704(2)[~~, as amended by 2008 Ky Acts ch. 127, Part XII, sec. 19,~~] to notify a provider, its billing agent, or designee that submitted the claim, of an attachment that is missing or in error, if required pursuant to KRS 304.17A-706(2) or 304.17A-720.

(3) Except for a claim involving an organ transplant, an insurer shall be in compliance with KRS 304.17A-702(1) if a clean claim is paid within:

(a) Thirty (30) days of receipt of the claim; or

(b) Three (3) business days of the check date if the check issued for payment of the claim is dated on the 28th, 29th, or 30th day after the claim is received.

(4) An insurer shall be in compliance with KRS 304.17A-702(1) for a clean claim involving an organ transplant if the claim is paid within:

(a) Sixty (60) days of receipt of the claim; or

(b) Three (3) business days of the check date if the check issued for payment of the claim is dated on the 58th, 59th, or 60th day after the claim is received.

(5) The claim payment time frame of KRS 304.17A-702(1)[~~,~~] shall:

(a) Include the time a claim is with a health care clearinghouse acting on behalf of an insurer; and

(b) Not include the time a claim is with a health care clearinghouse acting on behalf of a provider.

Section 4. Payment of Interest. (1) The method used to calculate an interest payment required by:

(a) KRS 304.17A-730(1)[~~, as amended by 2008 Ky Acts ch. 127, Part XII, sec. 20,~~] shall yield an amount not less than the result obtained by dividing the total number of days that a claim remains unpaid after the date payment was due by 365;

(b) Multiplying that quotient by the applicable interest rate established under KRS 304.17A-730(1)[~~, as amended by 2008 Ky Acts ch. 127, Part XII, sec. 20~~]; and

(c) Multiplying that product by the unpaid amount of the claim owed.

(2) An interest payment shall identify the claim for which it is paid by including the following information:

(a) Name of covered person;

(b) Covered person's insurer identification number;

(c) Name of provider;

(d) Date of service;

(e) Amount of interest paid; and

(f) Insurer reference number for the claim.

(3) Except for nonpayment of interest by a limited health service benefit plan for the provision of dental-only benefits as established under KRS 304.17C-090(3), an insurer shall pay the interest required by KRS 304.17A-730[~~, as amended by 2008 Ky Acts ch. 127, Part XII, sec. 20,~~] within thirty (30) days after the date a claim is paid.

(4) An insurer shall not be required to pay interest on corrected payments made in accordance with KRS 304.17A-708(1).

Section 5. Contested Claims. (1) An insurer may contest a

clean claim, pursuant to KRS 304.17A-706(1)(a), if an insurer, its agent, or designee has reasonable documented grounds, including:

(a) A covered person has notified the insurer that he has:

1. Another payment source; or

2. A preexisting condition;

(b) A provider has notified the insurer that a covered person has:

1. Another payment source; or

2. A preexisting condition;

(c) The insurer possesses file material establishing that:

1. Another insurer may be primarily responsible for the claim; or

2. A preexisting condition exists;

(d) A health claim attachment indicates another payment source; or

(e) A billing instrument identifies another payment source or a preexisting condition.

(2) An insurer in possession of the documentation listed in subsection (1) of this section
shall provide this information to a provider upon request.

Section 6. An insurer offering a limited health service benefit plan for the provision of dental-only benefits, its agent or designee shall be subject to the requirements established under this administrative regulation except for a requirement as established under Section 3(4) of this administrative regulation and KRS 304.17C-090.

Section 7. Insurer Offering a Health Benefit Plan Reporting Requirements. (1) Within the time frames established in KRS 304.17A-722(3), an insurer offering a health benefit plan shall submit to the department, on a calendar quarter basis, a report on the prompt payment of claims.

(2) If an insurer is unable to meet a time frame for reporting on the prompt payment of claims as established in this administrative regulation because of unforeseen computer system problems, an extension of time may be granted upon written request to the commissioner.

(3) The report required pursuant to subsection (1) of this section shall contain the prescribed information and data elements, as applicable, in the electronic format as prescribed by the Prompt Payment Reporting Manual, DIPR-PPR-1.

(4) All reporting insurers shall update any information included within the report later determined to be inaccurate.

Section 8. Insurer Offering a Limited Health Service Benefit Plan Reporting Requirements. An insurer offering a limited health service benefit plan for the provision of dental-only benefits shall:

(1) Annually, no later than June 30 of each year, submit a report to the office on the prompt payment of claims as established under KRS 304.17C-090(2); and

(2) Except for Section 7(1) of this administrative regulation, be subject to the requirements of an insurer offering a health benefit plan as established in this administrative regulation.

Section 9. Incorporation by Reference. (1) " Prompt Payment Reporting Manual, DIPR-PPR1" (7/2018) 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. This material is also available on the department's Web site: www.insurance.ky.gov.

NANCY G. ATKINS, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: July 11, 2018

FILED WITH LRC: July 11, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2018 at 9:45 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 August 17, 2018, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: This administrative regulation establishes the requirements for insurer compliance with prompt payment provisions included within KRS 304.17A-700 to 304.17A-730. This administrative regulation interprets the appropriate payment timeframes, proper insurer responses, and interest payments. The administrative regulation also establishes insurer prompt payment reporting requirements under KRS 304.17A-722.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 304.17A-722 to establish the prompt payment reporting requirements, and to interpret specific issues encountered by insurers and medical providers in the prompt payment process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation does not stray from the prompt payment requirements enumerated in KRS 304.17A-700 to 304.17A-730, and details the reporting requirements mandated under KRS 304.17A-722.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the reporting methods to the Department for reports required under KRS 304.17A-722. It also provides an interpretation of statutory provisions to answer common insurance industry issues regarding prompt payment.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the language utilized to account for legislative and Department structural changes. The amendment also consolidates the associated reporting requirements to facilitate ease of reference to all prompt payment requirements. Lastly, the amendment eliminates an unnecessary affidavit associated with the reporting requirement, and updates the reporting manual to eliminate outdated electronic reporting methods (i.e., 3.5 inch diskette). Instead, all insurers will be subject to a new requirement to update any previously provided information determined to be inaccurate.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to promote clarity in the application of the administrative regulation and confirm the requirements to changes in the Department and statutes over the past ten years.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment clarifies the language used to conform to changes in the authorizing statutes and Department structure. It maintains all necessary reporting provisions required by KRS 304.17A-722 and eliminates unnecessary forms and reporting mechanisms to allow for greater efficiency and innovation.

(d) How the amendment will assist in the effective administration of the statues: The amendment simplifies and consolidates all of the prompt pay requirements into one location. The new reporting requirements are more efficient. They allow new submission requirements considering the changes in communication, and remove unnecessary forms without impacting the integrity of the information provided.

(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 all insurers licensed to offer health insurance plans and limited health service benefit plans subject to prompt payment requirements.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Insurers may utilize current electronic methods to submit the required prompt payment reports and eliminate the unnecessary affidavits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amended administrative regulation will not impose any cost on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will realize efficiencies from the expanded methods of submissions, and the elimination of the affidavit requirement.

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

(a) Initially: The department does not anticipate that there is any cost to implement this amendment.

(b) On a continuing basis: The department does not anticipate any continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is considered for the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as the requirements apply to all health insurance companies equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.17A-700 to KRS 304.17A-730. KRS 304.17A-722 specifically requires the department to promulgate an administrative regulation stipulating prompt payment reporting requirements.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to the administrative regulation will not generate any revenue for state or local government agencies in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to the administrative regulation will not generate any revenue for state or local government agencies in subsequent years.

(c) How much will it cost to administer this program for the first year? The amendment to the administrative regulation will not result in any costs for state or local government agencies in the first year.

(d) How much will it cost to administer this program for subsequent years? The amendment to the administrative regulation will not result in any costs for state or local government agencies in subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Certificate of Need
(Amendment)

900 KAR 5:020. State Health Plan for facilities and services.

RELATES TO: KRS 216B.010-216B.130

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), 216B.040(2)(a)2.a.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The 2018 Update to the 2017-2019 State Health Plan shall be used to:

(1) Review a certificate of need application pursuant to KRS 216B.040; and

(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(29)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference. (1) The "2018 Update to the 2017-2019 State Health Plan", October 2018[~~November 2017~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, Division of Certificate of Need[~~Health Policy~~], 275 East Main Street, 5E-A[~~4WE~~], Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVE DAVIS, Inspector General
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 13, 2018

FILED WITH LRC: July 13, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 2018, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment

on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 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: Molly Lewis, email molly.lewis@ky.gov, phone 502-564-9592; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2018 Update to the 2017-2019 State Health Plan, which shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes, specifically KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

(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 incorporating by reference the 2018 Update to the 2017-2019 State Health Plan, which shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a. KRS 216B.015(28) requires that the State Health Plan be prepared triennially and updated annually.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The State Health Plan shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.

(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 incorporates by reference the 2018 Update to the 2017-2019 State Health Plan. Substantive changes include: adding an exception to review criteria for acute care beds to deem the application of licensed acute care hospitals that are verified as a Level I or Level II Trauma Center and have received written acknowledgement from the Office of Inspector General, Division of Certificate of Need recognizing an emergency with respect to the acute care beds being applied for consistent with the Plan; replacing specific language from the American College of Obstetrics and Gynecologists *Guidelines for Perinatal Care* detailed in the review criteria for Special Care Neonatal Beds with references that maintain the Plan's deference to the standards in the *Guidelines*; distinguishing Level II Special Care Neonatal Beds from Advanced Level II Special Care Neonatal Beds; adding an exception to the review criteria for applications to add Level II Special Care Neonatal Beds to allow a hospital to add a limited number of beds if the hospital is experiencing a high number of births and has a high occupancy in its existing Level II nursery but does not have excess acute care beds available to convert and meet the need; adding a review criterion to allow psychiatric hospitals to redistribute beds by licensure classification within a licensed psychiatric hospital so long as the redistribution does not increase the total licensed bed capacity of the psychiatric hospital; adding review criterion to create an exception to the PRTF Level II methodology for applications from an existing licensed Kentucky psychiatric hospital to establish a PRTF Level II on the hospital's campus or through the use of existing space; deleting the Post-Acute Transitional Care Pilot Program from the Long Term Care review criteria; adding review criteria for licensed acute care hospitals to establish nursing facility beds in the hospital when the nursing facility utilization in the ADD is at least 70%, the annual average length of stay for the proposed beds will not exceed forty-five (45) days, at least 50% of the patients admitted to the beds will have the primary diagnosis of one (1) of the top five (5) diagnoses for hospital readmissions, the hospital applicant will reduce hospital readmissions, and at least 75% of the patients discharged from the beds will return to a home or community based setting, and the applicant agrees to submit annual data reports to the Cabinet; recognizing Specialized Long Term Care and adding review criterion for licensed acute care hospitals and nursing facilities to add long term care beds restricted to Specialized Long Term Care without satisfying the long term care need methodology; amending the definition of Home Health Agency to reflect KRS 216.935; deleting the reference to substantial health management services and deleting the home health review criteria for an existing home health agency to expand its services area when specific CMS quality indicators are met; expanding the home health agency review criteria for hospitals seeking to establish limited home health agencies upon a demonstration of barriers with discharge planning to Kentucky licensed nursing facilities; reorganizing cardiac catheterization review criteria to distinguish diagnostic from therapeutic and the inclusion of PCI within therapeutic as a specific type of procedure; adding review criteria for cardiac catheterizations to allow a hospital with a specific relationship with a cardiology program at the primary teaching facility of an academic medical center to establish a comprehensive cardiac catheterization program when the program is located within 50 miles of the academic medical center, has a medical director from the academic medical center, and is located in a county without an existing cardiac catheterization service; reducing the review criteria for MRI to criterion related to equipment quality and a limited exception for closing hospitals; and deleting review criteria for Private Duty Nursing.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the State Health Plan, which is used to determine whether certificate of need applications are consistent with the State Health Plan.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by incorporating by reference the 2018 Update to the 2017-2019 State Health Plan.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide the 2018 Update to the 2017-2019 State Health Plan, which will be used to determine whether certificate of need applications are consistent with the State Health Plan.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects certificate of need applicants and affected parties requesting hearings. Annually, approximately 115 certificate of need applications are filed.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities that submit certificate of need applications will be subject to the criteria set forth in the 2018 Update to the 2017-2019 State Health Plan once it becomes effective.

(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 entities to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities that submit certificate of need applications will be subject to the revised criteria set forth in the 2018 Update to the 2017-2019 State Health Plan, which has been revised to remove arbitrary barriers to healthcare.

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

(a) Initially: No additional costs will be incurred to implement this administrative regulation.

(b) On a continuing basis: No additional costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new funding will be needed to implement the provision of the amended administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fee 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: The administrative regulation does not establish or increase fees.

(9) TIERING: Is tiering applied? Tiering is used as there are different CON review criteria for each licensure category addressed in the State Health Plan.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Office of Inspector General and may impact any government owned or controlled health care facilities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), and 216B.040(2)(a)2.a

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? No additional costs will be incurred to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Amendment)

902 KAR 20:008. License procedures and fee schedule.

RELATES TO: KRS 216.2925, 216.530, 216B.010, 216B.015, 216B.020(2)(c), (3), 216B.040, 216B.042, 216B.045-216B.055, 216B.075, 216B.105-216B.131, 216B.185, 216B.990

STATUTORY AUTHORITY: KRS 216.530(1), 216B.042(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042(1)(a) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function and to establish reasonable application fees for licenses. This administrative regulation establishes the fee schedule and requirements for obtaining a license to operate a health facility and establishes the procedure for obtaining a variance.

Section 1. Definitions. (1) "Adverse action" means action taken by the Cabinet for Health and Family Services, Office of Inspector General to deny, suspend, or revoke a health facility's license to operate.

(2) "Cabinet" is defined by KRS 216B.015(6).

(3) "Deemed hospital" means a hospital that has had its accreditation accepted by the Office of Inspector General pursuant to KRS 216B.185(1) as evidence that the hospital demonstrates compliance with the licensure requirements of KRS Chapter 216B.

(4) "Health facility" is defined by KRS 216B.015(13).

(5) "Health services" is defined by KRS 216B.015(14).

(6) "Inspector General" means the Inspector General of the Cabinet for Health and Family Services or designee.

(7) "Significant financial interest" means lawful ownership of a health facility or health service, whether by share, contribution, or otherwise in an amount equal to or greater than twenty-five (25) percent of total ownership of the health facility or health service.

(8) "Variance" means the written approval of the Inspector General authorizing a health facility to depart from a required facility specification, upon meeting the conditions established in Sections 4 and 5 of this administrative regulation.

Section 2. Licenses. (1) Any person or entity, in order to lawfully operate a health facility or health service, shall first obtain a provisional license.

(2) A license required by KRS 216B.105(1), including a provisional license, shall be conspicuously posted in a public area of the health facility.

(3) An applicant for provisional licensure or annual renewal of licensure as a health facility or health service shall complete and submit to the Office of the Inspector General the appropriate application as follows:

(a) Application for License to Operate a Health Facility or Health Service;

(b) Application for License to Operate a Chemical Dependency Treatment Service, Group Home, Psychiatric Residential Treatment Facility, or Residential Hospice Facility;

(c) Application for License to Operate a Hospital;

(d) Application for License to Operate a Home Health Agency, Non-residential Hospice, or Private Duty Nursing Agency;

(e) Application for License to Operate a Renal Dialysis Facility, Freestanding or Mobile Technology[~~Health Service~~], or Hospital-owned Pain Management[~~Special Health~~] Clinic[~~, or Specialized Medical Technological Service~~];

(f) Application for License to Operate a Long Term Care Facility; or

(g) Application for License to Operate a Family Care Home.

(4) Provisional License. Upon receipt of an application for a license and appropriate licensure fee as established in Section 3 of this administrative regulation, the Office of Inspector General shall:

(a) Review the application for completeness, including documentation related to:

1. Ownership;

2. Personnel;

3. Operations and administrative policies;

4. The type of services to be provided applicable to the license requested; and

5. if appropriate, plans and specifications for construction or renovation; and

(b) Return the application and accompanying licensure fee if:

1. An individual having a significant financial interest in the health facility or health service has had, within the seven (7) year period prior to the application date, a[~~had~~] significant financial interest in a facility or service that was licensed or certified by the cabinet, and the license or certificate to operate was denied, suspended, revoked, or voluntarily relinquished as the result of an

investigation or adverse action that placed patients, residents, or clients at risk of death or serious harm; or

2. The cabinet finds that the applicant misrepresented or submitted false information on the application.

(5) If an application is determined complete and no statutory or regulatory deficiencies are identified, the Office of Inspector General shall issue a provisional license to remain in effect until:

(a) Completion of the on-site inspection established in subsection (7) of this section; and

(b) Verification of compliance with each statute and administrative regulation applicable to the license requested.

(6)(a) Upon receipt of a provisional license, the licensee shall begin providing health services as designated on the licensure application.

(b) If a provisional licensee does not begin providing services within ten (10) business days after receipt of the provisional license, the licensee shall provide written notification to the cabinet of the following:

1. The reason the licensee has not yet begun providing services; and

2. The anticipated date the licensee will begin operating.

(c) The licensee shall notify the cabinet within three (3) business days after the licensee begins providing services.

(7)(a) Within three (3) months from the effective date of a provisional license, the Office of Inspector General shall conduct an unannounced, on-site inspection of the health facility or health service to verify compliance with each statute and administrative regulation applicable to the license requested.

(b) If the Office of Inspector General identifies a statutory or regulatory violation or multiple violations during the provisional licensure period, the health facility or health service shall be subject to the correction process established in subsection (13) of this section.

(8) A provisional license shall expire on the date the Office of Inspector General grants approval of or denies a license following the inspection described in subsection (7) of this section.

(9) If a provisional licensee receives notice from the Office of Inspector General that a license is denied, the licensee shall cease providing services immediately.

(10) Written notice denying a license shall explain the reason for the denial, including:

(a) Substantial failure, as described by KRS 216B.105(2), to comply with the provisions of KRS Chapter 216B or any administrative regulation applicable to the regular license;

(b) Substandard care that places patients, residents, or clients at risk of death or serious harm; or

(c) Denial of access to the Office of Inspector General as described in subsection (12) of this section.

(11) The effective date of the license shall be backdated to the issuance date of the provisional license and be subject to annual renewal within one (1) year from the effective date.

(12) Licensure inspections.

(a) Except for a health facility subject to KRS 216.530, a licensure inspection may be unannounced.

(b)1. A representative of the Office of Inspector General shall have access to the health facility pursuant to KRS 216B.042(2).

2. An applicant for licensure or a current licensee shall not deny access to a representative of the Office of Inspector General, after proper identification, to make an inspection for determining compliance with the requirements of each applicable administrative regulation for which the health facility or health service is licensed under 902 KAR Chapter 20 or 906 KAR Chapter 1.

3.a. Denial of access, including any effort to delay, interfere with, or obstruct an effort by a representative of the Office of Inspector General to enter the health facility or health service, or deny access to records relevant to the inspection, unless deemed confidential by 42 U.S.C. 299b-22(a), shall result in disciplinary action, including denial, revocation, modification, or suspension of the[~~facility's~~] license <u>of the health facility or health service</u>.

b. Denial, revocation, modification, or suspension of a health facility's or health service's license shall be subject to appeal pursuant to KRS 216B.105.

(c) An inspection of a health facility or health service licensed under 902 KAR Chapter 20 or 906 KAR Chapter 1 shall comply as follows:

1. The inspection shall be made at any time during the licensee's hours of operation;

2. The inspection shall be limited to ensure compliance with the standards set forth in 902 KAR Chapter 20, 906 KAR Chapter 1, KRS Chapter 216, or KRS Chapter 216B; and

3. The inspection of a health facility or health service based on a complaint or a follow-up visit shall not limit the scope of the inspection to the basis of the complaint or the implementation of a plan of correction.

(13) Violations.

(a) The Office of Inspector General shall notify a health facility or health service in writing of a regulatory violation identified during an inspection.

(b) The health facility shall submit to the Office of Inspector General, within ten (10) days of the notice, a written plan for the correction of the regulatory violation.

1. The plan shall be signed by the health facility's or health service's administrator, the licensee, or a person designated by the licensee and shall specify:

a. The date by which the violation shall be corrected;

b. The specific measures <u>to be</u> utilized to correct the violation; and

c. The specific measures <u>to be</u> utilized to ensure the violation will not recur.

2. The Office of Inspector General shall review the plan and notify the health facility or health service in writing of the decision to:

a. Accept the plan;

b. Not accept the plan; or

c. Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 216B.105(2).

3. The notice specified in subparagraph 2.b. of this paragraph shall:

a. State the specific reasons the plan is unacceptable; and

b. Require an amended plan of correction within ten (10) days of receipt of the notice.

4. The Office of Inspector General shall review the amended plan of correction and notify the health facility or health service in writing of the decision to:

a. Accept the plan;

b. Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 216B.105(2); or

c. Require the health facility or health service to submit an acceptable plan of correction.

5. A health facility or health service that fails to submit an acceptable amended plan of correction may be notified that the license will be denied, suspended, or revoked in accordance with KRS 216B.105(2).

(14) A license shall:

(a) Expire one (1) year from the effective date, unless otherwise expressly provided in the license certificate; and

(b) Be renewed in the form of a validation letter if the licensee:

1. Submits a completed licensure application;

2. Pays the prescribed fee;

3. Has no pending adverse action; and

4. Unless exempted, has responded to requests from the cabinet for:

a. Annual utilization surveys; and

b. Requests for information regarding health services provided.

(15) Except for a Level I psychiatric residential treatment facility licensed pursuant to the exception established in 902 KAR 20:320, Section 3(2), more than one (1) license shall not be issued or renewed for a particular licensure category at a specific location.

(16) Written notice shall be filed with the Office of Inspector General within thirty (30) calendar days of the effective date of a change of ownership. A change of ownership for a license shall:

(a) Be deemed to occur if more than twenty-five (25) percent of an existing health facility or health service or <u>equity</u>[~~capital stock~~] or voting rights of a <u>legal entity</u>[~~corporation~~] is purchased, leased, or otherwise acquired by one (1) or more persons or legal entity from another; and

(b) Not require the issuance of a provisional license.

(17) The licensee shall fully disclose to the cabinet the name, mailing address, email address, and phone number, or a change in the name, mailing address, email address, or phone number of:

(a) Each person or legal entity having an ownership interest in the health facility or health service; and

(b)1. Each officer or director if organized as a corporation, limited liability company, or other legal entity; or

2. Each partner if organized as a partnership.

(18) An individual, shareholder, partner, member, or legal entity shall not acquire a significant financial interest in any licensed health facility or health service if that individual, shareholder, partner, member, or legal entity previously held a significant financial interest in a licensed facility that had its license or certificate to operate denied, suspended, revoked, or voluntarily relinquished, within the preceding seven (7) years, as the result of an investigation or adverse action that placed patients, residents, or clients at risk of death or serious harm[~~within the preceding seven (7) years~~].

(19) An unannounced inspection shall be conducted:

(a) In response to a relevant complaint or allegation; and

(b) According to procedures established in subsection (12) of this section.

(20) A licensee that does not have a pending adverse action but fails to submit a completed licensure application annually shall cease operating the health facility or health service unless:

(a) The items required under subsection (14)(b) of this section have been tendered; and

(b) The Office of Inspector General has provided the health facility or health service with a notice granting temporary authority to operate pending submission of the application.

(21) Credentialing and Re-credentialing. A licensed health facility or health service that is required by KRS 216B.155(2) to assess the credentials of health care professionals applying for privileges shall use Form KAPER-1, Part B, incorporated by reference in 806 KAR 17:480.

(22) Licensure exemptions.

(a) A facility shall be exempt from licensure if it meets the criteria established by KRS 216B.020(2) or (3).

(b) A federally certified rural health clinic or a federally qualified health center that provides services to patients with behavioral health or psychiatric conditions, including substance use disorders, shall:

1. Be exempt from licensure in accordance with KRS 216B.020(2) and (3); and

2. Not be subject to licensure in a separate category under 902 KAR Chapter 20 or 908 KAR Chapter 1.

Section 3. Fee Schedule. (1)(a) Fees for review of plans and specifications for construction or renovation of health facilities shall be as follows:

License Type	Rate
(a) Hospitals plans and specifications review	$.10 per sq. ft.
(initial through final)	$200 minimum
(b) All other health facilities plans and specifications review	$.10 per sq. ft.
(initial through final)	$200 minimum

(b) A request for review of plans and specifications shall be submitted on the Program Review Fee – Worksheet Health Facility Identification form, accompanied by payment described in paragraph (a) of this subsection.

(2) Initial and Annual fees. The initial and annual licensure fee for health facilities and services shall be as follows:

License Type	Rate
(a) Freestanding birth center	$500
(b) Alzheimer's nursing home	For Alzheimer's nursing facilities with 50 beds or less, $750 + $25 per bed; For Alzheimer's nursing facilities with 51 or more beds, $1,000 + $25 per bed
(c) Ambulatory surgical center	$750
(d) Chemical dependency treatment service	$1,000 + $25 per bed
(e) Community mental health center	$1,500
(f) Day health care	$170
(g) Family care home	$42
(h) Group home for individuals with an intellectual or developmental disability	$100
[~~(i) Health maintenance organization~~]	[~~$12 per 100 patients~~]
(i) [~~(j)~~] Home health agency	$500
(j) [~~(k)~~] Hospice	$500
(k) [~~(l)~~] Hospital	
1. Deemed hospital	For deemed hospitals with 25 beds or less, $750 + $25 per bed; For deemed hospitals with 26 or more beds, $1,000 + $25 per bed
2. Non-deemed hospital	For non-deemed hospitals with 25 beds or less, $750 + $25 per bed; For non-deemed hospitals with 26 or more beds, $1,000 + $25 per bed
(l) [~~(m)~~] Intermediate care facility	For intermediate care facilities with 50 beds or less, $750 + $25 per bed; For intermediate care facilities with 51 or more beds, $1,000 + $25 per bed
(m) [~~(n)~~] ICF/IID facility	For ICFs/IID with 50 beds or less, $750 + $25 per bed; For ICFs/IID with 51 or more beds, $1,000 + $25 per bed
[~~(o) Network~~]	[~~$500~~]
(n) [~~(p)~~] Nursing facility	For nursing facilities with 50 beds or less, $750 + $25 per bed; For nursing facilities with 51 or more beds, $1,000 + $25 per bed
(o) [~~(q)~~] Nursing home	For nursing homes with 50 beds or less, $750 + $25 per bed; For nursing homes with 51 or more beds, $1,000 + $25 per bed
(p) [~~(r)~~] Ambulatory care clinic	$500
(q) [~~(s)~~] Personal care home	$100 + $5 per bed
[~~(t) Primary care center~~]	[~~$500 + $50 per extension~~]
(r) [~~(u)~~] Psychiatric hospital	
1. Deemed hospital	For deemed psychiatric hospitals with 25 beds or less, $750 + $25 per bed; For deemed psychiatric hospitals with 26 or more beds, $1,000 + $25 per bed

2. Non-deemed hospital	For non-deemed psychiatric hospitals with 25 beds or less, $750 + $25 per bed; For non-deemed psychiatric hospitals with 26 or more beds, $1,000 + $25 per bed
(s) [~~(v)~~] Psychiatric residential treatment facility	$500
[~~(w) Rehabilitation agency~~]	[~~$300~~]
(t) [~~(x)~~] Renal dialysis facility	$35 per station + $350 per facility
[~~(y) Rural health clinic~~]	[~~$500~~]
(u) Hospital-owned pain management [~~(z) Special health~~] clinic	$500
[~~(aa) Specialized medical technology service~~]	[~~$500~~]
(v) Freestanding or [~~(bb)~~] mobile technology [~~health service~~]	$500
(w) [~~(cc)~~] Comprehensive physical rehabilitation hospital	
1. Deemed hospital	For deemed hospitals with 25 beds or less, $750 + $25 per bed; For deemed hospitals with 26 or more beds, $1,000 + $25 per bed
2. Non-deemed	For non-deemed hospitals with 25 beds or less, $750 + $25 per bed; For non-deemed hospitals with 26 or more beds, $1,000 + $25 per bed
(x) [~~(dd)~~] Critical access hospital	$750 + $25 per bed
(y) [~~(ee)~~] Private duty nursing agency	$500
(z) [~~(ff)~~] Residential hospice facility	$500
(aa) [~~(gg)~~] Prescribed Pediatric Extended Care Facility	$500
(bb) [~~(hh)~~] Outpatient health care center	$500

(3) Change in status of a licensed health facility.

(a) Name change or change of facility administrator. If a health facility changes the name of the facility as set forth on its license or the facility administrator changes, the licensee shall notify the Office of Inspector General of the facility's new name or new administrator within ten (10) calendar days of the effective date of the name change or administrator change.

(b) Change of location.

1. If a health facility or one (1) of its extensions or satellites changes location and certificate of need approval is not required prior to relocation, the licensee shall notify the Office of Inspector General of the new location within ten (10) calendar days of the effective date of the change.

2. The Office of Inspector General shall conduct an on-site inspection for a change of location if the facility is one (1) of the following levels of care:

a. Freestanding birth center;
b. Alzheimer's nursing home;
c. Ambulatory surgical center;
d. Chemical dependency treatment service;
e. Group home;
f. Non-deemed hospital;
g. Intermediate care facility;
h. Intermediate care facility for individuals with an intellectual or developmental disability (ICF/IID);
i. Nursing facility;
j. Nursing home;
k. Personal care home;
l. Psychiatric residential treatment facility;
m. Renal dialysis facility;
n. Residential hospice facility;
o. Outpatient health care clinic; or
p. Abortion facility.

(4)(a) Failure to renew a license by the annual renewal date shall result in a late penalty equal to twenty (20) percent of the renewal fee or twenty-five (25) dollars, whichever amount is greater.

(b) Continual failure to submit a completed and accurate renewal application or fee by the date specified by the cabinet may result in an enforcement action.

Section 4. Existing Facilities With Waivers. (1) The Inspector General shall deem an existing health facility to be in compliance with a facility specification requirement, even though the health facility does not meet fully the applicable requirement, if:

(a) The Inspector General has previously granted, to the health facility, a waiver for the requirement;
(b) The health facility is licensed by the cabinet;
(c) The health facility is in good standing; and
(d) The waived requirement does not adversely affect the health, safety, or welfare of a resident or patient.

(2) If the Inspector General determines that the waived requirement has adversely affected patient or resident health, safety or welfare, then:

(a) The Inspector General shall notify the health facility of the findings and the need to comply with the applicable administrative regulations; and
(b) The health facility shall submit a written plan to ensure compliance, pursuant to Section 2(13)(b) of this administrative regulation.

Section 5. Variances. (1) The Inspector General may grant a health facility a variance from a facility specification requirement if the facility establishes that the variance will:

(a) Improve the health, safety, or welfare of a resident or patient; or
(b) Promote the same degree of health, safety, or welfare of a resident or patient as would prevail without the variance.

(2) A health facility shall submit a request for a variance, in writing, to the Office of Inspector General. The request shall include:

(a) All pertinent information about the facility;
(b) The specific provision of the administrative regulation affected;
(c) The specific reason for the request; and
(d) Evidence in support of the request.

(3) The Inspector General shall review and approve or deny the request for variance. The Inspector General may request additional information from the health facility as is necessary to render a decision. A variance may be granted with or without a stipulation or restriction.

(4) The Inspector General shall revoke a variance previously granted if the Inspector General determines the variance has not:

(a) Improved the health, safety, or welfare of a patient or resident; or
(b) Promoted the same degree of health, safety, or welfare of a patient or resident that would prevail without the variance.

1. The Inspector General shall notify the health facility of a decision to revoke a variance and the need to comply with the applicable regulatory requirement.

2. The health facility shall submit a written plan to ensure compliance, pursuant to Section 2(13)(b) of this administrative regulation.

Section 6. Variance Hearings. (1)(a) A health facility dissatisfied with a decision to deny, modify, or revoke a variance or a request for a variance may file a written request for a hearing with the Secretary of the Cabinet for Health and Family Services.

(b) The request shall be received by the secretary within twenty (20) days of the date the health facility receives notice of the decision to deny, modify, or revoke the variance or request for

a variance.

(2) An administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 7. Adverse Action Procedures. (1) A health facility or health service that has received a preliminary order to close or other notice of adverse action:

(a) Shall receive a duplicate license from the Office of Inspector General indicating that the health facility or health service has an adverse action pending;

(b) Shall post the duplicate license in place of the original license;

(c) Shall be subject to periodic inspections by the inspecting agency to investigate complaints and ensure patient safety; and

(d) May continue to operate under duplicate license pending completion of the adverse action process, if patients and residents are not subjected to risk of death or serious harm.

(2) Until all appeals pursuant to KRS 216B.105 of the pending adverse action have been exhausted, the health facility or health service shall not have its:

(a) License renewed; or

(b) Duplicate license replaced.

Section 8. Denial and Revocation. (1) The cabinet shall deny or revoke a license if it finds that:

(a) In accordance with KRS 216B.105(2), there has been a substantial failure by the health facility or health service to comply with the provisions of:

1. KRS Chapter 216B; or

2. The administrative regulations applicable to the health facility's or health service's license;

(b) The health facility or health service fails to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by Section 2(13) of this administrative regulation;

(c) The health facility or health service fails to comply with the annual renewal process described by Section 2(14) of this administrative regulation; or

(d) The health facility or health service denies access to the Office of Inspector General pursuant to Section 2(12)(b) of this administrative regulation.

(2) The denial or revocation of a health facility's or health service's license shall be issued pursuant to KRS 216B.105(2).

(3) Notice of the denial or revocation shall set forth the particular reasons for the action.

(4) In accordance with KRS 216B.105(2), the denial or revocation shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee, within the thirty (30) day period, files a request in writing for a hearing with the cabinet.

(5) Pursuant to KRS 216B.050, the cabinet may compel obedience to its lawful orders.

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

(a) Form OIG 001, "Application for License to Operate a Health Facility or Health Service", July 2018[~~February 2017~~];

(b) Form OIG 002, "Application for License to Operate a Chemical Dependency Treatment Service, Group Home, Psychiatric Residential Treatment Facility, or Residential Hospice Facility", January 2017;

(c) Form OIG 003, "Application for License to Operate a Hospital", January 2017;

(d) Form OIG 004, "Application for License to Operate a Home Health Agency, Non-Residential Hospice, or Private Duty Nursing Agency", January 2017;

(e) Form OIG 005, "Application for License to Operate a Renal Dialysis Facility, Freestanding or Mobile Technology[~~Health Service~~], or Hospital-owned Pain Management[~~Special Health~~] Clinic[~~, or Specialized Medical Technological Service~~]", July 2018[~~January 2017~~];

(f) Form OIG 006, "Application for License to Operate a Long Term Care Facility", January 2017;

(g) Form OIG 007, "Application for License to Operate a Family Care Home", January 2017; and

(h) Form OIG PR-1, "Program Review Fee – Worksheet Health Facility Identification Form", June 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. 902 KAR 20:008

STEVEN D. DAVIS, Inspector General
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 6, 2018

FILED WITH LRC: July 13, 2018 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 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 August 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, phone 502-564-2888, email stephanie.brammer@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for obtaining a license to operate a health facility, the fees for initial and annual licensure, the procedure for obtaining a variance from a facility specification requirement, and the process for adverse actions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042(1) which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for proper administration of the licensure function.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042(1) by establishing the requirements for obtaining a license to operate a health facility.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for obtaining a license to operate a health facility, the fee for initial and annual licensure, the procedure for obtaining a variance from a facility specification requirement, and the process for adverse actions.

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

(a) How the amendment will change this existing administrative regulation: In accordance with HB 444 from the 2018 Session of the General Assembly, this amendment revises the fee schedule and licensure applications by removing the following categories of care: health maintenance organizations, networks, primary care centers, rehabilitation agencies, and rural health clinics. This amendment replaces the reference to "special health clinic" with

"hospital-owned pain management clinic" consistent with the amendment of 902 KAR 20:260, filed concurrently with this administrative regulation. This amendment replaces the reference to "mobile health service" with "freestanding or mobile technology" consistent with the amendment of 902 KAR 20:275, filed concurrently with this administrative regulation. This amendment removes "specialized medical technology service" from the fee schedule consistent with the repeal of 902 KAR 20:250, filed concurrently with this administrative regulation. This amendment clarifies that federally certified rural health clinics and federally qualified health centers that provide services to patients with behavioral health or psychiatric conditions, including substance use disorder, shall be exempt from licensure in accordance with KRS 216B.020(2) and (3), and not be required to obtain licensure in a separate category under 902 KAR Chapter 20 or 908 KAR Chapter 1. This amendment also establishes a late penalty equal to twenty (20) percent of the renewal fee or twenty-five (25) dollars, whichever is greater, for failure to renew a license by the annual renewal date.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to align with the changes from HB 444.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the changes established by HB 444.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by aligning with the changes from HB 444.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment removes the following levels of care from the fee schedule: health maintenance organizations, networks, primary care centers, rehabilitation agencies, rural health clinics, and specialized medical technology services.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: 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): No additional costs will be incurred to comply with this administrative regulation. However, this amendment establishes a late penalty for failure to renew a license timely.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In accordance with HB 444, health maintenance organization, networks, primary care centers, rural health clinics, and rehabilitation agencies are no longer subject to licensure by the Office of Inspector General or the fees imposed by this administrative regulation. Specialized medical technology services are exempt from licensure if the entity does not provide a State Health Plan service.

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

(a) Initially: This administrative regulation imposes no additional costs on the administrative body.

(b) On a continuing basis: This administrative regulation imposes no additional costs on the administrative body on an ongoing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of the licensure function is from federal and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No 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: The administrative regulation establishes a late penalty for failure to renew a license timely.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities that elect to be 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 removes the licensure fee for health maintenance organizations, networks, primary care centers, rehabilitation agencies, rural health clinics, and specialized medical technology services. This administrative regulation also impacts the Cabinet for Health and Family Services, Office of Inspector General.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.020(2)(c) and (3), 216B.042

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate additional revenue for the Office of Inspector General unless a late penalty is imposed for failure to renew a license timely.

(b) How 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 additional revenue during subsequent years unless a late penalty is imposed for failure to renew a license timely.

(c) How much will it cost to administer this program for the first year? This administrative regulation imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation imposes no additional costs on the administrative body during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: 902 KAR 20:008, License procedures and fee schedule.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Amendment)

902 KAR 20:260. Hospital-owned pain management [~~Special health~~] clinics.

RELATES TO: KRS 198B.260, 216B.010-216B.131, 216B.990, 218A.175, 218A.205, 311,[~~313,~~] 314, 29 C.F.R. 1910.1030(d)(2)(viii), 45 C.F.R. 160, 164, 21 U.S.C. 801 – 971, 42 U.S.C. 1320d-2 - 1320d-8

STATUTORY AUTHORITY: KRS 13A.100, 216B.042 [~~216B.040~~], 216B.105

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 [~~216B.040~~] and 216B.105 require the Cabinet for Health and Family Services to promulgate administrative regulations governing health facilities and health services. This administrative regulation establishes the[~~provides~~] minimum licensure requirements for the operation of pain management[~~special health~~]

clinics if the clinic's primary practice component is the treatment of pain using controlled substances and the clinic is located off the campus of the hospital that has majority ownership interest.

Section 1. Definitions. (1) "Diagnostic services" means services that are performed to ascertain and assess an individual's physical health condition.

(2)[~~"Governing authority" or "licensee" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the clinic is vested. (3)~~] "License" means an authorization issued by the cabinet for the purpose of operating a hospital-owned pain management[~~special health~~] clinic.

(3)[~~(4)~~] "Licensure agency" means the Office of the Inspector General, Cabinet for Health and Family Services.

(4)[~~(5)~~] "Treatment services" means services provided to an individual who, because of a physical health condition, is in need of medical assistance for the attainment of the individual's maximum level of physical function.

(5) "Unencumbered license" means a prescriber's license that has not been restricted by the state professional licensing board due to an administrative sanction or criminal conviction relating to a controlled substance.

Section 2. Scope of Operations and Services. A Kentucky-licensed hospital that is[~~(1) Special health clinics are institutions which provide diagnostic services or a low, limited level of treatment on an outpatient basis.~~

~~(2) A special health clinic shall not include the following:~~

~~(a) Any entity exempt from licensure pursuant to KRS 216B.020(2), including an office or clinic that is exempt from Certificate of Need pursuant to 900 KAR 6:130, Section 3;~~

~~(b) A home-based hospice program that provides treatment for pain using controlled substances or a residential hospice facility licensed pursuant to 902 KAR 20:140;~~

~~(c) The provision of surgical services like those allowed to be performed by ambulatory surgical centers licensed pursuant to 902 KAR 20:106; or~~

~~(d) The provision of procedures that are invasive or result in continued, prolonged follow-up care or treatment.~~

~~(3) Services licensed as a special health clinic may include:~~

~~(a) Family planning clinics;~~

~~(b) Pulmonary care clinics;~~

~~(c) Disability determination clinics;~~

~~(d) Weight loss clinics;~~

~~(e) Speech and hearing clinics;~~

~~(f) Wellness centers;~~

~~(g) Counseling centers;~~

~~(h) Sports medicine clinics;~~

~~(i) Dental clinics; or~~

~~(j) Other medical specialty clinics.~~

~~(4) An entity~~] excluded from the definition of pain management facility pursuant to KRS 218A.175(1)(b) shall obtain separate licensure under this administrative regulation[~~as a special health clinic~~] for any outpatient clinic owned and operated by the hospital[~~entity~~] if:

(1)[~~(a)~~] The majority of the patients of the practitioners at the clinic are provided treatment for pain that includes the use of controlled substances; and

(2)[~~(b)~~] The clinic is located off-campus.

Section 3. Administration Requirements. (1) Administration[~~Licensee~~].

(a) A hospital that owns and operates a pain management clinic[~~licensee~~] shall be legally responsible for the clinic's[~~service and for~~] compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the facility, including the Drug Abuse Prevention and Control Act (21 U.S.C. 801 to 971 et. seq.), KRS Chapter 218A, 902 KAR Chapter 20, and 902 KAR Chapter 55[~~service, limited to the scope of the service's certificate of need~~].

(b) A licensee shall establish lines of authority and designate an administrator who shall be principally responsible for the daily operation of the clinic.

(2) Policies. A clinic shall establish and follow written administrative policies covering all aspects of operation, including:

(a) A description of organizational structure, staffing, and allocation of responsibility and accountability;

(b) A description of linkages with inpatient facilities and other providers;

(c) Policies and procedures for the guidance and control of personnel performances;

(d) A written program narrative describing in detail the:

1. Services offered:

2. Methods and protocols for service delivery;

3. Qualifications of personnel involved in the delivery of the services; and

4. Goals of the services;

(e) A description of the administrative and patient care records and reports;

(f) Procedures to be followed if an individual seeks or is in need of care and treatment that is beyond the scope of services offered by clinic, which may include:

1. Advising the individual to seek services elsewhere;

2. Making a referral on behalf of the individual; or

3. Contacting emergency medical services; and

(g) Procedures to be followed if the clinic performs any functions related to the storage, handling, and administration of drugs and biologicals.

(3) Patient care policies. The clinic's medical director shall develop patient care policies[~~shall be developed by the medical director~~] in collaboration with a group of the clinic's other professionals to address all medical aspects of the clinic's program, including:

(a)[~~1.~~] A description of the services the clinic provides directly and those provided through agreement;

(b)[~~2.~~] Guidelines for the medical management of health problems, which include the conditions requiring medical consultation or patient referral;

(c)[~~3.~~] Guidelines for the maintenance of medical records in accordance with subsection (6) of this section; and

(d)[~~4.~~] Procedures for review and evaluation of the services provided by the clinic at least annually.

(4) Personnel.

(a) Medical[~~Clinical~~] director. A clinic's medical director[~~clinic shall have a clinical director who~~]:

1. Shall meet the requirements of Section 6(3) and (4) of this administrative regulation[~~be:~~

~~a. A physician having a full and active license to practice in Kentucky and who is responsible for all medical aspects of the clinic except those clinics which provide only speech or audiological services;~~

~~b. Except for a clinic that provides only speech or audiological services, an advanced practice registered nurse practitioner having a full and active license to practice in Kentucky and who is responsible for the clinical activities of the clinic if the clinic provides services that do not exceed the scope of services allowed under KRS Chapter 314; or~~

~~c. A dentist having a full and active license to practice in Kentucky if the clinic provides only dental services~~];

2. Shall provide direct services, supervision, and consultation to the clinic's staff;

3. Shall participate with a group made up of clinic professionals, including at least one (1) nurse,[~~or one (1) dental hygienist if the clinic provides only dental services,~~] in the development of:

a. Execution and periodic review of the clinic's written policies and services as described in subsection (3) of this section; and

b. Written program narrative describing in detail:

(i) Each service offered;

(ii) Methods and protocols for service delivery;

(iii) Qualifications of personnel involved in the delivery of the services; and

(iv) Goals of each service[~~signed by the clinical director which include standing orders, rules of practice, and medical directives that apply to services provided by the clinic and direct the step-by-~~

~~step collection of subjective and objective data from the patient, direct data analysis, direct medical action depending on the data collected, and include the rationale for each decision made~~];

4. Shall periodically review the clinic's patient records, provide medical orders, and provide medical care services to patients of the clinic; and

5.[~~Shall be present for consultation weekly and be available within one (1) hour through direct telecommunication for consultation, assistance with medical emergencies, or patient referral; and~~

~~6.~~] May serve as both the clinic's administrator and medical[~~clinical~~] director.

(b) The clinic shall:

1. Employ, directly or by contract, a sufficient number of qualified personnel (e.g., physicians, nurses, therapists, or technicians[~~, or dental hygienists~~]) to provide effective patient care and all other related services; and

2. Maintain written personnel policies that[~~which~~] are made available to all employees.

(c) There shall be a written job description for each position that[~~which~~] shall be reviewed and revised as necessary.

(d) Current personnel records shall be maintained for each employee and include the following:

1. Name, address, and Social Security number;

2. Evidence of current registration, certification, or licensure of personnel;

3. Records of training and experience; and

4. Records of performance evaluation.

(5) In-service training. All personnel shall participate in annual in-service training programs relating to their respective job activities, including thorough job orientation for new employees.

(6) Medical records.

(a) The clinic shall maintain accurate, readily accessible, and complete medical records, which contain at least the following:

1. Medical or social history relevant to the services provided, including data obtainable from other providers;

2. Name of the patient, referring practitioner, if any, and practitioner's orders for special diagnostic services;

3. Date and description of each medical visit or contact, to include condition or reason necessitating visit or contact, assessment, diagnosis, services provided, names of personnel who provided the services, medications and treatments prescribed, and disposition made;

4. Reports of all physical examinations and laboratory and other test findings relevant to the services provided; and

5. Documentation of all referrals made, including reason for referral, to whom patient was referred, and any information obtained from referral source.

(b) Medical records shall be the property of the clinic.

(c) The original medical record shall not be removed from the clinic except in compliance with a court order or subpoena.

(d) Copies of a medical record or portions of the record may be used and disclosed, in accordance with this administrative regulation.

(e) Confidentiality/Security; Use and Disclosure.

1. The clinic shall maintain the confidentiality and security of medical records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law.

2. The clinic may use and disclose medical records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation.

3. This administrative regulation shall not be construed to forbid the clinic from establishing higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.

(f) Transfer of records. The clinic shall:

1. Establish systematic procedures to assist in continuity of care if the patient moves to another source of care; and

2. Upon proper release, transfer medical records or an abstract if requested.

(g) Retention of records. After the patient's death or discharge, the complete[~~completed~~] medical record shall be placed in an inactive file and retained for:

1. Six (6) years; or

2. If a minor, three (3) years after the patient reaches the age of majority under state law, whichever is longer.

(h) The clinic shall:

1. Make provisions for the written designation of a specific location for the storage of medical records if the[~~special health~~] clinic ceases to operate because of disaster or for any other reason; and

2. Safeguard the record and its content against loss, defacement, and tampering.

(7) Kentucky Health Information Exchange (KHIE).

(a) A clinic shall participate in the KHIE pursuant to the requirements of 900 KAR 9:010.

(b) If a clinic has not implemented a certified electronic health record, the clinic may meet the requirement of paragraph (a) of this subsection by participating in the direct secure messaging service provided by KHIE.

(8) Quality assurance program.

(a) Each clinic shall have an ongoing quality assurance program that:

1. Monitors and evaluates the quality and appropriateness of patient care;

2. Evaluates methods to improve patient care;

3. Identifies and corrects deficiencies within the clinic;

4. Alerts the designated physician or prescribing practitioner to identify and resolve recurring problems; and

5. Provides for opportunities to improve the clinic's performance and to enhance and improve the quality of care provided to patients.

(b) The medical director shall ensure that the quality assurance program includes the following components:

1. The identification, investigation, and analysis of the frequency and causes of adverse incidents to patients;

2. The identification of trends or patterns of incidents;

3. The development and implementation of measures to correct, reduce, minimize, or eliminate the risk of adverse incidents to patients; and

4. The documentation of these functions and periodic review no less than quarterly of this information by the designated physician or prescribing practitioner[~~The clinic shall:~~

~~(a) Carry out or arrange for an annual evaluation of its total program;~~

~~(b) Consider the findings of the evaluation; and~~

~~(c) Take corrective action, if necessary.~~

~~(9) The evaluation required by subsection (8) of this section shall include:~~

~~(a) The utilization of clinic services, including at least the number of patients served and the volume of services;~~

~~(b) A representative sample of both active and closed clinical records; and~~

~~(c) The clinic's health care policies~~].

Section 4. Provision of Services.[~~A licensed special health clinic shall comply with the requirements listed in Sections 3 and 5 of this administrative regulation, the clinic's program narrative, and the additional requirements of this section which relate to the particular services offered by the licensee.~~] (1) Equipment used for direct patient care by a [~~special health~~] clinic shall comply with the following:

(a) The licensee shall establish and follow a written preventive maintenance program to ensure that equipment shall be operative and properly calibrated;

(b) All personnel engaged in the operation of equipment shall have adequate training and be currently licensed, registered, or certified in accordance with applicable state statutes and administrative regulations; and

(c) There shall be a written training plan for the adequate training of personnel in the safe and proper usage of the equipment.

(2) Diagnostic services shall be performed in accordance with the[~~special health~~] clinic's protocol.

(3) Diagnostic services shall be provided under the supervision of a physician[~~, advanced practice registered nurse if the clinic provides services that do not exceed the scope of services allowed under KRS Chapter 314, or a dentist if the clinic provides only dental services,~~] who is qualified by advanced training and experience in the use of the specific technique utilized for diagnostic purposes.

(4) Physical examination services shall be nonabusive and provided in a manner that[~~which~~] ensures the greatest amount of safety and security for the patient.

(5) Personnel performing a physical examination shall:

(a) Have adequate training and be currently licensed, registered, or certified in accordance with applicable Kentucky statutes and administrative regulations; and

(b) Be limited by the relevant scope of practice of state licensure.

(6) At least one (1) physician and one (1) advanced practice registered nurse, licensed practical nurse, or registered nurse shall be on duty in the clinic during all hours the facility is operational.[~~A wellness center shall have at least one (1) person on staff, employed full time, who has current advanced cardiac life support certification.~~

~~(7) Personnel. Unless exempt pursuant to subsection (8) of this section, a clinic shall have a staff that includes at least:~~

~~(a)1. One (1) physician:~~

~~2. One (1) advanced practice registered nurse; or~~

~~3. One (1) dentist if the clinic provides only dental services;~~

~~(b) One (1) licensed nurse, or one (1) dental hygienist if the clinic provides only dental services; and~~

~~(c) Other staff or ancillary personnel that are necessary to provide the services essential to the clinic's operation.~~

~~(8) A physician practice that is acquired by a hospital and obtains licensure as a special health clinic shall have at least:~~

~~(a) One (1) physician; and~~

~~(b) Other staff or ancillary personnel that are necessary to provide services essential to the clinic's operation.~~

~~(9) The licensed nurse[, or dental hygienist if applicable, shall:~~

~~(a) Participate in the development, execution, and periodic review of the written policies governing and the services the clinic provides;~~

~~(b) Participate with the clinical director in periodic review of patient health records;~~

~~(c) Provide services in accordance with clinic policies, established protocols, the Nurse Practice Act (KRS Chapter 314), or KRS Chapter 313 if the individual is a dental hygienist, and with administrative regulations promulgated thereunder;~~

~~(d) Arrange for, or refer patients to, needed services that cannot be provided at the clinic; and~~

~~(e) Assure that adequate patient health records are maintained and transferred if a patient is referred.~~]

Section 5. Physical environment. (1) Accessibility. The clinic shall meet requirements for making buildings and facilities accessible to and usable by persons with a disability pursuant to KRS 198B.260 and administrative regulations promulgated thereunder.

(2) Fire safety. An initial license to operate a[~~special health~~] clinic or a new license to operate a clinic upon approval of a change of location shall not be issued before the clinic obtains approval from the State Fire Marshal's office.

(3) Housekeeping and maintenance services.

(a) Housekeeping.

1. The clinic shall maintain a clean and safe facility free of unpleasant odors.

2. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans, and other sources.

(b) Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

1. The clinic shall ensure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps, and fences, is[~~are~~] in good repair;

2. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing, and electrical fixtures shall be in good repair. Windows and doors that[~~which~~] can be opened for ventilation shall be screened;

3. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly; and

4. A pest control program shall be in operation in the clinic. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(4) The clinic shall develop written infection control policies that are consistent with Centers for Disease Control guidelines and include the:

(a) Prevention of disease transmission to and from patients, visitors, and employees, including:

1. Universal blood and body fluid precautions;

2. Precautions against airborne transmittal of infections;

3. Work restrictions for employees with infectious diseases; and

4. Cleaning, disinfection, and sterilization methods used for equipment and the environment; and

(b) Provision of in-service education programs annually on the cause, effect, transmission, prevention, and elimination of infections.

(5) Hazardous cleaning solutions, compounds, and substances shall be:

(a) Labeled;

(b) Stored in closed metal containers;

(c) Kept separate from other cleaning materials; and

(d) Kept in a locked storage area apart from the exam room.

(6) The facility shall be kept free from insects and rodents and their nesting places.

(7) Garbage and trash:

(a) Shall be removed from the premises regularly; and

(b) Containers shall be cleaned daily.

(8) A clinic shall establish and maintain a written policy for the handling and disposal of wastes, including any infectious, pathological, or contaminated wastes, which shall include the requirements established in this subsection.

(a) Sharp wastes, including broken glass, scalpel blades, and hypodermic needles, shall be segregated from other wastes and placed in puncture-resistant containers immediately after use.

(b) A needle or other contaminated sharp waste shall not be recapped, purposely bent, broken, or otherwise manipulated by hand as a means of disposal except as permitted by the Centers for Disease Control and the Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vii).

(c) A sharp waste container shall be incinerated on or off-site or rendered nonhazardous.

(d) Any nondisposable sharp waste shall be placed in a hard walled container for transport to a processing area for decontamination.

(9)(a) Disposable waste shall be:

1. Placed in a suitable bag or closed container so as to prevent leakage or spillage; and

2. Handled, stored, and disposed of in a way that minimizes direct exposure of personnel or patients to waste materials.

(b) The clinic shall establish specific written policies regarding handling and disposal of waste material.

(10) A licensee owned or operated incinerator used for the disposal of waste shall be in compliance with all applicable Kentucky statutes and administrative regulations.

Section 6. Standards for prescribing and dispensing controlled substances[~~in a special health clinic~~]. (1) All licensed prescribers of a[~~special health~~] clinic authorized to prescribe or dispense controlled substances shall comply with the professional standards relating to the prescribing and dispensing of controlled substances established by their professional licensing boards, including 201 KAR 9:260 and 201 KAR 20:057.

(2) A representative from the Office of Inspector General shall review the[special health] clinic's records, including the clinic's patient records, to verify facility compliance with administrative regulations promulgated by professional licensing boards pursuant to KRS 218A.205 that[which] establish standards for licensees authorized to prescribe or dispense controlled substances.

(3) A[special health] clinic[described by Section 2(3) of this administrative regulation in which the majority of the patients of the practitioners at the clinic are provided treatment for pain that includes the use of controlled substances shall comply with the requirements established in this subsection. (a) The clinic] shall not contract with or employ a physician or prescribing practitioner:

(a)[1.] Whose Drug Enforcement Administration number has ever been revoked;

(b)[2.] Whose application for a license to prescribe, dispense, or administer a controlled substance has been denied by any jurisdiction;

(c)[3.] Who has had any disciplinary limitation placed on his or her license by:

1.[a.] The Kentucky Board of Medical Licensure;

2.[b.] The Kentucky Board of Nursing;

3.[c.] The Kentucky Board of Dentistry;

4.[d.] The Kentucky Board of Optometric Examiners;

5.[e.] The State Board of Podiatry;

6.[f.] Any other board that licenses or regulates a person who is entitled to prescribe or dispense controlled substances to humans; or

7.[g.] A licensing board of another state if the disciplinary action resulted from illegal or improper prescribing or dispensing of controlled substances; or

(d)[4.] Who has been convicted of or pleaded guilty or nolo contendere to, regardless of adjudication, an offense that constitutes a felony for receipt of illicit and diverted drugs, including a controlled substance listed as Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V in this state or the United States.

(4)[(b)] The clinic's medical director shall:

(a)[1.] Be board certified and have a full, active, and unencumbered license to practice medicine in the commonwealth issued under KRS Chapter 311;

(b)[2.] Be physically present practicing medicine in the clinic for at least fifty (50) percent of the time that patients are present in the clinic;

(c)[3.] Within ten (10) days after the clinic hires a prescriber of controlled substances or ten (10) days after termination of a prescriber of controlled substances, notify the cabinet in writing and report the name of the prescriber; and

(d)[4.] Meet one (1) of the following:

1.[a.] Hold a current subspecialty certification in pain management by a member board of the American Board of Medical Specialties, or hold a current certificate of added qualification in pain management by the American Osteopathic Association Bureau of Osteopathic Specialists;

2.[b.] Hold a current subspecialty certification in hospice and palliative medicine by a member board of the American Board of Medical Specialties or hold a current certificate of added qualification in hospice and palliative medicine by the American Osteopathic Association Bureau of Osteopathic Specialists;

3.[c.] Hold a current board certification by the American Board of Pain Medicine;

4.[d.] Hold a current board certification by the American Board of Interventional Pain Physicians; or

5.[e.] Have completed a fellowship in pain management or an accredited residency program that included a rotation of at least five (5) months in pain management.

(5)[(c)] The clinic shall, within ten calendar (10) days after termination of the medical director, notify the cabinet of the identity of the individual designated as medical director, including the identity of any interim medical director until a permanent director is secured for the clinic.

(6)[(d)] Each licensed physician who prescribes or dispenses a controlled substance to a patient in the clinic as part of his or her employment agreement with the clinic shall successfully complete a minimum of ten (10) hours of Category I continuing medical education in pain management during each registration period throughout his or her employment agreement with the clinic.

Section 7. Denial and Revocation. (1) The cabinet shall deny a clinic's[an] application[for License to Operate a Renal Dialysis Facility, Mobile Health Service, Special Health Clinic, or Specialized Medical Technology Service], incorporated by reference in 902 KAR 20:008, Section 9[8](1)(e), if:

(a)[Any person with ownership interest in the special health clinic has had previous ownership interest in a health care facility that had its license revoked or voluntarily relinquished its license as the result of an investigation or pending disciplinary action;
(b) Any person with ownership interest in] The clinic has been discontinued from participation in the Medicaid Program due to fraud or abuse of the program;

(b)[(c)] An administrative sanction or criminal conviction relating to controlled substances has been imposed on the clinic or any [owner or] individual under contract or employed directly by the clinic for an act or omission done within the scope of the clinic's license or the individual's employment; or

(c)[(d)] The applicant fails, after the initial inspection, to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by 902 KAR 20:008, Section 2(13)[(5)].

(2) If, during the initial inspection of the[special health] clinic, the cabinet has probable cause to believe that a physician or other prescriber practicing at the facility may be engaged in the improper, inappropriate, or illegal prescribing or dispensing of a controlled substance, the cabinet shall:

(a) Refer the physician or other prescriber practicing at the clinic to the appropriate professional licensing board and appropriate law enforcement agency; and

(b) Withhold issuing a license to the clinic pending resolution of any investigation into the matter by a licensing board or law enforcement agency, and resolution of the appeals process, if applicable.

(3) The cabinet shall revoke a[special health] clinic's license if it finds that:

(a) In accordance with KRS 216B.105(2), there has been a substantial failure by the clinic to comply with the provisions of this administrative regulation;

(b) An administrative sanction or criminal conviction relating to controlled substances is imposed on the clinic or any individual employed by the clinic for an act or omission done within the scope of the clinic's license or the individual's employment;

(c) The clinic fails to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by 902 KAR 20:008, Section 2(13)[(5)]; or

(d) The clinic is terminated from participation in the Medicaid program pursuant to 907 KAR 1:671.

(4)(a) The denial or revocation of a[special health] clinic's license shall be mailed to the applicant or licensee by certified mail, return receipt requested, or by personal service.

(b) Notice of the denial or revocation shall set forth the particular reasons for the action.

(5) The denial or revocation shall become final and conclusive thirty (30) days after notice is given unless the applicant or licensee, within the thirty (30) day period, files a request in writing for a hearing with the cabinet.

(6) Urgent action to suspend a license.

(a) The cabinet shall take urgent action to suspend a [special health] clinic's license if the cabinet has probable cause to believe that:

1. The continued operation of the clinic would constitute a danger to the health, welfare, or safety of the facility's patients; or

2. A physician or other prescriber practicing at the clinic may be engaged in the improper or inappropriate prescribing or dispensing of a controlled substance.

(b) 1. The[special health] clinic shall be served with notice of the hearing on the urgent suspension to be held no sooner than twenty (20) days from the delivery of the notice.

2. Notice of the urgent suspension shall set forth the particular reasons for the action.

(c) If the cabinet issues an urgent suspension of the clinic's license pursuant to paragraph (a)2. of this subsection, the cabinet shall refer the physician or other prescriber practicing at the[~~special health~~] clinic to the appropriate professional licensing board and appropriate law enforcement agency.

(7) Notice of a hearing on an urgent suspension shall be served on the clinic by certified mail, return receipt requested, or by personal service.

(8)(a) Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming, modifying, or revoking the urgent suspension.

(b) The urgent suspension shall be affirmed if there is substantial evidence of an immediate danger to the public health, safety, or welfare.

(9) The decision rendered under subsection (8) of this section shall be a final order of the agency on the matter, and any party aggrieved by the decision may appeal to circuit court.

(10) If the cabinet issues an urgent suspension, the cabinet shall take action to revoke the[~~special health~~] clinic's license pursuant to subsection (3) of this section if:

(a) The clinic fails to attend the expedited hearing;

(b) The decision rendered under subsection (8) of this section affirms that there is substantial evidence of an immediate danger to the public health, safety, or welfare; or

(c) Referral to a professional licensing board and law enforcement agency in accordance with subsection (6)(c) of this section results in an administrative sanction or criminal conviction relating to controlled substances against a physician or prescribing practitioner employed by, or under contract with, the clinic.

(11) Pursuant to KRS 216B.050, the cabinet may compel obedience to its lawful orders.

STEVEN D. DAVIS, Inspector General
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 6, 2018

FILED WITH LRC: July 11, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 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 August 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: Stephanie Brammer-Barnes, email stephanie.brammer@ky.gov, phone 502-564-2888; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum licensure requirements for hospital-owned pain management clinics.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 216B.020(3)(b).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.020(3)(b) by establishing the requirements for licensure as a hospital-owned pain management clinic if the clinic provides pain management services and is located off the campus of a hospital with majority ownership interest.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the current administration of the statutes by establishing the requirements for licensure as a hospital-owned pain management clinic if the clinic provides pain management services and is located off the campus of a hospital with majority ownership interest.

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

(a) How the amendment will change this existing administrative regulation: In accordance with the passage of House Bill 444 from the 2018 Session of the General Assembly, this amendment will require licensure only if the clinic's primary practice component is the treatment of pain using controlled substances and the clinic is located off the campus of a hospital with majority ownership interest. Under House Bill 444, licensure will no longer be required for facilities that provide low-level outpatient services such as wellness, weight loss, disability determination, speech and hearing, or other nonemergency, noninvasive services.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the passage of House Bill 444.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.020(3)(b) by establishing the requirements for licensure if the clinic provides pain management services and is located off the campus of a hospital with majority ownership interest.

(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 the requirements for licensure if the clinic provides pain management services and is located off the campus of a hospital with majority ownership interest.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects facilities licensed as hospital-owned pain management clinics.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Off-campus, hospital-owned and operated clinics that provide pain management services will not be subject to any additional action to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In accordance with House Bill 444, licensure will no longer be required for facilities that provide low-level outpatient services such as wellness, weight loss, disability determination, speech and hearing, or other nonemergency, noninvasive services.

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

(a) Initially: This administrative regulation imposes no additional costs.

(b) On a continuing basis: This administrative regulation imposes no additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement the administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: No fee 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: The administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment affects facilities licensed as hospital-owned pain management clinics. This amendment also impacts the Cabinet for Health and Family Services, Office of Inspector General.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.020(3)(b), 216B.042, 216B.105

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.

(b) How 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.

(c) How much will it cost to administer this program for the first year? This administrative regulation imposes no additional costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation imposes no additional 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:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Amendment)

902 KAR 20:275. Freestanding or mobile technology[~~health services~~].

RELATES TO: KRS 211.842 – 211.852, 216B.010-216B.170[~~216B.131~~], 216B.990,[~~311, 313, 314, 319A, 327, 334A,~~] 29 C.F.R. 1910.1030(d)(2)(vii), 45 C.F.R. 160, 164, 42 U.S.C. 263b(f)(1)(G), 1320d

STATUTORY AUTHORITY: KRS 216B.042

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes the minimum licensure requirements for the operation of and services provided by a freestanding or mobile technology provider[~~health services~~].

Section 1. Definitions. (1)[~~"Computed tomography (CT) scanning" means a radiological diagnostic imaging procedure that shows cross sectional images of internal body structures.~~

~~(2) "Governing authority" or "licensee" means the individual, agency, partnership, or corporation in which the ultimate responsibility and authority for the conduct of the institution is vested.~~

~~(3) "IV therapy" means the administration, by a registered nurse under the supervision of a licensed physician, of various pharmaceutical and nutritional products by intravenous, subcutaneous, or epidural routes.~~

~~(4) "IV therapy service" means pharmaceutical and nursing services, including direct hands-on care, limited to and necessary for the:~~

~~(a) Preparation, dispensing, and delivery of pharmaceutical and nutritional products and equipment; and~~

~~(b) Related clinical consultation, training, and assessment or care incidental to initial start-up of IV therapy.~~

~~(5)~~] "License" means an authorization issued by the cabinet for the purpose of operating a freestanding or mobile technology unit[~~health services~~].

(2)[~~(6) "Lithotripter" means a noninvasive treatment technique that utilizes shock waves to shatter kidney stones. (7)~~] "Magnetic resonance imaging" or "MRI" means a diagnostic imaging modality that [~~which~~] utilizes magnetic resonance, an interaction between atoms and electromagnetic fields, to project images of internal body structures.

(3)[~~(8) "Other diagnostic and treatment services" means those health services which are determined to require licensure pursuant to KRS 216B.042 as a mobile health service. (9)~~] "Positron emission tomography scanning" or "PET scanning" means a procedure that allows the study of metabolic processes, such as oxygen consumption and utilization of glucose and fatty acids, by capturing images of cellular activity or metabolism by tracking the movement of radioactive tracers throughout the body.[~~an imaging procedure that uses a radioactive substance to reveal how organs and tissues are working.~~

~~(10) "Qualified anesthesiologist" means a person who:~~

~~(a) Is a doctor of medicine or a doctor of osteopathy licensed to practice medicine and surgery;~~

~~(b) Is board certified or in the process of being certified by the American Board of Anesthesiology or the American Osteopathic Board of Surgery; and~~

~~(c) Meets the criteria established by the mobile health service's governing authority.~~

~~(11) "Qualified urologist" means a person who:~~

~~(a) Is a doctor of medicine or a doctor of osteopathy licensed to practice medicine and surgery;~~

~~(b) Is board certified or is in the process of being certified by the American Board of Urology or the American Osteopathic Board of Surgery; and~~

~~(c) Meets criteria established by the mobile health service's governing authority.~~

~~(12) "Registered nurse" is defined by KRS 314.011(5).~~

~~(13) "Therapy practice" means a practice:~~

~~(a) That does not meet the licensure exemption criteria of KRS 216B.020(2); and~~

~~(b) Employs, directly or by contract, at least one (1) or any combination of the following practitioners:~~

~~1. Occupational therapists and occupational therapy assistants licensed pursuant to KRS Chapter 319A;~~

~~2. Physical therapists and physical therapy assistants licensed or certified pursuant to KRS Chapter 327; or~~

~~3. Speech-language pathologists and speech language pathology assistants licensed pursuant to KRS Chapter 334A.~~]

Section 2. Scope of Operations. In accordance with KRS 216B.020(3)(c) and (f), a freestanding or mobile unit that provides diagnostic or therapeutic equipment or procedures, i.e., MRI, PET, cardiac catheterization, or megavoltage radiation therapy services, shall be licensed by the cabinet[~~Operation and Services. (1) Mobile health services:~~

~~(a) Shall provide medical services in various locations, which may include settings such as the office of the licensee, a health~~

~~facility licensed under KRS Chapter 216B, or a home- or community-based setting; and~~

~~(b) May utilize a specially equipped vehicle, including a:~~

~~1. Van;~~

~~2. Trailer; or~~

~~3. Mobile home.~~

~~(2) A mobile health service shall not include a private office or entity exempt from licensure pursuant to KRS 216B.020(2).~~

~~(3) Mobile health services shall include:~~

~~(a) Mobile diagnostic imaging and examination services; or~~

~~(b) Mobile treatment services.~~

~~(4) Mobile health services may be:~~

~~(a) Provided through the use of a mobile vehicle; or~~

~~(b) Performed at various locations~~].

Section 3. Administration. (1) Licensee.

(a) The licensee shall be legally responsible for:

1. All activities of the licensed freestanding or mobile technology unit[~~health service~~]; and

2. Compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the freestanding service or mobile unit[~~, limited to the scope of the service's certificate of need~~].

(b) The licensee shall:

1. Establish lines of authority; and

2. Designate an administrator who shall be principally responsible for the daily operation of the service or mobile unit.

(2) Policies and procedures.

(a) The licensee shall develop and implement policies and procedures that address:

1. Care, treatment, procedures, services, and qualifications of personnel involved in the delivery of services; and

2. The operation of equipment.

(b) The policies and procedures shall be revised as needed to accurately reflect actual operations.

(c) The licensee shall establish a time period for review of all policies and procedures.

(d) The policies and procedures shall be accessible either by hard copy or electronically.

(3) Personnel.

(a) The licensee shall employ a sufficient number of qualified staff to operate
equipment in a manner that safely and effectively meets the needs and condition of the patients.

(b) Staffing numbers and training shall:

1. Meet the recommendations of the equipment manufacturers;

2. Adhere to current professional organizational standards; and

3. Comply with all local, state, and federal laws.

(c) Additional staff members shall be provided if the licensee or cabinet determines that the staff on duty is inadequate to effectively and safely operate the equipment.

(d) All staff operating or maintaining equipment shall be assigned duties and responsibilities in accordance with the individual's capability.

(e) Assigned duties shall be:

1. In writing; and

2. Reviewed on an annual basis by the staff member and supervisor.

(f) There shall be a medical director who:

1. Shall be a physician who is responsible for the quality of medical equipment services provided to patients; and

2. May serve as the administrator as described by subsection (1)(b) of this section.

(4) Personnel records. The licensee shall maintain current personnel records for each employee that shall contain the following:

(a) Name, address, and Social Security number;

(b) Evidence of current registration, certification, or professional licensure;

(c) Documentation of training and experience;

(d) Performance evaluations; and

(e) Record of pre-employment and regular health exams related to employment.

(5) In-service training. Staff shall attend training programs relating to their respective job activities. The training programs shall include:

(a) Thorough job orientation for new employees; and

(b) In-service training programs, emphasizing competence and professionalism necessary for effective health care.

(6) Health assessment. All staff members who have contact with patients shall:

(a) Within twelve (12) months prior to initial patient contact, have a health assessment; and

(b) Comply with the tuberculosis (TB) testing requirements established in 902 KAR 20:205.

(7) Medical records.

(a) The licensee shall maintain medical records that contain the following:

1. Medical and social history relevant to each service provided, including data obtained from other providers;

2. Physician's orders if an order is required for a specific diagnostic service;

3. Description of each medical visit or contact, including a description of the:

a. Condition or reason for the visit or contact;

b. Assessment;

c. Diagnosis;

d. Services provided;

e. If applicable, medications and treatments prescribed; and

f. Disposition made;

4. Reports of all physical examinations, laboratory, x-ray, and other test findings related to each service provided; and

5. Documentation of all referrals made, including reason for referral and to whom patient was referred.

(b) Ownership.

1. Medical records shall be the property of the freestanding or mobile technology service.

2. The original medical record shall not be removed except by court order.

3. Copies of a medical record or portions of the record may be used and disclosed, in accordance with the requirements established in this administrative regulation.

(c) Confidentiality and security: use and disclosure.

1. The freestanding or mobile technology service shall maintain the confidentiality and security of medical records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law.

2. The freestanding or mobile technology service may use and disclose medical records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation.

3. This administrative regulation shall not be construed to forbid the freestanding or mobile technology service from establishing higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.

(d) Transfer of records. The licensee shall:

1. Establish procedures to assist in continuity of care if the patient moves to another source of care; and

2. Upon proper release, transfer medical records or an abstract, if requested.

(e) Retention of records. After the patient's death or discharge, the completed medical record shall be placed in an inactive file and retained for:

1. Six (6) years; or

2. If a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

(f) Radiology records shall be retained in accordance with 42 U.S.C. 263b(f)(1)(G).

(g) A specific location shall be designated by the licensee for the maintenance and storage of the service's medical records.

(h) The licensee shall ensure safe storage of medical records if

the service ceases to operate because of disaster or for any other reason.

(i) The licensee shall safeguard the record and its content against loss, defacement, and tampering.

Section 4. Reporting; Incidents and Accidents. (1) A record of each incident or accident occurring in the equipment location area involving patients or staff members shall be retained for a period of two (2) years from the date of the incident or accident.

(2) A serious incident, accident, or medical condition as established in subsection (3) of this section and any illness resulting in death or inpatient hospitalization shall be reported via telephone to the next-of-kin or responsible party immediately and in writing to the Office of Inspector General within ten (10) days of the occurrence.

(3) A serious incident, accident, or medical condition shall include any of the following:

(a) Major permanent loss of function;

(b) A procedure on the wrong patient or wrong body part;

(c) Fractures of major limbs or joints;

(d) Severe burns, lacerations, or hematomas; and

(e) Actual or suspected abuse or mistreatment of patients.

(4) Reports made to the Office of Inspector General shall contain:

(a) Facility name;

(b) Patient age and sex;

(c) Date of incident or accident;

(d) Location;

(e) Extent or type of injury; and

(f) Means of treatment, e.g., hospitalization.

(5) A significant medication error or significant adverse medication reaction as established in subsection (6) of this section that requires intervention shall be reported immediately to the:

(a) Patient, next-of-kin, or responsible party;

(b) Prescriber;

(c) Supervising staff member; and

(d) Administrator.

(6) A significant medication error or significant adverse medication reaction shall include any event that is unintended and undesirable, including an unexpected effect of a prescribed medication or of a medication error that:

(a) Requires discontinuing a medication or modifying the dose;

(b) Requires hospitalization;

(c) Results in disability;

(d) Requires treatment with a prescription medication;

(e) Results in cognitive deterioration or impairment;

(f) Is life-threatening; or

(g) Results in death.

(7) Changes in the patient's condition, to the extent that a major cardiac event or other serious health concern is evident, shall be reported immediately to the:

(a) Attending physician;

(b) Next-of-kin or responsible party; and

(c) On-site manager.

Section 5. Provision of Services. (1) Care, treatment, procedures, or services shall be provided, given, or performed effectively and safely in accordance with an order from a physician or other legally authorized health care practitioner.

(2) Precautions shall be taken for a patient who:

(a) Has a special condition, such as pacemaker, pregnancy, or Alzheimer's disease; or

(b) May be susceptible to deleterious effects as a result of the treatment.

(3) If a patient or potential patient has a communicable disease, a physician or other legally authorized health care practitioner shall insure that:

(a) Adequate care is provided to prevent the spread of the disease; and

(b) The staff members are adequately trained and qualified to:

1. Manage the patient; or

2. Transfer the patient to an appropriate facility, if necessary.

(4) If the licensee engages a source to provide services normally provided by the staff, e.g., staffing, training, equipment maintenance, there shall be a written agreement with the source that describes:

(a) How and when the services are to be provided;

(b) The exact services to be provided; and

(c) A statement that these services are to be provided by qualified individuals.

(5) A current listing of all types of treatment and procedures offered shall be available.

(6) Anesthesia services. If provided, after the administration of a general anesthetic, a patient shall be attended by a physician until the patient may be safely placed under post-operative or procedure supervision by the nursing staff who shall then attend the patient until:

(a) The patient has regained full consciousness; or

(b) The effects of the anesthetic have sufficiently subsided for the patient to be able to summon aid if needed.

(7) Laboratory services.

(a) Laboratory services required in connection with the treatment or procedure to be performed shall be provided or arrangements made to obtain the services.

(b) Laboratory supplies shall not be expired.

(8) Megavoltage radiation therapy services. A licensee that provides megavoltage radiation therapy services shall comply with the requirements of this subsection.

(a) Sufficient personnel shall be present to supervise and perform the services provided by the facility, including at least one (1):

1. Certified radiation operator; or

2. Physician with specialized training and experience to perform the scope of radiation therapy services provided.

(b) The licensee shall be currently licensed or registered pursuant to KRS 211.842 to 211.852.

(c) There shall be written policies and procedures governing radiologic services and administrative routines that support sound radiologic practices.

(d) Reports of interpretations shall be written or dictated and signed by the radiologist or physician.

(e) The use of all x-ray apparatus shall be limited to certified radiation operators or physicians.

(f) Only a certified radiation operator or physician may apply or remove radium element, its disintegration products, and radioactive isotopes.

(g) Proper safety precautions shall be maintained against fire, explosion, electrical, and radiation hazards.

(9) Adverse conditions.

(a) If a patient experiences any adverse condition or complication during or after the performance of the treatment or procedure, the patient shall remain at the equipment location until the condition or complication is eliminated, as determined by the physician, and the patient is stabilized.

(b) A patient who requires care beyond the capability of the equipment or staff shall be transferred to an appropriate facility.

(10) Patient instruction. Written instructions, if applicable, shall be issued to each patient upon discharge, including:

(a) Signs and symptoms of possible complications;

(b) Telephone number of the location of the equipment, the attending physician, or other knowledgeable professional staff member, if any complication occurs or questions arise;

(c) An emergency telephone number if any complication occurs;

(d) Limitations regarding activities or foods; and

(e) Date for follow-up or return visit, if applicable.

Section 6. Rights and Assurances. (1) The licensee shall develop and post in a conspicuous place in a public area a grievance or complaint procedure to be exercised on behalf of the patients, including the address and phone number of the Office of Inspector General.

(2) Care, treatment, procedures, and services provided, and the charges for each shall be delineated in writing.

(3) Patients shall be made aware of all charges and services,

as verified by the signature of the patient or responsible party.

(4) Adequate safeguards shall be provided for protection and storage of patients' personal belongings.

(5) Patient rights shall be guaranteed, prominently displayed, and the patient shall be informed of these rights, including:

(a) The care, treatment, procedures, and services to be provided;

(b) Informed consent for care, treatment, procedures, and services;

(c) Respect for the patient's property;

(d) Freedom from mental and physical abuse and exploitation;

(e) Privacy while being treated and while receiving care;

(f) Respect and dignity in receiving care, treatment, procedures, and services;

(g) The consequences of refusal of the treatment or procedure;

(h) Refusal of experimental treatment and drugs; and

(i) Confidentiality and privacy of records.

(6) Except in an emergency, documentation regarding informed consent shall be properly executed prior to the treatment or procedure.

Section 7. Medication. (1) Medication orders.

(a) Medications, including oxygen, shall be administered to patients only upon the order of a physician or other legally authorized health care practitioner.

(b) All orders, including verbal, shall be:

1. Received only by a legally authorized health care practitioner; and

2. Authenticated and dated by a physician or other legally authorized health care practitioner pursuant to the licensee's policies and procedures, but no later than seventy-two (72) hours after the order is given.

(c) Verbal orders received shall include:

1. The time of receipt of the order;

2. Description of the order; and

3. Identification of the physician or other legally authorized health care practitioner and the individual receiving the order.

(2) Administering medication.

(a) Each medication dose administered shall be properly recorded in the patient's record as the medication is administered.

(b) The medication administration record shall include the:

1. Name of the medication;

2. Dosage;

3. Mode of administration;

4. Date;

5. Time; and

6. Signature of the individual administering the medication.

(c) Initials may be utilized in lieu of a signature and identification of the individual's initials shall be located within the record.

(3) Medication storage.

(a) Medications shall be stored:

1. Under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, safety, and security; and

2. Safeguarded to prevent access by unauthorized persons.

(b) Expired or discontinued medications shall not be stored with current medications.

(c) Storage areas shall:

1. Be of sufficient size for clean and orderly storage;

2. Be locked if not under direct observation by a licensed health care practitioner; and

3. Not be located near sources of heat, humidity, or other hazards that may negatively impact medication effectiveness or shelf-life.

(d)1. Medications requiring refrigeration shall be stored in a refrigerator at the temperature established by the U.S. Pharmacopeia (36 - 46 degrees F.).

2. Food and drinks and laboratory specimens shall not be stored in the same refrigerator in which medications and biologicals are stored.

3. Blood and blood products may be stored in the same refrigerator with medications and biologicals if stored in a separate compartment from the medications and biologicals.

(e) Medications shall be stored:

1. Separately from poisonous substances, blood, or body fluids;

2. In a manner that provides for separation between oral and topical medications; and

3. Separately from food.

(4) Disposition of medications.

(a) Medications shall not be retained in stock after the expiration date on the label.

(b) Contaminated or deteriorated medications shall not be maintained.

Section 8. Emergency procedures and disaster preparedness. (1) Emergency services.

(a) Appropriate equipment and services shall be provided to render emergency resuscitative and life-support procedures pending transfer to a hospital, if necessary.

(b) The licensee shall make arrangements for obtaining blood and blood products to meet emergency situations.

(2) Disaster preparedness. The licensee shall establish plans, based on equipment and staff capabilities, to meet its responsibilities for providing emergency care.

(3) Emergency call numbers.

(a) In addition to access to "911," emergency call data shall:

1. Be immediately available; and

2. Include the telephone numbers of:

a. Fire and police departments;

b. Ambulance service; and

c. The Poison Control Center.

(b) Other emergency call information shall be available, including the names, addresses, and telephone numbers of staff members to be notified in case of emergency.

Section 9. Equipment Maintenance. (1) Equipment utilized for providing treatment or procedures, including its component parts, shall be properly maintained to perform the functions for which it is designed.

(2) Equipment.

(a) Equipment used in the provision of care, treatment, procedures, and services shall:

1. Meet appropriate specifications and calibrations; and

2. Be monitored and operated in accordance with the manufacturer's guidelines.

(b) Records shall be maintained to indicate all testing and maintenance.

(c) If equipment for the administration of anesthesia is utilized, it shall be readily available, clean or sterile, and operating properly.

1. Anesthesia apparatus shall be equipped with a device to measure the oxygen component of the gas being inhaled by the patient.

2. The device shall emit audible and visual alarms if the proportion of oxygen falls below a safe level.

3. A record of the inspections made prior to each use of the anesthesia equipment and a record of all service and repair performed on all anesthesia machines, vaporizers, and ventilators shall be maintained and retained:

a. For a minimum of two (2) years from the date of the inspection, service, or repair or

b. Until the next Office of Inspector General survey.

Section 10. Physical Environment. (1) Accessibility. A licensee shall meet requirements for making buildings and facilities accessible to and usable by individuals with physical disabilities pursuant to federal, state, and local laws.

(2) Fire safety. A fixed-site location shall be approved by the state Fire Marshal's office before licensure is granted by the cabinet.

(3) Environment. The building in which equipment is utilized shall be planned, designed, and equipped to provide and promote the health, safety, and well-being of each patient.

(4) Infection control. The licensee shall develop written infection control policies that are consistent with Centers for

Disease Control guidelines, available at www.cdc.gov/ncidod/dhgp/guidelines.html, and shall include:

(a) Prevention of disease transmission to and from patients, visitors, and employees, including:

1. Universal blood and body fluid precautions;

2. Precautions against airborne transmittal of infections; and

3. Work restrictions for employees with infectious diseases; and

(b) Cleaning, disinfection, and sterilization methods used for equipment and the environment.

(5) Housekeeping and maintenance.

(a) The equipment location shall be neat, uncluttered, clean, and free of vermin and offensive odors.

(b) Hazardous cleaning solutions, compounds, and substances shall be:

1. Labeled;

2. Stored in closed metal containers;

3. Kept separate from other cleaning materials; and

4. Kept in a locked storage area.

(c) Garbage and trash:

1. Shall be removed from the premises regularly; and

2. Containers shall be cleaned regularly as needed.

(d) A licensee shall establish and maintain a written policy for the handling and disposal of wastes, including any infectious, pathological, and contaminated wastes, which shall include the following:

1. Sharp wastes shall be segregated from other wastes and placed in puncture-resistant containers immediately after use;

2. A needle or other contaminated sharp shall not be recapped, purposely bent, broken, or otherwise manipulated by hand as a means of disposal, except as permitted by the Centers for Disease Control and Prevention and the Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vii);

3. A sharp waste container shall be incinerated on or off-site or rendered nonhazardous; and

4. Any nondisposable sharps shall be placed in a hard walled container for transport to a processing area for decontamination.

(e)1. Disposable waste shall be:

a. Placed in a suitable bag or closed container so as to prevent leakage or spillage; and

b. Handled, stored, and disposed of in such a way as to minimize direct exposure of personnel or patients to waste materials.

2. The licensee shall establish specific written policies regarding handling and disposal of waste material.

(f) A licensee owned or operated incinerator used for the disposal of waste shall be in compliance with all applicable Kentucky statutes and administrative regulations.

Section 11. Quality assurance program. A licensee shall have a written, implemented quality assurance program that:

(1) Includes effective mechanisms for reviewing and evaluating patient care; and

(2) Provides for appropriate responses to findings.

Section 12. Mobile Units. (1) All mobile units, e.g., self-contained vans or tractor trailers, that transport equipment from one (1) host site to another, shall meet the current standards of this administrative regulation and of the local, state, and federal Departments of Transportation for the permitting and safe operation of the vehicle.

(2) A mobile cardiac catheterization laboratory shall only provide services on the campus of a host hospital that has emergency medical and intensive coronary care services.

(3) A procedure shall not be performed on a patient in a mobile cardiac catheterization laboratory if any of the following are present:

(a) Recent myocardial infarction (within ten (10) days or less);

(b) Uncontrolled arrhythmias;

(c) Severe uncontrolled congestive heart failure;

(d) Current hospitalization with highly unstable angina; or

(e) The patient is under eighteen (18) years of age.[~~If a mobile health service's governing authority is comprised of more than one (1) licensed hospital, a separate administrator may be designated from each hospital to serve as administrator during the time in which services are provided at the hospital where the designee is employed.~~

~~(3) Policies. A mobile health service shall establish and follow written administrative policies covering all aspects of operation, including:~~

~~(a) A description of organizational structure, staffing, and allocation of responsibility and accountability;~~

~~(b) Policies and procedures for the guidance and control of personnel performances;~~

~~(c) A written program narrative describing in detail each service offered, methods and protocols for service delivery, qualifications of personnel involved in the delivery of the services, and goals of each service;~~

~~(d) A description of the administrative and patient care records and reports; and~~

~~(e) Procedures to be followed if the licensee performs any functions related to the storage, handling, and administration of drugs and biologicals.~~

~~(4) Personnel.~~

~~(a) Medical director. Except for a therapy practice or entity that is licensed pursuant to this administrative regulation to provide only therapy services, the mobile health service shall have a medical director who shall be a licensed physician or dentist with specialized training and experience in, and responsibility for, all medical or dental aspects of the service.~~

~~(b) A mobile health service shall be exempt from paragraph (a) of this subsection if:~~

~~1. The service operates only diagnostic examination equipment;~~

~~2. The service is offered only to licensed hospitals; and~~

~~3. Personnel make no medical assessment of the diagnostic patient data collected.~~

~~(5) A mobile health service shall employ or contract with a sufficient number of qualified personnel to provide effective patient care and all other related services.~~

~~(6) The licensee shall provide written personnel policies, which shall:~~

~~(a) Be available to each employee;~~

~~(b) Be reviewed on an annual basis;~~

~~(c) Be revised as necessary; and~~

~~(d) Contain a job description for each position subject to review and revision, as necessary.~~

~~(7) The licensee shall maintain current personnel records for each employee that shall contain the following:~~

~~(a) Name, address, and Social Security number;~~

~~(b) Evidence of current registration, certification, or professional licensure;~~

~~(c) Documentation of training and experience;~~

~~(d) Performance evaluations; and~~

~~(e) Record of pre-employment and regular health exams related to employment.~~

~~(8) In-service training. Personnel shall attend training programs relating to their respective job activities. The training programs shall include:~~

~~(a) Thorough job orientation for new employees; and~~

~~(b) In-service training programs, emphasizing competence and professionalism necessary for effective health care.~~

~~(9) Medical records.~~

~~(a) The licensee shall maintain medical records that contain the following:~~

~~1. Medical and social history relevant to each service provided, including data obtained from other providers;~~

~~2. Physician's orders if an order is required for a specific diagnostic service;~~

~~3. Description of each medical visit or contact, including a description of the:~~

~~a. Condition or reason for the visit or contact;~~

~~b. Assessment;~~

~~c. Diagnosis;~~

~~d. Services provided;~~

~~e. If applicable, medications and treatments prescribed; and~~

~~f. Disposition made;~~

~~4. Reports of all physical examinations, laboratory, x-ray, and other test findings related to each service provided; and~~

~~5. Documentation of all referrals made, including reason for referral and to whom patient was referred.~~

~~(b) Ownership.~~

~~1. Medical records shall be the property of the mobile health service.~~

~~2. The original medical record shall not be removed except by court order.~~

~~3. Copies of a medical record or portions of the record may be used and disclosed, in accordance with the requirements established in this administrative regulation.~~

~~(c) Confidentiality and security: use and disclosure.~~

~~1. The mobile health service shall maintain the confidentiality and security of medical records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law.~~

~~2. The mobile health service may use and disclose medical records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation.~~

~~3. This administrative regulation shall not be construed to forbid the mobile health service from establishing higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.~~

~~(d) Transfer of records. The licensee shall:~~

~~1. Establish systematic procedures to assist in continuity of care if the patient moves to another source of care; and~~

~~2. Upon proper release, transfer medical records or an abstract, if requested.~~

~~(e) Retention of records. After the patient's death or discharge, the completed medical record shall be placed in an inactive file and retained for:~~

~~1. Six (6) years; or~~

~~2. If a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.~~

~~(f) Mammography and other radiology records shall be retained in accordance with 42 U.S.C. 263b(f)(1)(G).~~

~~(g) A specific location shall be designated by the mobile health service for the maintenance and storage of the service's medical records.~~

~~(h) The licensee shall have provisions for the storage of medical records if the mobile health service ceases to operate because of disaster or for any other reason.~~

~~(i) The licensee shall safeguard the record and its content against loss, defacement, and tampering.~~

~~(j) If a therapy practice licensed pursuant to this administrative regulation provides physical therapy, occupational therapy, or speech pathology services under a contractual agreement with another facility or service licensed under 902 KAR Chapter 20, the therapy practice shall:~~

~~1. Be exempt from the requirements of this subsection; and~~

~~2. Demonstrate compliance with Section 5(3)(d)1.d. and Section 5(3)(d)3. of this administrative regulation.~~

~~(10) Kentucky Health Information Exchange (KHIE).~~

~~(a) A mobile health service shall participate in the KHIE pursuant to the requirements of 900 KAR 9:010.~~

~~(b) If a mobile health service has not implemented a certified electronic health record, the service may meet the requirement of paragraph (a) of this subsection by participating in the direct secure messaging service provided by KHIE.~~

~~Section 4. Requirements for any Vehicle that a Patient Enters for Diagnostic or Treatment Services. (1) A vehicle used for the delivery of medical or dental services shall be kept in optimum order with clean interiors and equipment.~~

~~(2) The following standards shall apply only to a vehicle in which the patient enters:~~

~~(a) There shall be adequate heating and air-conditioning capability in both the driver and patient compartments;~~

~~(b) There shall be a minimum of two (2) potential power sources for the vehicle;~~

~~(c) To insure an immediately available source of power if a power failure occurs, one (1) power source shall be self-contained on the vehicle, and the other source shall be an exterior source of power hookup;~~

~~(d) The vehicle shall be accessible to users with disabilities through the use of a wheelchair lift or a ramp; and~~

~~(e) The vehicle shall have adequate and safe space for staff and examination procedures.~~

~~(3) Equipment. A vehicle used for the delivery of health services shall have the following essential equipment:~~

~~(a) One (1) five (5) pound dry chemical fire extinguisher;~~

~~(b) One (1) first aid kit;~~

~~(c) Suction apparatus; and~~

~~(d) Oxygen equipment (portable), including:~~

~~1. One (1) "D" size oxygen cylinder;~~

~~2. One (1) pressure gauge and flow rate regulator;~~

~~3. Adaptor and tubing; and~~

~~4. Transparent masks for adults and children. Nasal cannulas may be substituted.~~

~~(4) Personnel. Each mobile health service vehicle shall be staffed by at least one (1) person, who may be the driver of the vehicle, and shall have the following qualifications:~~

~~(a) Red Cross Advanced and Emergency Care Certification, each with supplemental CPR instruction certified by the American Red Cross or the American Heart Association;~~

~~(b) EMT-first responder certification;~~

~~(c) EMT-A certification; or~~

~~(d) Licensure as a registered nurse, physician, or dentist.~~

~~Section 5. Requirements for Provision of Services; Diagnostic Services and Treatment Services. (1) Unless an exemption applies, a licensed mobile health service shall comply with the:~~

~~(a) Requirements listed in Sections 3, 4, and 6 of this administrative regulation;~~

~~(b) Service's program narrative; and~~

~~(c) Additional requirements of this section that relate to the particular service offered by the licensee.~~

~~(2) Diagnostic services. Diagnostic services are services which are performed to ascertain and assess an individual's physical health condition.~~

~~(a) Diagnostic services, except for mammography services, shall be performed only on the order of a physician or advanced practice registered nurse as authorized in KRS 314.011(8).~~

~~(b) The licensee shall prepare a record for each patient that includes the following:~~

~~1. Date of the procedure;~~

~~2. Name of the patient;~~

~~3. Description of the procedures ordered and performed;~~

~~4. The referring physician;~~

~~5. The name of the person performing the procedure; and~~

~~6. The date and the name of the physician to whom the results were sent.~~

~~(c) Diagnostic imaging services.~~

~~1. Diagnostic imaging services shall be services that produce an image through film or computer generated video of the internal structures of a patient. These services may include:~~

~~a. X-ray;~~

~~b. MRI;~~

~~c. CT scanning;~~

~~d. PET scanning;~~

~~e. Ultrasound;~~

~~f. Mammography;~~

~~g. Fluoroscopy; and~~

~~h. Other modalities using directed energy to gain statistical, physiological, or biological diagnostic imaging information.~~

~~2. A mobile health service that provides diagnostic imaging services shall comply with the following requirements:~~

~~a. Equipment used for direct patient care shall be fully approved by the Federal Food and Drug Administration (FDA) for clinical use;~~

~~b. There shall be a written preventive maintenance program, which the licensee follows to ensure that imaging equipment is:~~

~~(i) Operative;~~

~~(ii) Properly calibrated; and~~

~~(iii) Shielded to protect the operator, patient, environment, and the integrity of the images produced;~~

~~c. Recalibration of radiation producing and nonradiation producing instrumentation shall occur at least every six (6) months by biomedical service personnel; and~~

~~d. Radiation producing instrumentation shall be recalibrated annually by a consulting health physicist.~~

~~3. Diagnostic imaging services shall be provided under the supervision of a physician who is qualified by advanced training and experience in the use of the specific imaging technique for diagnostic purposes.~~

~~4. Imaging services shall have a current license or registration pursuant to KRS Chapter 311B and 902 KAR Chapter 100.~~

~~5. Personnel engaged in the operation of imaging equipment shall be currently licensed or certified in accordance with KRS Chapter 311B and 201 KAR Chapter 46.~~

~~6. There shall be a written training plan for personnel in the safe and proper usage of the mobile imaging equipment and system.~~

~~7. There shall be a physician's signed order that:~~

~~a. Specifies the reason the procedure is required;~~

~~b. Identifies the area of the body to be examined; and~~

~~c. Documents the condition of the patient.~~

~~8. There shall be sufficiently trained on-duty personnel with adequate equipment to provide emergency resuscitation services if there is a patient emergency.~~

~~(d) Other diagnostic services.~~

~~1. Other diagnostic services shall be provided through the use of diagnostic equipment and physical examination. These services may include:~~

~~a. Electrocardiogram services;~~

~~b. Electroencephalogram services;~~

~~c. Holter monitor services;~~

~~d. Disability determination services;~~

~~e. Pulmonary function services;~~

~~f. Aphresis services;~~

~~g. Blood gas analysis services;~~

~~h. Echosonogrophy services; and~~

~~i. Doppler services.~~

~~2. Equipment used for direct patient care shall comply with the following:~~

~~a. The licensee shall establish and follow a written preventive maintenance program to ensure that equipment shall be operative and properly calibrated;~~

~~b. All personnel engaged in the operation of diagnostic equipment shall have training and be currently licensed or certified in accordance with KRS Chapter 311B and 201 KAR Chapter 46; and~~

~~c. There shall be a written personnel training plan for instruction in the safe and proper usage of the equipment.~~

~~3. Physical examination services shall be nonabusive and provided in a manner that ensures the greatest amount of safety and security for the patient.~~

~~a. Protocols for diagnostic examinations shall be developed by the medical director.~~

~~b. Personnel performing physical examinations shall:~~

~~(i) Have training; and~~

~~(ii) Be currently licensed or certified in accordance with KRS Chapter 311 or KRS Chapter 314.~~

~~c. Personnel performing physical examinations shall be limited by the relevant scope of practice pursuant to his or her professional license to practice.~~

~~(3) Treatment services. Treatment services are services provided to a patient who, because of a physical health condition, is in need of medical assistance for the attainment of his or her maximum level of physical function.~~

~~(a) Mobile health clinic.~~

~~1. A mobile health clinic shall provide both diagnostic and treatment services through the use of a mobile vehicle that meets the requirements of Section 4 of this administrative regulation.~~

~~2. A mobile health clinic may provide a wide range of diagnostic and treatment services on an outpatient basis for a variety of physical health conditions.~~

~~3. Policies. The licensee shall develop patient care policies with the advice of a group of professional personnel that includes:~~

~~a. One (1) or more physicians; and~~

~~b. One (1) or more advanced practice registered nurses.~~

~~4. At least one (1) member of the group responsible for developing patient care policies shall not be a member of the mobile health clinic staff.~~

~~5. The policies shall include:~~

~~a. A description of the services the mobile health clinic provides directly and those provided through agreement;~~

~~b. Guidelines for the medical management of health problems, which include the conditions requiring medical consultation or patient referral, and the maintenance of health records; and~~

~~c. Procedures for review and evaluation of the services provided by the clinic at least annually.~~

~~6. Personnel. The mobile health clinic shall have a staff that includes:~~

~~a. At least one (1) physician;~~

~~b. At least one (1) advanced practice registered nurse; and~~

~~c. Other staff or ancillary personnel that are necessary to provide the services essential to the clinic's operation.~~

~~7. The physician shall:~~

~~a. Be responsible for all medical aspects of the clinic;~~

~~b. Provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311;~~

~~c. Provide medical direction, supervision, and consultation to the staff;~~

~~d. In conjunction with the advanced practice registered nurse, participate in developing, executing, and periodically reviewing the mobile health clinic's written policies and services;~~

~~e. Periodically review the mobile health clinic's patient records, provide medical orders, and provide medical care services to patients of the mobile health clinic; and~~

~~f. Be present for consultation weekly, and be available within one (1) hour, through direct telecommunication for consultation, assistance with medical emergencies, or patient referral.~~

~~8. The advanced practice registered nurse shall:~~

~~a. Participate in the development, execution, and periodic review of the written policies governing the services the mobile health clinic provides;~~

~~b. Participate with the physician in periodic review of patient health records;~~

~~c. Provide services in accordance with mobile health clinic policies, established protocols, the Nurse Practice Act, KRS Chapter 314 and 201 KAR Chapter 20;~~

~~d. Arrange for, or refer patients to needed services not provided at the mobile health clinic; and~~

~~e. Assure that patient health records are maintained and transferred when patients are referred.~~

~~9. The mobile health clinic shall have linkage agreements or arrangements with each of the following:~~

~~a. Inpatient hospital care;~~

~~b. Physician services in a hospital, patient's home, or long-term care facility;~~

~~c. Additional and specialized diagnostic and laboratory services that are not available at the mobile health clinic;~~

~~d. Home health agency;~~

~~e. Emergency medical services;~~

~~f. Pharmacy services; and~~

~~g. Local health department.~~

~~10. The mobile health clinic shall:~~

~~a. Carry out or arrange for an annual evaluation of its total program; and~~

~~b. Consider the findings of the evaluation and take corrective action, if necessary. The evaluation shall include:~~

~~(i) The utilization of clinic services including at least the number of patients served and the volume of services;~~

~~(ii) A representative sample of both active and closed clinical records; and~~

~~(iii) The mobile health clinic's health care policies.~~

~~11. The mobile health clinic shall develop and maintain written protocols that include standing orders, rules of practice, and medical directives that:~~

~~a. Apply to services provided by the clinic; and~~

~~b. Explicitly direct the step-by-step collection of subjective and objective data from the patient. The protocols shall:~~

~~(i) Direct data analysis;~~

~~(ii) Direct explicit medical action depending upon the data collected;~~

~~(iii) Include rationale for each decision made; and~~

~~(iv) Be signed by the staff physician.~~

~~12. The mobile health clinic staff shall furnish diagnostic and therapeutic services and supplies that are commonly furnished in a physician's office or at the entry point into the health care delivery system, including:~~

~~a. Medical history;~~

~~b. Physical examination;~~

~~c. Assessment of health status; and~~

~~d. Treatment for a variety of medical conditions.~~

~~13. The mobile health clinic shall provide basic laboratory services essential to the immediate diagnosis and treatment of the patient, including:~~

~~a. Chemical examinations of urine by stick or tablet methods or both, including urine ketones;~~

~~b. Microscopic examinations of urine sediment;~~

~~c. Hemoglobin or hematocrit;~~

~~d. Blood sugar;~~

~~e. Gram stain;~~

~~f. Examination of stool specimens for occult blood;~~

~~g. Pregnancy tests;~~

~~h. Primary culturing for transmittal to a hospital laboratory or licensed laboratory; and~~

~~i. Test for pinworms.~~

~~14. The mobile health clinic shall:~~

~~a. Provide medical emergency procedures as a first response to common life-threatening injuries and acute illness; and~~

~~b. Have available the drugs and biologicals commonly used in lifesaving procedures, including:~~

~~(i) Analgesics;~~

~~(ii) Anesthetics (local);~~

~~(iii) Antibiotics;~~

~~(iv) Anticonvulsants;~~

~~(v) Antidotes;~~

~~(vi) Emetics;~~

~~(vii) Serums; and~~

~~(viii) Toxoids.~~

~~15. The mobile health clinic shall post the following in a conspicuous area at the entrance, visible from the outside of the clinic:~~

~~a. The hours that emergency medical services will be available in the clinic;~~

~~b. The clinic's next scheduled visit; and~~

~~c. Where emergency medical services not provided by the clinic can be obtained during and after the clinic's regular scheduled visits and hours of operation.~~

~~(b) Mobile dental clinic.~~

~~1. A mobile dental clinic shall provide both diagnostic and dental treatment services at different locations through the use of a mobile vehicle or equipment.~~

~~2. Policies. The licensee shall develop patient care policies with the advice of a group of professional personnel that includes at least one (1) licensed dentist.~~

~~3. The policies shall include:~~

~~a. Guidelines that identify dental problems beyond the scope of services provided by the licensee;~~

~~b. Provisions for patient referral;~~

~~c. Guidelines for the review and evaluation of the services provided by the clinic at least annually;~~

~~d. Procedures to be followed if a patient has a medical emergency; and~~

~~e. Guidelines for infection control.~~

~~4. Personnel. The mobile dental clinic shall have a staff that includes at least:~~

~~a. One (1) licensed dentist; and~~

~~b. One (1) dental assistant.~~

~~5. The dentist shall:~~

~~a. Be responsible for all aspects of patient care in accordance with KRS Chapter 313 and 201 KAR Chapter 8;~~

~~b. Be present in the clinic at all times that a patient is receiving dental care; and~~

~~c. Provide direct supervision to all staff involved in the delivery of services.~~

~~6. The dental assistant shall:~~

~~a. Provide services in accordance with:~~

~~(i) The mobile dental clinic policies and established protocols; and~~

~~(ii) KRS Chapter 313 and 201 KAR Chapter 8; and~~

~~b. Provide services only under the direct supervision of a licensed dentist.~~

~~7. Equipment. The mobile dental clinics shall have the following equipment:~~

~~a. X-ray units;~~

~~b. Sterilizer;~~

~~c. High-speed suction;~~

~~d. Dental lights; and~~

~~e. Emergency kit with the following drug types:~~

~~(i) Antiallergenic;~~

~~(ii) Vasodilators;~~

~~(iii) Anticonvulsives; and~~

~~(iv) Vasopressors.~~

~~(c) Mobile lithotripter service.~~

~~1. A mobile lithotripter service shall provide a noninvasive technique for removing kidney or ureteral stones through the use of a lithotripter at various hospital locations.~~

~~2. Mobile lithotripter services may only be delivered on the grounds of the hospital utilizing the mobile lithotripter service.~~

~~3. Lithotripsy services shall be:~~

~~a. Performed only on the order of a physician; and~~

~~b. Provided under the supervision of a physician who is qualified by advanced training and experience in the use of lithotripsy treatment.~~

~~4. The mobile lithotripter service shall prepare a record for each patient that includes the:~~

~~a. Date of the procedure;~~

~~b. Name of the patient;~~

~~c. Description of the procedures ordered and performed;~~

~~d. Referring physician; and~~

~~e. Name of the person performing the procedure.~~

~~5. There shall be a physician's signed order that specifies the:~~

~~a. Reason the procedure is required;~~

~~b. Area of the body to be exposed; and~~

~~c. Anticipated outcome of treatment.~~

~~6. Policies. A mobile lithotripter service shall develop patient care policies with the advice of a group of professional personnel that includes at least:~~

~~a. One (1) qualified urologist; and~~

~~b. One (1) qualified anesthetist.~~

~~7. At least one (1) member of the group responsible for developing patient care policies shall not be a member of the mobile lithotripter service staff.~~

~~8. The policies shall include:~~

~~a. A description of how a patient will be transported between the hospital and the mobile lithotripter service;~~

~~b. Procedures to be followed if a patient has a medical emergency;~~

~~c. Guidelines for the review and evaluation of the service on an annual basis; and~~

~~d. Policies and protocols governing the utilization and responsibilities of hospital staff in the delivery of lithotripter services.~~

~~9. Personnel. The mobile lithotripter service shall:~~

~~a. Employ at least one (1) lithotripter technician; and~~

~~b. Employ or make arrangements with the hospital utilizing the service for at least:~~

~~(i) One (1) registered nurse and one (1) qualified urologist to~~

~~be present in the unit during the delivery of lithotripsy services; and~~

~~(ii) One (1) qualified anesthetist to be available for procedures requiring anesthesia.~~

~~10. Lithotripsy equipment used for direct patient care shall comply with the following:~~

~~a. Lithotripsy equipment shall be fully approved by the Federal Food and Drug Administration (FDA) for clinical use;~~

~~b. The licensee shall establish and follow a written preventive maintenance program to ensure that equipment shall be:~~

~~(i) Operative;~~

~~(ii) Properly calibrated;~~

~~(iii) Properly shielded; and~~

~~(iv) Safe for the patient, operator, and environment.~~

~~11. All personnel engaged in the operation of diagnostic equipment shall have training and be currently licensed, certified, or registered in accordance with KRS Chapter 311B and 201 KAR Chapter 46.~~

~~12. There shall be a written training plan for the training of personnel in the safe and proper usage of the equipment.~~

~~13. There shall be trained on-duty personnel with equipment to provide emergency resuscitation if there is a patient emergency.~~

~~(d) Therapy practices. A therapy practice licensed pursuant to this administrative regulation shall:~~

~~1. Develop patient care policies that:~~

~~a. Include a description of services provided directly or through an agreement;~~

~~b. Include guidelines for the medical management of health problems that include the conditions requiring medical consultation or patient referral;~~

~~c. Address clinical records;~~

~~d. Include procedures for review and evaluation of the services provided at least annually; and~~

~~e. Ensure that physical therapy, occupational therapy, and speech pathology services shall be provided within the professional scope of practice established in KRS Chapter 327, KRS Chapter 319A, and KRS Chapter 334A, respectively;~~

~~2. Employ a sufficient number of qualified personnel pursuant to Section 3(5) of this administrative regulation;~~

~~3. Maintain a written plan of care for each patient that:~~

~~a. Indicates anticipated goals;~~

~~b. Specifies the type, amount, frequency, and duration of:~~

~~(i) Physical therapy;~~

~~(ii) Occupational therapy; or~~

~~(iii) Speech pathology;~~

~~c. Is established by the:~~

~~(i) Physical therapist who will provide physical therapy services;~~

~~(ii) Occupational therapist who will provide occupational therapy; or~~

~~(iii) Speech-language pathologist who will provide speech pathology services; and~~

~~4. Except for Section 3(4)(a) and, if applicable, Section 3(9) of this administrative regulation, demonstrate compliance with Section 2 and Section 3 of this administrative regulation, in addition to the requirements of this paragraph. Section 4 and Section 6 of this administrative regulation, and subsection (2) through subsection (3)(a), (b), (c), and (e) of this section shall not apply to a therapy practice licensed pursuant to this administrative regulation.~~

~~(e)1. Other treatment services shall:~~

~~a. Be performed only on the order of a physician;~~

~~b. Demonstrate compliance with the policy, personnel, in-service training, and program evaluation requirements established in subparagraphs 4. through 11. of this paragraph; and~~

~~c. May include IV therapy services. If provided, IV therapy shall:~~

~~(i) Only be performed by a registered nurse; and~~

~~(ii) Be limited to nursing services that are required for the initial start-up of an IV therapy program.~~

~~2. If nursing services are required that exceed the initial start-up of IV therapy, the services shall be provided by an agency that is licensed to provide care under a physician's plan of care.~~

~~3. All services provided shall be under the supervision of a licensed physician.~~

~~4. Policies. The licensee shall develop patient care policies with the advice of a group of professional personnel that includes at least:~~

~~a. One (1) physician; and~~

~~b. One registered nurse.~~

~~5. At least one (1) member of the group responsible for developing patient care policies shall not be a member of the service's staff.~~

~~6. The policies shall include:~~

~~a. A description of the services provided;~~

~~b. A requirement to inform patients of other in-home services which can be provided only by other licensed agencies;~~

~~c. A requirement for a written common plan for treatment and coordination of treatment with other licensed health care providers delivering services to the patient. Immediate verbal communication between providers regarding revisions to the common plan shall be documented in the plan of treatment;~~

~~d. Guidelines for the medical management of health problems, including:~~

~~(i) The conditions requiring medical consultation or patient referral; and~~

~~(ii) Maintenance of health records;~~

~~e. Procedures for review and evaluation of the services provided at least annually; and~~

~~f. Guidelines for patient and environment assessment.~~

~~7. Personnel. The service shall have a staff that includes at least one (1) registered nurse.~~

~~8. The service shall employ other staff or ancillary personnel that are necessary and essential to the service's operation.~~

~~9. The registered nurse shall:~~

~~a. Participate in the development, execution, and period review of the written policies governing the services provided;~~

~~b. Participate with the physician in periodic review of patient health records;~~

~~c. Provide services in accordance with established policies, protocols, the Nurse Practice Act, KRS Chapter 314 and 201 KAR Chapter 20;~~

~~d. Arrange for or refer patients to needed services that cannot be provided by the service; and~~

~~e. Assure that patient health records are maintained and transferred when patients are referred.~~

~~10. In-service training programs shall include instruction in:~~

~~a. Use of equipment;~~

~~b. Side effects and precautions of drugs and biologicals; and~~

~~c. Infection control measures.~~

~~11. The service shall:~~

~~a. Carry out, or arrange for an annual evaluation of its total program;~~

~~b. Consider the findings of the evaluation; and~~

~~c. Take corrective action, if necessary. The evaluation shall include:~~

~~(i) The utilization of the service including the number of patients served and the volume of services;~~

~~(ii) A representative sample of both active and closed records; and~~

~~(iii) The service's health care policies.~~

~~Section 6. Waste Processing. (1) Sharp wastes, including broken glass, scalpel blades, and hypodermic needles, shall be segregated from other wastes and placed in puncture-resistant containers immediately after use.~~

~~(2) A needle or other contaminated sharp waste shall not be recapped, purposefully bent, broken, or otherwise manipulated by hand as a means of disposal except as permitted by the Centers for Disease Control and the Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vii).~~

~~(3) A sharp waste container shall be incinerated on or off-site or rendered nonhazardous.~~

~~(4) Any nondisposable sharp waste shall be placed in a hard walled container for transport to a processing area for decontamination.~~

~~(5)(a) Disposable waste shall be:~~

~~1. Placed in a suitable bag or closed container so as to prevent~~

~~leakage or spillage; and~~

~~2. Handled, stored, and disposed of in a way that minimizes direct exposure of personnel or patients to waste materials.~~

~~(b) The licensee shall establish specific written policies regarding handling and disposal of waste material.~~

~~(6) All unpreserved tissue specimens shall be incinerated off site.~~]

STEVEN D. DAVIS, Inspector General
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 29, 2018

FILED WITH LRC: July 11, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 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 August 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: Stephanie Brammer-Barnes, email stephanie.brammer@ky.gov, phone 502-564-2888; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum licensure requirements for freestanding or mobile technology units that provide diagnostic or therapeutic equipment or procedures, i.e. MRI, PET, cardiac catheterization, or megavoltage radiation therapy services.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 216B.020(3)(c) and (f).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.020(3)(c) and (f) by establishing the requirements for licensure as a freestanding or mobile technology unit.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the current administration of the statutes by establishing the requirements for licensure as a freestanding or mobile technology unit.

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

(a) How the amendment will change this existing administrative regulation: In accordance with the passage of House Bill 444 from the 2018 Session of the General Assembly, this amendment requires licensure only if the freestanding or mobile technology unit provides a service in the State Health Plan, i.e. MRI, PET, cardiac catheterization, or megavoltage radiation therapy services.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the passage of House Bill 444.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.020(3)(c) and (f) by establishing the requirements for licensure if the freestanding or mobile technology unit provides a service in the State Health Plan, i.e. MRI, PET, cardiac catheterization, or megavoltage radiation therapy services.

(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 the requirements for licensure if the freestanding or mobile technology unit provides a service in the State Health Plan, i.e. MRI, PET, cardiac catheterization, or megavoltage radiation therapy services.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects freestanding or mobile technology units that provide MRI, PET, cardiac catheterization, or megavoltage radiation therapy services.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Freestanding or mobile technology units that provide MRI, PET, cardiac catheterization, or megavoltage radiation therapy services must be licensed in accordance with this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In accordance with House Bill 444, licensure only be required for freestanding or mobile technology units that provide MRI, PET, cardiac catheterization, or megavoltage radiation therapy services.

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

(a) Initially: This administrative regulation imposes no additional costs.

(b) On a continuing basis: This administrative regulation imposes no additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement the administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fee 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: The administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment affects facilities licensed as freestanding or mobile technology units. This amendment also impacts the Cabinet for Health and Family Services, Office of Inspector General.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.020(3)(c) and (f), 216B.042, 216B.105

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.

(b) How 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.

(c) How much will it cost to administer this program for the first year? This administrative regulation imposes no additional costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation imposes no additional 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:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 45:160. Kentucky food processing, packaging, storage, and distribution operations.

RELATES TO: KRS 13B,[~~194A.050, 211.090, 211.180,~~] 217.005 - 217.205, 217.290 - 217.390, 217.990 - 217.992, 318.130, 21 C.F.R. Part 1, 7, 70, 73, 74, 81, 82, 100 - 102, 104 - 107, 108 Subpart B[~~.25, 108.35~~], 109, [~~110,~~] 113, 114, 117, 120, 123, 129, 130, 133, 135 - 137, 139, 145, 146, 150, 152, 155, 156, 158, 160, 161, 163 - 166, 168, 169, 170, 172 - 178, 180 - 189,[~~Pub. L. 101 - 535, Pub. L. 108 - 282,~~] 21 U.S.C. 321, 343-345, 373, 374, 374a

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.180(1), 217.125(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) and 217.125(1) authorize the Cabinet for Health and Family Services to promulgate administrative regulations to regulate food processing, packaging, storage, and distribution operations. This administrative regulation establishes procedures and requirements for food processing, packaging, storage, and distribution operations for the purpose of protecting public health.

Section 1. Definitions. (1) "Adulterated" is defined by KRS 217.025.

(2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Food processing establishment" is defined by KRS 217.015(20).

(4) "Food storage warehouse" is defined by KRS 217.015(22).

(5) "Imminent health hazard" is defined by KRS 217.015(24).

(6) "Misbranded" is defined by KRS 217.035.

(7) "No Action Indicated" or "NAI" means a plant inspection classification that[~~which~~] indicates the firm has no violating condition or that only a minor violation was noted at the time of inspection.

(8) "Official Action Indicated" or "OAI" means a plant inspection classification that[~~which~~] indicates a condition noted during the inspection was significant enough to pose an imminent health hazard, or was an uncorrected VAI condition on a previous inspection.

(9) "Plant" means a food processing establishment or a food storage warehouse.

(10) "State Plumbing Code" means the code established by KRS Chapter 318 and 815 KAR Chapter 20.

(11) "Voluntary Action Indicated" or "VAI" means a plant inspection classification that[~~which~~] indicates [~~that~~] a condition was noted during the inspection that is in violation of this administrative regulation but was not significant enough to pose an imminent health hazard.

Section 2. Applicability. (1) Except as provided in subsection (2) of this section, a plant shall comply with the following federal requirements:

(a) 21 U.S.C. 373, Records;

(b) 21 C.F.R. 1.20 - 1.24, General labeling requirements;

(c) 21 C.F.R. 7.1 - 7.13, General enforcement policy provisions;

(d) 21 C.F.R. 7.40 - 7.59, Food recalls provisions;

(e) 21 C.F.R. 70.20 - 70.25, Packaging and labeling requirements;

(f) 21 C.F.R. 73.1 - 73.615, Listing of food color additives exempt from certification;

(g) 21 C.F.R. 74.101 - 74.706, Listing of food color additives subject to certification;

(h) 21 C.F.R. Part 81, General specifications and general restrictions for provisional color additives for use in foods, drugs, and cosmetics;

(i) 21 C.F.R. 82.3 - 82.706, Listing of certified provisionally listed food colors and specifications;

(j) 21 C.F.R. 100.155, Salt and iodized salt;

(k) 21 C.F.R. Part 101, Food Labeling;

(l) 21 C.F.R. Part 102, Common or usual name for non-standardized foods;

(m) 21 C.F.R. Part 104, Nutritional quality guidelines for foods;

(n) 21 C.F.R. Part 105, Foods for special dietary use;

(o) 21 C.F.R. Part 106, Infant formula quality control procedures;

(p) 21 C.F.R. Part 107, Infant formula;

(q) 21 C.F.R. 108 Subpart B[~~.25~~], Specific requirements and conditions for exemption from or compliance with an emergency permit;

(r)[~~21 C.F.R. 108.35, Thermal processing of low-acid foods packaged in hermetically sealed containers;~~

~~(s)~~] 21 C.F.R. Part 109, Unavoidable contaminants in food for human consumption and food packaging materials; [~~(t) 21 C.F.R. Part 110, Current good manufacturing practice in manufacturing, packaging and holding human food, whether sold interstate or intrastate commerce;~~]

(s)[~~(u)~~] 21 C.F.R. Part 113, Low acid foods;

(t)[~~(v)~~] 21 C.F.R. Part 114, Acidified foods;

(u) 21 C.F.R. Part 117, Hazard analysis and critical control point (HACCP) systems;

(v)[~~(w)~~] 21 C.F.R. Part 120, Hazard analysis and critical control point (HACCP) systems;

(w)[~~(x)~~] 21 C.F.R. Part 123, Fish and fishery products;

(x)[~~(y)~~] 21 C.F.R. Part 129, Processing and bottling of bottled drinking water;

(y)[~~(z)~~] 21 C.F.R. Part 130, Food standards general;

(z)[~~(aa)~~] 21 C.F.R. 133.10, 133.124, 133.125, 133.167 – 133.169, 133.171, 133.173 – 133.176, 133.179 - 133.180, Cheeses and related cheese products;

(aa)[~~(bb)~~] 21 C.F.R. Part 135, Frozen desserts;

(bb)[~~(cc)~~] 21 C.F.R. Part 136, Bakery products;

(cc)[~~(dd)~~] 21 C.F.R. Part 137, Cereal flours and related products;

(dd)[~~(ee)~~] 21 C.F.R. Part 139, Macaroni and noodle products;

(ee)[~~(ff)~~] 21 C.F.R. Part 145, Canned fruits;

(ff)[~~(gg)~~] 21 C.F.R. Part 146, Canned fruit juices;

(gg)[~~(hh)~~] 21 C.F.R. Part 150, Fruit butters, jellies, preserves, and related products;

(hh)[~~(ii)~~] 21 C.F.R. Part 152, Fruit pies;

(ii)[~~(jj)~~] 21 C.F.R. Part 155, Canned vegetables;

(jj)[~~(kk)~~] 21 C.F.R. Part 156, Vegetable juices;

(kk)[~~(ll)~~] 21 C.F.R. Part 158, Frozen vegetables;

(ll)[~~(mm)~~] 21 C.F.R. Part 160, Eggs and egg product;

(mm)[~~(nn)~~] 21 C.F.R. Part 161, Fish and shellfish;

(nn)[~~(oo)~~] 21 C.F.R. Part 163, Cacao products;

(oo)[~~(pp)~~] 21 C.F.R. Part 164, Tree nut and peanut products;

(pp)[~~(qq)~~] 21 C.F.R. Part 165, Beverages;

(qq)[~~(rr)~~] 21 C.F.R. Part 166, Margarine;

(rr)[~~(ss)~~] 21 C.F.R. Part 168, Sweeteners and table syrups;
(ss)[~~(tt)~~] 21 C.F.R. Part 169, Food dressings and flavorings;
(tt)[~~(uu)~~] 21 C.F.R. Part 170, Food additives;
(uu)[~~(vv)~~] 21 C.F.R. Part 172, Food additives permitted for direct addition to food for human consumption;
(vv)[~~(ww)~~] 21 C.F.R. Part 173, Secondary direct food additives permitted in food for human consumption;
(ww)[~~(xx)~~] 21 C.F.R. Part 174, Indirect food additives: general;
(xx)[~~(yy)~~] 21 C.F.R. Part 175, Indirect food additives: adhesives and components of coatings;
(yy)[~~(zz)~~] 21 C.F.R. Part 176, Indirect food additives: paper and paperboard components;
(zz)[~~(aaa)~~] 21 C.F.R. Part 177, Indirect food additives: polymers;
(aaa)[~~(bbb)~~] 21 C.F.R. Part 178, Indirect food additives: adjuvants, production aids, and sanitizers;
(bbb)[~~(ccc)~~] 21 C.F.R. Part 180, Food additives permitted in food or in contact with food on an interim basis pending additional study;
(ccc)[~~(ddd)~~] 21 C.F.R. Part 181, Prior sanctioned food ingredients;
(ddd)[~~(eee)~~] 21 C.F.R. Part 182, Substances generally recognized as safe;
(eee)[~~(fff)~~] 21 C.F.R. Part 184, Direct food substances affirmed as generally recognized as safe;
(fff)[~~(ggg)~~] 21 C.F.R. Part 186, Indirect food substances affirmed as generally recognized as safe;
(ggg)[~~(hhh)~~] 21 C.F.R. Part 189, Substances prohibited from use in human food; and
(hhh) 21 U.S.C. 321, 343 to 345, 374, 374a[~~(iii) Pub. L. 101 – 535~~], Nutritional and food allergen labeling requirements[~~and educational act; and~~
~~(jjj) Pub. L. 108 - 282, Food allergen labeling and consumer protection act~~].
(2) The following federal regulations shall not apply:
(a) 21 C.F.R. 101.69;
(b) 21 C.F.R. 101.108;
(c) 21 C.F.R. 102.19;
(d) 21 C.F.R. 106.120;
(e) 21 C.F.R. 107.200 - 107.280;
(f) 21 C.F.R. 120.14;
(g) 21 C.F.R. 123.12;
(h) 21 C.F.R. 130.5 - 130.6;
(i) 21 C.F.R. 130.17;
(j) 21 C.F.R. 170.6;
(k) 21 C.F.R. 170.15; and
(l) 21 C.F.R. 170.17.

Section 3. Permits. (1) Before operating, a food manufacturing or processing plant, food packaging plant, food storage warehouse, or food distribution warehouse shall obtain a permit from the cabinet in accordance with KRS 217.125.
(2) Application for a permit shall be made on Form DFS-260, Application for Permit to Operate a Food Plant, and shall be submitted to the cabinet with the annual fee established by 902 KAR 45:110.
(3) A permit for food manufacturing, food packaging, food storage, or food distribution shall only be issued:
(a) In the name of the applicant;
(b) For the location identified in the application; and
(c) For a firm that is in compliance with this administrative regulation and KRS 217.005 - 217.215.
(4) A permit shall:
(a) Be posted in a conspicuous place in the firm;
(b) Expire on December 31 of each year; and
(c) Be renewed in accordance with KRS 217.125(12) and by submitting the form and fee required by subsection (2) of this section.
(5) Failure to apply for or renew a permit to operate a food processing, packaging, storage, or distribution plant shall result in the cabinet issuing a Food Plant Enforcement Notice (DFS-263) to cease operation[~~Notice to Cease Operation~~].

Section 4. Plan Review. (1) Approval shall be obtained from the cabinet or its local health department agent prior to beginning work, if:
(a) A plant is constructed, remodeled, or altered;
(b) A plant's plumbing is relocated;
(c) Additional plumbing is added to a plant; or
(d) An existing structure is converted for use as a plant.
(2) To obtain approval, an applicant shall submit plans and specifications for the construction, remodeling, or alteration to the local health department in the county in which the construction, remodeling, or alteration will take place.
(3) Plans shall be prepared to show:
(a) Equipment layout;
(b) Size;
(c) Location and type of facilities; and
(d) Plumbing riser diagram.

Section 5. Construction and Maintenance. (1) The floor of the food preparation, food storage, and utensil washing area, walk-in refrigerator, dressing room, locker room, toilet room, and vestibule shall be:
(a) Smooth;
(b) Durable;
(c) Non-absorbent; and
(d) Easily cleaned.
(2) Floors shall be cleaned and maintained.
(3) A juncture of a wall with a floor shall be covered and sealed.
(4) The juncture between the wall and floor shall be tight-fitting.
(5)(a) A floor drain shall be provided in a floor that is water flushed for cleaning or that receives discharge of water or other fluid waste from equipment.
(b) Floors shall be graded to drain all parts of the floor.
(6) Drip or condensate from fixtures, ducts, and pipes shall not contaminate food, food-contact surfaces, or food-packaging materials.
(7) Mats shall be:
(a) Non-absorbent;
(b) Slip resistant; and
(c) Easily cleaned.
(8) Mats shall not be used as storage racks.
(9) Exposed utility service lines and pipes shall be installed to prevent tripping hazards and cleaning obstructions.
(10) Walls and ceilings, including doors, windows, skylights, and similar closures, shall be maintained in good repair.
(11) Walls and ceilings of all food preparation and ware washing areas shall be:
(a) Smooth;
(b) Non-absorbent; and
(c) Easily cleaned.
(12) Studs, joists, and rafters shall not be exposed in:
(a) Walk-in-refrigerators;
(b) Food preparation areas; and
(c) Ware washing areas.
(13) Doors shall be:
(a) Solid;
(b) Tight-fitting; and
(c) Closed, except during cleaning or maintenance.
(14) Light fixtures, vent covers, wall-mounted fans, and similar equipment attached to walls or[~~and~~] ceilings shall be kept clean and maintained in good repair.
(15) Aisles and working spaces shall be:
(a) Unobstructed; and
(b) Of a width to permit employees to perform their duties and protect against contaminating food or food-contact surfaces with clothing or by personal contact.
(16) Lighting shall be provided in:
(a) Hand-washing areas;
(b) Dressing and locker rooms;
(c) Toilet rooms;
(d) Areas where food is examined, processed, or stored; and
(e) Areas where equipment or utensils are cleaned.
(17) Lighting, glass fixtures, and skylights suspended over

exposed food or food packaging materials shall be made of safety glass or otherwise shielded to protect against food contamination in case of breakage.

(18) Ventilation or exhaust control equipment shall be provided to minimize odors
or vapors in areas where odors or vapors may contaminate food.

(19) Fans and other air-blowing equipment shall be located and operated in a manner that minimizes the potential for contaminating food, food-packaging materials, and food-contact surfaces.

(20) Protection against pests shall be provided.

Section 6. Water Supply. (1) The water supply shall be:

(a) Potable;

(b) Of sufficient quantity to meet plant needs; and

(c) From an approved public water system, if available.

(2) If a public water system is not available, the supply for the plant shall be approved pursuant to 401 KAR Chapters 8 and 11.

(3) If a community public water system later becomes available and has the capacity to serve the facility, connections may be made to it. The non-community water supply shall then be discontinued and inactivated.

(4) Hot and cold running water under pressure shall be provided in all areas where it is needed for:

(a) Processing food;

(b) Cleaning equipment, utensils, and food-packaging materials; and

(c) Employee sanitary facilities.

(5) Bottled water plants shall have their water supply system designed, approved, and operated in accordance with 401 KAR 8:700.

Section 7. Plumbing. (1) All plumbing shall comply with the minimum fixture requirements, and be sized, installed, and maintained in accordance with the State Plumbing Code.

(2) All utensils used in food processing that are not a part of a clean-in-place operation shall be washed, rinsed, and sanitized in:

(a) A permanently plumbed three (3) compartment sink; or

(b) A commercial dishwasher installed and operated in compliance with the State Plumbing Code and the manufacturer's instructions.

(3) If a three (3) compartment sink is utilized, the sink compartments shall be large enough to permit the accommodation of the equipment and utensils and each compartment of the sink shall be supplied with hot and cold potable running water under pressure.

(4) Clean-in-place equipment shall be cleaned or sanitized according to manufacturer instructions and industry best practices for the commodity being processed.

(5) Written sanitation procedures shall be maintained for each type of clean-in-place equipment.

(6) A service sink or curbed cleaning facility with a drain that allows for disposal of mop and cleaning solution water shall be provided.

(7) A person, firm, or corporation shall not construct, install, or alter any plumbing without having procured a plumbing construction permit from the Department of Housing, Buildings and Construction, under KRS Chapter 318.

Section 8. Sewage Disposal. (1) All sewage shall be disposed of into a public sewerage system, if available.

(2) If a public sewerage system is not available, disposal shall be made into a private system designed, constructed, and operated pursuant to the requirements of 401 KAR Chapter 5 or 902 KAR 10:085.

(3) If a public sewerage system becomes available, connection shall be made and the private sewerage system shall be discontinued.

Section 9. Toilet Facilities. Toilet facilities shall meet the fixture and construction requirements of KRS Chapter 318 and the State Plumbing Code.

Section 10. Hand Washing Facilities. (1) Hand-washing facilities shall be installed in accordance with KRS Chapter 318 and the State Plumbing Code where:

(a) Food is prepared;

(b) Utensils are washed; and

(c) Sanitary practices require employees to wash and sanitize their hands.

(2) All hand washing facilities shall be provided with:

(a) Soap;

(b) Disposable hand drying towels or mechanical hand drying devices; and

(c) Non-absorbent waste receptacles.

(3) Hand sanitizer shall not be used in lieu of hand washing.

(4) Lavatories used for hand washing shall not be used for food preparation or for washing equipment or utensils.

(5) Lavatories, soap dispensers, and hand drying devices shall be kept clean and maintained.

Section 11. Food Transportation. (1) Vehicles used for the transportation of food shall be maintained and loaded in a manner to prevent cross-contamination of food.

(2) Vehicles that transport refrigerated food shall be capable of maintaining frozen food frozen and refrigerated foods at forty-five (45) degrees Fahrenheit or below.

Section 12. Inspection Frequencies. (1) The cabinet shall assign an inspection frequency to each food manufacturing plant based upon the degree of risk associated with the commodity processed, packaged, stored, or distributed by the plant.

(2) The cabinet shall assign the inspection frequencies as follows:

(a) High risk plants shall be inspected no less than once every 1,080[~~360~~] days;

(b) Medium risk plants shall be inspected no less than once every 1,260[~~720~~] days; and

(c) Low risk plants shall be inspected no less than once every 1,440[~~1,080~~] days.

(3) The cabinet shall conduct additional inspections as necessary for enforcement pursuant to this administrative regulation.

Section 13. Violations. (1) If a plant has committed a violation of this administrative regulation, an opportunity to correct the violation shall be provided in accordance with the following classifications:

(a) NAI - No changes in the inspection frequency are warranted under this classification;

(b) VAI - A follow-up inspection is warranted within a period of time not to exceed ninety (90) days to determine if the violation causing this classification has been corrected; or

(c) OAI - A follow-up inspection shall be conducted within a period of time not to exceed forty-five (45) days to determine if the violation causing the classification has been corrected. A plant may also be classified as OAI if it continually fails to correct a violation previously classified under a VAI designation or if an imminent health hazard is noted during an inspection.

(2) Upon completion of the inspection, a recommended classification of NAI, VAI, or OAI and the timeframe for correction of the violation shall be specified on DFS-220, Food Plant Inspection Report.

(3) If, during a follow-up inspection, the violation noted on the previous inspection has not been corrected within the timeframe specified by the cabinet, the cabinet shall:

(a) Extend the timeframe for corrective action if the cabinet determines that progress towards compliance has been made; or

(b) Initiate enforcement provisions pursuant to Section 17 of this administrative regulation.

Section 14. Food Plant Environmental Sampling. The cabinet shall collect an environmental sample in an area of the plant as necessary for the enforcement of this administrative regulation.

Section 15. Examination and Detention of Foods. (1) The

cabinet shall examine and collect samples of food as often as necessary for the enforcement of this administrative regulation.

(2) When food is deemed to be adulterated or misbranded, DFS-265, Food Plant Quarantine/Final Disposition Report, shall be issued to the permit holder or person in charge pursuant to KRS 217.115.

Section 16. Imminent Health Hazard and Notification Requirements. (1) The permit holder shall take immediate steps to correct conditions that[~~which~~] have caused an imminent health hazard.

(2)(a) The permit holder shall notify the cabinet within twenty-four (24) hours of the knowledge of an imminent health hazard that cannot be controlled by immediate corrective action or if food, food contact equipment, or food packaging has become contaminated because of an imminent health hazard.

(b) Written notification to the cabinet shall be made by:

1. Email to CHFSDPHENV@KY.gov; or

2. Fax to 502-696-1882.

(3) If the cabinet has evidence that a plant has failed to act to correct an imminent health hazard, enforcement provisions shall be initiated pursuant to Section 17 of this administrative regulation.

Section 17. Enforcement Provisions. (1) If the cabinet has substantial reason to believe that a permit holder has failed to act to correct an imminent health hazard or if the permit holder or an authorized agent has interfered with the cabinet in the performance of its duties after its agents have duly and officially identified themselves, the cabinet shall immediately, upon notice to the permit holder using the DFS-263, Food Plant Enforcement Notice:

(a) Suspend the permit without a conference; or

(b) Suspend that portion of the plant operation affected by the imminent health hazard without a conference.

(2) In the instance of a permit suspension due to an imminent health hazard, the permit holder may request a conference on a DFS-267, Request for Conference. A conference shall be granted as soon as practical, not to exceed seven (7) days from the receipt of the Request for Conference.

(3) In all other instances of violation of this administrative regulation, the cabinet shall serve the permit holder with a written notice specifying the violation and afford the holder an opportunity to correct.

(4) If a permit holder or operator has failed to comply with an OAI inspection notice within the timeframe granted, the cabinet shall issue a Notice of Intent to Suspend Permit on a DFS-263, Food Plant Enforcement Notice.

(5) When a Notice of Intent to Suspend Permit is issued, the permit holder or operator shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of the notice, unless a written request for a conference is filed with the cabinet by the permit holder within the ten (10) day period.

(6) Any person whose permit has been suspended may make application on Form DFS-269, Application for Reinstatement, for a re-inspection for the purpose of reinstatement of the permit. Within seven (7) days following receipt of a written request, including a statement signed by the applicant that in his opinion the condition causing suspension of the permit has been corrected, the cabinet shall make an inspection, and if the inspection reveals that the condition causing suspension of the permit has been corrected, the permit shall be reinstated.

(7) For a plant that has had a suspended permit two (2) or more times within a five (5) year period, the cabinet shall initiate permit revocation proceedings. Prior to this action, the cabinet shall notify the permit holder in writing on a DFS-263, Food Plant Enforcement Notice, stating the reasons for which the permit revocation is being sought and advising that the permit shall be permanently revoked at the end of ten (10) days following service of the notice, unless a request for an administrative hearing is filed with the cabinet pursuant to KRS Chapter 13B by the permit holder within the ten (10) day period.

(8) Notice provided for under this administrative regulation shall be deemed to have been properly served if:

(a) A copy of the inspection report or other notice has been delivered personally to the permit holder; or

(b) The notice has been sent by registered or certified mail, return receipt.

Section 18. Administrative Conferences. An administrative conference shall be conducted pursuant to 902 KAR 1:400.

Section 19. Administrative Hearings. An administrative hearing shall be conducted pursuant to KRS Chapter 13B.

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DFS-220, Food Plant Inspection Report", 05/18[~~09/2014~~];

(b) "DFS-260, Application for Permit to Operate a Food Plant", 05/18[~~09/2014~~];

(c) "DFS-263, Food Plant Enforcement Notice", 05/18[~~09/2014~~];

(d) "DFS-265, Food Plant Quarantine/Final Disposition Report", 05/18[~~09/2014~~];

(e) "DFS-267, Request for Conference", 05/18[~~09/2014~~]; and

(f) "DFS-269, Application for Reinstatement", 05/18[~~09/2014~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Cabinet for Health and Family Services, Department for Public Health, Division of Public Health Protection and Safety, Food Safety Branch, 275 East Main Street, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

JEFFREY D. HOWARD, JR., M.D., Commissioner
ADAM MEIER, Secretary

APPROVED BY AGENCY: July 6, 2018

FILED WITH LRC: July 11, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 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 August 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: Julie Brooks, (502) 564-3970, julied.brooks@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 194A.050(1) and 217.125(1) authorize the Cabinet for Health and Family Services to promulgate administrative regulations to regulate food processing, packaging, storage, and distribution operations. This administrative regulation establishes procedures and requirements for food processing, packaging, storage, and distribution operations for the purpose of protecting public health.

(b) The necessity of this administrative regulation: This administrative regulation ensures regulated food processing, packaging, storage and distribution operations are in full compliance with the federal act and the Fair Packaging and Labeling Act. In

addition, this administrative regulation ensures food processing, packaging, storage and distribution facilities are properly permitted and constructed in a manner that protects public health.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 217.125(2) prohibits a person from operating a food processing establishment, food storage warehouse, salvage distributor or salvage processing plant without having obtained an annual permit to operate from the cabinet. This administrative regulation outlines the requirements for obtaining the annual permit for operation. This administrative regulation establishes the timeframe for inspection of each food manufacturing plant based on the degree of risk associated with the commodity processed, packaged, stored, or distributed by the plant.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures all food manufacturing plants operating in Kentucky are properly permitted and inspected.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the federal requirements for a food manufacturing plant. The timeline for inspection frequencies has been adjusted to be in compliance with the federal recommendations and standards.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure compliance with the federal act and Fair Packaging and Labeling Act.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment updates the federal requirements and standards as required by statute.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure all food manufacturing plants are in compliance with the federal requirements and standards. The adjustment to the inspection frequency will reduce burden on the regulated entities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: A total of 1,296 food processing firms. The firms are assigned a risk factor associated with the likelihood that a food safety or defense incident will occur. The risk factor and number of firms are: high risk – 185; medium risk – 528; and low risk – 583.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The regulated food manufacturing plants will have longer times between inspections but will retain all opportunities for correction of any identified violation.

(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: Food manufacturing plants are currently required to be in full compliance with the federal act and Fair Packaging and Labeling Act. This amendment eliminates any conflict between the state administrative regulation and the federal act.

(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 increased cost as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated food manufacturing plants will be in full compliance with the federal act and the Fair Packaging and Labeling Act.

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

(a) Initially: There is no increased cost.

(b) On a continuing basis: There is no increased cost.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: The permit and inspections fee will not be increased as a result of this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There are no fees established in this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as all food processing, packaging, storage, and distribution operations are treated 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? The Food Safety Branch within the Department for Public Health and local health departments will be impacted by this amendment.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 211.180(1), Chapter 217, 13B, 194A.050(1), 211.090(3), 21 C.F.R Chapter 1, Sections 1-199, and 21 U.S.C. 321, 343-345, 373, 374, 374a

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? No change in revenue generated.

(c) How much will it cost to administer this program for the first year? This is an ongoing program, there will be no change in costs.

(d) How much will it cost to administer this program for subsequent years? This is an ongoing program, there will be no change in 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:

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Federal Food, Drug, and Cosmetic Act; 21 U.S.C. 321, 343-345, 373, 374, 374a; and 21 C.F.R.

(2) State compliance standards. This administrative regulation adopts the federal requirements for food processing, packaging, storage, and distribution operations.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires state regulations to be compatible with the equivalent federal regulations.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no different, stricter, or additional responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 100:022. Licensing requirements for land disposal of radioactive waste.

RELATES TO: KRS 194A.005(1), 211.180(1), 211.842-211.852, 211.990(4), 10 C.F.R. Part 61, 40 C.F.R. 261, 42 U.S.C. 2011 - 2297g-4[~~, Pub.L. 96-573, Pres. EO 11988~~]

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3),

211.844(1),[~~211.846, 211.852~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844(1) requires the Cabinet for Health and Family Services to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes procedures, criteria, terms, and conditions upon which the cabinet issues licenses for the land disposal of radioactive wastes received from other persons.

Section 1. Definitions. (1) "Agreement state" means a state that the United States Nuclear Regulatory Commission or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.).

(2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet pursuant to 902 KAR 100:040 and this administrative regulation;

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an Agreement state; or

(c) A general license pursuant to 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement state[~~"Active maintenance" means a significant activity needed during the period of institutional control to maintain a reasonable assurance that the performance objectives in Section 18 and Section 19 of this administrative regulation are met. This term includes ongoing activities, such as the pumping and treatment of water from a disposal unit, or one (1) time measures, such as replacement of a disposal unit cover. This term does not include custodial activities, such as repair of fencing, repair or replacement of monitoring equipment, revegetation, minor additions to soil cover, minor repair of disposal unit covers, and general disposal site upkeep such as mowing grass.~~

~~(2) "Buffer zone" means a portion of the disposal site that is controlled by the licensee and that lies under the disposal units and between the disposal units and the boundary of the site.~~

~~(3) "Chelating agent" means:~~

~~(a) Amine polycarboxylic acids, such as EDTA, DTPA, or hydroxy-carboxylic acids; and (b) Polycarboxylic acids, such as citric acid, carbolic acid, or gluconic acid.~~

~~(4) "Commencement of construction" means clearing of land, excavation, or other substantial action that would adversely affect the environment of a land disposal facility. This term does not mean disposal site exploration, necessary roads for disposal site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the disposal site or the protection of environmental values.~~

~~(5) "Custodial agency" means an agency of the government designated to act on behalf of the government owner of the disposal site.~~

~~(6) "Disposal" means the isolation of radioactive wastes from the biosphere inhabited by man and his food chains by emplacement in a land disposal facility.~~

~~(7) "Disposal site" means that portion of a land disposal facility that is used for disposal of waste. It consists of disposal units and a buffer zone.~~

~~(8) "Disposal unit" means a discrete portion of the disposal site into which waste is placed for disposal. For near-surface disposal the unit is usually a trench.~~

~~(9) "Engineered barrier" means a manmade structure or device that is intended to improve the land disposal facility's ability to meet the performance objectives in this administrative regulation.~~

~~(10) "Explosive material" means a chemical compound, mixture, or device that produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.~~

~~(11) "Hazardous waste" means those wastes designated as hazardous by U.S. Environmental Protection Agency regulations in 40 C.F.R. Part 261.~~

~~(12) "Hydrogeologic unit" means a soil or rock unit or zone that by virtue of its porosity or permeability, or lack thereof, has a distinct influence on the storage or movement of ground water.~~

~~(13) "Inadvertent intruder" means a person who might occupy the disposal site after closure and engage in normal activities, such as agriculture, dwelling construction,~~

~~or other pursuits in which an individual might be unknowingly exposed to radiation from the waste.~~

~~(14) "Intruder barrier" means:(a) A sufficient depth of cover over the waste that inhibits contact with waste and helps to ensure that radiation exposures to an inadvertent intruder shall meet the performance objectives set forth in this administrative regulation; or~~

~~(b) Engineered structures that provide equivalent protection to the inadvertent intruder.~~

~~(15) "Land disposal facility" means the land, buildings, or equipment intended to be used for the disposal of radioactive wastes. A "geologic repository" as defined by C.F.R. Parts 60 or 63 is not considered a land disposal facility.~~

~~(16) "Monitoring" means observing and making measurements to provide data to evaluate the performance and characteristics of the disposal site.~~

~~(17) "Near-surface disposal facility" means a land disposal facility in which radioactive waste is disposed of within approximately the upper thirty (30) meters of the earth's surface.~~

~~(18) "Pyrophoric liquid" means a liquid that ignites spontaneously in dry or moist air at or below 130 degrees Fahrenheit (fifty-four and five-tenths (54.5) degrees Centigrade). A pyrophoric solid is a solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited readily and if ignited burns so vigorously and persistently as to create a serious transportation, handling, or disposal hazard. Included are spontaneously combustible and water-reactive materials.~~

~~(19) "Site closure and stabilization" means those actions that are taken upon completion of operations that prepare the disposal site for custodial care and that assure that the disposal site will remain stable and will not need ongoing active maintenance.~~

~~(20) "Stability" means structural stability.~~

~~(21) "Surveillance" means monitoring and observation of the disposal site for purposes of visual detection of need for maintenance, custodial care, evidence of intrusion, and compliance with other license and regulatory requirements.~~

~~(22) "Waste" means those low-level radioactive wastes that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level waste has the same meaning as in the Low-level Radioactive Waste Policy Act, Pub.L. 96-573, that is, radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in Section 11e.(2) of the Atomic Energy Act, 42 U.S.C. 2011 - 2297g-4(uranium or thorium tailings and waste)~~].

Section 2. Applicability. This administrative regulation shall apply to a licensee. Except as established in subsections (1) through (4) of this section, the licensee shall comply with 10 C.F.R. Part 61.

(1) The licensee shall not be subject to:

(a) 10 C.F.R. 61.4;

(b) 10 C.F.R. 61.5;

(c) 10 C.F.R. 61.8;

(d) 10 C.F.R. 61.16;

(e) 10 C.F.R. 61.20;

(f) 10 C.F.R. 61.23 (i) and (j);

(g) 10 C.F.R. 61.70;

(h) 10 C.F.R. 61.71;

(i) 10 C.F.R. 61.72;

(j) 10 C.F.R. 61.73;

(k) 10 C.F.R. 61.83; or

(l) 10 C.F.R. 61.84.

(2) Each application for a specific license shall be filed pursuant to 902 KAR 100:040.

(3) The "Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch" shall be used in lieu of federal references to the "Commission" and the "NRC."

(4) The report required by 10 C.F.R. 61.80(h) and (i) shall be directed to the manager, Radiation Health Branch, at:

(a) 275 East Main Street, Mailstop HS1-C-A, Frankfort, Kentucky 40621;

(b) (502) 564-1492: Facsimile;

(c) (502) 564-3700: Telephone, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(d) (800) 255-2587: Telephone, for hours except those established in paragraph (c) of this subsection.[~~person prescribing land disposal that involves disposal in the uppermost portion of the earth, approximately thirty (30) meters, of radioactive waste received from another person except:~~

~~(1) Disposal of "by-product material" as defined by 902 KAR 100:010 in quantities greater than 10,000 kilograms and containing more than five (5) millicuries of radium-226; or~~

~~(2) Disposal of licensed material as provided for in 902 KAR 100:021.~~

~~Section 3. License Required. (1) A person shall not receive, possess, or dispose of waste received from another person at a land disposal facility unless authorized by a license issued by the cabinet as provided by this administrative regulation and 902 KAR 100:021.~~

~~(2) Each person shall file an application with the cabinet as provided by 902 KAR 100:040, Section 4, and obtain a license as provided in this administrative regulation before commencing construction of a land disposal facility. Failure to comply with this requirement shall be grounds for denial of a license.~~

~~Section 4. Content of Application. In addition to the requirements of set forth in 902 KAR 100:040, Section 5, an application to receive from others, possess, or dispose of wastes shall consist of general information, specific technical information, institutional information, and financial information as set forth in Sections 5 through 9 of this administrative regulation.~~

~~Section 5. General Information. The general information shall include each of the following:~~

~~(1) Identity of the applicant including:~~

~~(a) The full name, address, telephone number, and description of the business or occupation of the applicant;~~

~~(b) If the applicant is a partnership, the name and address of each partner and the principal location where the partnership does business;~~

~~(c) If the applicant is a corporation or an unincorporated association, the state where it is incorporated or organized and the principal location where it does business and the names and addresses of its directors and principal officers; and~~

~~(d) If the applicant is acting as an agent or representative of another person in filing the application, all information required by this subsection shall be supplied with respect to the other person.~~

~~(2) Qualifications of the applicant.~~

~~(a) The organizational structure of the applicant, both off-site and on-site, including a description of lines of authority and assignments of responsibilities, whether in the form of administrative directives, contract provisions, or otherwise;~~

~~(b) The technical qualifications, including training and experience, of the applicant and members of the applicant's staff to engage in the proposed activities. Minimum training and experience requirements for personnel filling key positions described in paragraph (a) of this subsection shall be provided;~~

~~(c) A description of the applicant's personnel training program; and~~

~~(d) The plan to maintain an adequate complement of trained personnel to carry out waste receipt, handling, and disposal operations in a safe manner.~~

~~(3) A description of:~~

~~(a) The location of the proposed disposal site;~~

~~(b) The general character of the proposed activities;~~

~~(c) The types and quantities of radioactive waste to be received, possessed, or disposed of;~~

~~(d) Plans for use of the land disposal facility for purposes other than disposal of radioactive wastes; and~~

~~(e) The proposed facilities and equipment.~~

~~(4) Proposed schedules for construction, receipt of waste, and first emplacement of waste at the proposed land disposal facility.~~

~~Section 6. Specific Technical Information. The specific technical information shall include the following information needed for demonstration that the performance objectives and the applicable technical requirements of this administrative regulation shall be met:~~

~~(1) A description of the natural and demographic disposal site characteristics as determined by disposal site selection and characterization activities. The description shall include geologic, geotechnical, hydrologic, meteorologic, climatologic, and biotic features of the disposal site and vicinity;~~

~~(2) A description of the design features of the land disposal facility and the disposal units. For near-surface disposal, the description shall include those design features related to:~~

~~(a) Infiltration of water;~~

~~(b) Integrity of covers for disposal units;~~

~~(c) Structural stability of backfill, wastes, and covers;~~

~~(d) Contact of wastes with standing water;~~

~~(e) Disposal site drainage;~~

~~(f) Disposal site closure and stabilization;~~

~~(g) Elimination to the extent practicable of long-term disposal site maintenance;~~

~~(h) Inadvertent intrusion; occupational exposures;~~

~~(i) Disposal site monitoring; and~~

~~(j) Adequacy of the size of the buffer zone for monitoring and potential mitigative measures;~~

~~(3) A description of the principal design criteria and their relationship to the performance objectives;~~

~~(4) A description of the design basis natural events or phenomena and their relationship to the principal design criteria;~~

~~(5) A description of codes and standards that the applicant has applied to the design and that will apply to construction of the land disposal facilities;~~

~~(6) A description of the construction and operation of the land disposal facility. The description shall include, at a minimum, the:~~

~~(a) Methods of construction of disposal units;~~

~~(b) Waste emplacement;~~

~~(c) Procedures for and areas of waste segregation;~~

~~(d) Types of intruder barriers;~~

~~(e) On-site traffic and drainage systems;~~

~~(f) Survey control program;~~

~~(g) Methods and areas of waste storage; and~~

~~(h) Methods to control surface water and ground water access to the wastes. The description shall also include the methods to be employed in the handling and disposal of wastes containing chelating agents or other nonradiological substances that might affect meeting the performance objectives of this administrative regulation;~~

~~(7) A description of the disposal site closure plan, including those design features that are intended to facilitate disposal site closure and to eliminate the need for ongoing active maintenance;~~

~~(8) An identification of the known natural resources at the disposal site whose exploitation could result in inadvertent intrusion into the low-level wastes after removal of active institutional control;~~

~~(9) A description of the kind, amount, classification, and specifications of the radioactive material proposed to be received, possessed, or disposed of at the land disposal facility;~~

~~(10) A description of the quality control program for the determination of natural disposal site characteristics and for quality control during the design, construction, operation, and closure of the land disposal facility and the receipt, handling, and emplacement of waste. Audits and managerial controls shall be included;~~

~~(11) A description of the radiation safety program for control and monitoring of radioactive effluents to ensure compliance with the performance objective in Section 18 of this administrative regulation and occupational radiation exposure to ensure compliance with the requirements of 902 KAR 100:020 and to control contamination of personnel, vehicles, equipment, buildings,~~

~~and the disposal site. Both routine operations and accidents shall be addressed. The program description shall include procedures, instrumentation, facilities, and equipment;~~

~~(12) A description of the environmental monitoring program to provide data to evaluate potential health and environmental impacts and the plan for taking corrective measures if migration of radionuclides is indicated; and~~

~~(13) A description of the administrative procedures that the applicant shall apply to control activities at the land disposal facility.~~

~~Section 7. Technical Analyses. The specific technical information shall also include the following analyses needed to demonstrate that the performance objectives of these administrative regulations shall be met:~~

~~(1) Pathways analyzed in demonstrating protection of the general population from releases of radioactivity shall include air, soil, ground water, surface water, plant uptake, and exhumation by burrowing animals. The analyses shall clearly:~~

~~(a) Identify and differentiate between the roles performed by the natural disposal site characteristics and design features in isolating and segregating the wastes; and~~

~~(b) Demonstrate that there is reasonable assurance that the exposures to humans from the release of radioactivity shall not exceed the limits set forth in Section 18 of this administrative regulation;~~

~~(2) Analyses of the protection of individuals from inadvertent intrusion shall include demonstration that there is reasonable assurance the waste classification and segregation requirements shall be met and that adequate barriers to inadvertent intrusion shall be provided;~~

~~(3) Analyses of the protection of individuals during operations shall include assessments of expected exposures due to routine operations and likely accidents during handling, storage, or disposal of waste. The analyses shall provide reasonable assurance that exposures shall be controlled to meet the requirements of 902 KAR 100:020; and~~

~~(4) Analyses of the long-term stability of the disposal site and the need for ongoing active maintenance after closure shall be based upon analyses of active natural processes such as erosion, mass wasting, slope failure, settlement of wastes and backfill, infiltration through covers over disposal areas and adjacent soils, and surface drainage of the disposal site. The analyses shall provide reasonable assurance that there shall not be a need for ongoing active maintenance of the disposal site following closure.~~

~~Section 8. Institutional Information. The institutional information submitted by the applicant shall include:~~

~~(1) A certification by the Commonwealth of Kentucky, or federal agency that owns the disposal site, that the Commonwealth of Kentucky or federal agency is prepared to accept transfer of the license if the provisions of Section 15 of this administrative regulation are met, and shall assume responsibility for custodial care after site closure and postclosure observation and maintenance; and~~

~~(2) If the proposed disposal site is on land not owned by the Commonwealth of Kentucky or federal government, the applicant shall submit evidence that arrangements have been made for assumption of ownership in fee by the Commonwealth of Kentucky or federal agency before the cabinet issues a license.~~

~~Section 9. Financial Information. The financial information shall be sufficient to demonstrate that the financial qualifications of the applicant are adequate to carry out the activities for which the license is sought and meet other financial assurance requirements of this administrative regulation.~~

~~Section 10. Standards for Issuance of a License. A license for the receipt, possession, or disposal of waste containing or contaminated with radioactive material shall be issued by the cabinet upon finding that:~~

~~(1) The issuance of the license shall not constitute an unreasonable risk to the health and safety of the public;~~

~~(2) The applicant is qualified by reason of training and experience to carry out the disposal operations requested in a manner that protects health and minimizes danger to life and property;~~

~~(3) The applicant's proposed disposal site; disposal design; land disposal facility operations; including equipment, facilities, procedures, disposal site closure, and postclosure institutional care are adequate to protect the public health and safety in that they provide reasonable assurance that the general population shall be protected from releases of radioactivity as specified in the performance objective in Section 18 of this administrative regulation;~~

~~(4) The applicant's proposed disposal site; disposal site design; land disposal facility operations; including equipment, facilities, procedures, disposal site closure, and postclosure institutional control are adequate to protect the public health and safety in that they shall provide reasonable assurance that individual inadvertent intruders are protected in accordance with the performance objective in Section 19 of this administrative regulation;~~

~~(5) The applicant's proposed disposal facility operations, including equipment, facilities, and procedures, are adequate to protect the public health and safety in that they shall provide reasonable assurance that the standards for radiation protection set out in 902 KAR 100:019 shall be met;~~

~~(6) The applicant's proposed disposal site, disposal site design, land disposal facility operations, disposal site closure, and postclosure institutional care are adequate to protect the public health and safety in that they shall provide reasonable assurance that long-term stability of the disposed waste and the disposal site shall be achieved and shall eliminate to the extent practicable the need for ongoing active maintenance of the disposal site following closure;~~

~~(7) The applicant's demonstration provides reasonable assurance that the applicable technical requirements of this administrative regulation shall be met;~~

~~(8) The applicant's proposal for institutional control provides reasonable assurance that the care shall be provided for the length of time found necessary to ensure the findings in Subsection (3) through (6) of this section and that the institutional control meets the requirements of Section 27 of this administrative regulation; and~~

~~(9) The information on financial assurances meets the requirements of this administrative regulation.~~

~~Section 11. Conditions of Licenses. (1) A license issued under this administrative regulation, or a right thereunder, may be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, through transfer of control of the license to a person. A transfer, assignment, or disposition shall occur only if the cabinet finds, after securing full information, that the transfer is in accordance with the provisions of the Act. The cabinet shall provide the approval or denial in writing in the form of a license amendment.~~

~~(2) The licensee shall submit a written statement under oath upon request of the cabinet, before termination of the license, and to enable the cabinet to determine if the license shall be modified, suspended, or revoked.~~

~~(3) The license shall be terminated only on the full implementation of the final closure plan as approved by the cabinet, including postclosure observation and maintenance.~~

~~(4) The licensee shall be subject to the provisions of the Act, 902 KAR Chapter 100, and orders of the cabinet. The terms and conditions of the license shall be subject to amendment, revision, or modification.~~

~~(5) Each person licensed by the cabinet as authorized by this administrative regulation shall confine possession and use of materials to the locations and purposes authorized in the license.~~

~~(6) The licensee shall not dispose of waste until the cabinet has inspected the land disposal facility and has found it to be in conformance with the description, design, and construction described in the application for a license.~~

~~(7) The cabinet may incorporate in a license at issuance, or thereafter, by 902 KAR Chapter 100 or order, additional requirements and conditions with respect to the licensee's receipt,~~

~~possession, and disposal of waste necessary in order to:~~

~~(a) Protect health or to minimize danger to life or property; and~~

~~(b) Require reports and the keeping of records and to provide for inspections of activities under the license as necessary or appropriate to effectuate the purposes of the Act and 902 KAR Chapter 100.~~

~~(8) The authority to dispose of wastes expires on the date stated in the license. An expiration date on a license applies only to the aboveground activities and to the authority to dispose of waste. Failure to renew the license shall not relieve the licensee of responsibility for carrying out site closure, postclosure observation, and transfer of the license to the site owner.~~

~~Section 12. Application for Renewal or Closure. (1) An application for renewal or an application for closure shall be filed at least ninety (90) days prior to license expiration.~~

~~(2) An application for renewal of a license shall be filed in accordance with Sections 4 through 9 of this administrative regulation. An application for closure shall be filed in accordance with Section 13 of this administrative regulation. Information contained in previous applications, statements, or reports filed with the cabinet under the license may be incorporated by reference if the references are clear and specific.~~

~~(3) In a case in which a licensee has filed an application in proper form for renewal of a license, the license shall not expire until the cabinet has taken action on the application for renewal.~~

~~(4) In determining if a license shall be renewed, the cabinet shall apply the criteria set forth in Section 10 of this administrative regulation.~~

~~Section 13. Contents of Application for Closure. (1) Prior to final closure of the disposal site, or as otherwise directed by the cabinet, the applicant shall submit an application to amend the license for closure. This closure application shall include a final revision and specific details of the disposal site closure plan included as part of the license application submitted under Section 6(7) of this administrative regulation that includes each of the following:~~

~~(a) Additional geologic, hydrologic, or other data pertinent to the long-term containment of emplaced wastes obtained during the operational period;~~

~~(b) The results of tests, experiments, or other analyses relating to backfill of excavated areas; closure and sealing; waste migration and interaction with emplacement media; or other tests, experiments, or analysis pertinent to the long-term containment of emplaced waste within the disposal site;~~

~~(c) Proposed revision of plans for:~~

~~1. Decontamination or dismantlement of surface facilities;~~

~~2. Backfilling of excavated areas; or~~

~~3. Stabilization of the disposal site for postclosure care; and~~

~~(d) Significant new information regarding the environmental impact of closure activities and long-term performance of the disposal site.~~

~~(2) Upon review and consideration of an application to amend the license for closure submitted in accordance with subsection (1) of this section, the cabinet shall issue an amendment authorizing closure if there is reasonable assurance that the long-term performance objectives of this administrative regulation shall be met.~~

~~Section 14. Postclosure Observation and Maintenance. (1) The licensee shall observe, monitor, and carry out necessary maintenance and repairs at the disposal site until the site closure is complete and the license is transferred by the cabinet in accordance with Section 15 of this administrative regulation.~~

~~(2) Responsibility for the disposal site shall be maintained by the licensee for at least five (5) years.~~

~~(3) A shorter or longer time period for postclosure observation and maintenance may be established and approved as part of the site closure plan, based on site-specific conditions.~~

~~Section 15. Transfer of License. Following closure and the period of postclosure observation and maintenance, the licensee may apply for an amendment to transfer the license to the disposal site owner. The license shall be transferred if the cabinet finds:~~

~~(1) The closure of the disposal site has been made in conformance with the licensee's disposal site closure plan, as amended and approved as part of the license;~~

~~(2) Reasonable assurance has been provided by the licensee that the performance objectives of this administrative regulation are met;~~

~~(3) Funds and necessary records for care shall be transferred to the disposal site owner;~~

~~(4) The postclosure monitoring program is operational for implementation by the disposal site owner; and~~

~~(5) The Commonwealth of Kentucky or federal agency that shall assume responsibility for institutional control of the disposal site is prepared to assume responsibility and ensure that the institutional requirements found necessary under Section 10(8) of this administrative regulation shall be met.~~

~~Section 16. Termination of License. (1) Following a period of institutional control needed to meet the requirements found necessary under Section 10 of this administrative regulation, the licensee may apply for an amendment to terminate the license.~~

~~(2) This application shall be reviewed in accordance with the provisions of 902 KAR 100:040, Section 4.~~

~~(3) A license shall be terminated only if the cabinet finds:~~

~~(a) The institutional control requirements found necessary under Section 10(8) of this administrative regulation have been met;~~

~~(b) Additional requirements resulting from new information developed during the institutional control period have been met; and~~

~~(c) Permanent monuments or markers warning against intrusion have been installed.~~

~~Section 17. General Requirement. Land disposal facilities shall be sited, designed, operated, closed, and controlled after closure so that reasonable assurance exists that exposures to individuals are within the limits established in the performance objectives in Section 18 through Section 21 of this administrative regulation.~~

~~Section 18. Protection of the General Population from Releases of Radioactivity. A concentration of radioactive material that may be released to the general environment in groundwater, surface water, air, soil, plants, or animals shall not result in an annual dose exceeding an equivalent of twenty-five (25) millirems to the whole body, seventy-five (75) millirems to the thyroid, and twenty-five (25) millirems to any other organ of a member of the public. Reasonable effort shall be made to maintain releases of radioactivity in effluents to the general environment as low as it is reasonably achievable.~~

~~Section 19. Protection of Inadvertent Intrusion. Design, operation, and closure of the land disposal facility shall ensure protection of an individual inadvertently intruding into the disposal site and occupying the site or contacting the waste any time after active institutional controls over the disposal site are removed.~~

~~Section 20. Protection of Individuals During Operations. Operations at the land disposal facility shall be conducted in compliance with the standards for radiation protection set out in 902 KAR 100:019, except for releases of radioactivity in effluents from the disposal facility, which shall be governed by Section 18 of this administrative regulation. Every reasonable effort shall be made to maintain radiation exposures as low as is reasonably achievable.~~

~~Section 21. Stability of the Disposal Site After Closure. The disposal facility shall be sited, designed, used, operated, and closed to achieve long-term stability of the disposal site and to eliminate to the extent practicable the need for ongoing active maintenance of the disposal site following closure so that only surveillance, monitoring, or minor custodial care are required.~~

~~Section 22. Disposal Site Suitability Requirements for Land Disposal. Disposal site suitability for near-surface disposal. The following are the minimum characteristics a disposal site shall have to be acceptable for use as a near-surface disposal facility:~~

~~(1) The primary emphasis in disposal site suitability is isolation of wastes, and the disposal site features that ensure that the long-term performance objectives are met.~~

~~(2) The disposal site shall be capable of being characterized, modeled, analyzed, and monitored.~~

~~(3) Within the region where the facility is to be located, a disposal site shall be selected so that projected population growth and future developments are not likely to affect the ability of the disposal facility to meet the performance objectives of this administrative regulation.~~

~~(4) Areas shall be avoided having known natural resources that, if exploited, would result in failure to meet the performance objectives of this administrative regulation.~~

~~(5) The disposal site shall be generally well drained and free of areas of flooding or frequent ponding. Waste disposal shall not take place in a 100-year flood plain, coastal high-hazard area, or wetland, as defined in U.S. Executive Order 11988, Flood plain Management Guidelines.~~

~~(6) Upstream drainage areas shall be minimized to decrease the amount of run-off that could erode or inundate waste disposal units.~~

~~(7)(a) The disposal site shall provide sufficient depth to the water table that ground water intrusion, perennial or otherwise, into the waste shall not occur.~~

~~(b) The cabinet shall consider an exception to this requirement to allow disposal below the water table if it can be conclusively shown that disposal site characteristics may result in molecular diffusion being the predominant means of radionuclide movement and the rate of movement may result in the performance objectives being met.~~

~~(c) In no case shall waste disposal be permitted in the zone of fluctuation of the water table.~~

~~(8) The hydrogeologic unit used for disposal shall not discharge ground water to the surface within the disposal site.~~

~~(9) Areas shall be avoided if tectonic processes, such as faulting, folding, seismic activity, or vulcanism may occur with a frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of this administrative regulation or may preclude defensible modeling and prediction of long-term impacts.~~

~~(10) Areas shall be avoided if surface geologic processes such as mass wasting, erosion, slumping, landsliding, or weathering occur with a frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of this administrative regulation, or may preclude defensible modeling and prediction of long-term impacts.~~

~~(11) The disposal site shall not be located where nearby facilities or activities could adversely impact the ability of the site to meet the performance objectives of this administrative regulation or significantly mask the environmental monitoring program.~~

~~Section 23. Disposal Site Design for Land Disposal. Disposal site design for near-surface disposal.~~

~~(1) Site design features shall be directed toward long-term isolation and avoidance of the need for continuing active maintenance after site closure.~~

~~(2) The disposal site design and operation shall be compatible with the disposal site closure and stabilization plan and lead to disposal site closure that provides reasonable assurance that the performance objectives shall be met.~~

~~(3) The disposal site shall be designed to complement and improve the ability of the disposal site's natural characteristics to assure that the performance objectives shall be met.~~

~~(4) Covers shall be designed to minimize water infiltration, to direct percolating or surface water away from the disposed waste, and to resist degradation by surface geologic processes and biotic activity.~~

~~(5) Surface features shall direct surface water drainage away from disposal units at velocities and gradients that shall not result in erosion that shall require ongoing active maintenance in the future.~~

~~(6) The disposal site shall be designed to minimize the contact of water with waste during storage, the contact of standing water with waste during disposal, and the contact of percolating or standing water with wastes after disposal.~~

~~Section 24. Land Disposal Facility Operation and Disposal Site Closure; Near-surface Disposal Facility Operation and Disposal Site Closure. (1) Wastes designated as Class A in 902 KAR 100:021 shall be segregated from other wastes by placing in disposal units that are sufficiently separated from disposal units for the other waste classes so that an interaction between Class A wastes and other wastes shall not result in the failure to meet the performance objectives of this administrative regulation. This segregation is not necessary for Class A wastes if they meet the stability requirements in 902 KAR 100:021, Section 7(2).~~

~~(2) Wastes designated as Class C in 902 KAR 100:021 shall be disposed of so that the top of the waste is a minimum of five (5) meters below the top surface of the cover or shall be disposed of with intruder barriers that are designed to protect against an inadvertent intrusion for at least 500 years.~~

~~(3) Except as provided in subsection (1) of this section, only waste classified as Class A, B, or C shall be acceptable for near-surface disposal. All waste shall be disposed of in accordance with requirements of subsections (4) through (11) of this section.~~

~~(4) Wastes shall be emplaced in a manner that maintains the package integrity during emplacement, minimizes the void spaces between packages, and allows the void spaces to be filled.~~

~~(5) Void spaces between waste packages shall be filled with earth or other material to reduce future subsidence within the fill.~~

~~(6) Waste shall be placed and covered in a manner that limits the radiation dose rate at the surface of the cover to levels that at a minimum shall permit the licensee to comply with all provisions of 902 KAR 100:019, Sections 10 and 11, if the license is transferred as authorized by Section 15 of this administrative regulation.~~

~~(7) The boundaries and locations of each disposal unit shall be accurately located and mapped by means of a land survey.~~

~~(8) Near-surface disposal units shall be marked in a way that the boundaries of each unit can be easily defined.~~

~~(9) Three (3) permanent survey marker control points, referenced to United States Geological Survey (USGS) or National Geodetic Survey (NGS) survey control stations, shall be established on the site to facilitate surveys.~~

~~(10) The USGS or NGS control stations shall provide horizontal and vertical controls as checked against USGS or NGS record files.~~

~~(11) A buffer zone of land shall be maintained between any buried waste and the disposal site boundary and beneath the disposed waste. The buffer zone shall be of adequate dimensions to carry out environmental monitoring activities specified in Section 25 of this administrative regulation and take mitigative measures if needed.~~

~~(12) Closure and stabilization measures set forth in the approved site closure plan shall be carried out as each disposal unit is filled and covered.~~

~~(13) Active waste disposal operations shall not have an adverse effect on completed closure and stabilization measures.~~

~~(14) Only wastes containing or contaminated with radioactive materials shall be disposed of at the disposal site.~~

~~(15) A proposal for disposal of waste that is not generally acceptable for near-surface disposal because the waste form and disposal methods need to be different, and in general more stringent than those specified for Class C waste, may be submitted to the cabinet for approval.~~

~~Section 25. Environmental Monitoring. (1)(a) If a license application is submitted, the applicant shall have conducted a preoperational monitoring program to provide basic environmental data on the disposal site characteristics.~~

~~(b) The applicant shall obtain information about the ecology, meteorology, climate, hydrology, geology, geochemistry, and seismology of the disposal site.~~

~~(c) For those characteristics that are subject to seasonal variation, data shall cover at least a twelve (12) month period.~~

~~(2)(a) During the land disposal facility site construction and operation, the licensee shall maintain an environmental monitoring program.~~

~~(b) Measurements and observations shall be made and recorded to provide data to evaluate the potential health and environmental impacts during both the construction and the operation of the facility and to enable the evaluation of long-term effects and the need for mitigative measures.~~

~~(c) The monitoring system shall be capable of providing early warning of releases of radionuclides from the disposal site before they leave the site boundary.~~

~~(3) After the disposal site is closed, the licensee responsible for postoperational surveillance of the disposal site shall maintain a monitoring system based on the operating history and the closure and stabilization of the disposal site. The monitoring system shall be capable of providing early warning of releases of radionuclides from the disposal site before they leave the site boundary.~~

~~(4) The licensee shall have plans for taking corrective measures if the environmental monitoring program detects migration of radionuclides that would indicate that the performance objectives may not be met.~~

~~Section 26. Alternative Requirements for Design and Operations. The cabinet may, upon request or on its own initiative, authorize provisions other than those set forth in Sections 23 through 25 of this administrative regulation for the segregation and disposal of waste and for the design and operation of a land disposal facility on a specific basis if it finds reasonable assurance of compliance with the performance objectives of this administrative regulation.~~

~~Section 27. Institutional Requirements. (1) Land ownership. Disposal of radioactive waste received from other persons may be permitted only on land owned, in fee, by the Commonwealth of Kentucky or federal government.~~

~~(2) Institutional control.~~

~~(a) The land owner or custodial agency shall carry out an institutional control program to physically control access to the disposal site following transfer of control of the disposal site from the disposal site operator.~~

~~(b) The institutional control program shall also include, in part, carrying out an environmental monitoring program at the disposal site, periodic surveillance, minor custodial care, and other requirements as determined by the cabinet in accordance with 10 C.F.R. 61.59, and administration of funds to cover the costs for these activities.~~

~~(c) The period of controls shall be determined by the cabinet in accordance with 10 C.F.R. 61.59, but controls may not be relied upon for more than 100 years following transfer of control of the disposal site to the owner.~~

~~Section 28. Alternative Requirements for Waste Classification and Characteristics. The cabinet licensing a low-level disposal facility may, upon request or on its own initiative, authorize other provisions for the classification and characteristics of waste on a specific basis if, after evaluation of the specific characteristics of the waste, disposal site, or method of disposal, it finds reasonable assurance of compliance with the performance objectives specified in this administrative regulation.~~

~~Section 29. Applicant Qualifications and Assurances. Each applicant shall show that he either possesses the necessary funds or has reasonable assurance of obtaining the necessary funds or, by a combination of the two (2), to cover the estimated costs of conducting all licensed activities over the planned operating life of the project, including costs of construction and disposal.~~

~~Section 30. Funding for Disposal Site Closure and Stabilization. (1) The applicant shall provide assurances prior to the commencement of operations that sufficient funds shall be available to carry out disposal site closure and stabilization, including:~~

~~(a) Decontamination or dismantlement of land disposal facility structures;~~

~~(b) Closure and stabilization of the disposal site so that following transfer of the disposal site to the site owner, the need for ongoing active maintenance shall be eliminated to the extent practicable and only minor custodial care, surveillance, and monitoring shall be required; and~~

~~(c) Assurances shall be based on cabinet-approved cost estimates reflecting the cabinet-approved plan for disposal site closure and stabilization. The applicant's cost estimates shall take into account total costs that would be incurred if an independent contractor were hired to perform the closure and stabilization work.~~

~~(2) In order to avoid unnecessary duplication and expense, the cabinet may accept financial sureties that have been consolidated with earmarked financial or surety arrangements established to meet requirements of other federal or state agencies or local governing bodies for the decontamination, closure, and stabilization. If the cabinet accepts these arrangements they shall be adequate to satisfy these requirements and that the portion of the surety that covers the closure of the disposal site that shall be clearly identified and committed for use in accomplishing these activities.~~

~~(3) The licensee's surety mechanism shall be submitted annually for review by the cabinet to assure that sufficient funds are available for completion of the closure plan, assuming that the work has to be performed by an independent contractor.~~

~~(4) The amount of surety liability shall change in accordance with the predicted cost of future closure and stabilization. Factors affecting closure and stabilization cost estimates include:~~

~~(a) Inflation;~~

~~(b) Increases in the amount of disturbed land;~~

~~(c) Changes in engineering plans;~~

~~(d) Closure and stabilization that has already been accomplished; and~~

~~(e) Other conditions affecting costs. This shall yield a surety that is at least sufficient at all times to cover the costs of closure of the disposal units that are expected to be used before the next license renewal.~~

~~(5)(a) The term of the surety mechanism shall be open unless it can be demonstrated that another arrangement would provide an equivalent level of assurance.~~

~~1. This assurance shall be provided with a surety mechanism written for a specified period of time (for example, five (5) years) yet which shall be automatically renewed unless the party who issues the surety notifies the cabinet and the beneficiary (the site owner) and the principal (the licensee) not less than ninety (90) days prior to the renewal date of the intention not to renew.~~

~~2. In this situation the licensee shall submit a replacement surety within thirty (30) days after notification of cancellation.~~

~~(b) If the licensee fails to provide a replacement surety acceptable to the cabinet, the site owner may collect on the original surety.~~

~~(6)(a) Proof of forfeiture shall not be necessary to collect the surety so that if the licensee could not provide an acceptable replacement surety within the required time, the surety shall be automatically collected prior to its expiration.~~

~~(b) The conditions described in this section shall be clearly stated on a surety instrument that is not open-ended, and shall be agreed to by all parties. Liability under the surety mechanism shall remain in effect until the closure and stabilization program has been completed and approved by the cabinet and the license has been transferred to the site owner.~~

~~(7)(a) Financial surety arrangements acceptable to the cabinet include:~~

~~1. Surety bonds;~~

~~2. Cash deposits;~~

~~3. Certificates of deposit;~~

~~4. Deposits of government securities;~~

~~5. Escrow accounts;~~

~~6. Irrevocable letters or lines of credit;~~

~~7. Trust funds; and~~

~~8. Combinations of the above.~~

~~(b) Self-insurance, or an arrangement that essentially constitutes pledging the assets of the licensee, shall not satisfy the surety requirement for private sector applicants because this does not provide additional assurance other than that which already exists through license requirements.~~

~~Section 31. Financial Assurances for Institutional Controls. (1) Prior to the issuance of the license, the applicant shall provide for cabinet review and approval or denial a copy of a binding arrangement, such as a lease, between the applicant and the disposal site owner that ensures that sufficient funds shall be available to cover the costs of monitoring and required maintenance during the institutional control period. The binding arrangement shall be reviewed periodically by the cabinet to ensure that changes in inflation, technology, and disposal facility operations are reflected in the arrangements.~~

~~(2) Subsequent changes to the binding arrangement specified in subsection (1) of this section relevant to institutional control shall be submitted to the cabinet for approval or denial.~~

~~Section 32. Maintenance of Records, Reports, and Transfers. (1) Each licensee shall maintain records and make reports in connection with the licensed activities as required by the conditions of the license or by 902 KAR Chapter 100 or orders of the cabinet.~~

~~(2)(a) A record required by 902 KAR Chapter 100 or by license conditions shall be maintained for a period specified by the appropriate administrative regulation in 902 KAR Chapter 100 or by license condition.~~

~~(b) If a retention period is not otherwise specified, these records shall be maintained and transferred to the officials specified in subsection (5) of this section as a condition of license termination unless the cabinet otherwise authorizes disposition.~~

~~(3)(a) A record that shall be maintained as required by this section shall be the original, a reproduced copy, or microform if this reproduced copy or microform is capable of producing copy that is clear and legible at the end of the required retention period.~~

~~(b)1. The record may also be stored in electronic media with the capability of producing legible, accurate, and complete records during the retention period.~~

~~2. Records such as letters, drawings, and specifications shall include all pertinent information such as stamps, initials, and signatures.~~

~~(c) The licensee shall maintain adequate safeguards against tampering with and loss of records.~~

~~(4) If there is a conflict between the cabinet's administrative regulations, license condition, or other written cabinet approval or authorization pertaining to the retention period for the same type of record, the longest retention period specified shall take precedence.~~

~~(5) In addition to the requirements of subsections (1) through (4) of this section, copies of records of the location and the quantity of radioactive wastes contained in the disposal site shall be transferred upon license termination to the chief executive of the nearest municipality, the chief executive of the county in which the facility is located, the county zoning board or land development and planning agency, the Governor of the Commonwealth of Kentucky, other Kentucky local agencies, and federal governmental agencies as designated by the cabinet when the license is terminated.~~

~~(6) Following receipt and acceptance of a shipment of radioactive waste, the licensee shall record:~~

~~(a) The date that the shipment is received at the disposal facility;~~

~~(b) The date of disposal of the waste;~~

~~(c) A traceable shipment manifest number;~~

~~(d) A description of any engineered barrier or structural overpack provided for disposal of the waste;~~

~~(e) The location in the disposal site;~~

~~(f) The condition of the waste packages as received;~~

~~(g) Any discrepancies between materials listed on the manifest and those received;~~

~~(h) The volume of pallets, bracing, or other shipping or onsite generated materials that are contaminated, and are disposed of as contaminated or suspect materials; and~~

~~(i) Any evidence of leaking or damaged packages or radiation or contamination levels in excess of limits specified in U.S. Department of Transportation and 902 KAR Chapter 100.~~

~~(7) The licensee shall briefly describe repackaging operations of the waste packages included in the shipment, plus other information required by the cabinet as a license condition.~~

~~(8) The licensee shall retain these records until the cabinet transfers or terminates the license that authorizes the activities established in this section.~~

~~(9) Each licensee authorized to dispose of radioactive waste received from other persons shall file a copy of its financial report or a certified financial statement annually with the cabinet in order to update the information base for determining financial qualifications.~~

~~(10)(a) Each licensee authorized to dispose of waste materials received from other persons, authorized by this administrative regulation, shall submit an annual report to the cabinet. Reports shall be submitted by the end of the first calendar quarter of each year for the preceding year.~~

~~(b) The reports shall include:~~

~~1. Specification of the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in airborne effluents during the preceding year;~~

~~2. The results of the environmental monitoring program;~~

~~3. A summary of licensee disposal unit survey and maintenance activities;~~

~~4. A summary, by waste class, of activities and quantities of radionuclides disposed of;~~

~~5. Instances in which observed site characteristics were significantly different from those described in the application for a license; and~~

~~6. Other information the cabinet may require to protect public health and safety.~~

~~(c) The report shall specifically cover instances in which the quantities of radioactive materials released during the reporting period, monitoring results, or maintenance performed are significantly different from those expected in the materials previously reviewed as part of the licensing action.~~

~~(11)(a) In addition to the other requirements of this section, the licensee shall store or have stored, manifest and other information pertaining to receipt and disposal or radioactive waste in an electronic recordkeeping system.~~

~~(b) The manifest information that shall be stored electronically is:~~

~~1. That required in 902 KAR 100:021, Sections 9 and 10, with the exception of shipper and carrier telephone numbers and shipper and consignee certifications; and~~

~~2. The information required in subsection (6) of this section.~~

~~(c) As specified in license conditions, the licensee shall report the stored information, or subsets of the information, on a computer-readable medium.~~

~~Section 33. Tests at Land Disposal Facilities. Each licensee shall perform, or allow the cabinet to perform, any tests appropriate or necessary for the administration of this administrative regulation, including, in part, tests of:~~

~~(1) Radioactive wastes and facilities used for the receipt, storage, treatment, handling, or disposal of radioactive wastes;~~

~~(2) Radiation detection and monitoring instruments; and~~

~~(3) Other equipment and devices used in connection with the receipt, possession, handling, treatment, storage, or disposal of radioactive waste.~~

~~Section 34. Cabinet Inspections of Land Disposal Facilities. (1) Each licensee shall:~~

~~(a) Afford to the cabinet at all reasonable times opportunity to inspect radioactive waste not yet disposed of and the premises, equipment, operations, and facilities in which radioactive wastes are received, possessed, handled, treated, stored, or disposed;~~

~~(b) Provide the cabinet with the necessary equipment to meet the activities, such as monitoring, surveying, and recordkeeping as required by this section; and~~

~~(c) Make available to the cabinet for inspection, upon notice, records kept by it as required by this administrative regulation.~~

~~(2) Authorized representatives of the cabinet may copy and take away copies of any record required to be kept by this administrative regulation.~~]

JEFFREY D. HOWARD, Jr., M.D., Commissioner
ADAM MEIER, Secretary

APPROVED BY AGENCY: June 29, 2018

FILED WITH LRC: July 5, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 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 August 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, phone (502) 564-3970, email julied.brooks@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures, criteria, terms and conditions upon which the cabinet issues licenses for the land disposal of radioactive wastes received from other persons.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect the public from improper land disposal of radioactive wastes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.844 requires the cabinet to provide by administrative regulation the requirements for the handling and disposal of radioactive waste.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures all those engaged in the disposal of radioactive materials are properly licensed to do so as well as ensures proper procedures for land disposal are followed.

(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 adopts by reference the federal regulations for licensing requirements for land disposal of radioactive material, except where exclusions are allowed, thereby ensuring the highest level standards are followed by all those engaged in the disposal of radioactive waste in Kentucky.

(b) The necessity of the amendment to this administrative regulation: As an agreement state with the Nuclear Regulatory Commission (NRC), Kentucky is required to have state regulations compatible with the regulations promulgated by NRC. This amendment establishes compatibility with the federal regulation, except where exclusions are allowed.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides the technical requirements for handling and disposal of radioactive waste as required by KRS 211.844.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure all entities engaged in land disposal of radioactive waste are properly licensed to do so, and are following the correct procedures for such disposal.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Radiation Health Branch within the Department for Public Health is the only entity 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 questions (3) will have to take to comply with this administrative regulation or amendment: There will be no new actions required to be in compliance with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There is no anticipated change in cost for the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By adopting 10 C.F.R. Part 61, the state will eliminate any unnecessary training or licensing requirement for regulated entities.

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

(a) Initially: This program is already operating. There is no cost to implement this administrative regulation.

(b) On a continuing basis: This program is already operating. There is no cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment does not affect 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 is associated with this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There are no fees established in this administrative regulation.

(9) TIERING: Is tiering applied? No, tiering is not applied as all entities engaged in the land disposal of radioactive waste must meet the same standards.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only the Radiation Health Branch in the Department for Public Health will be impacted by this administrative regulation as it contains reference to the federal regulation. There are no new requirements.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to adopt administrative regulations necessary to protect the health of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the Cabinet. KRS 211.844 requires the Cabinet to provide by administrative regulation for the disposal of radioactive waste. 10 C.F.R. Part 61 establishes the procedures, criteria, and terms and conditions for land disposal of radioactive waste.

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.

(b) How 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.

(c) How much will it cost to administer this program for the first year? This administrative regulation does not add costs to the agency.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not add costs to the agency.

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. The Atomic Energy Act of 1954 as amended, the Energy Policy Act of 2005 and 10 C.F.R. Part 61.

2. State compliance standards. This regulation adopts the federal procedures, criteria, and terms and conditions, for the issuance of a license for land disposal of radioactive waste.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires state regulations to be compatible with the equivalent federal regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no different, stricter, or additional responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 100:052. Specific domestic licenses of broad scope for byproduct material[~~licenses~~].

RELATES TO: KRS 211.842-211.852, 211.990(4), 10 C.F.R. Part 33, 42 U.S.C. 2021

STATUTORY AUTHORITY: KRS 194.050(1), 211.090(3), 211.844(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services[~~Human Resources~~] is authorized by KRS 211.844(1) to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation prescribes requirements for the issuance of specific licenses of broad scope for byproduct[~~radioactive~~] material.

Section 1. Definitions. (1) "Agreement state" means a state that the United States Nuclear Regulatory Commission or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.).

(2)" Cabinet" is defined by KRS 194A.005(1).

(3) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet pursuant to 902 KAR 100:040 and this administrative regulation;

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an Agreement state; or

(c) A general license pursuant to 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement state.

Section 2. Applicability. This administrative regulation establishes requirements for specific licensees to possess, use, or transfer byproduct[~~radioactive~~] material for licenses of broad scope. Except as established in subsections (1) through (3) of this section, the licensee shall comply with 10 C.F.R. Part 33. (1) The licensee shall not be subject to:

(a) 10 C.F.R. 33.8;

(b) 10 C.F.R. 33.21; or

(c) 10 C.F.R. 33.23.

(2) Each application for a specific license shall be filed pursuant to 902 KAR 100:040.

(3) The "Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch" shall be used in lieu of federal references to the "Commission" and the "NRC. [~~Section 2. Types of Specific Licenses of Broad Scope. (1) A "Type A specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of a chemical or physical form of the radioactive material specified in the license, but not exceeding quantities specified in the license, for any authorized purpose. The quantities specified are usually in the multicurie range.~~

~~(2) A "Type B specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of a chemical or physical form of radioactive material specified in 902 KAR 100:090, relating to broad license quantities, for any authorized purpose. The possession limit for a Type B broad license, if only one (1) radionuclide is possessed, is the quantity specified for that radionuclide in Column I of the table in Section 2 of 902 KAR 100:090. If two (2) or more radionuclides are possessed, the possession limit for each is determined as follows: for each radionuclide, determine the ratio of the quantity possessed to the applicable quantity specified in Column I of the table in Section 2 of 902 KAR 100:090 for that radionuclide. The sum of the ratios for all radionuclides possessed under the license shall not exceed unity.~~

~~(3) A "Type C specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of a chemical or physical form of radioactive material specified in 902 KAR 100:090, relating to broad licensed quantities, for any authorized purpose. The possession limit for a Type C broad license, if only one (1) radionuclide is possessed, is the quantity specified for that radionuclide in Column II of the table in Section 2 of 902 KAR 100:090. If two (2) or more radionuclides are possessed, the possession limit is determined for each as follows: for each radionuclide determine the ratio of the quantity possessed to the applicable quantity specified in Column II of the table in Section 2 of 902 KAR 100:090 for that radionuclide. The sum of the ratios for all radionuclides possessed under the license shall not exceed unity.~~

~~Section 3. Requirements for the Issuance of a Type A Specific License of Broad Scope. An application for a Type A specific license of broad scope will be approved if:~~

~~(1) The applicant satisfies the general requirements specified in 902 KAR 100:040;~~

~~(2) The applicant has engaged in a reasonable number of activities involving the use of radioactive material; and~~

~~(3) The applicant has established administrative controls and requirements relating to organization, management, procedures, recordkeeping, material control and accounting, and management review that are necessary to assure safe operations, including:~~

~~(a) The establishment of a radiation safety committee composed of persons, such as a radiation safety officer, a representative of management, and persons trained and experienced in the safe use of radioactive materials;~~

~~(b) The appointment of a radiation safety officer who is qualified by training and experienced in radiation protection, who is available for advice and assistance on radiological safety matters; and~~

~~(c) The establishment of appropriate administrative procedures to assure control of procurement and use of radioactive material; completion of safety evaluation of proposed uses of radioactive~~

~~material which take into consideration matters, such as the adequacy of facilities and equipment, training and experience of the user, and the operating or handling procedures; and review, approval, and recording by the radiation safety committee of safety evaluations of proposed uses prepared in accordance with this subsection prior to use of the radioactive material.~~

~~Section 4. Requirements for the Issuance of a Type B Specific License of Broad Scope. An application for a Type B specific license of broad scope will be approved if:~~

~~(1) The applicant satisfies the general requirements specified in 902 KAR 100:040; and~~

~~(2) The applicant has established administrative controls and provisions relating to organization, management, procedures, recordkeeping, material control and accounting, and management review that are necessary to assure safe operations, including:~~

~~(a) The appointment of a radiation safety officer who is qualified by training and experience in radiation protection, who is available for advice and assistance on radiological safety matters; and~~

~~(b) The establishment of appropriate administrative procedures to assure control of procurement and use of radioactive material; completion of safety evaluations or proposed uses of radioactive materials which take into consideration such matters as the adequacy of facilities and equipment, training and experience of the user, the operating or handling procedures; and review, approval and recording by the radiation safety officer of safety evaluations of proposed uses prepared in accordance with this subsection prior to use of the radioactive material.~~

~~Section 5. Requirements for the Issuance of a Type C Specific License of Broad Scope. An application for a Type C specific license of broad scope shall be approved if:~~

~~(1) The applicant satisfies the general requirements specified in 902 KAR 100:040;~~

~~(2) The applicant submits a statement that radioactive material will be used only by, or under the direct supervision of, individuals who have received:~~

~~(a) A college degree at the bachelor level, or equivalent training and experience, in the physical or biological sciences or in engineering;~~

~~(b) At least forty (40) hours of training and experience in the safe handling of radioactive materials, characteristics of ionizing radiation, units of radiation dose and quantities, radiation detection instrumentation, biological hazards of exposure to radiation appropriate to the type and forms of radioactive material to be used; and~~

~~(3) The applicant has established administrative controls and provisions relating to procurement of radioactive material, procedures, recordkeeping, material control and accounting, and management review necessary to assure safe operations.~~

~~Section 6. Prohibited Acts and Conditions for Specific Licenses of Broad Scope. (1) Unless otherwise specifically authorized by these administrative regulations, persons licensed under this administrative regulation shall not:~~

~~(a) Conduct tracer studies in the environment involving direct release of radioactive material;~~

~~(b) Receive, acquire, own, possess, use, or transfer, devices containing 100,000 curies or more of radioactive material in sealed sources used for irradiation of materials;~~

~~(c) Conduct activities for which a specific license issued by the cabinet under 902 KAR 100:051 or 902 KAR 100:058 is required; or~~

~~(d) Add or cause the addition of radioactive material to a food, beverage, cosmetic, drug, or other product designed for ingestion or inhalation by, or application to, a human being.~~

~~(2) Each Type A specific license of broad scope issued under this administrative regulation shall be subject to the condition that radioactive material possessed under the license may only be used by, or under the direct supervision of, individuals approved by the licensee's radiation safety committee.~~

~~(3) Each Type B specific license of broad scope issued under this administrative regulation shall be subject to the condition that radioactive material possessed under the license may only be used by, or under the direct supervision of, individuals approved by the licensee's radiation safety officer.~~

~~(4) Each Type C specific license of broad scope issued under this administrative regulation shall be subject to the condition that radioactive material possessed under this license may only be used by, or under the direct supervision of, individuals who satisfy the requirements of Section 5 of this administrative regulation.~~]

JEFFREY D. HOWARD, Jr., M.D., Commissioner
ADAM MEIER, Secretary

APPROVED BY AGENCY: June 29, 2018

FILED WITH LRC: July 5, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 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 August 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, phone (502) 564-3970, email julied.brooks@ky.gov, and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the issuance of specific licenses of broad scope for byproduct material.

(b) The necessity of this administrative regulation: As an Agreement State with the authority to operate its radiation program, the Department for Public Health, Radiation Health Branch, is required to maintain a compatible set of regulations to those of the U.S. Nuclear Regulatory Commission (NRC) which govern the receipt, transfer, possession, use, and distribution of radioactive material in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to adopt administrative regulations necessary to protect the health of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the Cabinet. KRS 211.844(1) requires the Cabinet to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and to regulate the handling and disposal of radioactive waste. This administrative regulation regulates the issuance of specific licenses of broad scope for byproduct material.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures all those who possess or use sources of ionizing or electronic product radiation are properly licensed. By referencing the federal standards for broad scope licenses, affected entities do not have inconsistent state and federal requirements during the time it takes the Cabinet to amend

state regulations.

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

(a) How the amendment will change this existing administrative regulation: This amendment adopts by reference the applicable NRC regulations for licenses and radiation safety requirements for broad scope licenses.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary as the agreement between NRC and the Commonwealth requires the Radiation Health Branch to promulgate regulations that are compatible with NRC regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is consistent with the authorizing statutes, which require the secretary to adopt regulations for the registration and licensing of the possession of any source of ionizing or electronic product radiation necessary to protect the public from unnecessary radiation exposure.

(d) How the amendment will assist in the effective administration of the statutes: Once the amendment is effective, Kentucky regulation will reference the most up-to-date requirements for the issuance of specific licenses of broad scope for byproduct material.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Four (4) specific licensees and all future applicants for a specific license of broad scope.

(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: No action is required.

(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 cost of compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will be in full compliance with NRC regulations.

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

(a) Initially: This program is already operating. There is no cost to implement this administrative regulation.

(b) On a continuing basis: This program is already operating. There is no cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment does not affect 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 is associated with 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 establish or increase any fees.

(9) TIERING: Is tiering applied? No. This administrative regulation affects all radioactive materials licensees subject to 902 KAR Chapter 100 regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only the Radiation Health Branch in the Department for Public Health will be impacted by this administrative regulation as it contains reference to the federal regulation. There are no new requirements.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to adopt administrative regulations necessary to protect the health of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the Cabinet. KRS 211.844(1) requires the Cabinet to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and to regulate the handling and disposal of radioactive waste. 10 C.F.R. Part 33 contains the federal requirements that Kentucky must be consistent with.

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 generates no revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation generates no revenue.

(c) How much will it cost to administer this program for the first year? This administrative regulation does not add cost to the agency.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not add cost to the agency.

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. The Atomic Energy Act of 1954 as amended, the Energy Policy Act of 2005 and 10 C.F.R. Part 33.

2. State compliance standards. This regulation adopts the federal standards for the issuance of specific licenses of broad scope for radioactive material.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires state regulations to be compatible with the equivalent federal regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no different, stricter, or additional responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 100:070. Packaging and transportation [~~Transportation~~] of radioactive material.

RELATES TO: KRS 194A.005(1), 211.180(1), 211.842-211.852, 211.990(4), 10 C.F.R. Part 71, 73.2, 73.37, 49 C.F.R 173.403, 42 U.S.C 2021[~~39 C.F.R. 111.1, 49 C.F.R. 107, 170-189~~]

STATUTORY AUTHORITY: KRS[~~13B.170,~~] 194A.050(1), 211.090(3), 211.844(1)

NECESSITY, FUNCTION, AND CONFORMITY: [~~KRS 194A.050(1) requires the secretary to promulgate those 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.~~] KRS 211.844(1) requires the Cabinet for Health and Family Services to promulgate administrative

regulations[~~regulation~~] for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes requirements for packaging and transportation of radioactive material.

Section 1. Definitions. (1) "Agreement state" means a state that the United States
Nuclear Regulatory Commission or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.).

(2)" Armed escort" is defined by 10 C.F.R. 73.2.

(3) "Cabinet" is defined by KRS 194A.005(1).

(4) "Highway route controlled quantity" is defined by 49 C.F.R. 173.403

(5) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet pursuant to 902 KAR 100:040 and this administrative regulation;

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an Agreement state; or

(c) A general license pursuant to 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement state[~~(1) Applicability. Applies to a licensee authorized by a specific or general license issued by the cabinet to receive, possess, use, or transfer radioactive material, when:(a) The licensee delivers that material to a carrier for transport;~~

~~(b) Transports the material outside the site of usage as specified in the cabinet license; or~~

~~(c) Transports the material on public highways.~~

~~(2) This administrative regulation shall not authorize the possession of radioactive material~~].

Section 2. Applicability. This administration regulation shall apply to a licensee. The licensee shall comply with 10 C.F.R. Part 71 except as established in subsections (1) through (3) of this section. (1) The licensee shall not be subject to the following:

(a) 10 C.F.R. 71.2;
(b) 10 C.F.R. 71.6;
(c) 10 C.F.R. 71.11;
(d) 10 C.F.R. 71.14(b);
(e) 10 C.F.R. 71.19;
(f) 10 C.F.R. 71.31;
(g) 10 C.F.R. 71.33;
(h) 10 C.F.R. 71.35;
(i) 10 C.F.R. 71.37;
(j) 10 C.F.R. 71.38;
(k) 10 C.F.R. 71.39;
(l) 10 C.F.R. 71.41;
(m) 10 C.F.R. 71.43;
(n) 10 C.F.R. 71.45;
(o) 10 C.F.R. 71.51;
(p) 10 C.F.R. 71.55;
(q) 10 C.F.R. 71.59;
(r) 10 C.F.R. 71.61;
(s) 10 C.F.R. 71.63;
(t) 10 C.F.R. 71.64;
(u) 10 C.F.R. 71.65;
(v) 10 C.F.R. 71.70;
(w) 10 C.F.R. 71.71;
(x) 10 C.F.R. 71.73;
(y) 10 C.F.R. 71.74;
(z) 10 C.F.R. 71.75;
(aa) 10 C.F.R. 71.77;
(bb) 10 C.F.R. 71.85 (a)-(c);
(cc) 10 C.F.R. 71.91(b);
(dd) 10 C.F.R. 71.101(c)(2), (d) and (e); or
(ee) 10 C.F.R. 71.107-125.

(2) Each application for a specific license shall be filed pursuant to 902 KAR 100:040.

(3) Reference to the "Commission" or "NRC" shall be deemed to be a reference to the "Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch" except as established in the following:

(a) 10 C.F.R. 71.17; and

(b) 10 C.F.R. 71.88[~~Requirement for a License. A person shall not deliver radioactive material to a carrier for transport, or transport radioactive material, unless:~~

~~(1) Authorized in a general or specific license issued by the cabinet; or~~

~~(2) Exempted pursuant to Section 3 of this administrative regulation~~].

Section 3. Transport of highway route controlled quantities. (1) Advanced notification shall be provided in accordance with 10 C.F.R 71.97 prior to the transport, or delivery to a carrier for transport, of highway route controlled quantities.

(2) All licensees of the cabinet, NRC, or another Agreement state shall arrange for armed escort when transporting materials through the Commonwealth.

(3) Armed escort may be provided by either the Kentucky State Police (KSP) or private security firm meeting the requirements of 10 C.F.R 73.37.

(4) The cabinet may require advanced notice of and armed escort for other quantities of radioactive materials for the protection of public health and safety.

(5) Payment for escort provided by KSP shall be made in accordance with 902 KAR 100.012, Section 4.[~~Exemptions. (1) A licensee is exempt from all the requirements of this administrative regulation with respect to shipment or carriage of the following low-level materials:~~

~~(a) Natural material and ores containing naturally occurring radionuclides that are not intended to be processed for use of these radionuclides, if the activity concentration of the material does not exceed ten (10) times the values specified in 10 C.F.R. 71, Appendix A; and~~

~~(b) Materials for which the activity concentration is not greater than the activity concentration values, or for which the consignment activity is not greater than the limit for an exempt consignment found in 10 C.F.R. 71, Appendix A.~~

~~(2) A physician licensed by the Commonwealth to dispense drugs in the practice of medicine shall be exempt from Section 4 of this administrative regulation with respect to transport by the physician of radioactive material for use in the practice of medicine. However, a physician operating under this exemption shall be licensed pursuant to 902 KAR 100:072 or equivalent regulations of the NRC or an agreement state.~~

~~Section 4. Transportation of Licensed Material. (1) Each licensee who transports licensed material outside of the confines of his plant or other place of use specified in the cabinet license, or if transport is on a public highway, or who delivers licensed material to a carrier for transport, shall:~~

~~(a) Comply with the applicable requirements, appropriate to the mode of transport, of the regulations of the U.S. Department of Transportation in 49 C.F.R. 107, 171 through 180, and 390 through 397; and~~

~~(b) Assure that special instructions needed to open the package safely are sent to, or have been made available to, the consignee for the consignee's use in accordance with 902 KAR 100:019, Section 28(5).~~

~~(2) If the regulations of the U.S. Department of Transportation (DOT) are not applicable to a shipment of licensed material, the licensee shall conform to the standards and requirements of the Department of Transportation regulations, specified in subsection (1)(a) of this section, to the same extent as if the shipment was subject to the DOT regulations.~~

~~Section 5. General Licenses for Carriers. (1) A general license shall be issued to a common or contract carrier, not exempt under Section 3 of this administrative regulation, to receive, possess, transport, and store radioactive material in the regular course of carriage for another, or storage incident to the transportation and storage, if the transportation and storage is in accordance with the applicable requirements, appropriate to the mode of transport, of the U.S. Department of Transportation relating to the loading and~~

~~storage of packages, placarding of the transporting vehicle, and incident reporting.~~

~~(2) A general license shall be issued to a private carrier to transport radioactive material, if the transportation is in accordance with the applicable requirements, appropriate to the mode of transport, of the U.S. Department of Transportation relating to the loading and storage of packages, placarding of the transporting vehicle, and incident reporting.~~

~~(3) The notification of incidents referred to in the U.S. Department of Transportation requirements identified in subsection (1) of this section shall be filed with, or made to, the cabinet.~~

~~(4) A person authorized by a general license described in this section, who transports radioactive material, is exempt from the requirements of 902 KAR 100:019 and 902 KAR 100:165.~~

~~Section 6. General License: NRC Approved Packages. (1) A general license shall be issued to a licensee of the cabinet to transport or to deliver to a carrier for transport, licensed material in a package for which a license, certificate of compliance (CoC), or other approval has been issued by the NRC.~~

~~(2) The general license shall apply only to a licensee who:~~

~~(a) Has a quality assurance program approved by the NRC as satisfying the provisions of 10 C.F.R. 71.101 through 137;~~

~~(b) Has a copy of the certificate of compliance, or other approval of the package, and has the drawings and other documents referenced in the approval relating to the use and maintenance of the packaging and to the actions to be taken prior to shipment;~~

~~(c) Complies with the terms and conditions of the license, certificate, or other approval, as applicable, and the applicable requirements of this administrative regulation and 10 C.F.R. 71.0 through 71.11, 71.81 through 71.100, and 71.101 through 71.137; and~~

~~(d) Submits in writing to Document Control Desk, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, using an appropriate method listed in 10 C.F.R. 71.1(a), before the licensee's first use of the package, the licensee's name and license number and the package identification number specified in the package approval.~~

~~(3) The general license identified in subsection (1) of this section shall apply only if the package approval authorizes use of the package under the general license.~~

~~(4) For a Type B or fissile material package, the design of which was approved by the NRC before April 1, 1996, the general license shall be subject to additional restrictions contained in Section 7 of this administrative regulation.~~

~~Section 7. Previously Approved Type B Packages. (1) A Type B package previously approved by the NRC, but not designated as B(U) or B(M) in the NRC Certificate of Compliance, may be used under the general license of Section 6 of this administrative regulation, with the following limitations:~~

~~(a) Fabrication of the packaging was satisfactorily completed before August 31, 1986, as demonstrated by its model number, in accordance with NRC regulations;~~

~~(b) The package shall not be used for a shipment to a location outside the United States after August 31, 1986, except under multilateral approval by the U.S. Department of Transportation, as defined in 49 C.F.R. 173.403; and~~

~~(2) A serial number that uniquely identifies each package that conforms to the approved design is assigned to, and legibly and durably marked on, the outside of each package.~~

~~(3) A Type B(U) package, a Type B(M) package, an LSA material package, or a fissile material package, previously approved by the NRC but without the designation "-85" in the identification number of the NRC Certificate of Compliance, may be used under the general license of Section 6 of this administrative regulation, with the following conditions:~~

~~(a) Fabrication of the package shall have been satisfactorily completed by April 1, 1999, as demonstrated by its model number, in accordance with NRC regulations, 10 C.F.R. 71;~~

~~(b) A package used for shipment to a location outside the United States shall be subject to multilateral approval by the U.S. Department of Transportation, as defined in 49 C.F.R. 173.403; and~~

~~(c) A serial number that uniquely identifies each package that conforms to the approved design shall be assigned to, and legibly and durably marked on the outside of, each package.~~

~~Section 8. General License: DOT Specification Container. (1) A general license shall be issued to a licensee of the cabinet to transport, or to deliver to a carrier for transport, licensed material in a specification container for fissile material, or for a Type B quantity of radioactive material, as specified in 49 C.F.R. Parts 173 and 178.~~

~~(2) The general license shall apply only to a licensee who:~~

~~(a) Has a quality assurance program approved by the cabinet as satisfying the requirements of 10 C.F.R. 71.101 through 71.137;~~

~~(b) Has a copy of the specification; and~~

~~(c) Complies with the terms and conditions of the specification, and the applicable requirements of this administrative regulation and 10 C.F.R. 71.0 through 71.11, 71.81 through 71.100, and 71.101 through 71.137.~~

~~(3) The general license shall be subject to the limitation that the specification container shall not be used for a shipment to a location outside the United States except by multilateral approval, as defined in 49 C.F.R. 173.403.~~

~~(4) This section expires October 1, 2008.~~

~~Section 9. General License: Use of Foreign Approved Package. (1)(a) A general license shall be issued to a licensee of the cabinet to transport, or to deliver to a carrier for transport, licensed material in a package, the design of which has been approved in a foreign national competent authority certificate and revalidated by the U.S. Department of Transportation as meeting the applicable requirements of 49 C.F.R. 171.12.~~

~~(b) Except as provided in this section, the general license shall apply only to a licensee who has a quality assurance program approved by the NRC as satisfying the applicable provisions of 10 C.F.R. 71.101 through 71.137.~~

~~(2) The general license shall apply only to shipments made to or from locations outside the United States.~~

~~(3) The general license shall apply to a licensee who:~~

~~(a) Has copies of the applicable certificate, the revalidation, the drawings, and other documents referenced in the certificate relating to the:~~

~~1. Use and maintenance of the packaging; and~~

~~2. Actions to be taken prior to shipment; and~~

~~(b) Complies with the terms and conditions of the certificate and revalidation, and with the applicable requirements of this administrative regulation and 10 C.F.R. 71.0 through 71.11, 71.81 through 71.100, and 71.101 through 71.137.~~

~~(4) With respect to the quality assurance provisions of 10 C.F.R. 71.101 through 71.137, the licensee shall be exempt from design, construction, and fabrication considerations.~~

~~Section 10. Preliminary Determinations. Before the first use of a packaging for the shipment of radioactive material:~~

~~(1) The licensee shall ascertain that there are no cracks, pinholes, uncontrolled voids, or other defects that may significantly reduce the effectiveness of the packaging;~~

~~(2) If the maximum normal operating pressure will exceed thirty-five (35) kilopascal (five (5) lbf/in^2) gauge, the licensee shall test the containment system at an internal pressure at least fifty (50) percent higher than the maximum normal operating pressure to verify the capability of that system to maintain its structural integrity at that pressure; and~~

~~(3) The licensee shall mark the packaging, conspicuously and durably, with its model number, serial number, gross weight, and a package identification number assigned by the NRC. Before applying the model number, the licensee shall determine that the packaging has been fabricated in accordance with the design approved by the NRC.~~

~~Section 11. Routine Determinations. Before making a shipment of licensed material, the licensee shall ensure that the package~~

~~with its contents satisfies the applicable requirements of this administrative regulation and of the license. The licensee shall determine that:~~

~~(1) The package is proper for the contents to be shipped;~~

~~(2) The package is in unimpaired physical condition except for superficial defects, such as marks or dents;~~

~~(3) Each closure device of the packaging, including any required gasket, is properly installed and secured and free of defects;~~

~~(4) A system for containing liquid is adequately sealed and has adequate space or other specified provision for expansion of the liquid;~~

~~(5) A pressure relief device is operable and set in accordance with written procedures;~~

~~(6) The package has been loaded and closed in accordance with written procedures;~~

~~(7) For fissile material, any moderator or neutron absorber, if required, is present and in proper condition;~~

~~(8) A structural part of the package that could be used to lift or tie down the package during transport is rendered inoperable for that purpose unless it satisfies design requirements specified by 10 C.F.R. 71.45.~~

~~(9) The level of nonfixed, or removable, radioactive contamination on the external surfaces of each package offered for shipment is ALARA, and within the limits specified by the U.S. Department of Transportation in 49 C.F.R. 173.443;~~

~~(10) External radiation levels around the package and around the vehicle, if applicable, shall not exceed the limits specified in 49 C.F.R. 71.47 during transportation.~~

~~(11) Accessible package surface temperatures shall not exceed the limits specified in 10 C.F.R. 71.43(g) at any time during transportation.~~

~~Section 12. Air Transport of Plutonium. In addition to the requirements of a general license and exemptions stated in this administrative regulation or included by citation of U.S. Department of Transportation regulations, as may be applicable, the licensee shall assure that plutonium in any form, whether for import, export, or domestic shipment, is not transported by air or delivered to a carrier for air transport unless:~~

~~(1) The plutonium is contained in a medical device designed for individual human application;~~

~~(2) The plutonium is contained in a material in which the specific activity is less than or equal to the activity concentration values for plutonium specified in 10 C.F.R. 71, Appendix A and in which the radioactivity is essentially uniformly distributed;~~

~~(3) The plutonium is shipped in a single package containing no more than an A_2 quantity of plutonium in an isotope or form and is shipped in accordance with Section 4 of this administrative regulation;~~

~~(4) The plutonium is shipped in a package specifically authorized for the shipment of plutonium by air in the Certificate of Compliance for that package issued by the NRC; or~~

~~(5) For a shipment of plutonium by air which is subject to subsection (4) of this section, the licensee shall, through special arrangement with the carrier, require compliance with 49 C.F.R. 175.704, applicable to the air transport of plutonium;~~

~~(6) Nothing in this section shall be interpreted as removing or diminishing the requirements of 10 C.F.R. 73.24.~~

~~Section 13. Advance Notification of Transport of Irradiated Reactor Fuel and Nuclear Waste. (1)(a) Before the transport of nuclear waste outside of the confines of the licensee's facility or other place of use or storage, or before the delivery of nuclear waste to a carrier for transport, a licensee shall provide advance notification of the transport to the governor, or governor's designee, of each state through which the waste will be transported.~~

~~(b) Advance notification shall be required for shipments of irradiated reactor fuel in quantities less than that subject to advance notification requirements in 10 C.F.R. 73.37(f).~~

~~(2) Advance notification shall also be required for licensed material, other than irradiated fuel, if:~~

~~(a) The nuclear waste is required to be in Type B packaging for transportation;~~

~~(b) The nuclear waste is being transported to, through, or across a state boundary to a disposal site, or to a collection point for transport to a disposal site; and~~

~~(c) The quantity of licensed material in a single package exceeds the least of the following:~~

~~1. 3,000 times the A_1 value of the radionuclides as specified in 10 C.F.R. 71, Appendix A for special form radioactive material;~~

~~2. 3,000 times the A_2 value of the radionuclides as specified in 10 C.F.R. 71 Appendix A for normal form radioactive material; or~~

~~3. 27,000 curies (1000 TBq).~~

~~(3) Each advance notification shall be in writing and contain the following information:~~

~~(a) The name, address, and telephone number of the shipper, carrier, and receiver of the shipment;~~

~~(b) A description of the nuclear waste contained in the shipment as required by 49 C.F.R. 172.202 and 172.203(d);~~

~~(c) The point of origin of the shipment and the seven (7) day period during which departure of the shipment is estimated to occur;~~

~~(d) The seven (7) day period during which arrival of the shipment at state boundaries is estimated to occur;~~

~~(e) The destination of the shipment, and the seven (7) day period during which arrival of the shipment is estimated to occur; and~~

~~(f) A point of contact with a telephone number for current shipment information.~~

~~(4) The notification shall be made in writing to the office of each appropriate governor or governor's designee and to the cabinet.~~

~~(a) A notification delivered by mail shall be postmarked at least seven (7) days before the beginning of the seven (7) day period during which departure of the shipment is estimated to occur.~~

~~(b) A notification delivered by messenger shall reach the office of the governor, or governor's designee, at least four (4) days before the beginning of the seven (7) day period during which departure of the shipment is estimated to occur. A copy of the notification shall be retained by the licensee for three (3) years.~~

~~(5) The licensee who finds that schedule information previously furnished will not be met, shall telephone a responsible individual in the office of the governor, or governor's designee, and the cabinet and inform that individual of the extent of the delay beyond the schedule originally reported. The licensee shall maintain for three (3) years a record of the name of the individual contacted.~~

~~(6) A licensee who cancels a nuclear waste shipment, for which advance notification has been sent, shall send a cancellation notice to the governor, or governor's designee, of each appropriate state and to the cabinet. The licensee shall state in the notice that it is a cancellation and shall identify the advance notification that is being cancelled. A copy of the notice shall be retained by the licensee for three (3) years.~~

~~Section 14. Exemption from Classification as Fissile Material. Fissile material meeting the requirements of at least one (1) of the subsections (1) through (6) of this section are exempt from classification as fissile material and from the fissile material package standards of 10 C.F.R. 71.55 and 71.59, but are subject to all other requirements of this administrative regulation, except as noted. (1) Individual package containing two (2) grams or less fissile material;~~

~~(2) Individual or bulk packaging containing fifteen (15) grams or less of fissile material provided the package has at least 200 grams of solid nonfissile material for every gram of fissile material. Lead, beryllium, graphite, and hydrogenous material enriched in deuterium may be present in the package but shall not be included in determining the required mass for solid nonfissile material;~~

~~(3)(a) Low concentrations of solid fissile material commingled with solid nonfissile material, if:~~

~~1. There is at least 2,000 grams of solid nonfissile material for every gram of fissile material; and~~

~~2. There is no more than 180 grams of fissile material distributed within 360 kilograms of contiguous nonfissile material.~~

~~(b) Lead, beryllium, graphite, and hydrogenous material enriched in deuterium may be present in the package but shall not~~

~~be included in determining the required mass of solid nonfissile material.~~

~~(4) Uranium enriched in uranium-235 to a maximum of one (1) percent by weight, and with total plutonium and uranium content of up to one (1) percent of the mass of uranium-235, provided that the mass of any beryllium, graphite, and hydrogenous material enriched in deuterium constitutes less than five (5) percent of the uranium mass;~~

~~(5) Liquid solutions of uranyl nitrate enriched in uranium-235 to a maximum of two (2) percent by mass, with a total plutonium and uranium-233 content not exceeding two one-thousands (0.002) percent of the mass of uranium, and with a minimum nitrogen to uranium atomic ratio (N/U) of two (2). The material shall be contained in at least a DOT Type A package.~~

~~(6) Packages containing, individually, a total plutonium mass of not more than 1,000 grams, of which not more than twenty (20) percent by mass may consist of plutonium-239, plutonium-241, or any combination of these radionuclides.~~

~~Section 15. General License: Fissile Material (1) A general license is issued to any licensee of the cabinet to transport fissile material, or to deliver fissile material to a carrier for transport, if the material is shipped in accordance with this section of this administration regulation. The fissile material need not be contained in a package which meets the standards of 10 C.F.R. 71.41 through 71.65 and 71.71 through 71.77, however, the material shall be contained in a Type A package. The Type A package shall also meet the DOT requirements of 49 C.F.R. 173.417(a).~~

~~(2) The general license shall apply only to a licensee who has a quality assurance program approved by the U.S. Nuclear Regulatory Commission as satisfying the provisions of 10 C.F.R. 71.101 through 71.137.~~

~~(3) The general license shall apply only when a package's contents:~~

~~(a) Contain less than a Type A quantity of radioactive material; and~~

~~(b) Contain less than 500 total grams of beryllium, graphite, or hydrogenous material enriched in deuterium.~~

~~(4) The general license shall apply only to packages containing fissile material that are labeled with a Criticality Safety Index (CSI) that:~~

~~(a) Has been determined in accordance with subsection (5) of this section;~~

~~(b) Has a value less than or equal to ten (10); and~~

~~(c) For a shipment of multiple packages containing fissile material, the sum of the CSIs shall be less than or equal to fifty (50), for shipment on a nonexclusive use conveyance, and less than or equal to 100, for shipment on an exclusive use conveyance.~~

~~(5)(a) The value for the CSI shall be greater than or equal to the number calculated by the following equation:~~

$$CSI = 10\left(\frac{\text{grams of U-235}}{X} + \frac{\text{grams of U-233}}{Y} + \frac{\text{grams of Pu}}{Z}\right)$$

~~(b) The calculated CSI shall be rounded up to the first decimal place;~~

~~(c) The values of X, Y, and Z used in the CSI equation shall be taken from 10 C.F.R. Tables 71 – 1 or 71 – 2, as appropriate;~~

~~(d) If 10 C.F.R. Table 71 - 2 is used to obtain the value of X, then the values of the terms in the equation for uranium-233 and plutonium shall be assumed to be zero (0); and~~

~~(e) 10 C.F.R. Table 71 – 1 values for X, Y, and Z shall be used to determine the CSI if:~~

~~1. Uranium-233 is present in the package;~~

~~2. The mass of plutonium exceeds one (1) percent of the mass of uranium-235;~~

~~3. The uranium is of unknown uranium-235 enrichment or greater than twenty-four (24) percent enrichment; or~~

~~4. Substances having a moderating effectiveness (an average hydrogen density greater than water), such as certain hydrocarbons oils or plastics, are present in any form, except as polyethylene used for packaging or wrapping.~~

~~Section 16. General License: Plutonium-beryllium Special Form Material. (1) A general license is issued to any licensee of the cabinet to transport fissile material in the form of plutonium-beryllium (Pu-Be) special form sealed sources, or to deliver Pu-Be sealed sources to a carrier for transport, if the material is shipped in accordance with this section of this administrative regulation. This material need not be contained in a package which meets the standards of 10 C.F.R. 71.41 through 71.65 and 71.71 through 71.77, however, the material shall be contained in a Type A package. The Type A package shall also meet the DOT requirements of 49 C.F.R. 173.417(a).~~

~~(2) The general license shall apply only to a licensee who has a quality assurance program approved by the U.S. Nuclear Regulatory Commission as satisfying the provisions of 10 C.F.R. 71 Subpart H.~~

~~(3) The general licensee applies only if a package's contents:~~

~~(a) Contain less than a Type A quantity of radioactive material; and~~

~~(b) Contain less than 1,000 grams of plutonium, provided that plutonium-239, plutonium-241, or any combination of these radionuclides, constitutes less than 240 grams of the total quantity of plutonium in the package.~~

~~(4) The general license applies only to packages labeled with a CSI that:~~

~~(a) Have been determined in accordance with subsection (5) of this section;~~

~~(b) Have a value less than or equal to 100; and~~

~~(c) For a shipment of multiple packages containing Pu-Be sealed sources, the sum of the CSIs shall be less than or equal to fifty (50), for shipment on a nonexclusive use conveyance and less than or equal to 100, for shipment on an exclusive use conveyance.~~

~~(5)(a) The value for the CSI shall be greater than or equal to the number calculated by the following equation:~~

$$\left(\frac{\text{grams of Pu-239} + \text{grams of Pu-241}}{24}\right)$$

~~CSI = 10 and:~~

~~(b) The calculated CSI shall be rounded up to the first decimal place.~~

~~Section 17. External Radiation Standards for all Packages. (1) Except as provided in subsection (2) of this section, a package of radioactive materials offered for transportation shall be designed and prepared for shipment so that under conditions normally incident to transportation the radiation level shall not exceed 200 millirem/hour (mrem/h) (2 milliservierts/h) (2 mSv/h) at any point on the external surface of the package, and the transport index shall not exceed ten (10).~~

~~(2) A package that exceeds the radiation level limits specified in subsection (1) of this section shall be transported by exclusive use shipment only, and the radiation levels for the shipment shall not exceed the following during transportation:~~

~~(a) 200 mrem/h (2 mSv/h) on the external surface of the package, unless the following conditions are met, in which case the limit is 1,000 mrem/h (10 mSv/h);~~

~~1. The shipment is made in a closed transport vehicle;~~

~~2. The package is secured within the vehicle so that its position remains fixed during transportation; and~~

~~3. There are no loading or unloading operations between the beginning and end of the transportation;~~

~~(b) 200 mrem/h (2 mSv/h) at any point on the outer surface of the vehicle, including the top and underside of the vehicle, or in case of a flat-bed style vehicle, at any point on the vertical planes projected from the outer edges of the vehicle, on the upper surface of the load or enclosure, if used, and on the lower external surface of the vehicle; and~~

~~(c)1. Ten (10) mrem/h (0.1 mSv/h) at any point eighty (80) inches (2 meters) from the outer lateral surface of the vehicle, excluding the top and underside of the vehicle; or~~

~~2. In the case of a flat-bed style vehicle, an any point six and six tenths (6.6) feet (2 meters) from the vertical planes projected by~~

~~the outer edges of the vehicle, excluding the top and underside of vehicle; and~~

~~(d) Two (2) mrem/h (0.02 mSv/h) in any normally occupied space, except that this provision shall not apply to private carriers, if exposed personnel under their control wear radiation dosimetry devices as required by 902 KAR 100:019, Section 13.~~

~~(3) For shipments made under the provisions of subsection (2) of this section, the shipper shall provide specific written instructions to the carrier for maintenance of the exclusive use shipment controls. The instructions shall be included with the shipping paper information.~~

~~(4) The written instructions required for exclusive use shipments shall be sufficient so that, if followed, they will cause the carrier to avoid actions that will unnecessarily delay delivery or unnecessarily result in increased radiation levels or radiation exposure to transport workers or members of the general public.~~

~~Section 18. Assumption as to Unknown Properties. If the isotopic abundance, mass, concentration, degree of moderation, or other pertinent property of fissile material in any package is not known, the licensee shall package the fissile material as if the unknown properties have credible values that will cause the maximum neutron multiplication.~~

~~Section 19. Opening Instructions. Before delivery of a package to a carrier for transport, the licensee shall ensure that any special instructions needed to safely open the package have been sent to, or otherwise made available to, the consignee for the consignee's use in accordance with 902 KAR 100:019, Section 28(5).~~

~~Section 20. Quality Assurance Requirements. (1) The requirements in Sections 20 through 28 shall apply to design, purchase, fabrication, handling, shipping, storing, cleaning, assembly, inspection, testing, operation, maintenance, repair, and modification of components of packaging important to safety. As used in this administrative regulation, quality assurance comprises all those planned and systematic actions necessary to provide adequate confidence that a system or component will perform satisfactorily in service.~~

~~(2) Quality assurance includes quality control, which comprises those quality assurance actions related to control of the physical characteristics and quality of the material or component to predetermined requirements.~~

~~(3) The licensee, certificate holder, and applicant for a CoC are responsible for the quality assurance requirements as they apply to design, fabrication, testing, and modification of packaging.~~

~~(4) A licensee is responsible for the quality assurance provision that applies to its use of a packaging for the shipment of licensed material subject to this administrative regulation.~~

~~(5) A licensee, certificate holder, and applicant for a CoC shall:~~

~~(a) Establish, maintain, and execute a quality assurance program satisfying each of the applicable criteria of 10 C.F.R. 71.101 through 71.137 and satisfying any specific provisions that are applicable to the licensee's activities including procurement of packaging; and~~

~~(b) Execute the applicable criteria in a graded approach to an extent that is commensurate with the quality assurance requirement's importance to safety.~~

~~(6) A licensee shall, before the use of a package for the shipment of licensed material subject to this administrative regulation, obtain U.S. Nuclear Regulatory Commission approval of its quality assurance program. Using an appropriate method listed in 10 C.F.R. 71.1(a), a licensee shall file a description of its quality assurance program, including a discussion of which requirements of this administrative regulation are applicable and how they will be satisfied, by submitting the description to: Attention: Document Control Desk, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.~~

~~(7) A program for transport container inspection and maintenance limited to radiographic exposure devices, source changers, or packages transporting these devices and meeting the requirements of 902 KAR 100:100, Section 9(3) shall satisfy the requirements of Section 6(2)(a) and subsection (5) of this section.~~

~~Section 21. Quality Assurance Organization. (1) The licensee, certificate holder, and applicant for a Certificate of Compliance (CoC) shall be responsible for the establishment and execution of the quality assurance program. The licensee, certificate holder, and applicant for a CoC may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part of the quality assurance program, but shall retain responsibility for the program. These activities shall include performing the functions associated with attaining quality objectives and the quality assurance functions.~~

~~(2) The quality assurance functions shall:~~

~~(a) Assure an appropriate quality assurance program is established and effectively executed; and~~

~~(b) Verify, by procedures such as checking, auditing, and inspection, that activities affecting the functions that are important to safety have been correctly performed.~~

~~(3) The persons and organizations performing quality assurance functions shall have sufficient authority and organizational freedom to:~~

~~(a) Identify quality problems;~~

~~(b) Initiate, recommend, or provide solutions; and~~

~~(c) Verify implementation of solutions.~~

~~(4) While the term "licensee" is used, the requirements in this section shall be applicable to whatever design, fabrication, assembly, and testing of the package is accomplished with respect to a package before the time a package approval is issued.~~

~~Section 22. Quality Assurance Program. (1) The licensee, certificate holder, and applicant for a Certificate of Compliance (CoC) shall establish, at the earliest practicable time consistent with the schedule for accomplishing the activities, a quality assurance program that complies with the requirements of 10 C.F.R. 71.101 through 71.137. The licensee, certificate holder, and applicant for a CoC shall document the quality assurance program by written procedures or instructions and shall carry out the program in accordance with those procedures throughout the period during which the packaging is used. The licensee, certificate holder, and applicant for a CoC shall identify the material and components to be covered by the quality assurance program, the major organizations participating in the program, and the designated functions of these organizations.~~

~~(2) The licensee, certificate holder, and applicant for a CoC, through its quality assurance program, shall provide control over activities affecting the quality of the identified materials and components to an extent consistent with their importance to safety, and as necessary to assure conformance to the approved design of each individual package used for the shipment of radioactive material. The licensee, certificate holder, and applicant for a CoC shall assure that activities affecting quality are accomplished under suitably controlled conditions. Controlled conditions shall include the use of appropriate equipment; suitable environmental conditions for accomplishing the activity, such as adequate cleanliness; and assurance that all prerequisites for the given activity have been satisfied. The licensee, certificate holder, and applicant for a CoC shall take into account the need for special controls, processes, test equipment, tools, and skills to attain the required quality, and the need for verification of quality by inspection and test.~~

~~(3) The licensee, certificate holder, and applicant for a CoC shall base the requirements and procedures of its quality assurance program on the following conditions concerning the complexity and proposed use of the package and its components:~~

~~(a) The impact of malfunction or failure of the item to safety;~~

~~(b) The design and fabrication complexity or uniqueness of the item;~~

~~(c) The need for special controls and surveillance over processes and equipment;~~

~~(d) The degree to which functional compliance can be demonstrated by inspection or test; and~~

~~(e) The quality history and degree of standardization of the item.~~

~~(4) The license, certificate holder, and applicant for a CoC shall provide for indoctrination and training of personnel performing activities affecting quality, as necessary, to assure that suitable proficiency is achieved and maintained.~~

~~(5) The licensee, certificate holder, and applicant for a CoC shall review the status and adequacy of the quality assurance program at established intervals. Management of other organizations participating in the quality assurance program shall review regularly the status and adequacy of that part of the quality assurance program they are executing.~~

~~Section 23. Handling, Storage, and Shipping Control. The licensee, certificate holder, and applicant for a CoC shall establish measures to control, in accordance with instructions, the handling, storage, shipping, cleaning, and preservation of materials and equipment to be used in packaging to prevent damage or deterioration. If necessary for particular products, special protective environments, such as inert gas atmosphere, and specific moisture content and temperature levels shall be specified and provided.~~

~~Section 24. Inspection, Test and Operating Status. (1) The licensee, certificate holder, and applicant for a CoC shall establish measures to indicate, by the use of markings such as stamps, tags, labels, routing cards, or other suitable means, the status of inspections and tests performed upon individual items of the packaging. These measures shall provide for the identification of items that have satisfactorily passed required inspections and tests, where necessary to preclude inadvertent by passing of the inspections and tests.~~

~~(2) The licensee shall establish measures to identify the operating status of components of the packaging, such as tagging valves and switches, to prevent inadvertent operation.~~

~~Section 25. Nonconforming Materials, Parts, or Components. The licensee, certificate holder, and applicant for a CoC shall establish measures to control materials, parts, or components that do not conform to the licensee's requirements to prevent their inadvertent use or installation. These measures shall include, as appropriate, procedures for identification, documentation, segregation, disposition, and notification to affected organizations. Nonconforming items shall be reviewed and accepted, rejected, repaired, or reworked in accordance with documented procedures.~~

~~Section 26. Corrective Action. The licensee, certificate holder, and applicant for a CoC shall establish measures to assure that conditions adverse to quality, such as deficiencies, deviations, defective material and equipment, and nonconformances, are promptly identified and corrected. If a significant condition adverse to quality exists, the measures shall assure that the cause of the condition is determined and corrective action taken to preclude repetition. The identification of the significant condition adverse to quality, the cause of the condition, and the corrective action taken shall be documented and reported to appropriate levels of management.~~

~~Section 27. Quality Assurance Records. (1) The licensee, certificate holder, and applicant for a CoC shall maintain sufficient written records to describe the activities affecting quality. The records shall include the instructions, procedures, and drawings required by 10 C.F.R. 71.111 to prescribe quality assurance activities and shall include closely related specifications such as required qualifications of personnel, procedures, and equipment.~~

~~(2) The records shall include the instructions or procedures that establish a records retention program that is consistent with applicable regulations and designates factors such as duration, location, and assigned responsibility.~~

~~(3) The licensee, certificate holder, and applicant for a CoC shall retain these records for three (3) years beyond the date when the licensee, certificate holder, applicant for a CoC last engage in the activity for which the quality assurance program was developed. If any portion of the written procedures or instructions is superseded, the licensee, certificate holder, and applicant for CoC shall retain the superseded material for three (3) years after it is superseded.~~

~~Section 28. Audits. (1) The licensee, certificate holder, and applicant for a CoC shall carry out a comprehensive system of planned and periodic audits to verify compliance with all aspects of the quality assurance program and to determine the effectiveness of the program.~~

~~(2) The audits shall be performed in accordance with written procedures or checklists by appropriately trained personnel not having direct responsibilities in the areas being audited.~~

~~(3) Audited records shall be documented and reviewed by management having responsibility in the area audited.~~

~~(4) Follow-up action, including reaudit of deficient areas, shall be taken as indicated.~~

~~Section 29. Determination of A_1 and A_2. Values of A_1 and A_2 shall be determined as described in 10 C.F.R. 71 Appendix A.~~]

JEFFREY D. HOWARD, Jr., M.D., Commissioner
ADAM MEIER, Secretary

APPROVED BY AGENCY: June 29, 2018

FILED WITH LRC: July 5, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 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 August 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, phone (502) 564-3970, email julied.brooks@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for licensure for the packaging and transportation of radioactive material.

(b) The necessity of this administrative regulation: This administrative regulation outlines the requirements for those entities packaging and transporting radioactive materials to ensure materials are transported in a safe manner to prevent any unnecessary exposure to radioactive materials.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.844(1) requires the secretary to provide by administrative regulation the registration and licensing of the possession or use of any source of ionizing or electronic product radiation and the handling and disposal of radioactive waste; and to protect the public from unnecessary radiation exposure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation ensures that all those who participate in the packaging and transportation of radioactive materials are properly licensed for the

class of radioactive material and mode of transportation of radioactive materials. The proper packaging and transportation of radioactive materials helps to protect the public from unnecessary radiation exposures.

(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 adopts by reference the applicable Nuclear Regulatory Commission (NRC) regulations for packaging and transporting radioactive materials which eliminates any discrepancies between state and federal licensing requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary as the agreement between NRC and the Commonwealth requires the Radiation Health Branch to be compatible with NRC regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is consistent with the authorizing statutes, which require the secretary to adopt regulations for the registration and licensing of the possession of any source of ionizing or electronic product radiation necessary to protect the public from unnecessary radiation exposure.

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures all entities licensed for the packaging and transportation of radioactive materials are in full compliance with state and national regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 200 specific licensees of the cabinet and all licensees of the NRC or another agreement state who perform activities within the Commonwealth under reciprocal recognition pursuant to 902 KAR 100:065.

(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: Affected entities are required to be in compliance with NRC regulations so there will be no new actions required.

(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 cost of compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will be in full compliance with NRC regulations.

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

(a) Initially: This program is already operating. There is no cost to implement this amendment.

(b) On a continuing basis: This program is already operating. There is no cost to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment does not affect 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: An increase in fees or funding is not necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There are no fees established in this regulation.

(9) TIERING: Is tiering applied? No. This administrative regulation affects all radioactive materials licensees subject to 902 KAR Chapter 100 regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Radiation Health Branch in the Department for Public Health administers this program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to adopt administrative regulations necessary to protect the health of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the Cabinet. KRS 211.844(1) requires the Cabinet to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and to regulate the handling and disposal of radioactive waste.10 C.F.R. Part 71 establishes the requirements for packaging, preparation for shipment and transportation of licensed material.

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 generates no revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation generates no revenue.

(c) How much will it cost to administer this program for the first year? This administrative regulation does not add costs to the agency.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not add cost to the agency.

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. The Atomic Energy Act of 1954, as amended, the Energy Policy Act of 2005 and 10 C.F.R. Part 71.

(2) State compliance standards. This regulation adopts the federal standards for packaging and transportation of radioactive materials.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires state regulations to be compatible with the equivalent federal regulations.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for the imposition of the stricter standard, or additional or different
responsibilities or requirements. There are no different, stricter, or additional responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 100:072. Medical use of byproduct material[~~Use of radionuclides in the health arts~~].

RELATES TO: KRS 211.842-211.852, 211.990(4), 10 C.F.R. Part 35, 45 C.F.R. Part 46, 42 U.S.C. 2021

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.844(1)[~~, 10 C.F.R. 35~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations for the registration and

licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes requirements and provisions for the use of byproduct[~~radioactive~~] material in the healing arts, for issuance of licenses authorizing the medical use of byproduct[~~radioactive~~] material and for specific licensees to possess, use, and transfer byproduct[~~radioactive~~] material for medical uses.

Section 1. Definitions. (1) "Agreement state" means a state that the United States Nuclear Regulatory Commission or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.).

(2)" Cabinet" is defined by KRS 194A.005(1).

(3) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet pursuant to 902 KAR 100:040 and this administrative regulation;

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an Agreement state; or

(c) A general license pursuant to 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement state.

Section 2. Applicability. This administrative regulation establishes requirements for the medical use of byproduct material and for issuance of specific licensees authorizing the use of this material. Except as established in subsections (1) through (4) of this section, the licensee shall comply with 10 C.F.R. Part 35. (1) The licensee shall not be subject to:

(a) 10 C.F.R. 35.8;

(b) 10 C.F.R. 35.11(c)(1);

(c) 10 C.F.R. 35.13(a)(1);

(d) 10 C.F.R. 35.4001; or

(e) 10 C.F.R. 35.4002.

(2) Application for specific license. Each application for a specific license shall be filed pursuant to 902 KAR 100:040.

(3) The "Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch" shall be used in lieu of federal references to the "Commission" and the "NRC."

(4) Notifications and reports required by 10 C.F.R. 35.14, 35.3045, 35.3047, and 35.3067 shall be directed to the manager, Radiation Health Branch, at:

(a) 275 East Main Street, Mailstop HS1-C-A, Frankfort, Kentucky 40621;

(b) (502) 564-1492: Facsimile;

(c) (502) 564-3700: Telephone, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(d) (800) 255-2587: Telephone, for hours except those established in paragraph (c) of this subsection.[~~Implementation. (1) A licensee shall implement the provisions in this administrative regulation on or before October 24, 2005, with the exception of the requirements listed in subsection (2) of this section.~~

~~(2) A licensee shall implement the training requirements in Sections 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, and 77 of this administrative regulation on or before October 25, 2007.~~

~~(3) Prior to October 25, 2007, a licensee shall satisfy the training requirements of this administrative regulation for a radiation safety officer, an authorized medical physicist, an authorized nuclear pharmacist, or an authorized user by complying with either:~~

~~(a) The appropriate training requirements in Sections 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, and 77 of this administrative regulation; or~~

~~(b) The appropriate training requirements in Section 78 of this administrative regulation.~~

~~(4) If a license condition exempted a licensee from a provision of this administrative regulation on October 24, 2005, then the license condition continues to exempt the licensee from the provision of 902 KAR 100:072.~~

~~(5) If a requirement in this administrative regulation differs from the requirement in an existing license condition, the requirement in this administrative regulation shall govern.~~

~~(6) A licensee shall continue to comply with any license condition that requires it to implement procedures required by Sections 49, 55, 56, and 57 of this administrative regulation until there is a license amendment or renewal that modifies the license condition.~~

~~Section 2. License Required. (1) A person may manufacture, produce, acquire, receive, possess, prepare, use, or transfer radioactive material for medical use only in accordance with a specific license issued by the cabinet, the U.S. Nuclear Regulatory Commission, or another agreement state, or as allowed in subsection (2)(a) or (b) of this section.~~

~~(2) A specific license is not required for an individual who:~~

~~(a) Receives, possesses, uses, or transfers radioactive material in accordance with the administrative regulations in this chapter under the supervision of an authorized user as provided in Section 12 of this administrative regulation unless prohibited by license condition; or~~

~~(b) Prepares unsealed radioactive material for medical use in accordance with the administrative regulations in this chapter under the supervision of an authorized nuclear pharmacist or authorized user as provided in Section 12 of this administrative regulation unless prohibited by license condition.~~

~~Section 3. Maintenance of Records. Each record required by this administrative regulation shall be legible throughout the retention period specified by each section. The record shall be the original or a reproduced copy or a microform if the copy or microform is authenticated by authorized personnel and the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications shall include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.~~

~~Section 4. Application for License, Amendment, or Renewal. (1) An application shall be signed by the applicant's or licensee's management.~~

~~(2) An application for a license for medical use of radioactive material as described in Sections 30, 31, 33, 37, 45, 46 and 62 of this administrative regulation and shall be made by:~~

~~(a) Filing an original and one (1) copy of Form RPS-7, Application for Radioactive Material License, that includes the facility diagram, equipment, and training and experience qualifications of the radiation safety officer, authorized user, authorized medical physicist, and authorized nuclear pharmacist; and~~

~~(b) Submitting procedures required by Sections 49, 55, 56, and 57, of this administrative regulation as applicable.~~

~~(3) A request for a license amendment or renewal shall be made by:~~

~~(a) Submitting an original and one (1) copy of either:~~

~~1. Form RPS-7, Application for Radioactive Material License; or~~

~~2. A letter requesting the amendment or renewal; and~~

~~(b) Submitting procedures required by Sections 49, 55, 56, and 57 of this administrative regulation as applicable.~~

~~(4) In addition to the requirements in subsections (2) and (3) of this section, an application for a license or amendment for medical use of radioactive material as described in Section 62 of this administrative regulation shall also include information regarding any radiation safety aspects of the medical use of the material that is unique to the evolving technology.~~

~~(a) The applicant shall also provide specific information on:~~

~~1. Radiation safety precautions and instructions;~~

~~2. Methodology for measurement of dosages or doses to be administered to patients or human research subjects; and~~

~~3. Calibration, maintenance, and repair of instruments and equipment necessary for radiation safety.~~

~~(b) The applicant or licensee shall provide information~~

~~requested by the cabinet as necessary to complete its review of the application.~~

~~(5) An applicant that satisfies the requirements specified in 902 KAR 100:052 of this chapter may apply for a Type A specific license of broad scope.~~

~~Section 5. License Amendments. A licensee shall apply for and receive a license amendment:~~

~~(1) Before the licensee receives, prepares, or uses radioactive material for a type of use that is permitted under this chapter, but that is not authorized on the licensee's current license issued under this chapter;~~

~~(2) Before the licensee permits anyone to work as an authorized user, authorized nuclear pharmacist, or authorized medical physicist under the license, except:~~

~~(a) For an authorized user, an individual who meets the requirements in Sections 63, 68(1), 69(1), 70(1), 71(1), 72(1), 74(1), 76(1), 77(1), 78(2)(a), 78(3)(a), 78(4)(a), 78(7)(a), 78(9)(a), and 78(10)(a) of this administrative regulation;~~

~~(b) For an authorized nuclear pharmacist, an individual who meets the requirements in Sections 63 and 66(1) or 78(12)(a);~~

~~(c) For an authorized medical physicist, an individual who meets the requirements in Sections 63 and 65(1) or 78(11)(a) or (b) of this administrative regulation;~~

~~(d) An individual who is identified as an authorized user, an authorized nuclear pharmacist, or authorized medical physicist:~~

~~1. On a cabinet, an agreement state, or U.S. Nuclear Regulatory Commission license or other equivalent permit or license recognized by the cabinet that authorizes the use of radioactive material in medical use or in the practice of nuclear pharmacy;~~

~~2. On a permit issued by the cabinet, an agreement state, or U.S. Nuclear Regulatory Commission specific license of broad scope that is authorized to permit the use of radioactive material in medical use or in the practice of nuclear pharmacy;~~

~~3. On a permit issued by a U.S. Nuclear Regulatory Commission master material licensee that is authorized to permit the use of radioactive material in medical use or in the practice of nuclear pharmacy; or~~

~~4. By a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists.~~

~~(3) Before it changes radiation safety officers, except as provided in Section 10(3) of this administrative regulation;~~

~~(4) Before it receives radioactive material in excess of the amount or in a different form, or receives a different radionuclide than is authorized on the license;~~

~~(5) Before it adds to or changes the areas of use identified in the application or on the license, except for areas of use where radioactive material is used only in accordance with either Section 30 or 31 of this administrative regulation;~~

~~(6) Before it changes the address of use identified in the application or on the license; or~~

~~(7) Before it revises procedures required by Sections 49, 55, 56 and 57 of this administrative regulation as applicable, where the revision reduces radiation safety; and~~

~~(8) Before conducting research involving human research subjects using radioactive material.~~

~~Section 6. Notifications. (1) A licensee shall provide the cabinet a copy of the board certification, the cabinet, U.S. Nuclear Regulatory Commission or agreement state license, the permit issued by a U.S. Nuclear Regulatory Commission master material licensee, the permit issued by a cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state licensee of broad scope, or the permit issued by a U.S. Nuclear Regulatory Commission master material license broad scope permittee for each individual no later than thirty (30) days after the date that the licensee permits the individual to work as an authorized user, an authorized nuclear pharmacist, or an authorized medical physicist under Section 5(2)(a) through (d) of this administrative regulation.~~

~~(2) A licensee shall notify the cabinet by letter no later than thirty (30) days after:~~

~~(a) An authorized user, an authorized nuclear pharmacist, a radiation safety officer, or an authorized medical physicist permanently discontinues performance of duties under the license or has a name change;~~

~~(b) The licensee's mailing address changes;~~

~~(c) The licensee's name changes, but the name change does not constitute a transfer of control of the license as described in 902 KAR 100:040, Section 6(2) of this chapter; or~~

~~(d) The licensee has added to or changed the areas of use identified in the application or on the license if radioactive material is used in accordance with either Section 30 or 31 of this administrative regulation.~~

~~(3) The licensee shall mail the documents required in this section to the Cabinet for Health and Family Services, Radiation Health Branch, Manager, 275 East Main Street, Mailstop HS1C-A, Frankfort, Kentucky 40621.~~

~~Section 7. Exemptions Regarding Type A Specific Licenses of Broad Scope. A licensee possessing a Type A specific license of broad scope for medical use, issued under 902 KAR 100:052 of this chapter, is exempt from:~~

~~(1) Section 4(4) of this administrative regulation regarding the need to file an amendment to the license for medical use of radioactive material, as described in Section 62 of this administrative regulation;~~

~~(2) The provisions of Section 5(2) of this administrative regulation;~~

~~(3) The provisions of Section 5(5) of this administrative regulation regarding additions to or changes in the areas of use at the addresses identified in the application or on the license;~~

~~(4) The provisions of Section 6(1) of this administrative regulation;~~

~~(5) The provisions of Section 6(2)(a) of this administrative regulation for an authorized user, an authorized nuclear pharmacist, or an authorized medical physicist;~~

~~(6) The provisions of Section 6(2)(d) of this administrative regulation regarding additions to or changes in the areas of use identified in the application or on the license if radioactive material is used in accordance with either Section 30 or 31 of this administrative regulation; and~~

~~(7) The provisions of Section 36(1) of this administrative regulation.~~

~~Section 8. License Issuance. (1) The cabinet shall issue a license for the medical use of radioactive material if:~~

~~(a) The applicant has filed RPS-7 Application for Radioactive Material License in accordance with the instructions in Section 4 of this administrative regulation;~~

~~(b) The applicant has paid any applicable fee as provided in 902 KAR 100:012 of this chapter;~~

~~(c) The cabinet finds the applicant equipped and committed to observe the safety standards established by the cabinet in this Chapter for the protection of the public health and safety; and~~

~~(d) The applicant meets the requirements of 902 KAR 100:040, 100:041, 100:042, and 100:045 of this chapter.~~

~~(2) The cabinet shall issue a license for mobile medical service if the applicant:~~

~~(a) Meets the requirements in subsection (1) of this section; and~~

~~(b) Assures that individuals or human research subjects to whom unsealed radioactive material or radiation from implants containing radioactive material will be administered may be released following treatment in accordance with Section 27 of this administrative regulation.~~

~~Section 9. Specific Exemptions. The cabinet may, as established in 10 C.F.R. 35.19, upon application of any interested person or upon its own initiative, grant exemptions from the administrative regulations in this chapter that it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.~~

~~Section 10. Authority and Responsibilities for the Radiation~~

~~Protection Program. (1) In addition to the radiation protection program requirements of 902 KAR 100:019 of this administrative regulation, a licensee's management shall approve in writing:~~

~~(a) Requests for a license application, renewal, or amendment before submittal to the cabinet;~~

~~(b) Any individual before allowing that individual to work as an authorized user, authorized nuclear pharmacist, or authorized medical physicist; and~~

~~(c) Radiation protection program changes that do not require a license amendment and are permitted in under Section 11 of this administrative regulation.~~

~~(2) A licensee's management shall appoint a radiation safety officer, who agrees, in writing, to be responsible for implementing the radiation protection program. The licensee, through the radiation safety officer, shall ensure that radiation safety activities are being performed in accordance with licensee-approved procedures and regulatory requirements.~~

~~(3) For up to sixty (60) days each year, a licensee may permit an authorized user or an individual qualified to be a radiation safety officer, under Sections 63 and 64, of this administrative regulation to function as a temporary radiation safety officer and to perform the functions of a radiation safety officer, as provided in subsection (7) of this section, if the licensee takes the actions required in subsections (2), (5), (7), and (8) of this section and notifies the cabinet in accordance with Section 6 of this administrative regulation.~~

~~(4) A licensee may simultaneously appoint more than one (1) temporary radiation safety officer in accordance with subsection (3) of this section, if needed to ensure that the licensee has a temporary radiation safety officer that satisfies the requirements to be a radiation safety officer for each of the different types of uses of radioactive material permitted by the license.~~

~~(5) A licensee shall establish the authority, duties, and responsibilities of the radiation safety officer in writing.~~

~~(6) A licensee authorized for two (2) or more different types of uses of radioactive material under Sections 33, 37, and 46 of this administrative regulation or two (2) or more types of units under Section 46 of this administrative regulation shall establish a Radiation Safety Committee to oversee all uses of radioactive material permitted by the license. The committee shall include an authorized user of each type of use permitted by the license, the radiation safety officer, a representative of the nursing service, and a representative of management who is neither an authorized user nor a radiation safety officer. The committee may include other members the licensee considers appropriate.~~

~~(7) A licensee shall provide the radiation safety officer sufficient authority, organizational freedom, time, resources, and management prerogative to:~~

~~(a) Identify radiation safety problems;~~

~~(b) Initiate, recommend, or provide corrective actions;~~

~~(c) Stop unsafe operations; and~~

~~(d) Verify implementation of corrective actions.~~

~~(8) A licensee shall retain a record of actions taken under subsections (1), (2), and (5) of this section as follows:~~

~~(a) A licensee shall retain a record of actions taken by the licensee's management in accordance with subsection (1) of this section, for five (5) years. The record shall include a summary of the actions taken and a signature of licensee management.~~

~~(b) The licensee shall retain a copy of both authority, duties, and responsibilities of the radiation safety officer, as required in subsection (5) of this section, and a signed copy of each radiation safety officer's agreement to be responsible for implementing the radiation safety program, as required in subsection (5) of this section, for the duration of the license. The records shall include the signature of the radiation safety officer and licensee management.~~

~~Section 11. Radiation Protection Program Changes. (1) A licensee may revise its radiation protection program without cabinet approval if:~~

~~(a) The revision does not require a license amendment under Section 5 of this administrative regulation;~~

~~(b) The revision is in compliance with 902 KAR Chapter 100 and the license;~~

~~(c) The revision has been reviewed and approved by the radiation safety officer and licensee management; and~~

~~(d) The affected individuals are instructed on the revised program before the changes are implemented.~~

~~(2) A licensee shall retain a record of each radiation protection program change made in accordance with subsection (1) of this section for five (5) years. The record shall include a copy of the old and new procedures, the effective date of the change, and the signature of the licensee management that reviewed and approved the change.~~

~~Section 12. Supervision. (1) A licensee that permits the receipt, possession, use, or transfer of radioactive material by an individual under the supervision of an authorized user, as allowed by Section 2(2)(a) of this administrative regulation shall:~~

~~(a) In addition to the requirements in 902 KAR 100:165, instruct the supervised individual in the licensee's written radiation protection procedures, written directive procedures, administrative regulations of this chapter, and license conditions with respect to the use of radioactive material; and~~

~~(b) Require the supervised individual to follow the instructions of the supervising authorized user for medical uses of radioactive material, written radiation protection procedures established by the licensee, written directive procedures, administrative regulations of this chapter, and license conditions with respect to the medical use of radioactive material.~~

~~(2) A licensee that permits the preparation of radioactive material for medical use by an individual under the supervision of an authorized nuclear pharmacist or physician who is an authorized user, as allowed by Section 2(2)(b) of this administrative regulation shall:~~

~~(a) In addition to the requirements in 902 KAR 100:165, instruct the supervised individual in the preparation of radioactive material for medical use, as appropriate to that individual's involvement with radioactive material; and~~

~~(b) Require the supervised individual to follow the instructions of the supervising authorized user or authorized nuclear pharmacist regarding the preparation of radioactive material for medical use, written radiation protection procedures established by the licensee, the administrative regulations of this chapter, and license conditions.~~

~~(3) A licensee that permits supervised activities under subsections (1) and (2) of this section is responsible for the acts and omissions of the supervised individual.~~

~~Section 13. Written Directives. (1) A written directive shall be dated and signed by an authorized user before the administration of I-131 sodium iodide greater than 1.11 Megabecquerels (MBq) (Thirty (30) microcuries (μCi)), any therapeutic dosage of unsealed radioactive material or any therapeutic dose of radiation from radioactive material.~~

~~(a) If, because of the emergent nature of the patient's condition, a delay in order to provide a written directive would jeopardize the patient's health, an oral directive shall be acceptable. The information contained in the oral directive shall be documented as soon as possible in writing in the patient's record.~~

~~(b) A written directive shall be prepared within forty-eight (48) hours of the oral directive.~~

~~(2) The written directive shall contain the patient or human research subject's name and the following information:~~

~~(a) For any administration of quantities greater than 1.11 MBq (30 μCi) of sodium iodide I-131: the dosage;~~

~~(b) For an administration of a therapeutic dosage of unsealed radioactive material other than sodium iodide I-131: the radioactive drug, dosage, and route of administration;~~

~~(c) For gamma stereotactic radiosurgery: the total dose, treatment site, and values for the target coordinate settings per treatment for each anatomically distinct treatment site;~~

~~(d) For teletherapy: the total dose, dose per fraction, number of fractions, and treatment site;~~

~~(e) For high dose-rate remote afterloading brachytherapy: the radionuclide, treatment site, dose per fraction, number of fractions,~~

~~and total dose; or~~

~~(f) For all other brachytherapy, including low, medium, and pulsed dose rate remote afterloaders:~~

~~1. Before implantation: treatment site, the radionuclide, and dose; and~~

~~2. After implantation but before completion of the procedure: the radionuclide, treatment site, number of sources, and total source strength and exposure time (or the total dose).~~

~~(3) A written revision to an existing written directive may be made if the revision is dated and signed by an authorized user before the administration of the dosage of unsealed radioactive material, the brachytherapy dose, the gamma stereotactic radiosurgery dose, the teletherapy dose, or the next fractional dose.~~

~~(a) If, because of the patient's condition, a delay in order to provide a written revision to an existing written directive would jeopardize the patient's health, an oral revision to an existing written directive shall be acceptable. The oral revision shall be documented as soon as possible in the patient's record.~~

~~(b) A revised written directive shall be signed by the authorized user within forty-eight (48) hours of the oral revision.~~

~~(4) The licensee shall retain a copy of the written directive as required by this section for three (3) years.~~

~~Section 14. Procedures for Administrations Requiring a Written Directive. (1) For any administration requiring a written directive, the licensee shall develop, implement, and maintain written procedures to provide high confidence that:~~

~~(a) The patient's or human research subject's identity is verified before each administration; and~~

~~(b) Each administration is in accordance with the written directive.~~

~~(2) At a minimum, the procedures required by subsection (1) of this section shall address the following items that are applicable to the licensee's use of radioactive material:~~

~~(a) Verifying the identity of the patient or human research subject;~~

~~(b) Verifying that the administration is in accordance with the treatment plan, if applicable, and the written directive;~~

~~(c) Checking both manual and computer-generated dose calculations; and~~

~~(d) Verifying that any computer-generated dose calculations are correctly transferred into the consoles of therapeutic medical units authorized by Section 46 or 62 of this administrative regulation.~~

~~(3) A licensee shall retain a copy of the procedures required under subsection (1) for the duration of the license.~~

~~Section 15. Report and Notification of Medical Events. (1) A licensee shall report any event, except for an event that results from patient intervention, in which the administration of radioactive material or radiation from radioactive material results in:~~

~~(a) A dose that differs from the prescribed dose or dose that would have resulted from the prescribed dosage by more than 0.05 Sv (5 rem) effective dose equivalent, five-tenths (0.5) Sv (50 rem) to an organ or tissue, or five-tenths (0.5) Sv (50 rem) shallow dose equivalent to the skin; and~~

~~1. The total dose delivered differs from the prescribed dose by twenty (20) percent or more;~~

~~2. The total dosage delivered differs from the prescribed dosage by twenty (20) percent or more or falls outside the prescribed dosage range; or~~

~~3. The fractionated dose delivered differs from the prescribed dose, for a single fraction, by fifty (50) percent or more.~~

~~(b) A dose that exceeds 0.05 Sv (5 rem) effective dose equivalent, five-tenths (0.5) Sv (50 rem) to an organ or tissue, or five-tenths (0.5) Sv (50 rem) shallow dose equivalent to the skin from any of the following:~~

~~1. An administration of a wrong radioactive drug containing radioactive material;~~

~~2. An administration of a radioactive drug containing radioactive material by the wrong route of administration;~~

~~3. An administration of a dose or dosage to the wrong individual or human research subject;~~

~~4. An administration of a dose or dosage delivered by the wrong mode of treatment; or~~

~~5. A leaking sealed source.~~

~~(c) A dose to the skin or an organ or tissue other than the treatment site that exceeds by five-tenths (0.5) Sv (fifty (50) rem) to an organ or tissue and fifty (50) percent or more of the dose expected from the administration defined in the written directive (excluding, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site).~~

~~(2) A licensee shall report any event resulting from intervention of a patient or human research subject in which the administration of radioactive material or radiation from radioactive material results or will result in unintended permanent functional damage to an organ or a physiological system, as determined by a physician.~~

~~(3) The licensee shall notify the cabinet by telephone no later than the next calendar day after discovery of the medical event. The commercial telephone number of the Cabinet for Health and Family Services, Radiation Health Branch is (502) 564-3700. The twenty-four (24) hour emergency number is (800) 255-2587.~~

~~(4) The licensee shall submit a written report to the Cabinet for Health and Family Services, Radiation Health Branch, Manager,~~

~~275 East Main Street, Mailstop HS1C-A, Frankfort, Kentucky 40621, within fifteen (15) days after discovery of the medical event.~~

~~(a) The written report shall include:~~

~~1. The licensee's name;~~

~~2. The name of the prescribing physician;~~

~~3. A brief description of the event;~~

~~4. Why the event occurred;~~

~~5. The effect, if any, on the individual who received the administration;~~

~~6. What actions, if any, have been taken or are planned to prevent recurrence; and~~

~~7. Certification that the licensee notified the individual (or the individual's responsible relative or guardian), and if not, why not.~~

~~(b) The report shall not contain the individual's name or any other information that could lead to identification of the individual.~~

~~(5)(a)1. The licensee shall provide notification of the event to the referring physician and also notify the individual who is the subject of the medical event no later than twenty-four (24) hours after its discovery, unless the referring physician personally informs the licensee either that he or she will inform the individual or that, based on medical judgment, telling the individual would be harmful. The licensee shall not be required to notify the individual without first consulting the referring physician. If the referring physician or the affected individual cannot be reached within twenty-four (24) hours, the licensee shall notify the individual as soon as possible thereafter.~~

~~2. The notification of the individual who is the subject of the medical event may be made instead to that individual's responsible relative or guardian;~~

~~(b) If a verbal notification is made, the licensee shall inform the individual, or appropriate responsible relative or guardian, that a written description of the event can be obtained from the licensee upon request. The licensee shall provide this written description if requested; and~~

~~(c) The licensee shall not delay any appropriate medical care for the individual including any necessary remedial care as a result of the medical event, because of any delay in notification.~~

~~(6) Aside from the notification requirement, this section shall not affect any rights or duties of licensees and physicians in relation to each other, to individuals affected by the medical event, or to that individual's responsible relatives or guardians.~~

~~(7) A licensee shall:~~

~~(a) Annotate a copy of the report provided to the cabinet with the:~~

~~1. Name of the individual who is the subject of the event; and~~

~~2. Social Security number or other identification number, if one (1) has been assigned, of the individual who is the subject of the event; and~~

~~(b) Provide a copy of the annotated report to the referring physician, if other than the licensee, no later than fifteen (15) days after the discovery of the event.~~

~~Section 16. Report and Notification of a Dose to an Embryo/fetus or a Nursing Child. (1) A licensee shall report any dose to an embryo/fetus that is greater than fifty (50) mSv (five (5) rem) dose equivalent that is a result of an administration of radioactive material or radiation from radioactive material to a pregnant individual unless the dose to the embryo/fetus was specifically approved, in advance, by the authorized user.~~

~~(2) A licensee shall report any dose to a nursing child that is a result of an administration of radioactive material to a breast-feeding individual that:~~

~~(a) Is greater than fifty (50) mSv (five (5) rem) total effective dose equivalent; or~~

~~(b) Has resulted in unintended permanent functional damage to an organ or a physiological system of the child, as determined by a physician.~~

~~(3) The licensee shall notify the cabinet by telephone no later than the next calendar day after discovery of a dose to the embryo/fetus or nursing child that requires a report in subsections (1) or (2) of this section. The commercial telephone number of the Cabinet for Health and Family Services, Radiation Health Branch is (502) 564-3700. The twenty-four (24) hour emergency number is (800) 255-2587.~~

~~(4) The licensee shall submit a written report to the Cabinet for Health and Family Services, Radiation Health Branch, Manager, 275 East Main Street, Mailstop HS1C-A, Frankfort, Kentucky 40621, within fifteen (15) days after discovery of a dose to the embryo/fetus or nursing child that requires a report in subsections (1) or (2) in this section.~~

~~(a) The written report shall include:~~

~~1. The licensee's name;~~

~~2. The name of the prescribing physician;~~

~~3. A brief description of the event;~~

~~4. Why the event occurred;~~

~~5. The effect, if any, on the embryo or fetus or the nursing child;~~

~~6. What actions, if any, have been taken or are planned to prevent recurrence; and~~

~~7. Certification that the licensee notified the pregnant individual or mother (or the mother's or child's responsible relative or guardian), and if not, why not.~~

~~(b) The report shall not contain the individual's or child's name or any other information that could lead to identification of the individual or child.~~

~~(5)(a)1. The licensee shall provide notification of the event to the referring physician and also notify the pregnant individual or mother, both hereafter referred to as the mother, no later than twenty-four (24) hours after discovery of an event that would require reporting under subsection (1) or (2) of this section, unless the referring physician personally informs the licensee either that he or she will inform the mother or that, based on medical judgment, telling the mother would be harmful. The licensee shall not be required to notify the mother without first consulting with the referring physician. If the referring physician or mother cannot be reached within twenty-four (24) hours, the licensee shall make the appropriate notifications as soon as possible thereafter.~~

~~2. The notification may be made to the mother's or child's responsible relative or guardian instead of the mother. If a verbal notification is made, the licensee shall inform the mother, or the mother's or child's responsible relative or guardian, that a written description of the event can be obtained from the licensee upon request. The licensee shall provide this written description if requested; and~~

~~(b) The licensee shall not delay any appropriate medical care for the embryo or fetus or for the nursing child, including any necessary remedial care as a result of the event, because of any delay in notification.~~

~~(6) A licensee shall:~~

~~(a) Annotate a copy of the report provided to the cabinet with the:~~

~~1. Name of the pregnant individual or the nursing child who is the subject of the event; and~~

~~2. Social Security number or other identification number, if one (1) has been assigned, of the pregnant individual or the nursing child who is the subject of the event; and~~

~~(b) Provide a copy of the annotated report to the referring physician, if other than the licensee, no later than fifteen (15) days after the discovery of the event.~~

~~Section 17. Provisions for the Protection of Human Research Subjects. (1) A licensee may conduct research involving human research subjects only if it uses the radioactive materials specified on its license for the uses authorized on its license.~~

~~(2) If the research is conducted, funded, supported, or regulated by another federal agency that has implemented the Federal Policy for the Protection of Human Subjects, 45 C.F.R. Part 46, the licensee shall, before conducting research:~~

~~(a) Obtain review and approval of the research from an Institutional Review Board, as defined and described in the Federal Policy for the Protection of Human Subjects, 45 C.F.R. Part 46; and~~

~~(b) Obtain informed consent, as defined and described in the Federal Policy for the Protection of Human Subjects, 45 C.F.R. Part 46, from the human research subject.~~

~~(3) If the research will not be conducted, funded, supported, or regulated by another federal agency that has implemented the Federal Policy, the licensee, shall before conducting research, apply for and receive a specific amendment to its cabinet medical use license. The amendment request shall include a written commitment that the licensee shall, before conducting research:~~

~~(a) Obtain review and approval of the research from an Institutional Review Board, as defined and described in the Federal Policy for the Protection of Human Subjects, 45 C.F.R. Part 46; and~~

~~(b) Obtain "informed consent", as defined and described in the Federal Policy, form the human research subject.~~

~~(4) This section shall not relieve the licensees from complying with the other requirements in this administrative regulation.~~

~~Section 18. Report of a Leaking Source. A licensee shall file a report within five (5) days if a leak test required by Section 24, of this administrative regulation reveals the presence of 185 Bq (0.005 μCi) or more of removable contamination. The report shall be filed with the Cabinet for Health and Family Services, Radiation Health Branch, Manager, 275 East Main Street, Frankfort, Kentucky 40621. The written report shall include the model number and serial number, if assigned, of the leaking source; the radionuclide and its estimated activity; the results of the test; the date of the test; and the action taken.~~

~~Section 19. Quality Control of Diagnostic Equipment. A licensee shall establish written quality control procedures for diagnostic equipment used for radionuclide studies.(1) As a minimum, the procedures shall include:~~

~~(a) Quality control procedures recommended by equipment manufacturers; or~~

~~(b) Procedures submitted by the licensee and approved by the cabinet.~~

~~(2) The licensee shall conduct quality control procedures in accordance with written procedures.~~

~~Section 20. Possession, Use, and Calibration of Instruments Used to Measure the Activity of Unsealed Radioactive Material. (1) For direct measurements performed in accordance with Section 22, of this administrative regulation a licensee shall possess and use instrumentation to measure the activity of unsealed radioactive material before it is administered to each patient or human research subject.~~

~~(2) A licensee shall calibrate the instrumentation required in subsection (1) of this section in accordance with nationally-recognized standards or the manufacturer's instructions.~~

~~(3) A licensee shall maintain a record of instrument calibrations, required by this section, for three (3) years. The records shall include the model and serial number of the instrument, the date of the calibration, the results of the calibration, and the name of the individual who performed the calibration.~~

~~Section 21. Calibration of Survey Instruments. (1) A licensee shall calibrate the survey instruments used to show compliance with this administrative regulation and 902 KAR 100:019 before first use, annually, and following a repair that affects the calibration. A licensee shall:~~

~~(a) Calibrate all scales with readings up to ten (10) mSv (1,000 mrem) per hour with a radiation source;~~

~~(b) Calibrate two (2) separated readings on each scale or decade that will be used to show compliance; and~~

~~(c) Conspicuously note on the instrument the apparent dose rate from a dedicated check source as determined at the time of calibration, and the date of calibration.~~

~~(2) A licensee shall not use survey instruments if the difference between the indicated exposure rate and the calculated exposure rate is more than twenty (20) percent.~~

~~(3) A licensee shall maintain a record of each radiation survey instrument calibrations for three (3) years. The record shall include the model and serial number of the instrument, the date of the calibration, the results of the calibration, and the name of the individual who performed the calibration.~~

~~Section 22. Determination of Dosages of Unsealed Radioactive Material for Medical Use. (1) A licensee shall determine and record the activity of each dosage before medical use.~~

~~(2) For a unit dosage, this determination shall be made by:~~

~~(a) Direct measurement of radioactivity; or~~

~~(b) A decay correction, based on the activity or activity concentration determined by:~~

~~1. A manufacturer or preparer licensed pursuant to 902 KAR 100:040 and 902 KAR 100:058, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements; or~~

~~2. A cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state license for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by FDA.~~

~~(3) For other than unit dosages, this determination shall be made by:~~

~~(a) Direct measurement of radioactivity;~~

~~(b) Combination of measurement of radioactivity and mathematical calculations; or~~

~~(c) Combination of volumetric measurements and mathematical calculations, based on the measurement made by a manufacturer or preparer licensed pursuant to 902 KAR 100:040 and 902 KAR 100:058, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements.~~

~~(4) Unless otherwise directed by the authorized user, a licensee shall not use a dosage if the dosage does not fall within the prescribed dosage range or if the dosage differs from the prescribed dosage by more than twenty (20) percent.~~

~~(5) A licensee shall retain a record of the dosage determination, required by this section, for three (3) years. The record shall contain:~~

~~(a) The radiopharmaceutical;~~

~~(b) The patient's or human research subject's name, or identification number if one (1) has been assigned;~~

(c) The prescribed dosage, the determined dosage, or a notation that the total activity is less than 1.11 MBq (30 µCi);

~~(d) The date and time of the dosage determination; and~~

~~(e) The name of the individual who determined the dosage.~~

~~Section 23. Authorization for Calibration, Transmission, and Reference Sources. Any person authorized by Section 2 of this administrative regulation for medical use of radioactive material may receive, possess, and use any of the following radioactive material for check, calibration, transmission, and reference use. (1) Sealed sources, not exceeding 1.11 GBq (30 mCi) each, manufactured and distributed by a person licensed pursuant to 902 KAR 100:040 and 902 KAR 100:058, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements.~~

~~(2) Sealed sources, not exceeding 1.11 GBq (30 mCi) each, redistributed by a licensee authorized to redistribute the sealed sources manufactured and distributed by a person licensed pursuant to 902 KAR 100:040 and 902 KAR 100:058, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements, providing the redistributed sealed sources are in the original packaging and shielding and are accompanied by the manufacturer's approved instructions.~~

~~(3) Any radioactive material with a half-life not longer than 120 days in individual amounts not to exceed 0.56 GBq (15 mCi).~~

~~(4) Any radioactive material with a half-life longer than 120 days in individual amounts not to exceed the smaller of 7.4 MBq (200 µCi) or 1000 times the quantities in 902 KAR 100:030.~~

~~(5) Technetium-99m in amounts as needed.~~

~~Section 24. Requirements for Possession of Sealed Sources and Brachytherapy Sources. (1) A licensee in possession of any sealed source or brachytherapy source shall follow the radiation safety and handling instructions supplied by the manufacturer.~~

~~(2) A licensee in possession of a sealed source shall:~~

~~(a) Test the source for leakage before its first use unless the licensee has a certificate from the supplier indicating that the source was tested within six (6) months before transfer to the licensee; and~~

~~(b) Test the source for leakage at intervals not to exceed six (6) months or at other intervals approved by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state in the Sealed Source and Device Registry.~~

~~(3) To satisfy the leak test requirements of this section, the licensee shall measure the sample so that the leak test can detect the presence of 185 Bq (0.005 µCi) of radioactive material in the sample.~~

~~(4) A licensee shall retain leak test records in accordance with subsection (8)(a) of this section.~~

~~(5) If the leak test reveals the presence of 185 Bq (0.005 µCi) or more of removable contamination, the licensee shall:~~

~~(a) Immediately withdraw the sealed source from use and store, dispose, or cause it to be repaired in accordance with the requirements in 902 KAR 100:019, 100:021, 100:040, and 100:058; and~~

~~(b) File a report within five (5) days of the leak test in accordance with 902 KAR 100:072, Section 18.~~

~~(6) A licensee need not perform a leak test on the following sources:~~

~~(a) Sources containing only radioactive material with a half-life of less than thirty (30) days;~~

~~(b) Sources containing only radioactive material as a gas;~~

~~(c) Sources containing 3.7 MBq (100 µCi) or less of beta or gamma-emitting material or 0.37 MBq (10 µCi) or less of alpha-emitting material;~~

~~(d) Seeds of iridium-192 encased in nylon ribbon; and~~

~~(e) Sources stored and not being used. However, the licensee shall test each source for leakage before any use or transfer unless it has been leak tested within six (6) months before the date of use or transfer.~~

~~(7) A licensee in possession of sealed sources or brachytherapy sources, except for gamma stereotactic radiosurgery sources, shall conduct a semiannual physical inventory of all these sources in its possession. The licensee shall retain each inventory record in accordance with subsection (8)(b) of this section.~~

~~(8) A licensee shall keep records of leaks tests and inventory of sealed sources and brachytherapy sources as follows:~~

~~(a) A licensee shall retain records of leak tests for three (3) years. The records shall include the model number and serial number, if one (1) has been assigned, of each source tested; the identity of each source by radionuclide and its estimated activity; the results of the test; the date of the test; and the name of the individual who performed the test.~~

~~(b) A licensee shall retain records of the semiannual physical inventory of sealed sources and brachytherapy sources for three (3) years. The inventory records shall contain the model number of each source, and serial number if one (1) has been assigned, the identity of each source by radionuclide and its nominal activity, the location of each source, and the name of the individual who~~

~~performed the inventory.~~

~~Section 25. Labeling of Vials and Syringes. Each syringe and vial that contains unsealed radioactive material shall be labeled to identify the radioactive drug. Each syringe shield and vial shield shall also be labeled unless the label on the syringe or vial is visible when shielded.~~

~~Section 26. Surveys of Ambient Radiation Exposure Rate. (1) In addition to the surveys required by 902 KAR 100:019, a licensee shall survey with a radiation detection survey instrument at the end of each day of use. A licensee shall survey all areas where unsealed radioactive material requiring a written directive was prepared for use or administered.~~

~~(2) A licensee shall not be required to perform the surveys required by subsection (1) of this section in an area where patients or human research subjects are confined when they cannot be released under Section 27 of this administrative regulation.~~

~~(3) A licensee shall retain a record of each survey for three (3) years. The record shall include the date of the survey, the results of the survey, the instrument used to conduct the survey, and the name of the individual who performed the survey.~~

~~Section 27. Release of Individuals Containing Unsealed Radioactive Material or Implants Containing Radioactive Material. (1) A licensee may authorize the release from its control of any individual who has been administered unsealed radioactive material or implants containing radioactive material if the total effective dose equivalent to any other individual from exposure to the released individual is not likely to exceed five (5) mSv (five-tenths (0.5) rem). NUREG-1556, Vol. 9, "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Medical Licenses," describes methods for calculating doses to other individuals and contains tables of activities not likely to cause doses exceeding five (5) mSv (0.5 rem).~~

~~(2) A licensee shall provide the released individual, or the individual's parent or guardian, with instructions, including written instructions, on actions recommended to maintain doses to other individuals as low as is reasonably achievable if the total effective dose equivalent to any other individual is likely to exceed one (1) mSv (one-tenth (0.1) rem). If the total effective dose equivalent to a nursing infant or child could exceed one (1) mSv (one-tenth (0.1) rem) assuming there were no interruption of breast-feeding, the instructions shall also include:~~

~~(a) Guidance on the interruption or discontinuation of breast-feeding; and~~

~~(b) Information on the potential consequences, if any, of failure to follow the guidance.~~

~~(3) A licensee shall retain a record of the basis for authorizing the release of an individual in accordance with this section, if the total effective dose equivalent is calculated by:~~

~~(a) Using the retained activity rather than the activity administered;~~

~~(b) Using an occupancy factor less than 0.25 at one (1) meter;~~

~~(c) Using the biological or effective half-life; or~~

~~(d) Considering the shielding by tissue.~~

~~(4) A licensee shall retain a record that the instructions, required by this section, were provided to a breast-feeding female if the radiation dose to the infant or child from continued breast-feeding could result in a total effective dose equivalent exceeding five (5) mSv (five-tenths (0.5) rem).~~

~~(5) The records required by subsections (3), and (4) of this section shall be retained for three (3) years after the date of release of the individual.~~

~~(6) A report shall be filed in accordance with Section 15 of this chapter and submitted to the cabinet if a dose greater than 50 mSv (5 rem) is received by an individual from a patient released under this section.~~

~~Section 28. Provision of Mobile Medical Service. (1) A licensee providing mobile medical service shall:~~

~~(a) Obtain a letter signed by the management of each client for which services are rendered that permits the use of byproduct material at the client's address and clearly delineates the authority and responsibility of the licensee and the client;~~

~~(b) Check instruments used to measure the activity of unsealed radioactive material for proper function before medical use at each client's address or on each day of use, whichever is more frequent. At a minimum, the check for proper function required by this paragraph shall include a constancy check;~~

~~(c) Check survey instruments for proper operation with a dedicated check source before use at each client's address; and~~

~~(d) Before leaving a client's address, survey all areas of use to ensure compliance with the requirements in 902 KAR 100:019.~~

~~(2) A mobile medical service shall not have radioactive material delivered from the manufacturer or the distributor to the client unless the client has a license allowing possession of the byproduct material. Radioactive material delivered to the client shall be received and handled in conformance with the client's license.~~

~~(3) A licensee providing mobile medical services shall retain the letter required in subsection (1)(a) and the record of each survey required in subsection (1)(d) of this section respectively:~~

~~(a) A licensee shall retain a copy of each letter required in subsection (1)(a) that permits the use of radioactive material at a client's address. Each letter shall clearly delineate the authority and responsibility of the licensee and the client and shall be retained for three (3) years after the last provision of service.~~

~~(b) A licensee shall retain the record of each survey required by subsection (1)(d) for three (3) years. The record shall include the date of the survey, the results of the survey, the instrument used to make the survey, and the name of the individual who performed the survey.~~

~~(4) The cabinet shall license mobile medicine services in accordance with this administrative regulation and applicable requirements of 902 KAR 100:012, 100:015, 100:019, 100:021, 100:040, 100:050, 100:060, 100:070, and 100:165.~~

~~Section 29. Decay-in-storage. (1) A licensee may hold radioactive material with a physical half-life of less than 120 days for decay-in-storage before disposal without regard to its radioactivity if the licensee:~~

~~(a) Holds radioactive material for decay a minimum of ten (10) half-lives;~~

~~(b) Monitors radioactive material at the surface before disposal and determines that its radioactivity cannot be distinguished from the background radiation level with an appropriate radiation detection survey meter set on its most sensitive scale and with no interposed shielding; and~~

~~(c) Removes or obliterates all radiation labels, except for radiation labels on materials that are within containers and that will be managed as biomedical waste after they have been released from the licensee.~~

~~(2) A licensee shall retain a record of each disposal for three (3) years. The record shall include the:~~

~~(a) Date of the disposal;~~

~~(b) Date on which the radioactive material was placed in storage;~~

~~(c) Radionuclides disposed;~~

~~(d) Model and serial number of the survey instrument used;~~

~~(e) Background dose rate;~~

~~(f) Radiation dose rate measured at the surface of each waste container; and~~

~~(g) Name of the individual who performed the disposal.~~

~~Section 30. Use of Unsealed Radioactive Material for Uptake, Dilution, and Excretion Studies for Which a Written Directive is Not Required. Except for quantities that require a written directive under Section 13(2), of this administrative regulation a licensee may use any unsealed radioactive material prepared for medical use for uptake, dilution, or excretion studies that is:~~

~~(1) Obtained from a manufacturer or preparer licensed under 902 KAR 100:040 and 902 KAR 100:058 of this chapter, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements;~~

~~(2) Prepared by:~~

~~(a) An authorized nuclear pharmacist;~~

~~(b) A physician who is an authorized user and who meets the requirements specified in Section 69 or 70 and Section 69(3)(a)2.g of this administrative regulation; or~~

~~(c) An individual under the supervision of either as specified in Section 12 of this administrative regulation; or~~

~~(3) Obtained from and prepared by a licensee of the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by FDA; or~~

~~(4) Prepared by the licensee for use in research in accordance with a Radioactive Drug Research Committee-approved application or an Investigational New Drug (IND) protocol accepted by FDA.~~

~~Section 31. Use of Unsealed Radioactive Material for Imaging and Localization Studies for Which a Written Directive is Not Required. Except for quantities that require a written directive under Section 13(2) of this administrative regulation a licensee may use any unsealed radioactive material prepared for medical use for imaging and localization studies that is:~~

~~(1) Obtained from a manufacturer or preparer licensed under 902 KAR 100:040 or 100:058 of this chapter, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements;~~

~~(2) Prepared by:~~

~~(a) An authorized nuclear pharmacist;~~

~~(b) A physician who is an authorized user and who meets the requirements specified in Sections 69 or 70 and Section 69(3)(a)2.g. of this administrative regulation; or~~

~~(c) An individual under the supervision, as specified in Section 12 of this administrative regulation;~~

~~(3) Obtained from and prepared by a cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state licensee for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by FDA; or~~

~~(4) Prepared by the licensee for use in research in accordance with a Radioactive Drug Research Committee-approved application or an Investigational New Drug (IND) protocol accepted by FDA.~~

~~Section 32. Permissible Radionuclide Contaminant Concentration. (1) A licensee shall not administer to humans a radiopharmaceutical containing more than:~~

~~(a) 0.15 kilobecquerel of molybdenum-99 per megabecquerel of technetium-99m (0.15 microcurie of molybdenum-99 per millicurie of technetium-99m); or~~

~~(b) 0.02 kilobecquerel of strontium-82 per megabecquerel of rubidium-82 chloride injection (0.02 microcurie of strontium-82 per millicurie of rubidium-82 chloride); or~~

~~(c) 0.02 kilobecquerel of strontium-85 per megabecquerel of rubidium-82 chloride injection (0.2 microcurie of strontium-85 per millicurie of rubidium-82 chloride);~~

~~(2) A licensee preparing radiopharmaceuticals from radionuclide generators shall measure the concentration of radionuclide contaminant of the first eluate after receipt of a generator to demonstrate compliance with limits specified in subsection (1) of this section.~~

~~(3) A licensee required to measure radionuclide contaminant concentration, in this section, shall retain a record of each measurement for three (3) years;~~

~~(a) The record shall include, for each elution or extraction tested, the:~~

~~1. Measured activity of the radiopharmaceutical expressed in millicuries;~~

~~2. Measured activity of contaminant expressed in microcuries;~~

~~3. Ratio of the measurements in subsection (1)(a), (b), and (c) of this section expressed as microcuries of contaminant per millicurie of radiopharmaceutical;~~

~~4. Date of the test; and~~

~~5. Initials of the individual who performed the test.~~

~~(b) A licensee shall report immediately to the cabinet each occurrence of contaminant concentration exceeding the limits specified in this section.~~

~~Section 33. Use of Unsealed Radioactive Material for Which a Written Directive is Required. A licensee may use any unsealed radioactive material prepared for medical use and for which a written directive is required that is:~~

~~(1) Obtained from a manufacturer or preparer licensed under 902 KAR 100:040 or 902 KAR 100:058 of this chapter, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements;~~

~~(2) Prepared by an authorized nuclear pharmacist; a physician who is an authorized user and who meets the requirements specified in Section 69 or 70 of this administrative regulation, or an individual under the supervision, as specified in Section 12 of this administrative regulation;~~

~~(3) Obtained from and prepared by a cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state licensee for use in research in accordance with an Investigational New Drug (IND) protocol accepted by FDA; or~~

~~(4) Prepared by the licensee for use in research in accordance with an Investigational New Drug (IND) protocol accepted by FDA.~~

~~Section 34. Safety Instruction. (1) In addition to 902 KAR 100:165, a licensee shall provide radiation safety instruction, initially and at least annually, to personnel caring for the patient or the human research subjects receiving radiopharmaceutical therapy and hospitalized for compliance with Section 27 of this administrative regulation. To satisfy this requirement, the instruction shall describe the licensee's procedures for:~~

~~(a) Patient or human research subject control;~~

~~(b) Visitor control:~~

~~1. Routine visitation to hospitalized individuals in accordance with 902 KAR 100:019, Section 10(1)(a) of this chapter; and~~

~~2. Visitation authorized in accordance with 902 KAR 100:019, Section 10(6) of this chapter;~~

~~(c) Contamination control;~~

~~(d) Waste control; and~~

~~(e) Notification of the radiation safety officer, or his or her designee, and the authorized user if the patient or the human research subject has a medical emergency or dies.~~

~~(2) A licensee shall retain a record of individuals receiving safety instructions for three (3) years. The record shall include a list of the topics covered, the date of the instruction, the name of the attendee(s), and the name(s) of the individual(s) who provided the instruction.~~

~~Section 35. Safety Precautions. (1) For each patient or human research subject who cannot be released under Section 27 of this administrative regulation a licensee shall:~~

~~(a) Quarter the patient or the human research subject either in:~~

~~1. A private room with a private sanitary facility; or~~

~~2. A room, with a private sanitary facility, with another individual who also has received therapy with unsealed radioactive material and who also cannot be released under Section 27 of this administrative regulation;~~

~~(b) Visibly post the patient's or the human research subject's room with a "Radioactive Materials" sign:~~

~~(c) Note on the door or in the patient's or human research subject's chart where and how long visitors may stay in the patient's or the human research subject's room; and~~

~~(d) Either monitor material and items removed from the patient's or the human research subject's room to determine that their radioactivity cannot be distinguished from the natural background radiation level with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding, or handle the material and items as radioactive waste.~~

~~(2) A licensee shall notify the radiation safety officer, or his or her designee, and the authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.~~

~~Section 36. Suppliers for Sealed Sources or Devices for~~

~~Medical Use. For medical use, a licensee shall only use:~~

~~(1) Sealed sources or devices manufactured, labeled, packaged, and distributed in accordance with a license issued by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state;~~

~~(2) Sealed sources or devices noncommercially transferred from a 902 KAR 100:072 license, U.S. Nuclear Regulatory Commission, or equivalent State Medical License; or~~

~~(3) Teletherapy sources manufactured and distributed in accordance with a license issued by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state.~~

~~Section 37. Use of Sources for Manual Brachytherapy. A licensee shall use only brachytherapy sources for therapeutic medical uses:~~

~~(1) As approved in the Sealed Source and Device Registry; or~~

~~(2) In research in accordance with an active Investigational Device Exemption (IDE) application accepted by the FDA if the requirements of Section 36(1) of this administrative regulation are met.~~

~~Section 38. Surveys After Source Implant and Removal. (1) Immediately after implanting sources in a patient or a human research subject, the licensee shall make a survey to locate and account for all sources that have not been implanted.~~

~~(2) Immediately after removing the last temporary implant source from a patient or a human research subject, the licensee shall make a survey of the patient or the human research subject with a radiation detection survey instrument to confirm that all sources have been removed.~~

~~(3) A licensee shall retain a record of the surveys required by subsections (1) and (2) of this section for three (3) years. Each record shall include the date and results of the survey, the survey instrument used, and the name of the individual who made the survey.~~

~~Section 39. Brachytherapy Sources Accountability. (1) A licensee shall maintain accountability at all times for all brachytherapy sources in storage or use.~~

~~(2) As soon as possible after removing sources from a patient or a human research subject, a licensee shall return brachytherapy sources to a secure storage area.~~

~~(3) A licensee shall maintain a record of the brachytherapy source accountability for three (3) years for:~~

~~(a) Temporary implants, the record shall include:~~

~~1. The number and activity of sources removed from storage, the time and date they were removed from storage, the name of the individual who removed them from storage, and the location of use; and~~

~~2. The number and activity of sources returned to storage, the time and date they were returned to storage, and the name of the individual who returned them to storage.~~

~~(b) Permanent implants, the record shall include:~~

~~1. The number and activity of sources removed from storage, the date they were removed from storage, and the name of the individual who removed them from storage;~~

~~2. The number and activity of sources not implanted, the date they were returned to storage, and the name of the individual who returned them to storage; and~~

~~3. The number and activity of sources permanently implanted in the patient or human research subject.~~

~~Section 40. Safety Instruction. In addition to the requirements of 902 KAR 100:165 of this chapter. (1) The licensee shall provide radiation safety instruction, initially and at least annually, to personnel caring for patients or human research subjects who are receiving brachytherapy and cannot be released under Section 27 of this administrative regulation. To satisfy this requirement, the instruction shall be commensurate with the duties of the personnel and shall include the:~~

~~(a) Size and appearance of the brachytherapy sources;~~

~~(b) Safe handling and shielding instructions;~~

~~(c) Patient or human research subject control;~~

~~(d) Visitor control, including both:~~

~~1. Routine visitation of hospitalized individuals in accordance with 902 KAR 100:019, Section 10(1)(a) of this chapter; and~~

~~2. Visitation authorized in accordance with 902 KAR 100:019, Section 10(6) of this chapter; and~~

~~(e) Notification of the radiation safety officer, or his or her designee, and an authorized user if the patient or the human research subject has a medical emergency or dies.~~

~~(2) A licensee shall retain a record of individuals receiving instruction for three (3) years. The record shall include a list of the topics covered, the date of the instruction, the name of the attendee, and the name of the individual who provided the instruction.~~

~~Section 41. Safety Precautions. (1) For each patient or human research subject who is receiving brachytherapy and cannot be released under Section 27 of this administrative regulation a licensee shall:~~

~~(a) Not quarter the patient or the human research subject in the same room as an individual who is not receiving brachytherapy;~~

~~(b) Visibly post the patient's or human research subject's room with a "Radioactive Materials" sign; and~~

~~(c) Note on the door or in the patient's or human research subject's chart where and how long visitors may stay in the patient's or human research subject's room.~~

~~(2) A licensee shall have applicable emergency response equipment available near each treatment room to respond to a source:~~

~~(a) Dislodged from the patient; and~~

~~(b) Lodged within the patient following removal of the source applicators.~~

~~(3) A licensee shall notify the radiation safety officer, or his or her designee, and an authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.~~

~~Section 42. Calibration Measurements of Brachytherapy Sources. (1) Before the first medical use of a brachytherapy source on or after October 24, 2005, a licensee shall have:~~

~~(a) Determined the source output or activity using a dosimetry system that meets the requirements of Section 51(1) of this administrative regulation;~~

~~(b) Determined source positioning accuracy within applicators; and~~

~~(c) Used published protocols currently accepted by nationally recognized bodies to meet the requirements of subsection (1)(a) and (b) of this section.~~

~~(2) A licensee may use measurements provided by the source manufacturer or by a calibration laboratory accredited by the American Association of Physicists in Medicine that are made in accordance with subsection (1) of this section.~~

~~(3) A licensee shall mathematically correct the outputs or activities determined in subsection (1) of this section for physical decay at intervals consistent with one (1) percent physical decay.~~

~~(4) A licensee shall retain a record of each calibration of brachytherapy sources required by this section for three (3) years after the last use of the source. The record shall include:~~

~~(a) The date of the calibration;~~

~~(b) The manufacturer's name, model number, and serial number for the source and the instruments used to calibrate the source;~~

~~(c) The source output or activity;~~

~~(d) The source positioning accuracy within the applicators; and~~

~~(e) The name of the individual, source manufacturer, or the calibration laboratory that performed the calibration.~~

~~Section 43. Decay of strontium-90 sources for ophthalmic treatments. (1) Only an authorized medical physicist shall calculate the activity of each strontium-90 source that is used to determine the treatment times for ophthalmic treatments. The decay shall be based on the activity determined under Section 42 of this administrative regulation.~~

~~(2) A licensee shall retain a record of the activity of each~~

~~strontium-90 source for the life of the source. The record shall include:~~

~~(a) The date and initial activity of the source as determined under Section 42 of this administrative regulation; and~~

~~(b) For each decay calculation, the date and the source activity as determined under subsection (1) of this section.~~

~~Section 44. Therapy-related computer systems. The licensee shall perform acceptance testing on the treatment planning system of therapy-related computer systems in accordance with published protocols accepted by nationally-recognized bodies. At a minimum, the acceptance testing shall include, as applicable, verification of:~~

~~(1) The source-specific input parameters required by the dose calculation algorithm;~~

~~(2) The accuracy of dose, dwell time, and treatment time calculations at representative points;~~

~~(3) The accuracy of isodose plots and graphic displays; and~~

~~(4) The accuracy of the software used to determine sealed source positions from radiographic images.~~

~~Section 45. Use of Sealed Sources for Diagnosis. A licensee shall use only sealed sources for diagnostic medical uses as approved in the Sealed Source and Device Registry.~~

~~Section 46. Use of a Sealed Source in a Remote Afterloader Unit, Teletherapy Unit, or Gamma Stereotactic Radiosurgery Unit. A licensee shall use sealed sources in photon emitting remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units for therapeutic medical uses:~~

~~(1) As approved in the Sealed Source and Device Registry; or~~

~~(2) In research in accordance with an active Investigational Device Exemption (IDE) application accepted by the FDA provided the requirements of Section 36(1) of this administrative regulation are met.~~

~~Section 47. Surveys of Patients and Human Research Subjects Treated with a Remote Afterloader Unit. (1) Before releasing a patient or a human research subject from licensee control, a licensee shall survey the patient or the human research subject and the remote afterloader unit with a portable radiation detection survey instrument to confirm that the source has been removed from the patient or human research subject and returned to the safe shielded position.~~

~~(2) A licensee shall retain a record of the surveys for three (3) years. Each record shall include the date and results of the survey, the survey instrument used, and the name of the individual who made the survey.~~

~~Section 48. Installation, Maintenance, Adjustment, and Repair. (1) Only a person specifically licensed by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state shall install, maintain, adjust, or repair a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit that involves work on the source shielding, the source driving unit, or other electronic or mechanical component that could expose the source, reduce the shielding around the source, or compromise the radiation safety of the unit or the source.~~

~~(2) Except for low dose-rate remote afterloader units, only a person specifically licensed by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state shall install, replace, relocate, or remove a sealed source or source contained in other remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units.~~

~~(3) For a low dose-rate remote afterloader unit, only a person specifically licensed by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state or an authorized medical physicist shall install, replace, relocate, or remove a sealed source contained in the unit.~~

~~(4) A licensee shall retain a record of the installation, maintenance, adjustment, and repair of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units for three (3) years. For each installation, maintenance, adjustment and repair, the record shall include the date, description of the service, and name of the individual who performed the work.~~

~~Section 49. Safety Procedures and instructions for Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units. (1) A licensee shall:~~

~~(a) Secure the unit, the console, the console keys, and the treatment room when not in use or unattended;~~

~~(b) Permit only individuals approved by the authorized user, radiation safety officer, or authorized medical physicist to be present in the treatment room during treatment with the source;~~

~~(c) Prevent dual operation of more than one (1) radiation producing device in a treatment room if applicable; and~~

~~(d) Develop, implement, and maintain written procedures for responding to an abnormal situation if the operator is unable to place the source in the shielded position, or remove the patient or human research subject from the radiation field with controls from outside the treatment room. These procedures shall include:~~

~~1. Instructions for responding to equipment failures and the names of the individuals responsible for implementing corrective actions;~~

~~2. The process for restricting access to and posting of the treatment area to minimize the risk of inadvertent exposure; and~~

~~3. The names and telephone numbers of the authorized users, the authorized medical physicist, and the radiation safety officer to be contacted if the unit or console operates abnormally.~~

~~(2) A copy of the procedures required by subsection (1)(d) of this section shall be physically located at the unit console.~~

~~(3) A licensee shall post instructions at the unit console to inform the operator of:~~

~~(a) The location of the procedures required by subsection (1)(d) of this section; and~~

~~(b) The names and telephone numbers of the authorized users, the authorized medical physicist, and the radiation safety officer to be contacted if the unit or console operates abnormally.~~

~~(4) A licensee shall provide instruction, initially and at least annually, to all individuals who operate the unit, as appropriate to the individual's assigned duties, in:~~

~~(a) The procedures identified in paragraph (1)(d) of this section; and~~

~~(b) The operating procedures for the unit.~~

~~(5) A licensee shall ensure that operators, authorized medical physicists, and authorized users participate in drills of the emergency procedures, initially and at least annually.~~

~~(6) A licensee shall retain a record of individuals receiving instructions for three (3) years. The record shall include a list of the topics covered, the date of the instruction, the name of the attendee, and the name of the individual who provided the instruction.~~

~~(7) A licensee shall retain a copy of the procedures until the licensee no longer possesses the remote afterloader, teletherapy unit, or gamma stereotactic radiosurgery unit.~~

~~Section 50. Safety Precautions for Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units. (1) A licensee shall control access to the treatment room by a door at each entrance.~~

~~(2) A licensee shall equip each entrance to the treatment room with an electrical interlock system that shall:~~

~~(a) Prevent the operator from initiating the treatment cycle unless each treatment room entrance door is closed;~~

~~(b) Cause the source to be shielded when an entrance door is opened; and~~

~~(c) Prevent the source from being exposed following an interlock interruption until all treatment room entrance doors are closed and the source on-off control is reset at the console.~~

~~(3) A licensee shall require any individual entering the treatment room to assure, through the use of appropriate radiation monitors, that radiation levels have returned to ambient levels.~~

~~(a) Each radiation monitor shall be equipped with a backup power supply separate from the power supply to the unit. This backup power supply may be a battery system.~~

~~(b) If the radiation monitor is inoperable, the licensee shall require any individual entering the treatment room to use a survey~~

~~instrument or audible alarm personal dosimeter to monitor for any malfunction of the source exposure mechanism that may result in an exposed or partially exposed source. The instrument or dosimeter shall be checked with a dedicated check source for proper operation at the beginning of each day of use. The licensee shall keep a record as established in this section.~~

~~(c) A licensee shall promptly repair or replace the radiation monitor if it is inoperable.~~

~~(4) Except for low-dose remote afterloader units, a licensee shall construct or equip each treatment room with viewing and intercom systems to permit continuous observation of the patient or the human research subject from the treatment console during irradiation.~~

~~(5) For licensed activities in which a source is placed within the patient's or human research subject's body, a licensee shall only conduct treatments that allow for expeditious removal of a decoupled or jammed source.~~

~~(6) In addition to the requirements specified in subsections (1) through (5) of this section, a licensee shall:~~

~~(a) For medium dose-rate and pulsed dose-rate remote afterloader units, require:~~

~~1. An authorized medical physicist and either an authorized user or a physician, under the supervision of an authorized user, who has been trained in the operation and emergency response for the unit to be physically present during the initiation of all patient treatments involving the unit; and~~

~~2. An authorized medical physicist and either an authorized user or an individual, under the supervision of an authorized user, who has been trained to remove the source applicator if there is an emergency involving the unit, to be immediately available during continuation of all patient treatments involving the unit.~~

~~(b) For high dose-rate remote afterloader units, require:~~

~~1. An authorized user and an authorized medical physicist to be physically present during the initiation of all patient treatments involving the unit; and~~

~~2. An authorized medical physicist and either an authorized user or a physician, under the supervision of an authorized user, who has been trained in the operation and emergency response for the unit, to be physically present during continuation of all patient treatments involving the unit.~~

~~(c) For gamma stereotactic radiosurgery units, require an authorized user and an authorized medical physicist to be physically present throughout all patient treatments involving the unit.~~

~~(d) Notify the radiation safety officer, or his or her designee, and an authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.~~

~~(7) A licensee shall have applicable emergency response equipment available near each treatment room to respond to a source:~~

~~(a) Remaining in the unshielded position; or~~

~~(b) Lodged within the patient following completion of the treatment.~~

~~Section 51. Dosimetry Equipment. (1) Except for low dose-rate remote afterloader sources in which the source output or activity is determined by the manufacturer, a licensee shall have a calibrated dosimetry system available for use. To satisfy this requirement, one (1) of the following two (2) conditions shall be met:~~

~~(a) The system shall have been calibrated using a system or source traceable to the National Institute of Science and Technology (NIST) and published protocols accepted by nationally recognized bodies or by a calibration laboratory accredited by the American Association of Physicists in Medicine (AAPM). The calibration shall have been performed within the previous two (2) years and after any servicing that may have affected system calibration; or~~

~~(b) The system shall have been calibrated within the previous four (4) years. Eighteen (18) to thirty (30) months after that calibration, the system shall have been intercompared with another dosimetry system that was calibrated within the past twenty-four (24) months by NIST or by a calibration laboratory accredited by the AAPM. The results of the intercomparison shall indicate that the calibration factor of the licensee's system had not changed by more than two (2) percent. The licensee shall not use the intercomparison result to change the calibration factor. If intercomparing dosimetry systems to be used for calibrating sealed sources for therapeutic units, the licensee shall use a comparable unit with beam attenuators or collimators, as applicable, and sources of the same radionuclide as the source used at the licensee's facility.~~

~~(2) The licensee shall have a dosimetry system available for use for spot-check output measurements, if applicable. To satisfy this requirement, the system may be compared with a system that has been calibrated in accordance with subsection (1) of this section. This comparison shall have been performed within the previous year and after each servicing that may have affected system calibration. The spot-check system may be the same system used to meet the requirement in subsection (1) of this section.~~

~~(3) The licensee shall retain a record of each calibration, intercomparison, and comparison in accordance with this section for the duration of the license. For each calibration, intercomparison, or comparison, the record shall include:~~

~~(a) The date;~~

~~(b) The manufacturer's name, model numbers and serial numbers of the instruments that were calibrated, intercompared, or compared as required by subsections (1) and (2) of this section;~~

~~(c) The correction factor that was determined from the calibration or comparison or the apparent correction factor that was determined from an intercomparison; and~~

~~(d) The names of the individuals who performed the calibration, intercomparison, or comparison.~~

~~Section 52. Full Calibration Measurements on Teletherapy Units. (1) A licensee authorized to use a teletherapy unit for medical use shall perform full calibration measurements on each teletherapy unit:~~

~~(a) Before the first medical use of the unit;~~

~~(b) Before medical use under the following conditions:~~

~~1. If spot-check measurements indicate that the output differs by more than five (5) percent from the output obtained at the last full calibration corrected mathematically for radioactive decay;~~

~~2. Following replacement of the source or following reinstallation of the teletherapy unit in a new location; or~~

~~3. Following any repair of the teletherapy unit that includes removal of the source or major repair of the components associated with the source exposure assembly; and~~

~~(c) At intervals not exceeding one (1) year.~~

~~(2) To satisfy the requirement of subsection (1) of this section, full calibration measurements shall include determination of:~~

~~(a) The output within +/- three (3) percent for the range of field sizes and for the distance or range of distances used for medical use;~~

~~(b) The coincidence of the radiation field and the field indicated by the light beam localizing device;~~

~~(c) The uniformity of the radiation field and its dependence on the orientation of the useful beam;~~

~~(d) Timer accuracy and linearity over the range of use;~~

~~(e) On-off error; and~~

~~(f) The accuracy of all distance measuring and localization devices in medical use.~~

~~(3) A licensee shall use the dosimetry system described in Section 51(1) of this administrative regulation to measure the output for one (1) set of exposure conditions. The remaining radiation measurements required in subsection (2)(a) of this section may be made using a dosimetry system that indicates relative dose rates.~~

~~(4) A licensee shall make full calibration measurements required by subsection (1) of this section in accordance with published protocols accepted by nationally-recognized bodies.~~

~~(5) A licensee shall mathematically correct the outputs determined in subsection (2)(a) of this section for physical decay for intervals not exceeding one (1) month for cobalt-60, six (6) months for cesium-137, or at intervals consistent with one (1) percent decay for all other nuclides.~~

~~(6) Full calibration measurements required by subsection (1) of this section and physical decay corrections required by subsection (5) of this section shall be performed by the authorized medical physicist.~~

~~(7) A licensee shall retain a record of each calibration for three (3) years. The record shall include:~~

~~(a) The date of the calibration;~~

~~(b) The manufacturer's name, model number, and serial number of the teletherapy, remote afterloader, and gamma stereotactic radiosurgery unit, the source, and the instruments used to calibrate the unit;~~

~~(c) The results and an assessment of the full calibrations;~~

~~(d) The results of the autoradiograph required for low dose-rate remote afterloader units; and~~

~~(e) The signature of the authorized medical physicist who performed the full calibration.~~

~~Section 53. Full calibration measurements on remote afterloader units. (1) A licensee authorized to use a remote afterloader unit for medical use shall perform full calibration measurements on each unit:~~

~~(a) Before the first medical use of the unit;~~

~~(b) Before medical use under the following conditions:~~

~~1. Following replacement of the source or following reinstallation of the unit in a new location outside the facility; and~~

~~2. Following any repair of the unit that includes removal of the source or major repair of the components associated with the source exposure assembly;~~

~~(c) At intervals not exceeding one (1) quarter for high dose-rate, medium dose-rate, and pulsed dose-rate remote afterloader units with sources whose half-life exceeds seventy-five (75) days; and~~

~~(d) At intervals not exceeding one (1) year for low dose-rate remote afterloader units.~~

~~(2) To satisfy the requirement of subsection (1) of this section, full calibration measurements shall include, as applicable, determination of:~~

~~(a) The output within ± five (5) percent;~~

~~(b) Source positioning accuracy to within ± one (1) millimeter;~~

~~(c) Source retraction with backup battery upon power failure;~~

~~(d) Length of the source transfer tubes;~~

~~(e) Timer accuracy and linearity over the typical range of use;~~

~~(f) Length of the applicators; and~~

~~(g) Function of the source transfer tubes, applicators, and transfer tube-applicator interfaces.~~

~~(3) A licensee shall use the dosimetry system described in Section 51(1) of this administrative regulation to measure the output.~~

~~(4) A licensee shall make full calibration measurements required by subsection (1) of this section in accordance with published protocols accepted by nationally-recognized bodies.~~

~~(5) In addition to the requirements for full calibrations for low dose-rate remote afterloader units in subsection (2) of this section, a licensee shall perform an autoradiograph of the source to verify inventory and source arrangement at intervals not exceeding one (1) quarter.~~

~~(6) For low dose-rate remote afterloader units, a licensee may use measurements provided by the source manufacturer that are made in accordance with subsections (1) through (5) of this section.~~

~~(7) A licensee shall mathematically correct the outputs determined in subsection (2)(a) of this section for physical decay at intervals consistent with one (1) percent physical decay.~~

~~(8) Full calibration measurements required by subsection (1) of this section and physical decay corrections required by subsection (7) of this section shall be performed by the authorized medical physicist.~~

~~(9) A licensee shall retain a record of each calibration for three (3) years. The record shall include:~~

~~(a) The date of the calibration;~~

~~(b) The manufacturer's name, model number, and serial number of the teletherapy, remote afterloader, and gamma stereotactic radiosurgery unit, the source, and the instruments used to calibrate the unit;~~

~~(c) The results and an assessment of the full calibrations;~~

~~(d) The results of the autoradiograph required for low dose-rate remote afterloader units; and~~

~~(e) The signature of the authorized medical physicist who performed the full calibration.~~

~~Section 54. Full calibration measurements on gamma stereotactic radiosurgery units (1) A licensee authorized to use a gamma stereotactic radiosurgery unit for medical use shall perform full calibration measurements on each unit:~~

~~(a) Before the first medical use of the unit;~~

~~(b) Before medical use under the following conditions:~~

~~1. Whenever spot-check measurements indicate that the output differs by more than five (5) percent from the output obtained at the last full calibration corrected.~~

~~2. Following replacement of the sources or following reinstallation of the gamma mathematically for radioactive decay, stereotactic radiosurgery unit in a new location, and~~

~~3. Following any repair of the gamma stereotactic radiosurgery unit that includes removal of the sources or major repair of the components associated with the source assembly; and~~

~~(c) At intervals not exceeding one (1) year, with the exception that relative helmet factors need only be determined before the first medical use of a helmet and following any damage to a helmet.~~

~~(2) To satisfy the requirement of subsection (1) of this section, full calibration measurements shall include determination of:~~

~~(a) The output within ± three (3) percent;~~

~~(b) Relative helmet factors;~~

~~(c) Isocenter coincidence;~~

~~(d) Timer accuracy and linearity over the range of use;~~

~~(e) On-off error;~~

~~(f) Trunnion centricity;~~

~~(g) Treatment table retraction mechanism, using backup battery power or hydraulic backups with the unit off;~~

~~(h) Helmet microswitches;~~

~~(i) Emergency timing circuits; and~~

~~(j) Stereotactic frames and localizing devices (trunnions).~~

~~(3) A licensee shall use the dosimetry system described in Section 51(1) of this administrative regulation to measure the output for one (1) set of exposure conditions. The remaining radiation measurements required in subsection (2)(a) of this section may be made using a dosimetry system that indicates relative dose rates.~~

~~(4) A licensee shall make full calibration measurements required by subsection (1) of this section in accordance with published protocols accepted by nationally recognized bodies.~~

~~(5) A licensee shall mathematically correct the outputs determined in subsection (2)(a) of this section at intervals not exceeding one (1) month for cobalt-60 and at intervals consistent with one (1) percent physical decay for all other radionuclides.~~

~~(6) Full calibration measurements required by subsection (1) of this section and physical decay corrections required by subsection (5) of this section shall be performed by the authorized medical physicist.~~

~~(7) A licensee shall retain a record of each calibration for three (3) years. The record shall include:~~

~~(a) The date of the calibration;~~

~~(b) The manufacturer's name, model number, and serial number of the teletherapy, remote afterloader, and gamma stereotactic radiosurgery unit, the source, and the instruments used to calibrate the unit;~~

~~(c) The results and an assessment of the full calibrations;~~

~~(d) The results of the autoradiograph required for low dose-rate remote afterloader units; and~~

~~(e) The signature of the authorized medical physicist who performed the full calibration.~~

~~Section 55. Periodic Spot-checks for Teletherapy Units. (1) A licensee authorized to use teletherapy units for medical use shall perform output spot-checks on each teletherapy unit once in each calendar month that shall include determination of:~~

~~(a) Timer accuracy, and timer linearity over the range of use;~~

~~(b) On-off error;~~

~~(c) The coincidence of the radiation field and the field indicated by the light beam localizing device;~~

~~(d) The accuracy of all distance measuring and localization devices used for medical use;~~

~~(e) The output for one (1) typical set of operating conditions measured with the dosimetry system described in Section 51(2) of this administrative regulation; and~~

~~(f) The difference between the measurement made in subsection (1)(e) of this section and the anticipated output, expressed as a percentage of the anticipated output (i.e., the value obtained at last full calibration corrected mathematically for physical decay).~~

~~(2) A licensee shall perform measurements required by subsection (1) of this section in accordance with written procedures established by the authorized medical physicist. That individual shall not be required to actually perform the spot-check measurements.~~

~~(3) A licensee shall have the authorized medical physicist review the results of each spot-check within fifteen (15) days. The authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.~~

~~(4) A licensee authorized to use a teletherapy unit for medical use shall perform safety spot-checks of each teletherapy facility once in each calendar month and after each source installation to assure proper operation of:~~

~~(a) Electrical interlocks at each teletherapy room entrance;~~

~~(b) Electrical or mechanical stops installed for the purpose of limiting use of the primary beam of radiation (restriction of source housing angulation or elevation, carriage or stand travel and operation of the beam on-off mechanism);~~

~~(c) Source exposure indicator lights on the teletherapy unit, on the control console, and in the facility;~~

~~(d) Viewing and intercom systems;~~

~~(e) Treatment room doors from inside and outside the treatment room; and~~

~~(f) Electrically assisted treatment room doors with the teletherapy unit electrical power turned off.~~

~~(5) If the results of the checks required in subsection (4) of this section indicate the malfunction of any system, a licensee shall lock the control console in the off position and shall not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.~~

~~(6) A licensee shall retain a record of each spot-check for teletherapy units for three (3) years. The record shall include:~~

~~(a) The date of the spot-check;~~

~~(b) The manufacturer's name, model number, and serial number of the teletherapy unit, source and instrument used to measure the output of the teletherapy unit;~~

~~(c) An assessment of timer linearity and constancy;~~

~~(d) The calculated on-off error;~~

~~(e) A determination of the coincidence of the radiation field and the field indicated by the light beam localizing device;~~

~~(f) The determined accuracy of each distance measuring and localization device;~~

~~(g) The difference between the anticipated output and the measured output;~~

~~(h) Notations indicating the operability of each entrance door electrical interlock, each electrical or mechanical stop, each source exposure indicator light, and the viewing and intercom system and doors; and~~

~~(i) The name of the individual who performed the periodic spot-check and the signature of the authorized medical physicist who reviewed the record of the spot-check.~~

~~(7) A licensee shall retain a copy of the procedures required by subsection (2) of this section until the licensee no longer possesses the teletherapy unit.~~

~~Section 56. Periodic Spot-checks for Remote Afterloader Units. (1) A licensee authorized to use a remote afterloader unit for medical use shall perform spot-checks of each remote afterloader facility and on each unit:~~

~~(a) Before the first use of a high dose-rate, medium dose-rate, or pulsed dose-rate remote afterloader unit on a given day;~~

~~(b) Before each patient treatment with a low dose-rate remote afterloader unit; and~~

~~(c) After each source installation.~~

~~(2) A licensee shall perform the measurements required by subsection (1) of this section in accordance with written procedures established by the authorized medical physicist. That individual shall not be required to actually perform the spot check measurements.~~

~~(3) A licensee shall have the authorized medical physicist review the results of each spot-check within fifteen (15) days. The authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.~~

~~(4) To satisfy the requirements of subsection (1) of this section, spot-checks shall, at a minimum, assure proper operation of:~~

~~(a) Electrical interlocks at each remote afterloader unit room entrance;~~

~~(b) Source exposure indicator lights on the remote afterloader unit, on the control console, and in the facility;~~

~~(c) Viewing and intercom systems in each high dose-rate, medium dose-rate, and pulsed dose-rate remote afterloader facility;~~

~~(d) Emergency response equipment;~~

~~(e) Radiation monitors used to indicate the source position;~~

~~(f) Timer accuracy;~~

~~(g) Clock (date and time) in the unit's computer; and~~

~~(h) Decayed source activity in the unit's computer.~~

~~(5) If the results of the checks required in subsection (4) of this section indicate the malfunction of any system, a licensee shall lock the control console in the off position and shall not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.~~

~~(6) A licensee shall retain a record of each spot-check for remote afterloader units for three (3) years. The record shall include, as applicable:~~

~~(a) The date of the spot-check;~~

~~(b) The manufacturer's name, model number, and serial number for the remote afterloader unit and source;~~

~~(c) An assessment of timer accuracy;~~

~~(d) Notations indicating the operability of each entrance door electrical interlock, radiation monitors, source exposure indicator lights, viewing and intercom systems, and clock and decayed source activity in the unit's computer; and~~

~~(e) The name of the individual who performed the periodic spot-check and the signature of the authorized medical physicist who reviewed the record of the spot-check.~~

~~(7) A licensee shall retain a copy of the procedures required by subsection (2) of this section until the licensee no longer possesses the remote afterloader unit.~~

~~Section 57. Periodic Spot-checks for Gamma Stereotactic Radiosurgery Units. (1) A licensee authorized to use a gamma stereotactic radiosurgery unit for medical use shall perform spot-checks of each gamma stereotactic radiosurgery facility and on each unit:~~

~~(a) Monthly;~~

~~(b) Before the first use of the unit on a given day; and~~

~~(c) After each source installation.~~

~~(2) A licensee shall:~~

~~(a) Perform the measurements required by subsection (1) of this section in accordance with written procedures established by the authorized medical physicist. That individual shall not be required to actually perform the spot check measurements.~~

~~(b) Have the authorized medical physicist review the results of each spot-check within fifteen (15) days. The authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.~~

~~(3) To satisfy the requirements of subsection (1)(a) of this section, spot-checks shall, at a minimum:~~

~~(a) Assure proper operation of:~~

~~1. Treatment table retraction mechanism, using backup battery power or hydraulic backups with the unit off;~~

~~2. Helmet microswitches;~~

~~3. Emergency timing circuits; and~~

~~4. Stereotactic frames and localizing devices (trunnions).~~

~~(b) Determine:~~

~~1. The output for one (1) typical set of operating conditions measured with the dosimetry system described in Section 51(2) of this administrative regulation;~~

~~2. The difference between the measurement made in subsection (3)(b)1. of this section and the anticipated output, expressed as a percentage of the anticipated output (the value obtained at last full calibration corrected mathematically for physical decay);~~

~~3. Source output against computer calculation;~~

~~4. Timer accuracy and linearity over the range of use;~~

~~5. On-off error; and~~

~~6. Trunnion centricity.~~

~~(4) To satisfy the requirements of subsection (1)(b) and (c) of this section, spot-checks shall assure proper operation of:~~

~~(a) Electrical interlocks at each gamma stereotactic radiosurgery room entrance;~~

~~(b) Source exposure indicator lights on the gamma stereotactic radiosurgery unit, on the control console, and in the facility;~~

~~(c) Viewing and intercom systems;~~

~~(d) Timer termination;~~

~~(e) Radiation monitors used to indicate room exposures; and~~

~~(f) Emergency off buttons.~~

~~(5) A licensee shall arrange for the repair of any system identified in subsection (3) of this section that is not operating properly as soon as possible.~~

~~(6) If the results of the checks required in subsection (4) of this section indicate the malfunction of any system, a licensee shall lock the control console in the off position and shall not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.~~

~~(7) A licensee shall retain a record of each spot-check for gamma stereotactic radiosurgery units required by this section for three (3) years. The record shall include:~~

~~(a) The date of the spot-check;~~

~~(b) The manufacturer's name, model number, and serial number for the gamma stereotactic radiosurgery unit and the instrument used to measure the output of the unit;~~

~~(c) An assessment of timer linearity and accuracy;~~

~~(d) The calculated on-off error;~~

~~(e) A determination of trunnion centricity;~~

~~(f) The difference between the anticipated output and the measured output;~~

~~(g) An assessment of source output against computer calculations;~~

~~(h) Notations indicating the operability of radiation monitors, helmet microswitches, emergency timing circuits, emergency off buttons, electrical interlocks, source exposure indicator lights, viewing and intercom systems, timer termination, treatment table retraction mechanism, and stereotactic frames and localizing devices (trunnions); and~~

~~(i) The name of the individual who performed the periodic spot-check and the signature of the authorized medical physicist who reviewed the record of the spot-check.~~

~~(8) A licensee shall retain a copy of the procedures required by subsection (2) of this section until the licensee no longer possesses the gamma stereotactic radiosurgery unit.~~

~~Section 58. Additional Technical Requirements for Mobile Remote Afterloader Units. (1) A licensee providing mobile remote afterloader service shall:~~

~~(a) Check survey instruments before medical use at each address of use or on each day of use, whichever is more frequent; and~~

~~(b) Account for all sources before departure from a client's address of use.~~

~~(2) In addition to the periodic spot-checks required by Section 56 of this administrative regulation a licensee authorized to use mobile afterloaders for medical use shall perform checks on each remote afterloader unit before use at each address of use. At a minimum, checks shall be made to verify the operation of:~~

~~(a) Electrical interlocks on treatment area access points;~~

~~(b) Source exposure indicator lights on the remote afterloader unit, on the control console, and in the facility;~~

~~(c) Viewing and intercom systems;~~

~~(d) Applicators, source transfer tubes, and transfer tube-applicator interfaces;~~

~~(e) Radiation monitors used to indicate room exposures;~~

~~(f) Source positioning (accuracy); and~~

~~(g) Radiation monitors used to indicate whether the source has returned to a safe shielded position.~~

~~(3) In addition to the requirements for checks in subsection (2) of this section, a licensee shall ensure overall proper operation of the remote afterloader unit by conducting a simulated cycle of treatment before use at each address of use.~~

~~(4) If the results of the checks required in subsection (2) of this section indicate the malfunction of any system, a licensee shall lock the control console in the off position and shall not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.~~

~~(5) A licensee shall retain a record of each check for mobile remote afterloader units for three (3) years. The record shall include:~~

~~(a) The date of the check;~~

~~(b) The manufacturer's name, model number, and serial number of the remote afterloader unit;~~

~~(c) Notations accounting for all sources before the licensee departs from a facility;~~

~~(d) Notations indicating the operability of each entrance door electrical interlock, radiation monitors, source exposure indicator lights, viewing and intercom system, applicators, source transfer tubes, and transfer tube applicator interfaces, and source positioning accuracy; and~~

~~(e) The signature of the individual who performed the check.~~

~~Section 59. Radiation Surveys. (1) In addition to the survey requirement in 902 KAR 100:019, Section 12, a person licensed under this administrative regulation shall conduct surveys to ensure that the maximum radiation levels and average radiation levels from the surface of the main source safe with the source in the shielded position do not exceed the levels stated in the Sealed Source and Device Registry.~~

~~(2) The licensee shall conduct the survey required by subsection (1) of this section at installation of a new source and following repairs to the source shielding, the source driving unit, or other electronic or mechanical component that could expose the source, reduce the shielding around the source, or compromise the radiation safety of the unit or the source.~~

~~(3) A licensee shall maintain a record of radiation surveys of treatment units for the duration of use of the unit. The record shall include:~~

~~(a) The date of the measurements;~~

~~(b) The manufacturer's name, model number and serial number of the treatment unit, source, and instrument used to measure radiation levels;~~

~~(c) Each dose rate measured around the source while the unit is in the off position and the average of all measurements; and~~

~~(d) The signature of the individual who performed the test.~~

~~Section 60. Five (5) year Inspection for Teletherapy and Gamma Stereotactic Radiosurgery Units. (1) A licensee shall have each teletherapy unit and gamma stereotactic radiosurgery unit fully inspected and serviced during source replacement or at intervals not to exceed five (5) years, whichever comes first, to assure proper functioning of the source exposure mechanism.~~

~~(2) This inspection and servicing may only be performed by persons specifically licensed to do so by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state.~~

~~(3) A licensee shall maintain a record of the five (5) year inspections for teletherapy and gamma stereotactic radiosurgery units for the duration of use of the unit. The record shall contain:~~

~~(a) The inspector's radioactive materials license number;~~

~~(b) The date of inspection;~~

~~(c) The manufacturer's name and model number and serial~~

~~number of both the treatment unit and source;~~

~~(d) A list of components inspected and serviced, and the type of service; and~~

~~(e) The signature of the inspector.~~

~~Section 61. Therapy-related Computer Systems. The licensee shall perform acceptance testing on the treatment planning system of therapy-related computer systems in accordance with published protocols accepted by nationally recognized bodies. At a minimum, the acceptance testing shall include, as applicable, verification of:~~

~~(1) The source-specific input parameters required by the dose calculation algorithm;~~

~~(2) The accuracy of dose, dwell time, and treatment time calculations at representative points;~~

~~(3) The accuracy of isodose plots and graphic displays;~~

~~(4) The accuracy of the software used to determine sealed source positions from radiographic images; and~~

~~(5) The accuracy of electronic transfer of the treatment delivery parameters to the treatment delivery unit from the treatment planning system.~~

~~Section 62. Other Medical Uses of Radioactive Material or Radiation from Radioactive Material. A licensee may use radioactive material or a radiation source approved for medical use which is not specifically addressed in Sections 30, 31, 33, 37, 45, and 46 of this administrative regulation if:~~

~~(1) The applicant or licensee has submitted the information required by Section 4(2) through (4) of this administrative regulation; and~~

~~(2) The applicant or licensee has received written approval from the cabinet in a license or license amendment and uses the material in accordance with the administrative regulations and specific conditions the cabinet considers necessary for the medical use of the material.~~

~~Section 63. Recentness of Training. The training and experience specified in Sections 64 through 77 of this administrative regulation shall have been obtained within the seven (7) years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.~~

~~Section 64. Training for Radiation Safety Officer. Except as provided in Section 67 of this administrative regulation, the licensee shall require an individual fulfilling the responsibilities of the radiation safety officer as provided in 902 KAR 100:072, Section 10 to be an individual who:~~

~~(1)(a) Is certified by a specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state and who meets the requirements in subsections (2) and (3) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:~~

~~1.a. Hold a bachelor's or graduate degree from an accredited college or university in physical science or engineering or biological science with a minimum of twenty (20) college credits in physical science;~~

~~b. Have five (5) or more years of professional experience in health physics (graduate training may be substituted for no more than two (2) years of the required experience) including at least three (3) years in applied health physics; and~~

~~c. Pass an examination administered by diplomats of the specialty board, which evaluates knowledge and competence in radiation physics and instrumentation, radiation protection, mathematics pertaining to the use and measurements of radioactivity, radiation biology, and radiation dosimetry; or~~

~~2.a. Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;~~

~~b. Have two (2) years of full-time practical training, two (2) years of supervised experience, or two (2) years of a combination of full-time practical training and supervised experience in medical physics:~~

~~(i) Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state; or~~

~~(ii) In clinical nuclear medicine facilities providing diagnostic or therapeutic services under the direction of physicians who meet the requirements for authorized users in 902 KAR 100:072, Sections 67, 69, or 70 of this administrative regulation; and~~

~~c. Pass an examination, administered by diplomats of the specialty board, that assesses knowledge and competence in clinical diagnostic radiological or nuclear medicine physics and in radiation safety;~~

~~(b) Has completed a structured educational program consisting of both:~~

~~1. 200 hours of classroom and laboratory training in the following areas:~~

~~a. Radiation physics and instrumentation;~~

~~b. Radiation protection;~~

~~c. Mathematics pertaining to the use and measurement of radioactivity;~~

~~d. Radiation biology; and~~

~~e. Radiation dosimetry; and~~

~~2. One (1) year of full-time radiation safety experience under the supervision of the individual identified as the radiation safety officer on a cabinet, U.S. Nuclear Regulatory Commission, or agreement state license or permit issued by a Commission master material licensee that authorizes similar type of use of radioactive material involving the following:~~

~~a. Shipping, receiving, and performing related radiation surveys;~~

~~b. Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and instruments used to measure radionuclides;~~

~~c. Securing and controlling radioactive material;~~

~~d. Using administrative controls to avoid mistakes in the administration of radioactive material;~~

~~e. Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures;~~

~~f. Using emergency procedures to control radioactive material; and~~

~~g. Disposing of radioactive material; or~~

~~(c)1. Is a medical physicist who has been certified by a specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state pursuant to 902 KAR 100:072, Section 65(1), and has experience in radiation safety for similar types of use of radioactive material for which the licensee is seeking the approval of the individual as radiation safety officer, and who meets the requirements in subsections (2) and (3) of this section; or~~

~~2. Is an authorized user, authorized medical physicist, or authorized nuclear pharmacist identified on the licensee's license and has experience with the radiation safety aspects of similar types of use of radioactive material for which the individual has radiation safety officer responsibilities;~~

~~(2) Has obtained written attestation, signed by a preceptor radiation safety officer, that the individual has satisfactorily completed the requirements of this section, and has achieved a level of radiation safety knowledge sufficient to function independently as a radiation safety officer for a medical use licensee; and~~

~~(3) Has training in the radiation safety, regulatory issues, and emergency procedures for the types of use for which a licensee seeks approval. This training requirement may be satisfied by completing training that is supervised by a radiation safety officer, authorized medical physicist, authorized nuclear pharmacist, or authorized user, as appropriate, who is authorized for the type of use for which the licensee is seeking approval.~~

~~Section 65. Training for an Authorized Medical Physicist. Except as provided in Section 67 of this administrative regulation the licensee shall require the authorized medical physicist to be an individual who:~~

~~(1)(a) Is certified by a specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear~~

~~Regulatory Commission, or an agreement state and who meets the requirements in paragraph (b)2. of this subsection and subsection (2) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:~~

~~1. Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;~~

~~2. Have two (2) years of full-time practical training, two (2) years of supervised experience, or two (2) years of a combination of full-time practical training and supervised experience in medical physics:~~

~~a. Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state; or~~

~~b. In clinical radiation facilities providing high-energy, external beam therapy (photons and electrons with energies greater than or equal to one (1) million electron volts) and brachytherapy services under the direction of physicians who meet the requirements in Section 67, 74, or 77 of this administrative regulation; and~~

~~3. Pass an examination, administered by diplomats of the specialty board, that assesses knowledge and competence in clinical radiation therapy, radiation safety, calibration, quality assurance, and treatment planning for external beam therapy, brachytherapy, and stereotactic radiosurgery; or~~

~~(b) Holds a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university; and has completed one (1) year of full-time training in medical physics and an additional year of full-time work experience under the supervision of an individual who meets the requirements for an authorized medical physicist for the type of use for which the individual is seeking authorization. This training and work experience shall be conducted in clinical radiation facilities that provides high-energy, external beam therapy (photons and electrons with energies greater than or equal to one (1) million electron volts) and brachytherapy services and shall include:~~

~~1. Performing sealed source leak test and inventories;~~

~~2. Performing decay corrections;~~

~~3. Performing full calibration and periodic spot checks of external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and~~

~~4. Conducting radiation surveys around external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and~~

~~(2) Has obtained written attestation that the individual has satisfactorily completed the requirements of this section, and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written attestation shall be signed by a preceptor authorized medical physicist who meets the requirements in Sections 65 or 67 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status; and~~

~~(3) Has training for the type of use for which authorization is sought that includes hands-on device operation, safety operations, clinical use, and the operation of a treatment planning system. This training requirement shall be satisfied by satisfactorily completing either a training program provided by the vendor or by training supervised by an authorized medical physicist authorized for the type of use for which the individual is seeking authorization.~~

~~Section 66. Training for an Authorized Nuclear Pharmacist. Except as provided in Section 67 of this administrative regulation the licensee shall require the authorized nuclear pharmacist to be a pharmacist who:~~

~~(1) Is certified by a specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state and who meets the requirements in subsection (2)(b) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:~~

~~(a) Have graduated from a pharmacy program accredited by the American Council on Pharmaceutical Education (ACPE) or have passed the Foreign Pharmacy Graduate Examination Committee (FPGEC) examination;~~

~~(b) Hold a current, active license to practice pharmacy;~~

~~(c) Provide evidence of having acquired at least 4,000 hours of training and experience in nuclear pharmacy practice. Academic training may be substituted for no more than 2,000 hours of the required training and experience; and~~

~~(d) Pass an examination in nuclear pharmacy administered by diplomats of the specialty board, that assesses knowledge and competency in procurement, compounding, quality assurance, dispensing, distribution, health and safety, radiation safety, provision of information and consultation, monitoring patient outcomes, research and development; or~~

~~(2)(a) Has completed 700 hours in a structured educational program consisting of both:~~

~~1. 200 hours of classroom and laboratory training in the following areas:~~

~~a. Radiation physics and instrumentation;~~

~~b. Radiation protection;~~

~~c. Mathematics pertaining to the use and measurement of radioactivity;~~

~~d. Chemistry of radioactive material for medical use; and~~

~~e. Radiation biology; and~~

~~2. Supervised practical experience in a nuclear pharmacy involving:~~

~~a. Shipping, receiving, and performing related radiation surveys;~~

~~b. Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;~~

~~c. Calculating, assaying, and safely preparing dosages for patients or human research subjects;~~

~~d. Using administrative controls to avoid medical events in the administration of radioactive material; and~~

~~e. Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures; and~~

~~(b) Has obtained written attestation, signed by a preceptor authorized nuclear pharmacist, that the individual has satisfactorily completed the requirements in subsections (1)(a), (1)(b) and (1)(c) or (2)(a) of this section and has achieved a level of competency sufficient to function independently as an authorized nuclear pharmacist.~~

~~Section 67. Training for Experienced Radiation Safety Officer, Teletherapy or Medical Physicist, Authorized Medical Physicist, Authorized User, Nuclear Pharmacist and Authorized Nuclear Pharmacist. (1)(a) An individual identified as a radiation safety officer, a teletherapy or medical physicist, or a nuclear pharmacist on a cabinet, U.S. Nuclear Regulatory Commission, or agreement state license or a permit issued by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state broad scope licensee or master material license permit or by a master material license permittee of broad scope before October 24, 2005 shall not be required to comply with the training requirements of Section 64, 65, or 66, of this administrative regulation respectively:~~

~~(b) An individual identified as a radiation safety officer, an authorized medical physicist, or an authorized nuclear pharmacist on a cabinet, U.S. Nuclear Regulatory Commission, or agreement state license or a permit issued by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state broad scope licensee or master material license permit or master material licensee permittee of broad scope between October 24, 2002 and April 29, 2005 is not required to comply with the training requirements of Section 64, 65, or 66 of this administration regulation respectively.~~

~~(2)(a) Physicians, dentists, or podiatrists identified as authorized users for the medical use of radioactive material on a license issued by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state, a permit issued by a~~

~~Commission master material licensee, a permit issued by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state broad scope licensee, or a permit issued by a Commission master material license broad scope permittee before October 24, 2002 who perform only those medical uses for which they were authorized on that date shall not be required to comply with the training requirements of 902 KAR 100:072, Sections 68 through 77.~~

~~(b) Physicians, dentists, or podiatrists identified as authorized users for the medical use of radioactive material on a license issued by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state, a permit issued by a Commission master material licensee, a permit issued by the cabinet, U.S. Nuclear Regulatory Commission or an agreement state broad scope licensee or a permit issued by a Commission master material license broad scope permittee who performs only those medical uses for which they were authorized between October 24, 2002 and April 29, 2005 shall not be required to comply with the training requirements of Sections 68 through 77 of this administrative regulation.~~

~~Section 68. Training for Uptake, Dilution, and Excretion Studies. Except as provided in Section 67 of this administrative regulation the licensee shall require an authorized user of unsealed radioactive material for the uses authorized pursuant to Section 30 of this administrative regulation to be a physician who:~~

~~(1) Is certified by a medical specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission or an agreement state and who meets the requirements in subsection (3)(b) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:~~

~~(a) Complete sixty (60) hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies as described in subsection (3)(a)1 through 3(a)2 of this section; and~~

~~(b) Pass an examination, administered by diplomats of the specialty board, that assesses knowledge and competence in radiation safety, radionuclide handling, and quality control;~~

~~(2) Is an authorized user under Section 69 or 70 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements; or~~

~~(3)(a) Has completed sixty (60) hours of training and experience, including a minimum of eight (8) hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies. The training and experience shall include:~~

~~1. Classroom and laboratory training, in the following areas;~~

~~a. Radiation physics and instrumentation;~~

~~b. Radiation protection;~~

~~c. Mathematics pertaining to the use and measurement of radioactivity;~~

~~d. Chemistry of radioactive material for medical use; and~~

~~e. Radiation biology; and~~

~~2. Work experience, under the supervision of an authorized user who meets the requirements in Section 67, 68, 69, or 70, of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements, involving:~~

~~a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;~~

~~b. Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;~~

~~c. Calculating, measuring, and safely preparing patient or human research subject dosages;~~

~~d. Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;~~

~~e. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and~~

~~f. Administering dosages of radioactive drugs to patients or human research subjects; and~~

~~(b) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in Section 67, 68, 69, or 70 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements, that the individual has satisfactorily completed the requirements in subsection (1)(a) or (3)(a) of this section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized pursuant to Section 30 of this administrative regulation.~~

~~Section 69. Training for Imaging and Localization Studies. Except as provided in Section 67 of this administrative regulation the licensee shall require an authorized user of unsealed radioactive material for the uses authorized pursuant to Section 31 of this administrative regulation to be a physician who:~~

~~(1) Is certified by a medical specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state and who meets the requirements in subsection (3)(b) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:~~

~~(a) Complete 700 hours of training and experience in basis radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for imaging and localization studies that includes the topics listed in subsection (3)(a)1 through (3)(a)2 of this section; and~~

~~(b) Pass an examination, administered by diplomats of the specialty board, which assesses knowledge and competence in radiation safety, radionuclide handling, and quality control;~~

~~(2) Is an authorized user pursuant to Section 70 of this administrative regulation and meets the requirements in subsection (3)(a)2.g of this section, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements; or~~

~~(3)(a) Has completed 700 hours of training and experience, including a minimum of eighty (80) hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for imaging and localization studies. The training and experience shall include, at a minimum:~~

~~1. Classroom and laboratory training in the following areas:~~

~~a. Radiation physics and instrumentation;~~

~~b. Radiation protection;~~

~~c. Mathematics pertaining to the use and measurement of radioactivity;~~

~~d. Chemistry of radioactive material for medical use; and~~

~~e. Radiation biology; and~~

~~2. Work experience, under the supervision of an authorized user, who meets the requirements in Section 67, 69 or 70 and Section 69(3)(a)2.g of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements, involving:~~

~~a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;~~

~~b. Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;~~

~~c. Calculating, measuring, and safely preparing patient or human research subject dosages;~~

~~d. Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;~~

~~e. Using procedures to safely contain spilled radioactive material and using proper decontamination procedures;~~

~~f. Administering dosages of radioactive drugs to patients or human research subjects; and~~

~~g. Eluting generator systems appropriate for preparation of radioactive drugs for imaging and localization studies, measuring and testing the eluate for radionuclidic purity, and processing the eluate with reagent kits to prepare labeled radioactive drugs; and~~

~~(b) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in Sections 67, 69, or 70 and Section 69(3)(a)2.g of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements, that the individual has satisfactorily completed~~

~~the requirements in subsection (1)(a) or (3)(a) of this section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized pursuant to Sections 30 and 31 of this administrative regulation.~~

~~Section 70. Training for Use of Unsealed Radioactive Material for Which a Written Directive Is Required. Except as provided in Section 67 of this administrative regulation the licensee shall require an authorized user of unsealed radioactive material for the uses authorized pursuant to Section 33 of this administrative regulation to be a physician who:~~

~~(1) Is certified by a medical specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission or an agreement state, and who meets the requirements in subsection (2)(a)2.f and (b) of this section. To be recognized, a specialty board shall require all candidates for certification to:~~

~~(a) Successfully complete residency training in a radiation therapy or nuclear medicine training program or a program in a related medical specialty. These residency training programs shall include 700 hours of training and experience as described in subsection (2)(a)1 through 2.e of this section. Eligible training programs shall be approved by:~~

~~1. Residency Review Committee of the Accreditation Council for Graduate Medical Education;~~

~~2. Royal College of Physicians and Surgeons of Canada; or~~

~~3. Committee on Post-Graduate Training of the American Osteopathic Association; and~~

~~(b) Pass an examination, administered by the diplomats of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, quality assurance, and clinical use of unsealed radioactive material for which a written directive is required; or~~

~~(2)(a) Has completed 700 hours of training and experience, including a minimum of 200 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material requiring a written directive. The training and experience shall include:~~

~~1. Classroom and laboratory training in the following areas:~~

~~a. Radiation physics and instrumentation;~~

~~b. Radiation protection;~~

~~c. Mathematics pertaining to the use and measurement of radioactivity;~~

~~d. Chemistry of radioactive material for medical use; and~~

~~e. Radiation biology; and~~

~~2. Work experience, under the supervision of an authorized user who meets the requirements in this section, or Section 67 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements. A supervising authorized user, who meets the requirements in this subsection, shall have experience in administering dosages in the same dosage category or categories (clause f. of this subparagraph) of this administrative regulation as the individual requesting authorized user status. The work experience shall involve:~~

~~a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;~~

~~b. Performing quality control procedures on instruments used to determine the activity of dosages, and performing checks for proper operation of survey meters;~~

~~c. Calculating, measuring, and safely preparing patient or human research subject dosages;~~

~~d. Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;~~

~~e. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures;~~

~~f. Administering dosages of radioactive drugs to patients or human research subjects involving a minimum of three (3) cases in each of the following categories for which the individual is requesting authorized user status:~~

~~(i) Oral administration of less than or equal to 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131, for which a written directive is required;~~

~~(ii) Oral administration of greater than 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131;~~

~~(iii) Parenteral administration of any beta emitter or a photon-emitting radionuclide with a photon energy less than 150 keV, for which a written directive is required; or~~

~~(iv) Parenteral administration of any other radionuclide, for which a written directive is required; and~~

~~(b) Has obtained written attestation that the individual has satisfactorily completed the requirements in subsection (1)(a) and (2)(a)2.f or (2)(a) of this section, and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized pursuant to Section 33 of this administrative regulation. The written attestation shall be signed by a preceptor authorized user who meets the requirements of this section, and section 67 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements. The preceptor authorized user, who meets the requirements in subsection (2) of this section, shall have experience in administering dosages in the same dosage category or categories (Section 70(2)(a)2.f) of this administrative regulation as the individual requesting authorized user status.~~

~~Section 71. Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 Gigabecquerels (33 millicuries). Except as provided in Section 67 of this administrative regulation, the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 Gigabecquerels (33 millicuries), to be a physician who:~~

~~(1) Is certified by a medical specialty board whose certification process includes all of the requirements in subsection (3)(a) and (b) of this section and whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state and who meets the requirements in subsection (3)(c) of this section;~~

~~(2) Is an authorized user pursuant to Section 70 of this administrative regulation for uses listed in Section 70(2)(a)2.f.(i) or (ii), or Section 72 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements; or~~

~~(3)(a) Has successfully completed eighty (80) hours of classroom and laboratory training, applicable to the medical use of sodium iodide I–131 for procedures requiring a written directive. The training shall include:~~

~~1. Radiation physics and instrumentation;~~

~~2. Radiation protection;~~

~~3. Mathematics pertaining to the use and measurement of radioactivity;~~

~~4. Chemistry of radioactive material for medical use; and~~

~~5. Radiation biology; and~~

~~(b) Has work experience, under the supervision of an authorized user who meets the requirements in Section 67, 70, 71,, or 72 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements. A supervising authorized user who meets the requirements in Section 70 (2)(a) of this administrative regulation shall have experience in administering dosages as specified in Section 70(2)(a)2.f.(i) or (ii) of this administrative regulation. The work experience shall involve:~~

~~1. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;~~

~~2. Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation for survey meters;~~

~~3. Calculating, measuring, and safely preparing patient or human research subject dosages;~~

~~4. Using administrative controls to prevent a medical event involving the use of radioactive material;~~

~~5. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and~~

~~6. Administering dosages to patients or human research~~

~~subjects, that includes at least three (3) cases involving the oral administration of less than or equal to 1.22~~

~~Gigabecquerels (33 millicuries) of sodium iodide I-131; and~~

~~(c) Has obtained written attestation that the individual has satisfactorily completed the requirements in subsection (3)(a) and (b) of this section and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized pursuant to Section 33 of this administrative regulation. The written attestation shall be signed by a preceptor authorized user who meets the requirements in Section 67, 70, 71, or 72 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements. A preceptor authorized user, who meets the requirement in Section 70(2) of this administrative regulation shall also have experience in administering dosages as specified in Section 70(2)(a)2.f.(i) or (ii) of this administrative regulation.~~

~~Section 72. Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 Gigabecquerels (33 millicuries). Except as provided in Section 67 of this administrative regulation the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 Gigabecquerels (33 millicuries), to be a physician who:~~

~~(1) Is certified by a medical specialty board whose certification process includes all of the requirements in subsection (3)(a) and (b) of this section, and whose certification has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state and who meets the requirements in subsection of (3)(c) of this section; or~~

~~(2) Is an authorized user pursuant to Section 70 of this administrative regulation for uses listed in Section 70(2)(a)2.f.(ii) of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements; or~~

~~(3)(a) Has successfully completed eighty (80) hours of classroom and laboratory training, applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training shall include:~~

~~1. Radiation physics and instrumentation;~~

~~2. Radiation protection; and~~

~~3. Mathematics pertaining to the use and measurement of radioactivity;~~

~~4. Chemistry of radioactive material for medical use; and~~

~~5. Radiation biology;~~

~~(b) Has work experience, under the supervision of an authorized user who meets the requirements in Section 67, 70, or 72 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements. A supervising authorized user, who meets the requirements in Section 70(2) of this administrative regulation, shall also have experience in administering dosages as specified in Section 70(2)(a)2.f.(ii) of this administrative regulation. The work experience shall involve:~~

~~1. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;~~

~~2. Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation for survey meters;~~

~~3. Calculating, measuring, and safely preparing patient or human research subject dosages;~~

~~4. Using administrative controls to prevent a medical event involving the use of radioactive material;~~

~~5. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and~~

~~6. Administering dosages to patients or human research subjects, that includes at least three (3) cases involving the oral administration of greater than 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131; and~~

~~(c) Has obtained written attestation that the individual has satisfactorily completed the requirements in subsection (3)(a) and (b) of this section and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized pursuant to Section 33 of this administrative regulation. The written attestation shall be signed by a preceptor authorized user who meets the requirements in Section 67, 70 or 72 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements. A preceptor authorized user, who meets the requirements in Section 70(2) of this administrative regulation, shall have experience in administering dosages as specified in Section 70(2)(a)2.f.(ii).~~

~~Section 73. Training for the Parenteral Administration of Unsealed Radioactive Material Requiring a Written Directive. Except as provided in Section 67 of this administrative regulation, the licensee shall require an authorized user for the parenteral administration requiring a written directive, to be a physician who:~~

~~(1) Is an authorized user pursuant to Section 70 for uses listed in Section 70(2)(a)2.f.(iii) or Section 70(2)(a)2.f.(iv) of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements; or~~

~~(2)(a)1. Is an authorized user pursuant to Sections 74 or 77 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state and who meets the requirements in paragraph (b) of this subsection; or~~

~~2. Is certified by a medical specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state pursuant to Sections 74 or 77 of this administrative regulation; and who meets the requirements in paragraph (b) of this subsection; and~~

~~(b)1. Has successfully completed eighty (80) hours of classroom and laboratory training, applicable to parenteral administrations, for which a written directive is required, of a beta emitter or a photon-emitting radionuclide with a photon energy less than 150 keV, or parenteral administration of other radionuclides for which a written directive is required. The training shall include:~~

~~a. Radiation physics and instrumentation;~~

~~b. Radiation protection;~~

~~c. Mathematics pertaining to the use and measurement of radioactivity;~~

~~d. Chemistry of radioactive material for medical use; and~~

~~e. Radiation biology;~~

~~2. Has work experience, under the supervision of an authorized user who meets the requirements in Sections 67, 70, or 73 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements, in the parenteral administration, for which a written directive is required, of a beta emitter, or a photon-emitting radionuclide with a photon energy less than 150 keV, or parenteral administration of other radionuclides for which a written directive is required. A supervising authorized user who meets the requirements in Section 70 of this administrative regulation shall have experience in administering dosages as specified in Section 70(2)(a)2.f.(iii) or (iv) of this administrative regulation or both. The work experience shall involve:~~

~~a. Ordering, receiving, and unpacking radioactive materials safely, and performing the related radiation surveys;~~

~~b. Performing quality control procedures on instruments used to determine the activity of dosages, and performing checks for proper operation of survey meters;~~

~~c. Calculating, measuring, and safely preparing patient or human research subjects dosages;~~

~~d. Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;~~

~~e. Using procedures to contain spilled radioactive material safely, and using proper decontamination procedures; and~~

~~f. Administering dosages to patients or human research subjects, that include at least three (3) cases involving the parenteral administration, for which a written directive is required, of a beta emitter, or photon-emitting radionuclide with a photon energy less than 150 keV, or a minimum of three (3) cases involving the parenteral administration of other radionuclides, for which a written directive is required, or both; and~~

~~3. Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraph (a)1. or 2. of this subsection, and has achieved a level of competency sufficient to function independently as an authorized user for the~~

~~parenteral administration of unsealed radioactive material requiring a written directive. The written attestation shall be signed by a preceptor authorized user who meets the requirements in Sections 67, 70, or 73 of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements. A preceptor authorized user, who meets the requirements in Section 70 of this administrative regulation, shall have experience in administering dosages as specified in Section 70(2)(a)2.f.(iii) or (iv) of this administrative regulation or both.~~

~~Section 74. Training for Use of Manual Brachytherapy Sources. Except as provided in Section 67 of this administrative regulation, the licensee shall require an authorized user of a manual brachytherapy source for the uses authorized pursuant to Section 37 of this administrative regulation to be a physician who:~~

~~(1) Is certified by a medical specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state and who meets the requirements in (2)(c) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:~~

~~(a) Successfully complete a minimum or three (3) years of residency training in a radiation oncology program approved by the:~~

~~1. Residency Review Committee of the Accreditation Council for Graduate Medical Education; or~~

~~2. Royal College of Physicians and Surgeons of Canada; or~~

~~3. Committee on Post-Graduate Training of the American Osteopathic Association; and~~

~~(b) Pass an examination, administered by diplomats of the specialty board, that tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of manual brachytherapy; or~~

~~(2)(a) Has completed a structured educational program in basic radionuclide handling techniques applicable to the use of manual brachytherapy sources that includes:~~

~~1. 200 hours of classroom and laboratory training in the following areas:~~

~~a. Radiation physics and instrumentation;~~

~~b. Radiation protection;~~

~~c. Mathematics pertaining to the use and measurement of radioactivity; and~~

~~d. Radiation biology; and~~

~~2. 500 hours of work experience, under the supervision of an authorized user who meets the requirements in this section, or Section 67 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements at a medical institution, involving:~~

~~a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;~~

~~b. Checking survey meters for proper operation;~~

~~c. Preparing, implanting, and removing brachytherapy sources;~~

~~d. Maintaining running inventories of material on hand;~~

~~e. Using administrative controls to prevent a medical event involving the use of radioactive material;~~

~~f. Using emergency procedures to control radioactive material; and~~

~~(b) Has completed three (3) years of supervised clinical experience in radiation oncology, under an authorized user who meets the requirements in this section, or Section 67 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by subsection (2)(a)2. of this section; and~~

~~(c) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in this section, or Section 67 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements, that the individual has satisfactorily completed the requirements in subsection (1)(a) or (2)(a) and (b) of this section and has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy sources for the medical uses authorized pursuant to Section 37 of this administrative regulation.~~

~~Section 75. Training for Ophthalmic Use of Strontium-90. Except as provided in Section 67 of this administrative regulation the licensee shall require the authorized user of strontium-90 for ophthalmic radiotherapy to be a physician who:~~

~~(1) Is an authorized user pursuant to Section 74 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements; or~~

~~(2)(a) Has completed twenty-four (24) hours of classroom and laboratory training applicable to the medical use of strontium-90 for ophthalmic radiotherapy. The training shall include:~~

~~1. Radiation physics and instrumentation;~~

~~2. Radiation protection;~~

~~3. Mathematics pertaining to the use and measurement of radioactivity; and~~

~~4. Radiation biology; and~~

~~(b) Supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution, clinic, or private practice that includes the use of strontium-90 for the ophthalmic treatment of five (5) individuals. This supervised clinical training shall involve:~~

~~1. Examination of each individual to be treated;~~

~~2. Calculation of the dose to be administered;~~

~~3. Administration of the dose; and~~

~~4. Follow up and review of each individual's case history; and~~

~~(c) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in Sections 67, 74, or 75 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements, that the individual has satisfactorily completed the requirements in subsection (2) of this section and has achieved a level of competency sufficient to function independently as an authorized user of strontium-90 for ophthalmic use.~~

~~Section 76. Training for use of sealed sources for diagnosis. Except as provided in Section 67 of this administrative regulation, the licensee shall require the authorized user of a diagnostic sealed source for use in a device authorized pursuant to Section 45 of this administrative regulation to be a physician, dentist, or podiatrist who:~~

~~(1)(a) Is certified by a specialty board whose certification process includes all of the requirements in paragraph (b) of this subsection and subsection (2) of this section and whose certification has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state; or~~

~~(b) Has completed eight (8) hours of classroom and laboratory training in basic radionuclide handling techniques specifically applicable to the use of the device. The training shall include:~~

~~1. Radiation physics and instrumentation;~~

~~2. Radiation protection;~~

~~3. Mathematics pertaining to the use and measurement of radioactivity; and~~

~~4. Radiation biology; and~~

~~(2) Has completed training in the use of the device for the uses requested.~~

~~Section 77. Training for Use of Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units. Except as provided in Section 67 of this administrative regulation, the licensee shall require an authorized user of a sealed source for a use authorized pursuant to Section 46 of this administrative regulation to be a physician who:~~

~~(1) Is certified by a medical specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state and who meets the requirements in (2)(c) and (3) of this section. To have its certification recognized, a specialty board shall require all~~

~~candidates for certification to:~~

~~(a) Successfully complete a minimum of three (3) years of residency training in a radiation therapy program approved by the:~~

~~1. Residency Review Committee of the Accreditation Council for Graduate Medical Education;~~

~~2. Royal College of Physicians and Surgeons of Canada; or~~

~~3. Committee on Post-Graduate Training of the American Osteopathic Association; and~~

~~(b) Pass an examination, administered by diplomats of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of stereotactic radiosurgery, remote afterloaders and external beam therapy; or~~

~~(2)(a) Has completed a structured educational program in basic radionuclide techniques applicable to the use of a sealed source in a therapeutic medical unit that includes:~~

~~1. 200 hours of classroom and laboratory training in the following areas:~~

~~a. Radiation physics and instrumentation;~~

~~b. Radiation protection;~~

~~c. Mathematics pertaining to the use and measurement of radioactivity; and~~

~~d. Radiation biology; and~~

~~2. 500 hours of work experience, under the supervision of an authorized user who meets the requirements in this section, or Section 67 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements at a medical institution, involving:~~

~~a. Reviewing full calibration measurements and periodic spot-checks;~~

~~b. Preparing treatment plans and calculating treatment doses and times;~~

~~c. Using administrative controls to prevent a medical event involving the use of radioactive material;~~

~~d. Implementing emergency procedures to be followed in the event of the abnormal operation of the medical unit or console;~~

~~e. Checking and using survey meters; and~~

~~f. Selecting the proper dose and how it is to be administered; and~~

~~(b) Has completed three (3) years of supervised clinical experience in radiation therapy, under an authorized user who meets the requirements in this section, or Section 67 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by subsection (2)(a)2 of this section; and~~

~~(c) Has obtained written attestation that the individual has satisfactorily completed the requirements in subsection (1)(a) or (2)(a) and (b), and (3) of this section, and has achieved a level of competency sufficient to function independently as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The written attestation shall be signed by a preceptor authorized user who meets the requirements in this section, or Section 67 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements for an authorized user for each type of therapeutic medical unit for which the individual is requesting authorized user status; and~~

~~(3) Has received training in device operation, safety procedures, and clinical use for the type of use for which authorization is sought, This training requirement may be satisfied by satisfactory completion of a training program provided by the vendor for new users or by receiving training supervised by an authorized user or authorized medical physicist, as appropriate, who is authorized for the type of use for which the individual is seeking authorization.~~

~~Section 78. Alternative Training. During a two (2) year period after the effective date of October 24, 2005, alternative training and experience requirements shall be available. Licensees shall have the option of complying with either the training requirements of Section 78 of this administrative regulation or the new requirements in Sections 65 through 77 of this administrative regulation. After October 24, 2007, licensee shall not have the option of using Section 78 of this administrative regulation. Except as provided in Section 67 of this administrative regulation, the licensee shall require for:~~

~~(1) A radiation safety officer, an individual fulfilling the responsibilities of the radiation safety officer as provided in Section 10 of this administrative regulation to be an individual who:~~

~~(a) Is certified by the:~~

~~1. American Board of Health Physics in Comprehensive Health Physics;~~

~~2. American Board of Radiology;~~

~~3. American Board of Nuclear Medicine;~~

~~4. American Board of Science in Nuclear Medicine;~~

~~5. Board of Pharmaceutical Specialties in Nuclear Pharmacy;~~

~~6. American Board of Medical Physics in radiation oncology physics;~~

~~7 Royal College of Physicians and Surgeons of Canada in nuclear medicine;~~

~~8. American Osteopathic Board of Radiology; or~~

~~9. American Osteopathic Board of Nuclear Medicine;~~

~~(b) Has had classroom and laboratory training and experience as follows:~~

~~1. 200 hours of classroom and laboratory training that includes:~~

~~a. Radiation physics and instrumentation;~~

~~b. Radiation protection;~~

~~c. Mathematics pertaining to the use and measurement of radioactivity;~~

~~d. Radiation biology; and~~

~~e. Radiopharmaceutical chemistry; and~~

~~2. One (1) year of full time experience as a radiation safety technologist at a medical institution under the supervision of the individual identified as the radiation safety officer on a cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state license that authorizes the medical use of radioactive material; or~~

~~(c) Is an authorized user identified on the licensee's license.~~

~~(2) Authorized user of a radiopharmaceutical for uptake, dilution, and excretion in Section 30(1) of this administrative regulation to be a physician who:~~

~~(a) Is certified in:~~

~~1. Nuclear medicine by the American Board of Nuclear Medicine;~~

~~2. Diagnostic radiology by the American Board of Radiology;~~

~~3. Diagnostic radiology or radiology by the American Osteopathic Board of Radiology;~~

~~4. Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or~~

~~5. American Osteopathic Board of Nuclear Medicine in nuclear medicine;~~

~~(b) Has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, and supervised clinical experience as follows:~~

~~1. Forty (40) hours of classroom and laboratory training that includes:~~

~~a. Radiation physics and instrumentation;~~

~~b. Radiation protection;~~

~~c. Mathematics pertaining to the use and measurement of radioactivity;~~

~~d. Radiation biology; and~~

~~e. Radiopharmaceutical chemistry; and~~

~~2. Twenty (20) hours of supervised clinical experience under the supervision of an authorized user and that includes:~~

~~a. Examining patients or human research subjects and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;~~

~~b. Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;~~

~~c. Administering dosages to patients or human research~~

~~subjects and using syringe radiation shields;~~

~~d. Collaborating with the authorized user in the interpretation of radioisotope test results; and~~

~~e. Patient or human research subject follow up; or~~

~~(c) Has successfully completed a six (6) month training program in nuclear medicine as part of a training program that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified in paragraph (b) of this section.~~

~~(3) Authorized user for imaging and localization studies using a radiopharmaceutical, generator, or reagent kit in Section 31(1) of this administrative regulation to be a physician who:~~

~~(a) Is certified in:~~

~~1. Nuclear medicine by the American Board of Nuclear Medicine;~~

~~2. Diagnostic radiology by the American Board of Radiology;~~

~~3. Diagnostic radiology or radiology by the American Osteopathic Board of Radiology;~~

~~4. Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or~~

~~5. American Osteopathic Board of Nuclear Medicine in nuclear medicine;~~

~~(b) Has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, generators, and reagent kits, supervised work experience, and supervised clinical experience as follows:~~

~~(c)1. 200 hours of classroom and laboratory training that includes:~~

~~a. Radiation physics and instrumentation;~~

~~b. Radiation protection;~~

~~c. Mathematics pertaining to the use and measurement of radioactivity;~~

~~d. Radiopharmaceutical chemistry; and~~

~~e. Radiation biology;~~

~~2. 500 hours of supervised work experience under the supervision of an authorized user that includes:~~

~~a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;~~

~~b. Calibrating dose calibrators and diagnostic instruments and performing checks for proper operation of survey meters;~~

~~c. Calculating and safely preparing patient or human research subject dosages;~~

~~d. Using administrative controls to prevent the medical event of radioactive material;~~

~~e. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and~~

~~f. Eluting technetium-99m from generator systems, measuring and testing the eluate for molybdenum-99 and alumina contamination, and processing the eluate with reagent kits to prepare technetium-99m labeled radiopharmaceuticals; and~~

~~3. 500 hours of supervised clinical experience under the supervision of an authorized user that includes:~~

~~a. Examining patients or human research subjects and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;~~

~~b. Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;~~

~~c. Administering dosages to patients or human research subjects and using syringe radiation shields;~~

~~d. Collaborating with the authorized user in the interpretation of radioisotope test results; and~~

~~e. Patient or human research subject follow up; or~~

~~(c) Has successfully completed a six (6) month training program in nuclear medicine that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified in paragraph (b) of this section.~~

~~(4) The authorized user of radiopharmaceuticals for therapeutic use in Section 33 of this administrative regulation to be a physician who:~~

~~(a) Is certified by:~~

~~1. The American Board of Nuclear Medicine;~~

~~2. The American Board of Radiology in radiology, therapeutic radiology, or radiation oncology;~~

~~3. The Royal College of Physicians and Surgeons of Canada in nuclear medicine; or~~

~~4. The American Osteopathic Board of Radiology after 1984; or~~

~~(b) Has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of therapeutic radiopharmaceuticals, and supervised clinical experience as follows:~~

~~1. Eighty (80) hours of classroom and laboratory training that includes:~~

~~a. Radiation physics and instrumentation;~~

~~b. Radiation protection;~~

~~c. Mathematics pertaining to the use and measurement of radioactivity; and~~

~~d. Radiation biology; and~~

~~2. Supervised clinical experience under the supervision of an authorized user at a medical institution that includes:~~

~~a. Use of iodine-131 for diagnosis of thyroid function and the treatment of hyperthyroidism or cardiac dysfunction in ten (10) individuals; and~~

~~b. Use of iodine-131 for treatment of thyroid carcinoma in three (3) individuals.~~

~~(5) The authorized user of only iodine-131 for the treatment of hyperthyroidism to be a physician with special experience in thyroid disease who has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of iodine-131 for treating hyperthyroidism, and supervised clinical experience as follows:~~

~~(a) Eighty (80) hours of classroom and laboratory training that includes:~~

~~1. Radiation physics and instrumentation;~~

~~2. Radiation protection;~~

~~3. Mathematics pertaining to the use and measurement of radioactivity; and~~

~~4. Radiation biology; and~~

~~(b) Supervised clinical experience under the supervision of an authorized user that includes the use of iodine-131 for diagnosis of thyroid function, and the treatment of hyperthyroidism in ten (10) individuals.~~

~~(6) The authorized user of only iodine-131 for the treatment of thyroid carcinoma to be a physician with special experience in thyroid disease who has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of iodine-131 for treating thyroid carcinoma, and supervised clinical experience as follows:~~

~~(a) Eighty (80) hours of classroom and laboratory training that includes:~~

~~1. Radiation physics and instrumentation;~~

~~2. Radiation protection;~~

~~3. Mathematics pertaining to the use and measurement of radioactivity; and~~

~~4. Radiation biology; and~~

~~(b) Supervised clinical experience under the supervision of an authorized user that includes the use of iodine-131 for the treatment of thyroid carcinoma in three (3) individuals.~~

~~(7) The authorized user of a brachytherapy source in Section 36 of this administrative regulation for therapy to be a physician who:~~

~~(a) Is certified in:~~

~~1. Radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;~~

~~2. Radiation oncology by the American Osteopathic Board of Radiology;~~

~~3. Radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or~~

~~4. Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or~~

~~(b) Is in the active practice of therapeutic radiology, has had classroom and laboratory training in radioisotope handling techniques applicable to the therapeutic use of brachytherapy~~

~~sources, supervised work experience, and supervised clinical experience as follows:~~

~~1. 200 hours of classroom and laboratory training that includes:~~

~~a. Radiation physics and instrumentation;~~

~~b. Radiation protection;~~

~~c. Mathematics pertaining to the use and measurement of radioactivity; and~~

~~d. Radiation biology;~~

~~2. 500 hours of supervised work experience under the supervision of an authorized user at a medical institution that includes:~~

~~a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;~~

~~b. Checking survey meters for proper operation;~~

~~c. Preparing, implanting, and removing sealed sources;~~

~~d. Maintaining running inventories of material on hand;~~

~~e. Using administrative controls to prevent a medical event involving radioactive material; and~~

~~f. Using emergency procedures to control radioactive material; and~~

~~3. Three (3) years of supervised clinical experience that includes one (1) year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association, and an additional two (2) years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution that includes:~~

~~a. Examining individuals and reviewing their case histories to determine their suitability for brachytherapy treatment, and any limitations or contraindications;~~

~~b. Selecting the proper brachytherapy sources and dose and method of administration;~~

~~c. Calculating the dose; and~~

~~d. Post-administration follow-up and review of case histories in collaboration with the authorized user.~~

~~(8) The authorized user of only strontium-90 for ophthalmic radiotherapy to be a physician who is in the active practice of therapeutic radiology or ophthalmology, and has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of strontium-90 for ophthalmic radiotherapy, and a period of supervised clinical training in ophthalmic radiotherapy as follows:~~

~~(a) Twenty-four (24) hours of classroom and laboratory training that includes:~~

~~1. Radiation physics and instrumentation;~~

~~2. Radiation protection;~~

~~3. Mathematics pertaining to the use and measurement of radioactivity; and~~

~~4. Radiation biology; and~~

~~(b) Supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution that includes the use of strontium-90 for the ophthalmic treatment of five (5) individuals that includes:~~

~~1. Examination of each individual to be treated;~~

~~2. Calculation of the dose to be administered;~~

~~3. Administration of the dose; and~~

~~4. Follow up and review of each individual's case history.~~

~~(9) The authorized user of a sealed source for diagnosis in a device listed in Section 45 of this administrative regulation to be a physician, dentist, or podiatrist who:~~

~~(a) Is certified in:~~

~~1. Radiology, diagnostic radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;~~

~~2. Nuclear medicine by the American Board of Nuclear Medicine;~~

~~3. Diagnostic radiology or radiology by the American Osteopathic Board of~~

~~Radiology; or~~

~~4. Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or~~

~~(b) Has had eight (8) hours of classroom and laboratory training in basic radioisotope handling techniques specifically applicable to the use of the device that includes:~~

~~1. Radiation physics, mathematics pertaining to the use and measurement of radioactivity, and instrumentation;~~

~~2. Radiation biology;~~

~~3. Radiation protection; and~~

~~4. Training in the use of the device for the uses requested.~~

~~(10) The authorized user of a sealed source for therapeutic medical devices listed in Section 46 of this administrative regulation to be a physician who:~~

~~(a) Is certified in:~~

~~1. Radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;~~

~~2. Radiation oncology by the American Osteopathic Board of Radiology;~~

~~3. Radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology";~~

~~4. Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or~~

~~(b) Is in the active practice of therapeutic radiology, and has had classroom and laboratory training in basic radioisotope techniques applicable to the use of a sealed source in a therapeutic medical device, supervised work experience, and supervised clinical experience as follows:~~

~~1. 200 hours of classroom and laboratory training that includes:~~

~~a. Radiation physics and instrumentation;~~

~~b. Radiation protection;~~

~~c. Mathematics pertaining to the use and measurement of radioactivity; and~~

~~d. Radiation biology;~~

~~2. 500 hours of supervised work experience under the supervision of an authorized user at a medical institution that includes:~~

~~a. Review of the full calibration measurements and periodic spot-checks;~~

~~b. Preparing treatment plans and calculating treatment times;~~

~~c. Using administrative controls to prevent medical events;~~

~~d. Implementing emergency procedures to be followed in the event of the abnormal operation of the medical device or console; and~~

~~e. Checking and using survey meters; and~~

~~3. Three (3) years of supervised clinical experience that includes one (1) year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association and an additional two (2) years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution that includes:~~

~~a. Examining individuals and reviewing their case histories to determine their suitability for teletherapy, remote afterloader, or gamma stereotactic radiosurgery treatment, and any limitations or contraindications;~~

~~b. Selecting the proper dose and how it is to be administered;~~

~~c. Calculating the doses and collaborating with the authorized user in the review of patients' or human research subjects' progress and consideration of the need to modify originally prescribed doses as warranted by patients' or human research subjects' reaction to radiation; and~~

~~d. Postadministration follow up and review of case histories.~~

~~(11) The authorized medical physicist shall be an individual who:~~

~~(a) Is certified by the American Board of Radiology in:~~

~~1. Therapeutic radiological physics;~~

~~2. Roentgen ray and gamma ray physics;~~

~~3. X-ray and radium physics; or~~

~~4. Radiological physics; or~~

~~(b) Is certified by the American Board of Medical Physics in radiation oncology physics; or~~

~~(c) Holds a master's or doctor's degree in physics, biophysics, radiological physics, or health physics, and has completed one (1) year of full time training in therapeutic radiological physics and an additional year of full time work experience under the supervision~~

~~of a medical physicist at a medical institution that includes the tasks listed in Sections 24, 52, 53, 54, 55, 56, 57 and 58 of this administrative regulation as applicable.~~

~~(12) The authorized nuclear pharmacist to be a pharmacist who:~~

~~(a) Has current board certification as a nuclear pharmacist by the Board of Pharmaceutical Specialties; or~~

~~(b)1. Has completed 700 hours in a structured educational program consisting of both:~~

~~a. Didactic training in the following areas:~~

~~(i) Radiation physics and instrumentation;~~

~~(ii) Radiation protection;~~

~~(iii) Mathematics pertaining to the use and measurement of radioactivity;~~

~~(iv) Chemistry of radioactive material for medical use; and~~

~~(v) Radiation biology; and~~

~~b. Supervised experience in a nuclear pharmacy involving the following:~~

~~(i) Shipping, receiving, and performing related radiation surveys;~~

~~(ii) Using and performing checks for proper operation of dose calibrators, survey meters, and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;~~

~~(iii) Calculating, assaying, and safely preparing dosages for patients or human research subjects;~~

~~(iv) Using administrative controls to avoid mistakes in the administration of radioactive material;~~

~~(v) Using procedures to prevent or minimize contamination and using proper decontamination procedures; and~~

~~2. Has obtained written certification, signed by a preceptor authorized nuclear pharmacist, that the above training has been satisfactorily completed and that the individual has achieved a level of competency sufficient to independently operate a nuclear pharmacy.~~

~~(13) An authorized experienced nuclear pharmacist must be a pharmacist who has completed a structured educational program as specified in subsection (12)(b)(1) of this section before December 2, 1994, and who is working in a nuclear pharmacy would qualify as an experienced nuclear pharmacist. An experienced nuclear pharmacist shall not be required to comply with the requirements for a preceptor statement (subsection (12)(b)(2) of this section) and recentness of training (Section 63 of this administrative regulation) to qualify as an authorized nuclear pharmacist.~~

~~Section 79. Food and Drug Administration (FDA), Other Federal and State Requirements. Nothing in this administrative regulation relieves the licensee from complying with applicable FDA, other federal and state requirements governing radioactive drugs or devices.~~]

JEFFREY D. HOWARD, JR., M.D., Commissioner
ADAM MEIER, Secretary

APPROVED BY AGENCY: June 29, 2018

FILED WITH LRC: July 5, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 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 August 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, phone (502) 564-3970, email julied.brooks@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements and provisions for the medical use of byproduct materials, for issuance of licenses authorizing the medical use of byproduct material and for specific licensees to possess, use and transfer radioactive materials for medical use.

(b) The necessity of this administrative regulation: This administrative regulation outlines the specific qualifications and trainings necessary for the use of byproduct materials for medical purposes. Proper licensing and training helps to ensure the safe administration of radioactive materials during medical treatment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.844(1) requires the cabinet to promulgate regulations for the registration and licensing of the possession or use of any source of ionizing or electronic product radiation; as well as the specification of the form of applications for registration and licenses, and the qualifications therefor; and to protect the public from unnecessary radiation exposure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that all individuals using byproduct materials for medical purposes are properly trained and licensed to do so.

(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: All individuals using radioactive materials for medical purposes must be in full compatibility with the Nuclear Regulatory Commission (NRC) regulations for the medical use of byproduct material. This amendment adopts the NRC regulations where applicable.

(b) The necessity of the amendment to this administrative regulation: Because Kentucky is an agreement state with NRC, the state must ensure state regulations are compatible with NRC regulations. This amendment ensures full compatibility with NRC regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment helps to ensure all professionals engaged in the practice of nuclear medicine are properly trained and licensed to the national standard. This in turn protects those receiving radioactive materials as part of medical therapy.

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures all entities licensed for the use of radioactive materials in the healing arts are engaged in the safe usage of radioactive materials in their practice consistent with state and federal regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 205 specific licensees of the cabinet and all future applicants for specific license authorizing the medical use of byproduct material.

(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: Individuals engaged in the practice of nuclear medicine are required to be in full compliance with NRC regulations.

(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 anticipated additional cost for regulated entities as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By adopting 10 C.F.R. Part 35, the state will eliminate any unnecessary training or licensing requirement for regulated entities.

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

(a) Initially: There is no anticipated additional cost to the program to implement this regulation.

(b) On a continuing basis: The program is already operating. There is no cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment does not affect funding.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There are no fees established in this administrative regulation.

(9) TIERING: Is tiering applied? No, tiering is not applied. Regulated entities practicing nuclear medicine are all required to meet the national standards for the discipline.

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? Only the Radiation Health Branch in the Department for Public Health will be impacted by this administrative regulation as it contains reference to the federal regulation. There are no new requirements.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to adopt administrative regulations necessary to protect the health of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the Cabinet. KRS 211.844(1) requires the Cabinet to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and to regulate the handling and disposal of radioactive waste. 10 C.F.R. Part 35, contains these federal requirements that Kentucky must be compatible with.

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 generates no revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation generates no revenue.

(c) How much will it cost to administer this program for the first year? This administrative regulation does not add costs to the agency.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not add costs to the agency.

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. The Atomic Energy Act of 1954 as amended, the Energy Policy Act of 2005 and 10 C.F.R. Part 35.

2. State compliance standards. This regulation adopts the federal standards for the issuance of license for the medical use of byproduct material.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires state regulations to be compatible with the equivalent federal regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no different, stricter, or additional responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 100:100. Licenses for industrial radiography and radiation safety requirements for industrial radiographic operations.

RELATES TO: KRS 211.180(1), 211.842-211.852, 211.990(4), 10 C.F.R. Part 34, 42 U.S.C. 2021[~~, 71, 21 C.F.R. 1020.40~~]

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.844(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes radiation safety requirements for industrial radiographic operations and shall apply to licensees[~~or registrants~~] who use sources of radiation for industrial radiography.

Section 1. Definitions. (1) "Agreement state" means a state that the United States Nuclear Regulatory Commission or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.).

(2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet pursuant to 902 KAR 100:040 and this administrative regulation;

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an Agreement state; or

(c) A general license pursuant to 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement state[~~Specific License and Registration Requirements for Industrial Radiography. (1) An Application for Radioactive Material License, incorporated by reference in 902 KAR 100:040, for a specific license or registration for the use of sources of radiation in industrial radiography shall be approved if the applicant meets the following requirements:~~

~~(a) Except as provided in subsection (3)(k) of this section, the applicant shall satisfy the general requirements specified in 902 KAR 100:040, Section 4, or 100:110 and 100:145, and any specific requirements contained in this administrative regulation.~~

~~(b) The applicant shall submit an adequate program for training a radiographer and a radiographers' assistant that meets the requirements of Section 14 of this administrative regulation.~~

~~1. An applicant shall not describe the initial training and examination program for a radiographer in the subjects outlined in Section 14 of this administrative regulation.~~

~~2. From June 30, 2000, to June 30, 2002, an applicant shall affirm that an individual acting as an industrial radiographer shall be certified in radiation safety by a certifying entity as described in 10 C.F.R. Part 34, Appendix A, before commencing duty as a radiographer. This affirmation shall substitute for a description of the initial training and examination program for a radiographer in the subjects outlined in Section 14 of this administrative regulation.~~

~~(c) The applicant shall submit procedures for verifying and documenting the certification status of a radiographer and for ensuring that the certification of an individual acting as a radiographer remains valid.~~

~~(d) The applicant shall submit written operating and emergency procedures as described in Section 15 of this administrative regulation.~~

~~(e) The applicant shall submit a description of a program for inspections of the job performance of a radiographer and a radiographers' assistant at intervals not to exceed six (6) months as described in Section 14 of this administrative regulation.~~

~~(f) The applicant shall submit a description of the applicant's overall organization structure as it applies to the radiation safety responsibilities in industrial radiography, including specified delegation of authority and responsibility.~~

~~(g) The applicant shall identify and list the qualifications of the individual designated as the radiation safety officer (RSO) and of the potential designees responsible for ensuring that the licensee's radiation safety program is implemented in accordance with the procedures that have been submitted to the cabinet and have received approval pursuant to Sections 13 and 15 of this administrative regulation.~~

~~(h) If an applicant intends to perform leak testing of sealed sources or exposure devices containing depleted uranium (DU) shielding, the applicant shall describe the procedures for performing and the qualifications of the person authorized to do the leak testing.~~

~~(i) If the applicant intends to analyze the applicant's own wipe samples, the application shall include a description of the procedures to be followed, which shall include:~~

~~1. Instruments to be used;~~

~~2. Methods of performing the analysis; and~~

~~3. Pertinent experience of the person analyzing the wipe samples.~~

~~(j) If the applicant intends to perform an "in-house" calibration of a survey instrument, the applicant shall describe the method to be used and the relevant experience of the person performing the calibration. A calibration shall be performed according to the procedures and at the intervals prescribed in Section 5 of this administrative regulation.~~

~~(k) The applicant shall identify and describe the location of each field station and permanent radiographic installation.~~

~~(l) The applicant shall identify the location where records required by this and other administrative regulations in 902 KAR Chapter 100 shall be maintained.~~

~~(2) A licensee shall maintain a copy of its license, documents incorporated by reference, and amendments to these items until superseded by new documents approved by the cabinet or until the cabinet terminates the license~~].

Section 2. Applicability. This administrative regulation shall apply to a licensee. The licensee shall comply with 10 C.F.R. Part 34 except as established in subsections (1) through (4) of this section. (1) The licensee shall not be subject to the following:

(a) 10 C.F.R. 34.5;

(b) 10 C.F.R. 34.8;

(c) 10 C.F.R. 34.11;

(d) 10 C.F.R. 34.121; or

(e) 10 C.F.R. 34.123.

(2) Each application for a specific license shall be filed pursuant to 902 KAR 100:040.

(3) Reference to the "Commission" or "NRC" shall be deemed to be a reference to the "Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch".

(4) Notifications required by 10 C.F.R. 34.101 shall be directed to the manager, Radiation Health Branch, at:

(a) 275 East Main Street, Mailstop HS1-C-A, Frankfort, Kentucky 40621;

(b) (502) 546-1492: Facsimile;

(c) (502) 564-3700: Telephone, Monday through Friday from 8 a.m. to 4:30 p.m.; or

(d) (800) 255-2587: Telephone, for hours except those established in paragraph (c) of this subsection.[~~Performance Provisions for Radiography Equipment. Equipment used in industrial radiographic operations shall meet the following criteria:~~

~~(1)(a) Except as provided in subsection (3)(k) of this section, a radiographic exposure device, source assembly, or sealed source and associated equipment shall meet the provisions specified in American National Standard Institute (ANSI) N432-1980, Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography; and~~

~~(b) Engineering analysis shall be submitted by an applicant or licensee to demonstrate the applicability of previously performed testing on similar individual radiography equipment components. If upon review, the cabinet determines that the engineering analysis demonstrates that actual testing of the component is not necessary, the engineering analysis shall be an acceptable alternative.~~

~~(2)(a) A radiographic exposure device shall have attached to it by the user, a durable, legible, clearly visible label bearing the:~~

~~1. Chemical symbol and mass number of the radionuclide in the device;~~

~~2. Activity and date on which this activity was last measured;~~

~~3. Model or product code and serial number of the sealed source;~~

~~4. Manufacturer of the sealed source; and~~

~~5. Name, address, and telephone number of the licensee or registrant.~~

~~(b) A radiographic exposure device intended for use as a Type B transport container shall meet the applicable provisions of 10 C.F.R. 71.~~

~~(c) Modification of an exposure device, source changer, source assembly, or associated equipment shall be prohibited, unless the design of a replacement component, including source holder, source assembly, control, or guide tube, shall not compromise the design safety features of the system.~~

~~(3) In addition to the provisions specified in subsections (1) and (2) of this section, the following provisions shall apply to a radiographic exposure device, source assembly, and associated equipment that allow the source to be moved out of the device for radiographic operation or to a source changer:~~

~~(a) The coupling between the source assembly and the control cable shall be designed in a manner so that the source assembly cannot:~~

~~1. Become disconnected if cranked outside the guide tube; and~~

~~2. Be unintentionally disconnected under normal and reasonably foreseeable abnormal conditions.~~

~~(b) The device shall automatically secure the source assembly if it is cranked back into the fully shielded position within the device. The securing system shall be released only by a deliberate operation on the exposure device.~~

~~(c) Each outlet fitting, lock box, and drive cable fitting on a radiographic exposure device shall be equipped with a safety plug or cover, which shall be installed during storage and transportation to protect the source assembly from water, mud, sand, or other foreign matter.~~

~~(d) A sealed source or source assembly shall have attached to it or engraved on it, a durable, legible, visible label with the words: "DANGER-RADIOACTIVE." The label shall not interfere with the safe operation of the exposure device or associated equipment.~~

~~(e) The guide tube shall have passed:~~

~~1. A crushing test that closely approximates the crushing forces likely to be encountered during use; and~~

~~2. A kinking resistance test that closely approximates the kinking forces likely to be encountered during use.~~

~~(f) Guide tubes shall be used if moving the source out of the device.~~

~~(g) An exposure head or similar device designed to prevent the source assembly from passing out the end of the guide tube shall~~

~~be attached to the outermost end of the guide tube during a radiographic operation.~~

~~(h) The guide tube exposure head connection shall withstand the tensile test for control units specified in ANSI N432-1980.~~

~~(i) A source changer shall provide a system for assuring that the source cannot be accidentally withdrawn from the changer if connecting or disconnecting the drive cable to or from a source assembly.~~

~~(j) A radiographic exposure device and associated equipment in use after January 10, 1996, shall comply with the provisions of this section.~~

~~(k) Equipment used in industrial radiography operations need not comply with paragraph 8.9.2(c) of the Endurance Test in American National Standards Institute N432-1980, if the prototype equipment has been tested using a torque value representative of the torque that an individual using the radiographic equipment can realistically exert on the lever or crankshaft of the drive mechanism.~~

~~Section 3. Limits on External Levels of Radiation for Radiographic Exposure Devices and Storage Containers. The maximum exposure rate limits for storage containers and source changers shall be:~~

~~(1) 200 millirems (2 millisieverts) per hour at any exterior surface; and~~

~~(2) Ten (10) millirems (0.1 millisieverts) per hour at one (1) meter from any exterior surface, with the sealed source in the shielded position.~~

~~Section 4. Locking of Radiographic Exposure Devices, Storage Containers, and Source Containers. (1) A radiographic exposure device shall have a lock or outer locked container designed to prevent unauthorized or accidental production of radiation or removal or exposure of a sealed source from its shielded position.~~

~~(a) An exposure device or its container shall be kept locked, and if a keyed lock, with the key removed at all times except:~~

~~1. If under the direct surveillance of a radiographer or radiographer's assistant; or~~

~~2. As authorized by Section 19 of this administrative regulation.~~

~~(b) During radiographic operation the sealed source assembly shall be secured in the shielded position each time the source is returned to that position.~~

~~(c) A sealed source storage container and source changer shall be:~~

~~1. Provided with a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position; and~~

~~2. Kept locked, and if a keyed lock, with the key removed at all times if containing sealed sources, except if under the direct surveillance of a radiographer or radiographer's assistant.~~

~~(2) The control panel of a radiation machine shall be:~~

~~(a) Equipped with a lock that prevents the unauthorized use of an x-ray system or the accidental production of radiation; and~~

~~(b) Kept locked and the key removed at all times, except if under the direct visual surveillance of a radiographer or radiographer's assistant.~~

~~Section 5. Radiation Survey Instruments. (1) A licensee or registrant shall maintain sufficient calibrated and operable radiation survey instruments at a location where a source of radiation is present in order to perform radiation surveys as required by this administrative regulation and 902 KAR 100:019, Section 12(1).~~

~~(2) A radiation survey instrument shall be calibrated:~~

~~(a) At intervals not to exceed six (6) months;~~

~~(b) After an instrument servicing, except for battery changes;~~

~~(c)1. At two (2) points located approximately one-third (1/3) and two-thirds (2/3) of full-scale for linear scale instruments;~~

~~2. Midrange of each decade, and at two (2) points of at least one (1) decade for logarithmic scale instruments;~~

~~3. At three (3) points between two (2) and 1,000 millirems (90.02 and ten (10) millisieverts) per hour for digital instruments; and~~

~~(d) So that an accuracy within plus or minus twenty (20) percent of the calibration source can be demonstrated at the points checked.~~

~~(3) A record of each calibration shall be maintained for three (3) years after the calibration date for inspection by the cabinet.~~

~~(4) Instrumentation required by this section shall have a range so that two (2) millirems (0.02 millisieverts) per hour through one (1) rem (0.01 sievert) per hour may be measured.~~

~~Section 6. Leak Testing and Replacement of Sealed Sources. (1) The replacement of a sealed source fastened to or contained in a radiographic exposure device, and leak testing, repairing, opening, or modification of a sealed source shall be performed by a person specifically authorized by the cabinet, the U.S. Nuclear Regulatory Commission, or an agreement state.~~

~~(2) A sealed source shall be tested for leakage:~~

~~(a) At intervals not to exceed six (6) months;~~

~~(b) Using a method approved by the cabinet, the U.S. Nuclear Regulatory Commission, or an agreement state; and~~

~~(c)1. By taking a wipe sample from the nearest accessible point to the sealed source where contamination might accumulate.~~

~~2. The wipe sample shall be analyzed for radioactive contamination.~~

~~3. The analysis shall be capable of detecting the presence of 0.005 microcuries (185 Bq) of radioactive material on the test sample; and~~

~~4. The analysis shall be performed by a person specifically authorized by the cabinet, the U.S. Nuclear Regulatory Commission, or an agreement state to perform the analysis.~~

~~(3) A sealed source shall not be used by the licensee until tested for leakage, except if:~~

~~(a) The source is accompanied by a certificate from the transferor showing it to have been leak-tested within six (6) months preceding the transfer; or~~

~~(b) The source has been in storage and not in use for six (6) months or less.~~

~~(4)(a) A test conducted in accordance with subsections (1) and (2) of this section that reveals the presence of 0.005 microcuries (185 Bq) or more of removable radioactive material shall be considered evidence that the sealed source is leaking.~~

~~(b) The licensee shall immediately withdraw the equipment involved from use and shall have it decontaminated and repaired or disposed of in accordance with 902 KAR 100:021.~~

~~(c) The licensee shall file a report with the Manager, Radiation Health Branch, Department of Public Health, 275 East Main Street, Frankfort, Kentucky 40621, within five (5) days of a test with results that exceed the threshold in this subsection.~~

~~(d) The report shall describe the equipment involved, the test results, and the corrective action taken.~~

~~(5) An exposure device using depleted uranium (DU) shielding and an "S" tube configuration shall be tested for DU contamination at intervals not to exceed twelve (12) months.~~

~~(a) The analysis shall be:~~

~~1. Capable of detecting the presence of 0.005 microcuries (185 Bq) of radioactive material on the test sample; and~~

~~2. Performed by a person specifically authorized by the cabinet, the U.S. Nuclear Regulatory Commission, or an agreement state to perform the analysis.~~

~~(b) If testing reveals the presence of 0.005 microcuries (185 Bq) or more of removable DU contamination, the exposure device shall be removed from use until an evaluation of the wear on the S-tube has been made.~~

~~(c) If the evaluation reveals that the S-tube is worn through, the device shall not be used again.~~

~~(d) A DU shielded device shall:~~

~~1. Not require testing for DU contamination while in storage and not in use; and~~

~~2. Require testing before use or transfer if the interval of storage exceeded twelve (12) months.~~

~~(6)(a) A licensee shall maintain records of leak test results for each sealed source or device containing DU.~~

~~(b) The results shall be stated in units of microcuries (becquerels).~~

~~(c) The licensee shall retain a record for three (3) years after it~~

~~is made or until the source in storage is removed.~~

~~Section 7. Quarterly Inventory. (1) A licensee or registrant shall conduct a quarterly physical inventory to account for each source of radiation and each device containing depleted uranium received or possessed in accordance with the license.~~

~~(2) Records of the inventories shall be maintained for three (3) years from the date of the inventory for inspection by the cabinet. The records of inventories shall include:~~

~~(a) Radionuclide;~~

~~(b) Number of curies (becquerels) or mass (for DU) in a device;~~

~~(c) Location of sealed sources and devices;~~

~~(d) Date of the inventory;~~

~~(e) Name of the individual making the inventory; and~~

~~(f) Manufacturer, model number, and serial number of each sealed source or device, as appropriate.~~

~~Section 8. Utilization Logs. A licensee or registrant shall maintain utilization logs, which shall be kept available for inspection by the cabinet for three (3) years from the date of the recorded event, at the address specified in the license or on the registration, showing for a source of radiation the following information:~~

~~(1) A description including make, model, and serial number of the exposure device, radiation machine, or transport or storage container in which a sealed source is located;~~

~~(2) Identity and signature of the radiographer to whom assigned;~~

~~(3) Site or plant where used and dates of use;~~

~~(4) Date a source of radiation is removed from storage and returned to storage; and~~

~~(5) For permanent radiographic installations, the dates a radiation machine is energized.~~

~~Section 9. Inspection and Maintenance of Radiographic Exposure Devices, Radiation Machines, Transport and Storage Containers, Associated Equipment, Source Changes, and Survey Instruments. (1) A licensee or registrant shall perform:~~

~~(a) Visual and operability checks on survey meters, radiographic exposure devices, radiation machines, transport and storage containers, associated equipment, and source changers before use on a day the equipment is to be used to ensure that the:~~

~~1. Equipment is in good working condition;~~

~~2. Source is adequately shielded; and~~

~~3. Required labeling is present; and~~

~~(b) An operability check of survey instruments using check sources or other appropriate means.~~

~~(2) If an equipment problem is found, the equipment shall be removed from service until repaired.~~

~~(3) A licensee or registrant shall have written procedures for:~~

~~(a) Inspection and routine maintenance of radiographic exposure devices, radiation machines, source changers, associated equipment, transport and storage containers, and survey instruments at intervals not to exceed three (3) months, or before the first use in order to ensure the proper functioning of components important to safety;~~

~~(b) Inspection and maintenance necessary to maintain the Type B packaging used to transport radioactive materials; and~~

~~(c) Inspection and maintenance program to assure that a Type B package is shipped and maintained in accordance with the certificate of compliance, or other approval.~~

~~(4) A replacement component shall meet design specifications.~~

~~(5) If an equipment problem is found, the equipment shall be removed from service until repaired.~~

~~(6)(a) A record of equipment problems found in daily checks and quarterly inspections of radiographic exposure devices, transport and storage containers, associated equipment, source changers, and survey instruments and of any maintenance performed in accordance with subsections (1) through (3) of this section shall be kept for three (3) years for inspection by the cabinet.~~

~~(b) The record shall include:~~

~~1. The date of check or inspection;~~

~~2. Name of the inspector;~~

~~3. Equipment involved;~~

~~4. Problems found; and~~

~~5. What repair and maintenance was done.~~

~~Section 10. Permanent Radiographic Installations. (1) Permanent radiographic installations with an entrance used for personnel access to a high radiation area shall have:~~

~~(a) Entrance controls of the type described in 902 KAR 100:019, Section 14(1)(b) and (c) and Section 14(2) that reduce the radiation level upon entry into the area; or:~~

~~(b) Both visible and audible warning signals to warn of the presence of radiation.~~

~~1. The visible signal shall be activated by radiation if the source is exposed or the machine is energized.~~

~~2. The audible signal shall be activated if an attempt is made to enter the installation while the source is exposed or the machine is energized.~~

~~(2)(a) The alarm system shall be tested for proper operation with a radiation source at the beginning of each day before the installation is used for radiographic operations.~~

~~(b) The test shall include a check of the visible and audible signals.~~

~~(c) Each entrance control device that reduces the radiation level upon entry, as designated in subsection (1) of this section, shall be tested monthly.~~

~~(3)(a) If an entrance device or alarm system is operating improperly, it shall be immediately labeled as defective and repaired within seven (7) calendar days.~~

~~(b) The facility may continue to be used during the seven (7) day repair period if the licensee:~~

~~1. Implements the continuous surveillance requirements of Section 19 of this administrative regulation; and~~

~~2. Uses an alarming ratemeter.~~

~~(4) Records of tests for entrance control and audible and visual alarms shall be maintained for inspection by the cabinet for three (3) years from the date of the test.~~

~~Section 11. Labeling, Storage, and Transportation. (1) A licensee shall not use a source changer or a container to store radioactive material unless the source changer or the storage container has securely attached to it a durable, legible, and clearly visible label bearing the standard trefoil radiation caution symbol conventional colors (magenta, purple or black on a yellow background, having a minimum diameter of twenty-five (25) millimeters), and the following words:~~

~~(a)1. CAUTION*; or~~

~~2. DANGER;~~

~~(b) RADIOACTIVE MATERIAL; and~~

~~(c) NOTIFY:~~

~~1. CIVIL AUTHORITIES; or~~

~~2. NAME OF COMPANY.~~

~~(2) The licensee shall not transport radioactive material unless the material is packaged, and the package is labeled, marked, and accompanied with appropriate shipping papers in accordance with 10 C.F.R. Part 71.~~

~~(3) A locked radiographic exposure device, radiation machine, or storage container shall be physically secured to prevent tampering or removal by unauthorized personnel. The licensee shall store radioactive material in a manner that minimizes danger from explosion or fire.~~

~~(4) The licensee shall lock and physically secure the transport package containing radioactive material in the transporting vehicle to prevent accidental loss, tampering, or unauthorized removal of the radioactive material from the vehicle.~~

~~Section 12. Conducting Industrial Radiographic Operations. (1)(a) If radiography is performed at a location other than a permanent radiographic installation, the radiographer shall be accompanied by at least one (1) other qualified radiographer or an individual who has met the requirements of Section 14 of this administrative regulation. The additional qualified individual shall observe the operations and be capable of providing immediate~~

~~assistance to prevent unauthorized entry.~~

~~(b) Radiography shall not be performed unless more than one (1) qualified individual is present.~~

~~(2) A radiographic operation conducted at a location of use authorized on the license shall be conducted in a permanent radiographic installation, unless specifically authorized by the cabinet.~~

~~(3) A licensee shall have one (1) year from the effective date of June 27, 1998 to meet the requirement for having two (2) qualified individuals present at a location other than a permanent radiographic installation, as specified in subsection (1) of this section.~~

~~Section 13. Radiation Safety Officer for Industrial Radiography. The radiation safety officer (RSO) shall ensure that radiation safety is being performed in the daily operation of the licensee's program in accordance with approved procedures and regulatory requirements. (1) The minimum qualifications, training, and experience for RSOs for industrial radiography is as follows:~~

~~(a) Completion of the training and testing requirements of Section 14 of this administrative regulation;~~

~~(b) 2,000 hours of hands-on experience as a qualified radiographer in industrial radiographic operations; and~~

~~(c) Formal training in the establishment and maintenance of a radiation protection program.~~

~~(2) The cabinet shall consider alternatives if the RSO has:~~

~~(a) Appropriate training or experience in the field of ionizing radiation; and~~

~~(b) Adequate formal training in establishing and maintaining a radiation safety protection program.~~

~~(3) The specific duties and authorities of the RSO shall include:~~

~~(a) Establishing and overseeing operating, emergency and ALARA procedures as required by 902 KAR 100:019, and reviewing them regularly to ensure that the procedures in use conform to current 902 KAR 100:019 procedures, and conform to other requirements in 902 KAR Chapter 100 and to the license conditions.~~

~~(b) Overseeing and approving all phases of the training program for radiographic personnel, ensuring that appropriate and effective radiation protection is taught;~~

~~(c) Ensuring that:~~

~~1. Required radiation surveys and leak tests are performed and documented in accordance with 902 KAR Chapter 100, including corrective measures if levels of radiation exceed established limits;~~

~~2. Personnel monitoring devices are calibrated and used properly by occupationally-exposed personnel;~~

~~3. Records are kept of the monitoring results;~~

~~4. Timely notifications are made as required by 902 KAR 100:019, Section 40; and~~

~~5. Operations are conducted safely; and~~

~~(d) Assuming control for instituting corrective actions including stopping of operations, if necessary.~~

~~(4) A licensee or registrant shall have two (2) years from the effective date of June 27, 1999 to meet the requirements of subsections (1) and (2) of this section.~~

~~Section 14. Training. (1) A licensee or registrant:~~

~~(a) Shall not permit an individual to act as a radiographer as defined in 902 KAR 100:010 until the individual has received:~~

~~1. Formal training in the subjects identified in subsection (4) of this section;~~

~~2. At least two (2) months of on-the-job training; and~~

~~3. Is certified through a radiographer certification program in accordance with the criteria specified in Section 1 of this administrative regulation; or~~

~~(b) May, until two (2) years from the effective date of June 27, 1999, allow an individual who has not met the requirements of this section, to act as a radiographer if the individual has:~~

~~1. Received training in the subjects identified in subsection (4) of this section; and~~

~~2. Demonstrated an understanding of the subjects by successful completion of a written examination previously submitted to and approved by the cabinet;~~

~~(c) Shall not permit an individual to act as a radiographer until the individual has:~~

~~1. Received copies of and instructions in the following:~~

~~a. Provisions contained in this administrative regulation;~~

~~b. Provisions of 902 KAR 100:019, 100:040, 100:070, and 100:165;~~

~~c. Conditions of the license or registration certificate issued by the cabinet; and~~

~~d. The licensee's or registrant's approved operating and emergency procedures;~~

~~2. Demonstrated understanding of the licensee's license and operating and emergency procedures by successful completion of a written or oral examination covering this material;~~

~~3. Received training in the:~~

~~a. Use of the licensee's sources of radiation, the registrant's radiation machine, and other radiation exposure devices;~~

~~b. Daily inspection of devices and associated equipment; and~~

~~c. Use of radiation survey instruments; and~~

~~4. Demonstrated an understanding of the use of radiographic exposure devices, sources, survey instruments, and associated equipment described in paragraphs (a) and (c) of this subsection, by successful completion of a practical examination covering the material;~~

~~(d) Shall not permit an individual to act as a radiographer's assistant as defined in 902 KAR 100:010 until the individual has:~~

~~1. Received copies of and instructions in the following:~~

~~a. Provisions contained in this administrative regulation;~~

~~b. Requirements of 902 KAR 100:019, 100:040, 100:070, and 100:165;~~

~~c. Conditions of the license or registration certificate issued by the cabinet; and~~

~~d. The licensee's or registrant's operating and emergency procedures;~~

~~2. Demonstrated competence to use, under the personal supervision of the radiographer, the sources of radiation, radiographic exposure devices, radiation machines, associated equipment, and radiation survey instruments that the assistant uses; and~~

~~3. Demonstrated:~~

~~a. Understanding of the instructions provided in paragraph (a) of this subsection by successfully completing a written test on the subjects covered; and~~

~~b. Competence in the use of hardware described in paragraph (b) of this subsection by successfully completing a practical examination on the use of the hardware; and~~

~~(e) Shall provide annual refresher safety training for a radiographer and radiographer's assistant at intervals not to exceed twelve (12) months.~~

~~(2)(a) Except in those operations in which a single individual shall serve as both radiographer and RSO and shall perform all radiography operations, the RSO or designee shall conduct an inspection program of the job performance of a radiographer and radiographer's assistant to ensure that 902 KAR Chapter 100, license requirements, and the applicant's operating and emergency procedures are followed.~~

~~(b) The inspection program shall include observation of the performance of the radiographer and radiographer's assistant during an actual industrial radiographic operation, at intervals not to exceed six (6) months;~~

~~(c) If a radiographer or a radiographer's assistant has not participated in an industrial radiographic operation for more than six (6) months since the last inspection, the radiographer shall demonstrate knowledge of the training requirements of subsection (3) of this section and the radiographer's assistant shall demonstrate knowledge of the training requirements of subsection (1)(d)2 of this section by a practical examination before either person may next participate in a radiographic operation; and~~

~~(d) The cabinet shall consider alternatives in those situations in which the individual serves as both radiographer and RSO.~~

~~(3) Records of training specified in subsection (1)(c) of this section shall be maintained by a licensee or registrant for inspection by the cabinet for three (3) years after the record is made.~~

~~(a) Records shall include:~~

~~1. Radiographer certification documents;~~

~~2. Verification of certification status;~~

~~3. Copies of written tests;~~

~~4. Dates of oral tests and practical examinations;~~

~~5. Names of individuals conducting and receiving the oral and practical examinations; and~~

~~6. Documentation of annual refresher safety training and semi-annual inspections of job performance for a radiographer and a radiographer's assistant, which shall include:~~

~~a. Topics discussed during the refresher safety training;~~

~~b Dates the annual refresher safety training was conducted; and~~

~~c. Names of the instructors and attendees.~~

~~(b) For inspections of job performance, the records shall also include a list showing the items checked and all noncompliances observed by the RSO.~~

~~(4) The licensee or registrant shall include the following subjects required in subsection (1)(b) of this section:~~

~~(a) Fundamentals of radiation safety including:~~

~~1. Characteristics of gamma radiation;~~

~~2. Units of radiation dose and quantity of radioactivity;~~

~~3. Hazards of exposure to radiation;~~

~~4. Levels of radiation from radioactive material; and~~

~~5. Methods of controlling radiation dose by time, distance, and shielding;~~

~~(b) Radiation detection instruments including:~~

~~1. Use, operation, calibration, and limitations of radiation survey instruments;~~

~~2. Survey techniques; and~~

~~3. Use of personnel monitoring equipment;~~

~~(c) Equipment to be used including:~~

~~1. Operation and control of radiographic exposure equipment, remote handling equipment, and storage containers, including pictures or models of source assemblies (pigtails);~~

~~2. Storage, control, and disposal of radioactive material;~~

~~3. Inspection and maintenance of equipment; and~~

~~4. Operation and control of radiation machines;~~

~~(d) The requirements of 902 KAR Chapter 100, as applicable; and~~

~~(e) Case histories of accidents in radiography.~~

~~(5) A licensee or registrant shall have one (1) year from June 27, 1998 to comply with the additional training requirements specified in subsections (1)(c) and (d) of this section.~~

~~(6) Licensees and registrants shall have one (1) year from June 27, 1999, to comply with the certification requirements specified in subsection (1) of this section. Records of radiographer certification maintained in accordance with subsection (3) of this section shall provide appropriate affirmation of certification requirements specified in subsection (1) of this section.~~

~~Section 15. Operating and Emergency Procedures. (1) A licensee's or registrant's operating and emergency procedures shall include instructions in at least the following:~~

~~(a) The handling and use of sources of radiation to be employed so an individual is not likely to be exposed to radiation doses in excess of the limits established in 902 KAR 100:019, Section 3;~~

~~(b) Methods and occasions for conducting radiation surveys;~~

~~(c) Methods for controlling access to radiographic areas;~~

~~(d) Methods and occasions for locking and securing a source of radiation, radiographic exposure device, or transport and storage container;~~

~~(e) Personnel monitoring and the use of personnel monitoring equipment, including steps that shall be taken immediately by radiography personnel if a pocket dosimeter is found to be off-scale or an alarm ratemeter alarms unexpectedly;~~

~~(f) Transportation of sources of radiation to field locations, including:~~

~~1. Packing of a radiographic exposure device and storage container in a vehicle;~~

~~2. Placarding of a vehicle if needed; and~~

~~3. Control of sources of radiation during transportation;~~

~~(g) Minimizing exposure of individuals if an accident occurs;~~

~~(h) The procedure for notifying proper personnel if an accident occurs;~~

~~(i) Maintenance of records; and~~

~~(j) The inspection, maintenance, and operability checks of radiographic exposure devices, radiation machines, storage containers, survey instruments, and transport containers.~~

~~(2) The licensee or registrant shall maintain copies of current operating and emergency procedures until the cabinet terminates the license.~~

~~(3) Superseded material shall be retained for three (3) years after the change is made.~~

~~Section 16. Personnel Monitoring. (1) A licensee or registrant shall not permit an individual to act as a radiographer or radiographer's assistant unless, at all times during radiographic operations, the individual wears on the trunk of the body a direct reading pocket dosimeter, an operating alarm ratemeter, and a personal dosimeter that is processed and evaluated by an accredited National Voluntary Laboratory Accreditation Program (NVLAP) processor.~~

~~(2) The wearing of an alarm ratemeter shall not be required for permanent radiography facilities in which another alarming or warning device is in routine use or during radiographic operations using radiation machines.~~

~~(3) Pocket dosimeters shall have a range from zero to at least 200 milliroentgens (two (2) millisieverts) and shall be recharged daily or at the start of a shift. Electronic personal dosimeters may be used in place of ion-chamber pocket dosimeters only.~~

~~(4) A personal dosimeter shall be assigned to, and worn by, only one (1) individual.~~

~~(5) A film badge shall be replaced each month, and other personal dosimeters processed and evaluated by an accredited NVLAP processor shall be replaced at intervals not to exceed three (3) months.~~

~~(6) After replacement, each personal dosimeter shall be processed as soon as possible.~~

~~(7) Direct reading dosimeters, such as pocket dosimeters or electronic personal dosimeters, shall be read and exposures recorded at the beginning and end of a shift.~~

~~(a) If an individual's pocket dosimeter is found to be off scale, or if the electronic personal dosimeter reads greater than 200 millirems (two (2) millisieverts), and the possibility of radiation exposure cannot be ruled out as the cause:~~

~~1. The individual's personal dosimeter shall be sent for processing within twenty-four (24) hours;~~

~~2. Radiographic operations by the individual shall cease; and~~

~~3. The individual shall not return to work with sources of radiation until a determination of the radiation exposure has been made by the RSO or the RSO's designee. The results shall be included in the records maintained in accordance with paragraph (b) of this subsection and subsection (10)(b) of this section.~~

~~(b) A licensee or registrant shall maintain the following exposure records:~~

~~1. Direct reading dosimeter readings and yearly operability checks for three (3) years after the record is made;~~

~~2. Reports received from the NVLAP processor of personal dosimeter results until the cabinet terminates the license; and~~

~~3. Records of estimates of exposures as a result of off-scale personal direct reading dosimeters, or lost or damaged personal dosimeters, until the cabinet terminates the license.~~

~~(8) If a personal dosimeter is lost or damaged, the worker shall cease work immediately until:~~

~~(a) A replacement personal dosimeter meeting the requirements of subsection (1) of this section is provided; and~~

~~(b) The exposure is calculated for the time period from issuance to loss or damage of the personal dosimeter. The results of the calculated exposure and the time period for which the personal dosimeter was lost or damaged shall be included in the records maintained in accordance with subsection (7) of this section.~~

~~(9)(a) Pocket dosimeters, or electronic personal dosimeters, shall be checked for correct response to radiation at periods not to~~

~~exceed twelve (12) months.~~

~~(b) Acceptable dosimeters shall read within plus or minus twenty (20) percent of the true radiation exposure.~~

~~(10)(a) An alarm ratemeter shall:~~

~~1. Be checked to ensure that the audible alarm functions properly prior to use at the start of a shift;~~

~~2. Be set to give an alarm signal at a preset dose rate of 500 mR/hr (5mSv/hr);~~

~~3. Require special means to change the preset alarm functions;~~

~~4. Be calibrated at periods not to exceed twelve (12) months for correct response to radiation; and~~

~~5. Alarm within plus or minus twenty (20) percent of the true radiation dose rate.~~

~~(b) Records of alarm ratemeter calibrations shall be maintained for three (3) years after the record is made.~~

~~Section 17. Documents Required at Field Stations and Temporary Job Sites. A licensee or registrant shall have the following records available for inspection by the cabinet at each field station, if applicable, and at each job site:~~

~~(1) A copy of the operating and emergency procedures;~~

~~(2) A current copy of the radioactive material license or registration certificate;~~

~~(3) A copy of 902 KAR 100:019, 100:100, and 100:165;~~

~~(4) Latest survey records required by Section 22 of this administrative regulation;~~

~~(5) Records of direct reading dosimeters, such as pocket dosimeters or electronic personal dosimeters readings, as required by Section 16 of this administrative regulation;~~

~~(6) Evidence of The latest instrument calibration of the radiation survey instrumentation in use at the site, as required by Section 5 of this administrative regulation;~~

~~(7) Utilization records for each radiographic exposure device dispatched from that location, as required by Section 8 of this administrative regulation;~~

~~(8) Records of equipment problems identified in daily checks of equipment required by Section 9 of this administrative regulation;~~

~~(9) Records of alarm system and entrance control checks required by Section 10 of this administrative regulation, if applicable;~~

~~(10) Evidence of the latest calibrations of alarm ratemeters and operability checks of pocket dosimeters and electronic personal dosimeters, as required by Section 16 of this administrative regulation;~~

~~(11) The shipping papers for the transportation of radioactive materials required by 902 KAR 100:070; and~~

~~(12) If operating in accordance with reciprocity pursuant to 902 KAR 100:065, a copy of the agreement state or U.S. Nuclear Regulatory Commission license authorizing the use of radioactive materials.~~

~~Section 18. Specific Provisions for Radiographic Personnel Performing Industrial Radiography. (1) At a job site, the following shall be supplied by a licensee or registrant:~~

~~(a) At least one (1) operable, calibrated survey instrument for every exposure device or radiation machine in use;~~

~~(b) A current whole body personnel monitor (TLD or film badge) for an individual performing radiographic operations;~~

~~(c) An operable, calibrated pocket dosimeter with a range of zero to 200 milliroentgens for a worker performing radiographic operations;~~

~~(d) Appropriate barrier ropes and signs; and~~

~~(e) An operable, calibrated, alarming ratemeter for every person performing radiographic operations using a radiographic exposure device.~~

~~(2) A radiographer at a job site shall have on the radiographer's person a valid certificate ID card issued by a certifying entity.~~

~~(3) An industrial radiographic operation shall not be performed if the items in subsections (1) and (2) of this section are not available at the job site or they are inoperable.~~

~~(4) During an inspection by the cabinet, the cabinet shall terminate an operation if items in subsections (1) and (2) of this section are not available or not operable, or if the required number of radiographic personnel are not present. Operations shall not be resumed until required conditions are met.~~

~~Section 19. Surveillance. During a radiographic operation, a radiographer or the other individual present, as required by Section 12 of this administrative regulation, shall maintain direct visual surveillance of the operation to protect against unauthorized entry into a high radiation area, except at a permanent radiographic installation where:~~

~~(1) Entryways are locked; and~~

~~(2) The requirements of Section 10 of this administrative regulation are met.~~

~~Section 20. Posting. (1) An area in which radiography is being performed shall be conspicuously posted, as required in 902 KAR 100:019, Section 24(1) and (2).~~

~~(2) Exceptions listed in 902 KAR 100:019 do not apply to an industrial radiographic operation.~~

~~Section 21. Special Provisions and Exemptions for Cabinet X-ray Systems. (1) The use of a certified or certifiable cabinet x-ray system shall be exempt from the requirements of this administrative regulation, except for the following:~~

~~(a) For certified and certifiable cabinet x-ray systems, including those designed to allow admittance of individuals:~~

~~1. A registrant shall not permit an individual to operate a cabinet x-ray system until the individual has received a copy of and instruction in the operating procedures for the unit.~~

~~2. A test for proper operation of interlocks shall be conducted and recorded at intervals not to exceed six (6) months.~~

~~3. A registrant shall perform an evaluation of the radiation dose limits to determine compliance with 902 KAR 100:019, Section 10, and 21 C.F.R. 1020.40, Cabinet X-ray Systems, at intervals not to exceed one (1) year.~~

~~4. Records shall be maintained demonstrating compliance with subsections (1)(a)1 and 2 of this section until disposal is authorized by the cabinet.~~

~~5. Records of the evaluation required by subparagraph 3 of this paragraph shall be maintained for two (2) years after the evaluation is performed.~~

~~(b)1. Certified cabinet x-ray systems shall be maintained in compliance with 21 C.F.R. 1020.40, Cabinet X-ray Systems.~~

~~2. A modification shall not be made to the system unless prior cabinet approval has been granted.~~

~~(2) An industrial use of a hand-held light intensified imaging device shall be exempt from the requirements of this administrative regulation if the dose rate eighteen (18) inches from the source of radiation to any individual does not exceed two (2) millirem per hour. A device exceeding this limit shall meet the applicable requirements of this administrative regulation and the licensing or registration requirements of 902 KAR 100:040 and 100:110, as applicable.~~

~~Section 22. Radiation Surveys and Survey Records. (1) A radiographic operation shall not be conducted unless calibrated and operable radiation survey instrumentation, as described in Section 5 of this administrative regulation, is available and used at a location of radiographic operations.~~

~~(2) A survey with a radiation survey instrument shall be made after a radiographic exposure of the radiographic exposure device and the guide tube if approaching the device or guide tube to determine that the sealed source has been returned to its shielded position before exchanging films, repositioning the exposure head, or dismantling equipment.~~

~~(3) A survey shall be conducted of the radiographic exposure device with a calibrated radiation survey instrument if the source is exchanged and if a radiographic exposure device is placed in a storage area, to ensure that the source is in its shielded position.~~

~~(4) A physical radiation survey shall be made after a radiographic exposure using radiographic machines to determine that the machine is "off."~~

~~(5) Records shall be kept of the exposure device survey conducted before the device is placed in storage as specified in subsection (3) of this section if that survey is the last one performed in the workday. The records shall be maintained for inspection by the cabinet for three (3) years after it is made.~~

~~Section 23. Supervision of Radiographer's Assistant. (1) If a radiographer's assistant uses radiographic exposure devices, associated equipment, sealed sources, or conducts radiation surveys required by Section 22 of this administrative regulation to determine that the sealed source has returned to the shielded position after an exposure or the radiation machine is off, the radiographer's assistant shall be under the personal supervision of a radiographer.~~

~~(2) The radiographer shall:~~

~~(a) Be physically present at the site where a source of radiation and associated equipment is being used;~~

~~(b) Watch, by direct visual observation, the performance of the operations performed by the radiographer's assistant referred to in this section; and~~

~~(c) Be in close proximity so that immediate assistance shall be given if required.~~

~~Section 24. Reporting Requirements. (1) In addition to the reporting requirements specified in 902 KAR 100:040, Section 15, and in accordance with other sections of this administrative regulation, a licensee or registrant shall provide a written report to the Cabinet for Health and Family Services, Radiation Health Branch within thirty (30) days of the occurrence of the following incidents involving radiographic equipment:~~

~~(a) Unintentional disconnection of the source assembly from the control cable;~~

~~(b) Inability to retract the source assembly to its fully shielded position and secure it in this position;~~

~~(c) Failure of a component, critical to safe operation of the device, to properly perform its intended function;~~

~~(d) Failure of an indicator on a radiation machine to show that radiation is being produced;~~

~~(e) Failure of an exposure switch to terminate production of radiation if turned to the off position; or~~

~~(f) Failure of a safety interlock to terminate x-ray production.~~

~~(2) The licensee or registrant shall include the following information in a report submitted in accordance with subsection (1) of this section:~~

~~(a) A description of the equipment problem;~~

~~(b) Cause of an incident, if known;~~

~~(c) Manufacturer and model number of equipment involved in the incident;~~

~~(d) Place, time, and date of the incident;~~

~~(e) Actions taken to establish normal operations;~~

~~(f) Corrective actions taken or planned to prevent recurrence; and~~

~~(g) Qualifications of personnel involved in the incident.~~

~~(3) A report of an overexposure submitted under 902 KAR 100:019, Section 40, involving failure of a safety component of radiography equipment shall include the information specified in subsection (2) of this section.~~

~~(4) A licensee shall notify the cabinet if conducting radiographic operations or storing radioactive material at a location not listed on the license for a period in excess of 180 days in a calendar year.~~

~~Section 25. Incorporation by Reference. (1) The American National Standard Institute (ANSI) N432-1980, "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography", published in NBS Handbook 136, issued January 1981, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, Office of the Commissioner, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. until 4:30 p.m.~~]

JEFFREY D. HOWARD, Jr., M.D., Commissioner

ADAM MEIER, Secretary

APPROVED BY AGENCY: June 29, 2018

FILED WITH LRC: July 5, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 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 August 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, phone (502) 564-3970, email julied.brooks@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the technical requirements and basis for issuing licenses to perform radiography using byproduct material.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to control hazards to health and the environment from ionizing radiation associated with the use of byproduct material in industrial radiography.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.844(1) requires the cabinet to provide by administrative regulation for the licensing of the possession and use of byproduct material and shall include specification of the form of application for licenses and the qualifications therefore.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will make the cabinet's administrative regulation identical to the federal regulation that regulates the same activities. This provides for consistent regulatory framework for all entities affected.

(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 adopts by reference the applicable Nuclear Regulatory Commission (NRC) regulations for licenses for industrial radiography and radiation safety requirements for industrial radiographic operations which eliminates any discrepancies between state and federal licensing and safety requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary as the agreement between NRC and the Commonwealth requires the Radiation Health Branch to be in full compliance with NRC regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is consistent with the authorizing statutes, which require the secretary to adopt regulations for the registration and licensing of the possession of any source of ionizing or electronic product radiation necessary to

protect the public from unnecessary radiation exposure.

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures all entities licensed or registered for industrial radiographic operations are in full compliance with state and national regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are approximately eighteen (18) licensees of the cabinet; all future applicants for licenses authorizing the use of byproduct material for industrial radiography and any licensee that performs industrial radiography in the Commonwealth under the reciprocal recognition of licenses pursuant to 902 KAR 100:065.

(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: Affected entities are required to be in compliance with NRC regulations so there will be no new actions required.

(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 cost for compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will be in full compliance with NRC regulations.

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

(a) Initially: This program is already operating. There is no cost to implement this amendment.

(b) On a continuing basis: This program is already operating. There is no cost to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment does not affect 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: An increase in fees or funding is not necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There are no fees established in this regulation.

(9) TIERING: Is tiering applied? No. This administrative regulation is applicable to all affected entities in a like manner. All regulated entities must be in compliance with NRC regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Radiation Health Branch in the Department for Public Health administers this program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 10 C.F.R. Part 34, KRS 194A.050(1), 211.090(3), 211.844(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 does not generate revenue.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Atomic Energy Act of 1954, as amended, the Energy Policy Act of 2005 and 10 C.F.R. Part 34.

2. State compliance standards. This regulation adopts the federal technical requirements and basis for issuing licenses to perform radiography using byproduct material in industrial radiography.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires state regulations to be compatible with the equivalent federal regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no different, stricter, or additional responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 100:142. Licenses and radiation safety requirements for well logging[~~Wire line service operations~~].

RELATES TO: KRS 194A.005(1), 211.180(1), 211.842-211.852, 211.990(4), 10 C.F.R. Part 39, 42 U.S.C. 2021

STATUTORY AUTHORITY: KRS 194.050(1), 211.090(3), 211.844(1)[~~, 10 C.F.R. 39~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 requires the Cabinet for Health and Family Services to promulgate administrative regulations for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation provides the requirements for the issuance of a license authorizing the use of licensed materials including sealed sources, radioactive tracers, radioactive markers, and uranium sinker bars in well logging in a single well[~~radiation safety requirements for persons using sources of radiation for wire line service operations including radioactive markers, mineral exploration, and subsurface tracer studies~~].

Section 1. Definitions. (1) "Agreement state" means a state that the United States Nuclear Regulatory Commission or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.).

(2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet pursuant to 902 KAR 100:040 and this administrative regulation;

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an Agreement state; or

(c) A general license pursuant to 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement state[~~Agreement with Well Owner or Operator. (1) A licensee shall not perform a wire line service operation with a sealed source in a well or well-bore unless, prior to commencement of the operation, the licensee has a written~~

~~agreement with the well operator or well or land owner that:~~

~~(a) If a sealed source is lodged downhole, a reasonable effort at recovery shall be made;~~

~~(b) If a decision is made to abandon the sealed source downhole, the requirements of this administrative regulation shall be met;~~

~~(c) A person shall not attempt to recover a sealed source in a manner, which, in the licensee's opinion, may result in its rupture;~~

~~(d) The radiation monitoring required in Section 24 of this administrative regulation shall be performed;~~

~~(e) If the environment, equipment, or personnel are contaminated with radioactive material, decontamination shall be performed prior to release from the site or for unrestricted use; and~~

~~(f) If the sealed source is classified as not retrievable after reasonable efforts at recovery have been expended, the requirements of Section 27 of this administrative regulation shall be met.~~

~~(2) The licensee shall retain a copy of the written agreement with the well operator or well or land owner for three (3) years after completion of the well logging operations~~].

Section 2. Applicability. This administrative regulation shall apply to a licensee. The licensee shall comply with 10 C.F.R. Part 39 except as established in subsections (1) through (3) of this section. (1) The licensee shall not be subject to the following:

(a) 10 C.F.R. 39.5;

(b) 10 C.F.R 39.8;

(c) 10 C.F.R. 39.11;

(d) 10 C.F.R. 39.101; or

(e) 10 C.F.R. 39.103.

(2) Each application for a specific license shall be filed pursuant to 902 KAR 100:040.

(3) Reference to the "Commission" or "NRC" shall be deemed to be a reference to the "Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch".

(4) Notifications required by 10 C.F.R. 39.77 shall be directed to the manager, Radiation Health Branch, at:

(a) 275 East Main Street, Mailstop HS1-C-A, Frankfort, Kentucky 40621;

(b) (502)564-1492: Facsimile;

(c) (502)564-3700: Telephone, Monday through Friday from 8 a.m. to 4:30 p.m.; or

(d) (800)255-2587: Telephone, for hours outside of those in paragraph (c)[~~Limits on Levels of Radiation. Radioactive materials shall be used, stored, and transported in a manner that the requirements of 902 KAR 100:019 and 100:070 shall be met~~.

~~Section 3. Storage Precautions. (1) Sources of radiation, except accelerators, shall be provided with a lockable storage or transport container.~~

~~(2) The container shall be provided with a lock (or tamper seal for calibration sources) to prevent unauthorized removal of, or exposure to, the source of radiation.~~

~~(3) Sources of radiation shall be stored in a manner that shall minimize the danger from explosion or fire.~~

~~Section 4. Transport Precautions. Transport containers shall be physically secured to the transporting vehicle to prevent accidental loss, tampering, or unauthorized removal.~~

~~Section 5. Radiation Survey Instruments. (1) The licensee or registrant shall maintain sufficient calibrated and operable radiation survey instruments, capable of detecting beta and gamma radiation, at each field station and temporary jobsite to make physical radiation surveys as required by this administrative regulation and by 902 KAR 100:019.~~

~~(2)(a) Instrumentation required by this section shall be capable of measuring one-tenth (0.1) millirem (.001 mSv) per hour through at least fifty (50) millirem (0.5 mSv) per hour.~~

~~(b) The licensee shall have available additional calibrated and operable radiation detection instruments sensitive enough to detect the low radiation and contamination levels that could be encountered if a sealed source ruptured. The licensee shall own the instruments or have a procedure to obtain them as soon as possible from a second party.~~

~~(3) The licensee shall have each radiation survey instrument required by subsection (1) and (2) of this section calibrated:~~

~~(a) At intervals not to exceed six (6) months and after each instrument servicing;~~

~~(b) At energies and exposure levels appropriate for use; and~~

~~(c) So that accuracy within plus or minus twenty (20) percent of the true radiation level shall be demonstrated on each scale.~~

~~(4) Records of calibration shall be maintained for a period of at least three (3) years after the date of calibration for inspection by the cabinet.~~

~~Section 6. Leak Testing of Sealed Sources. (1) A licensee who uses a sealed source of radioactive material shall have the source tested for leakage as specified in this section. The licensee shall keep a record of leak test results in units of microcuries and retain the record for inspection by the cabinet.~~

~~(2) Method of Testing.~~

~~(a) The wipe of a sealed source shall be performed using a leak test kit or method approved by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state;~~

~~(b) The wipe sample shall be taken from the nearest accessible point to the sealed source where contamination might accumulate;~~

~~(c) The wipe sample shall be analyzed for radioactive contamination; and~~

~~(d) The analysis shall be capable of detecting the presence of 0.005 microcuries (185 Bq) of radioactive material on the test sample and shall be performed by a person approved by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state, as established in 10 C.F.R. Part 39.35.~~

~~(3) Test Frequency.~~

~~(a) Each sealed source, except an Energy Compensation Source (ECS), shall be tested at intervals not to exceed six (6) months;~~

~~(b) In the absence of a certificate from a transferor that a test has been made within the six (6) months before the transfer, the sealed source shall not be used until tested.~~

~~(4)(a) Each ECS, not exempted by subsection (7) of this section, shall be tested at intervals not to exceed three (3) years. In the absence of a certificate from a transferor that a test has been made with the three (3) years before the transfer, the ECS shall not be used until tested.~~

~~(5) Removal from service:~~

~~(a) If the test conducted under subsections (1) and (2) of this section reveals the presence of 0.005 microcuries (185 Bq) or more of removable radioactive material, the licensee shall remove the sealed source from service immediately and have it decontaminated, repaired, or disposed by a cabinet, U.S. Nuclear Regulatory Commission, or agreement state licensee authorized to perform these functions;~~

~~(b) The licensee shall check the equipment associated with the leaking source for radioactive contamination and, if contaminated, have it decontaminated or disposed of by a cabinet, U.S. Nuclear Regulatory Commission, or agreement state licensee that is authorized to perform these functions.~~

~~(6) The licensee shall submit a report to the cabinet within five (5) days of receiving the test results, and the report shall describe the equipment involved in the leak, the test results, contamination that resulted from the leaking source, and the corrective actions taken up to the time that report is made.~~

~~(7) The following sealed sources shall be exempt from the periodic leak test requirements in subsections (1) through (5) of this section:~~

~~(a) Hydrogen – 3 (tritium) sources;~~

~~(b) Sources containing radioactive material with a half-life of thirty (30) days or less;~~

~~(c) Sealed sources containing radioactive material in gaseous form;~~

~~(d) Sources of beta- or gamma-emitting radioactive material with an activity of ten (10) microcuries (0.37 Bq) or less; and~~

~~(e) Sources of alpha- or neutron-emitting radioactive material~~

~~with an activity of ten (10) microcuries (0.37 Bq) or less.~~

~~Section 7. Quarterly Inventory. (1) A licensee or registrant shall conduct a quarterly physical inventory to account for sources of radiation received or possessed by the licensee or registrant.~~

~~(2) Records of inventories shall be maintained for at least two (2) years from the date of the inventory for inspection by the cabinet and shall include:~~

~~(a) The quantities and kinds of sources of radiation;~~

~~(b) The location where sources of radiation are assigned;~~

~~(c) The date of the inventory; and~~

~~(d) The name of the individual conducting the inventory.~~

~~Section 8. Utilization Records. A licensee or registrant shall maintain current records, which shall be kept available for inspection by the cabinet for at least two (2) years from the date of the recorded event showing the following information for each source of radiation:~~

~~(1) A description (or make and model number or serial number) of each source of radiation used;~~

~~(2) The identity of the logging supervisor responsible for the radioactive material and identity of logging assistant present;~~

~~(3) Locations where used and dates of use; and~~

~~(4) In the case of tracer materials and radioactive markers, the utilization record shall also indicate the radionuclide and activity used at a particular well site.~~

~~Section 9. Design and Performance Criteria for Sealed Sources used in Downhole Operations. (1) A sealed source, except those containing radioactive material in gaseous form, used in downhole operations shall, as a minimum, meet the following criteria:~~

~~(a) Be of double encapsulated construction;~~

~~(b) Contain radioactive material whose chemical and physical form shall be as insoluble and nondispersible as practicable; and~~

~~(c) Meets the requirements of paragraphs (2), (3), and (4) of this section.~~

~~(2) For a sealed source manufactured on or before July 14, 1989, a licensee may use the sealed source in well logging applications if it meets the requirements of USASI N5.10-1968, Classification of Sealed Radioactive Sources, or the requirements in subsections (3) or (4) of this section.~~

~~(3) For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source for use in well logging applications if it meets the oil-well logging requirements of ANSI/HPS N43.6-1997, Sealed Radioactive Sources – Classification.~~

~~(4) For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source for use in well logging applications if the sealed source's prototype has been tested and found to maintain its integrity after each of the following tests:~~

~~(a) Temperature. The test source shall be held at minus forty (40) degrees Centigrade for twenty (20) minutes, 600 degrees Centigrade for one (1) hour, and then be subject to a thermal shock test with a temperature drop from 600 degrees Centigrade to twenty (20) degrees Centigrade within fifteen (15) seconds;~~

~~(b) Impact test. A five (5) kilogram steel hammer, two and five-tenths (2.5) centimeters in diameter, shall be dropped from a height of one (1) meter onto the test source;~~

~~(c) Vibration test. The test source shall be subject to a vibration from twenty-five (25) Hz to 500 Hz at five (5) g amplitude for thirty (30) minutes;~~

~~(d) Puncture test. A one (1) gram hammer and pin, three-tenths (0.3) centimeter in diameter, shall be dropped from a height of one (1) meter unto the test source.~~

~~(e) Pressure Test. The test source shall be subject to an external pressure of 1.695 x 10^7 pascals (24,600 pounds per square inch absolute).~~

~~(5) The requirements in subsections (1) through (4) of this section shall not apply to sealed sources that contain radioactive material in gaseous form.~~

~~(6) The requirements in subsections (1) through (4) of this section shall not apply to ECS sources, which shall be registered with the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state.~~

~~(7) Certification documents shall be maintained for inspection by the cabinet for a period of at least two (2) years after source disposal.~~

~~(8) For sources abandoned downhole, certification documents shall be maintained until their disposal is authorized by the cabinet.~~

~~Section 10. Labeling. (1) A source, source holder, or logging tool containing radioactive material shall bear a durable, legible, and clearly visible marking or label that has, as a minimum, the standard radiation symbol without color requirement and the following wording: DANGER (or CAUTION) RADIOACTIVE.~~

~~(2) This labeling shall be on the smallest component, for example, source, source holder, or logging tool, that is transported as a separate piece of equipment.~~

~~(3) A transport container shall have permanently attached to it a durable legible and clearly visible label that has, at a minimum, the standard radiation symbol and the following wording: DANGER (or CAUTION) RADIOACTIVE. Notify civil authorities (or name of company) if found.~~

~~Section 11. Inspection and Maintenance. (1) A licensee or registrant shall conduct, at intervals not to exceed six (6) months, a program of inspection of sealed sources and inspection and maintenance of source holders, logging tools, source handling tools, storage containers, transport containers, uranium sinker bars, and injection tools to assure proper labeling, operation, and physical condition.~~

~~(2) Records of inspection and maintenance shall be maintained for a period of at least two (2) years for inspection by the cabinet.~~

~~(3) If an inspection conducted pursuant to this section reveals damage to labeling or components critical to radiation safety, the device shall be removed from service until repairs have been made.~~

~~(4) The repair, opening, or other modification of a sealed source shall be performed only by persons specifically authorized to do so by the cabinet, the U. S. Nuclear Regulatory Commission, or an Agreement State.~~

~~(5) If a sealed source is stuck in the source holder, the licensee shall not perform any operation, for example drilling, cutting, or chiseling on the source holder unless the licensee is specifically licensed by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state to perform the operation.~~

~~Section 12. Training Requirements. (1) A licensee or registrant shall not permit an individual to act as a logging supervisor until the individual has:~~

~~(a) Completed a course recognized by the cabinet, an Agreement State, or the U. S. Nuclear Regulatory Commission covering the subjects outlined in Section 28 of this administrative regulation and shall have demonstrated an understanding of the subjects;~~

~~(b) Received copies of and demonstrated an understanding of the following:~~

~~1. The requirements contained in this administrative regulation;~~

~~2. Provisions of 902 KAR Chapter 100;~~

~~3. The conditions of the license or registration certificate issued by the cabinet; and~~

~~4. The licensee's or registrant's approved operating and emergency procedures;~~

~~(c) Completed on-the-job training and demonstrated competence in the use of sources of radiation, related handling tools, and radiation survey instruments that shall be employed in his assignment; and~~

~~(d) Demonstrated an understanding of the requirements in paragraphs (a) and (b) of this subsection by successfully completing a written test.~~

~~(2) A licensee or registrant shall not permit an individual to act as a logging assistant until the individual has:~~

~~(a) Read and received instruction in the licensee's or registrant's operating and emergency procedures, the requirements contained in this administrative regulation and other~~

~~applicable provisions of 902 KAR Chapter 100 and shall have demonstrated understanding of the subjects;~~

~~(b) Demonstrated competence to use, under the personal supervision of the logging supervisor, the sources of radiation, related handling tools, and radiation survey instruments that will be employed in his assignment; and~~

~~(c) Demonstrated understanding of the requirements in paragraphs (a) and (b) of this subsection by successfully completing a written or oral test.~~

~~(3) A licensee or registrant shall maintain employee training records for inspection by the cabinet for at least two (2) years following termination of employment.~~

~~Section 13. Operating and Emergency Procedures. The licensee's or registrant's operating and emergency procedures shall include instructions in at least the following:~~

~~(1) The handling and use of sources of radiation to be employed so that an individual is not likely to be exposed to radiation doses in excess of the limits established in 902 KAR 100:019, Section 3;~~

~~(2) The handling and use of radioactive material including the use of sealed sources in wells without surface casing for protecting fresh water aquifers, if appropriate;~~

~~(3) The use of remote handling tools for handling sealed source and radioactive tracer material except low-activity calibration sources;~~

~~(4) Methods and occasions for conducting radiation surveys, including surveys for detecting contamination;~~

~~(5) Methods and occasions for locking and securing sources of radiation;~~

~~(6) Personnel monitoring and the use of personnel monitoring equipment;~~

~~(7) Transportation to temporary job sites and field stations, including:~~

~~(a) Packaging of sources of radiation in the vehicles;~~

~~(b) Placarding of vehicles, if needed; and~~

~~(c) Physically securing sources of radiation during transportation to prevent accidental loss, tampering, or unauthorized removal;~~

~~(8) Minimizing exposures of individuals from inhalation and ingestion of radioactive tracer material;~~

~~(9) The procedure for notifying proper personnel if an accident occurs;~~

~~(10) Maintenance of records, including records generated by logging personnel at temporary jobsites;~~

~~(11) The inspection of sealed sources;~~

~~(12) The inspection and maintenance of source holders, logging tools, source handling tools, storage containers, transport containers, uranium sinker bars, and injection tools;~~

~~(13) The procedures that shall be followed if a sealed source is lodged downhole;~~

~~(14) Picking up, receiving, and opening packages containing radioactive material;~~

~~(15) Decontamination of the environment, equipment, and personnel if tracers are used; and~~

~~(16) Actions to be taken if a sealed source is ruptured or a sealed source is lodged in a well, including steps to:~~

~~(a) Prevent the spread of contamination;~~

~~(b) Minimize inhalation and ingestion of radioactive material; and~~

~~(c) Obtain suitable radiation survey instruments as required by Section 5 of this administrative regulation.~~

~~Section 14. Personnel Monitoring. (1) A licensee or registrant shall not permit an individual to act as a logging supervisor or logging assistant unless the individual wears, at all times during well service operations utilizing sources of radiation, a personal dosimeter that is processed and evaluated by an accredited NVLAP processor.~~

~~(2) A personal dosimeter shall be assigned to and worn by only one (1) individual.~~

~~(3) Film badges shall be replaced monthly and other personal dosimeters replaced at least quarterly.~~

~~(4) After replacement, a personal dosimeter shall be promptly processed.~~

~~(5) Personnel monitoring records shall be maintained for inspection by the cabinet until it authorizes disposal.~~

~~Section 15. Security. During logging or tracer applications, the logging supervisor or other designated employee shall maintain direct surveillance of the operation to protect against unauthorized or unnecessary entry into a restricted area.~~

~~Section 16. Handling Tools. The licensee shall provide and require the use of tools that shall assure remote handling of sealed sources other than low activity calibration sources.~~

~~Section 17. Tracer Studies. (1) Protective gloves and other protective clothing shall be used by personnel handling radioactive tracer material.~~

~~(2) Care shall be taken to avoid ingestion or inhalation of radioactive material.~~

~~(3) A licensee shall not permit injection of radioactive material into potable aquifers without prior written authorization from the cabinet.~~

~~Section 18. Uranium Sinker Bars. The licensee may use a uranium sinker bar in well logging applications only if it is legibly impressed with the words "CAUTION – RADIOACTIVE – DEPLETED URANIUM" and "NOTIFY CIVIL AUTHORITIES (or COMPANY NAME) IF FOUND."~~

~~Section 19. Energy Compensation Source (ECS). (1) The licensee may use an energy compensation source which is contained within a logging tool, or other tool components, only if the ECS contains quantities of radioactive material not exceeding 100 microcuries (3.7 MBq).~~

~~(2) For well logging applications with a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of Sections 6, 7, and 8.~~

~~(3) For well logging applications without a surface casing for protecting fresh water aquifers, use of the energy compensation source is only subject to the requirements of Sections 1, 6, 7, 8, 20, and 27.~~

~~Section 20. Use of a Sealed Source in a Well Without a Surface Casing. A licensee may use a sealed source in a well without a surface casing for protecting fresh water aquifers only if the licensee follows a procedure, approved by the Cabinet, for reducing the probability of the source becoming lodged in the well.~~

~~Section 21. Particle Accelerators. A licensee or registrant shall not permit above ground testing of particle accelerators if the testing will result in the production of radiation except in areas or facilities controlled or shielded so that the requirements of 902 KAR 100:019 shall be met.~~

~~Section 22. Tritium Neutron Generator Target Source. (1) Use of a tritium neutron generator target source, containing quantities not exceeding thirty (30) curies (1,110 GBq) and in a well with a surface casing to protect fresh water aquifers shall be as established in this administrative regulation, except Sections 1, 9, and 27 of this administrative regulation.~~

~~(2) Use of a tritium neutron generator target source, containing quantities exceeding thirty (30) curies (1,110 GBq) or in a well without a surface casing to protect fresh water aquifers shall be as established in this administrative regulation, except Section 9 of this administrative regulation.~~

~~Section 23. Radiation Surveys. (1) A radiation survey shall be made and recorded for each area where radioactive materials are stored and used.~~

~~(2) A radiation survey shall be made and recorded of the radiation levels in occupied positions and on the exterior of each vehicle used to transport radioactive materials.~~

~~(3) Each survey shall include each source of radiation and~~

~~combination of sources of radiation transported in the vehicle.~~

~~(4) After removal of the sealed source from the logging tool and before departing the job site, the logging tool detector shall be energized, or a survey meter used, to assure that the logging tool is free of contamination.~~

~~(5) A radiation survey shall be made and recorded at the job site or well head for tracer operations, except for those using hydrogen-3, carbon-14, and sulfur-35.~~

~~(6) Each survey shall include radiation levels prior to and after the operation.~~

~~(7) Records required pursuant to this section shall include:~~

~~(a) The dates;~~

~~(b) The identification of the individual making the survey;~~

~~(c) Identification of survey instrument used; and~~

~~(d) An exact description of the location of the survey.~~

~~(8) Each survey record shall be maintained for inspection by the cabinet for at least two (2) years after completion of the survey.~~

~~Section 24. Radioactive Contamination Control. (1) If the licensee has reason to believe that, as a result of an operation involving a sealed source, the encapsulation of the sealed source may be damaged by the operation, the licensee shall conduct a radiation survey, including a contamination survey, during and after the operation.~~

~~(2) If the licensee detects evidence that a sealed source has ruptured or radioactive materials have caused contamination, the licensee shall initiate immediately the emergency procedures required by Section 13 of this administrative regulation.~~

~~(3) If contamination results from the use of radioactive material in well logging, the licensee shall decontaminate work areas, equipment, and unrestricted areas.~~

~~(4) During efforts to recover a sealed source lodged in the well, the licensee shall continuously monitor, with a radiation detector capable of detecting the radioactive material, the circulating fluids from the well, if present, to check for contamination resulting from damage to the sealed source.~~

~~Section 25. Records Required at Field Stations. A licensee or registrant maintaining field stations from which well service operations are conducted shall have copies of the following records available at each station for inspection by the cabinet:~~

~~(1) Appropriate license or certificate of registration;~~

~~(2) Operating and emergency procedures;~~

~~(3) A copy of 902 KAR 100:019, 100:142, and 100:165;~~

~~(4) Survey records required pursuant to Section 23 of this administrative regulation;~~

~~(5) Quarterly inventories required pursuant to Section 7 of this administrative regulation;~~

~~(6) Utilization records required pursuant to Section 8 of this administrative regulation;~~

~~(7) Records of inspection and maintenance required pursuant to Section 11 of this administrative regulation;~~

~~(8) Records of the latest survey instrument calibration pursuant to Section 5 of this administrative regulation;~~

~~(9) Records of the latest leak test results pursuant to Section 6 of this administrative regulation; and~~

~~(10) Training records required by Section 12 of this administrative regulation.~~

~~Section 26. Records Required at Temporary Job Sites. (1) A licensee or registrant conducting a well service operation at a temporary job site shall have the following records available at that site for inspection by the cabinet:~~

~~(a) Operating and emergency procedures;~~

~~(b) Survey records required pursuant to Section 23 of this administrative regulation for the period of operation at the site;~~

~~(c) Evidence of current calibration for the radiation survey instruments in use at the site; and~~

~~(d) The shipping papers for the transportation of radioactive materials.~~

~~(2) In addition to the record requirements of this section, at each temporary job site where a well service operation is conducted under cabinet authorization granted pursuant to 902 KAR 100:065, a licensee or registrant shall have the following records available for inspection by the cabinet:~~

~~(a) Current leak test records for the sealed sources in use at the site;~~

~~(b) The appropriate license and certification of registration or equivalent document; and~~

~~(c) Shipping papers for the transport of radioactive material.~~

~~Section 27. Notification of Incidents and Lost Sources. (1) If the licensee knows or has reason to believe that a sealed source has been ruptured, the licensee shall:~~

~~(a) Immediately notify by telephone the Cabinet for Health and Family Services, Radiation Health Branch at (502) 564-3700 from 8 a.m.-4:30 p.m. Monday through Friday or at (800) 255-2587 at other hours; and~~

~~(b) Within thirty (30) days, notify by confirmatory letter to the Manager, Radiation Health Branch, 275 East Main Street, Frankfort, Kentucky 40621. The letter shall:~~

~~1. Designate the well or other location;~~

~~2. Describe the magnitude and extent of the escape of radioactive materials;~~

~~3. Assess the consequences of the rupture; and~~

~~4. Explain efforts planned or being taken to mitigate these consequences.~~

~~(2) The licensee shall notify the Cabinet for Health and Family Services, Radiation Health Branch of the theft or loss of radioactive materials, radiation overexposures, excessive levels and concentrations of radiation, and certain other accidents as required by 902 KAR 100:019, Sections 38, 39, and 40 and 100:040, Section 15.~~

~~(3) If a sealed source or device containing radioactive material is lodged in a well and it becomes apparent that efforts to recover the sealed source will not be successful, the licensee shall:~~

~~(a) Notify the Cabinet for Health and Family Services, Radiation Health Branch, immediately by telephone at (502) 564-3700 from 8 a.m. - 4:30 p.m., Monday through Friday or at (800) 255-2587 at other hours of the circumstances that resulted in the inability to retrieve the source and obtain cabinet approval to implement abandonment procedures; or~~

~~(b) That the licensee implemented abandonment before receiving cabinet approval because the licensee believed there was an immediate threat to public health and safety.~~

~~(4) If it becomes apparent that efforts to recover the radioactive source shall not be successful, the licensee shall:~~

~~(a) Advise the well owner or well-operator of the requirements of this administrative regulation regarding abandonment and an appropriate method of abandonment, which shall include:~~

~~1. The immobilization and sealing in place of the radioactive source with a cement plug;~~

~~2. A means to prevent inadvertent intrusion on the source, unless the source is not accessible to any subsequent drilling operations; and~~

~~3. The mounting of a permanent identification plaque, containing information required by this section, at the surface of the well, unless the mounting of the plaque is not practical;~~

~~(b) Either ensure that abandonment procedures are implemented within thirty (30) days after the sealed source has been classified as irretrievable or request an extension of time if unable to complete the abandonment procedures; and~~

~~(c) File a written report on the abandonment with the Manager, Radiation Health Branch, 275 East Main Street, Frankfort, Kentucky 40621 within thirty (30) days after a sealed source has been classified as irretrievable. The report shall be sent to each appropriate state or federal agency that issued permits or approved of the drilling operation and shall include the following information:~~

~~1. Date of occurrence and a brief description of attempts to recover the source;~~

~~2. Description of the radioactive source involved, including radionuclide, quantity, and chemical and physical form;~~

~~3. Surface location and identification of well;~~

~~4. Results of efforts to immobilize and seal the source in place;~~

~~5. A brief description of the attempted recovery effort;~~

~~6. Depth of the radioactive source;~~
~~7. Depth of the top of the cement plug;~~
~~8. Depth of the well;~~
~~9. The immediate threat to public health and safety justification for implementing abandonment if prior cabinet approval was not obtained in accordance with subsection (6) of this section;~~
~~10. Information such as a warning statement, contained on the permanent identification plaque; and~~
~~11. State and federal agencies receiving a copy of this report.~~
~~(5) If a sealed source containing radioactive material is abandoned downhole, the licensee shall provide a permanent plaque mounted at the surface of the well. This plaque shall:~~
~~(a) Be constructed of long-lasting material, such as stainless steel, brass, bronze, or Monel. The size of the plaque shall be at least seven (7) inch, seventeen (17) cm square and one-eighth (1/8) inch (3mm) thick. Letter size of the word "Caution" shall be approximately twice the letter size of the rest of the information, for example, one-half (1/2) inch and one-fourth (1/4) inch letter size, respectively; and~~
~~(b) Contain the following engraved information on its face:~~
~~1. The word "Caution;"~~
~~2. The radiation symbol (color not required);~~
~~3. The date of abandonment;~~
~~4. The name of the well operator or well owner;~~
~~5. The well name and well identification number or other designation;~~
~~6. The sealed source by radionuclide and quantity of activity;~~
~~7. The source depth and the depth to the top of the plug;~~
~~8. An appropriate warning, depending on the specific circumstances of an abandonment, for example, "Do not drill below plug depth;" or "Do not enlarge casing;" and~~
~~9. The words "Do not reenter hole before contacting Radiation Health Branch, Kentucky Cabinet for Health and Family Services."~~
~~(6) If the licensee knows or has reason to believe that radioactive material has been lost in or to an underground potable water source, the licensee shall:~~
~~(a) Immediately notify the Cabinet for Health and Family Services, Radiation Health Branch by telephone at (502) 564-3700 from 8 a.m. - 4:30 p.m. Monday through Friday or at (800) 255-2587 at other hours; and~~
~~(b) Confirm by letter, within thirty (30) days, to the Manager, Radiation Health Branch, 275 East Main Street, Frankfort, Kentucky 40621.~~
~~(7) The notice shall designate the well location and shall describe the magnitude and extent of loss of radioactive material, assess the consequences of the loss, and explain efforts planned or being taken to mitigate consequences.~~

~~Section 28. Minimum Training Requirements for Logging Supervisors. Logging supervisors shall receive minimum training in the following areas:~~
~~(1) Fundamentals of radiation safety:~~
~~(a) Characteristics of gamma, neutron, and x-radiation;~~
~~(b) Units of radiation dose (mrem);~~
~~(c) Quantity of radioactivity (curie);~~
~~(d) Significance of radiation dose:~~
~~1. Radiation protection standards; and~~
~~2. Biological effects of radiation dose;~~
~~(e) Levels of radiation from sources of radiation;~~
~~(f) Methods of controlling radiation dose:~~
~~1. Working time;~~
~~2. Working distance; and~~
~~3. Shielding; and~~
~~(g) Radiation safety practices including prevention of contamination and methods of decontamination;~~
~~(2) Radiation detection instrumentation to be used:~~
~~(a) Use of radiation survey instruments:~~
~~1. Operation;~~
~~2. Calibration; and~~
~~3. Limitations;~~
~~(b) Survey techniques; and~~
~~(c) Use of personnel monitoring equipment;~~
~~(3) Equipment to be used:~~
~~(a) Remote handling equipment;~~
~~(b) Sources of radiation;~~
~~(c) Storage and transport containers; and~~
~~(d) Operation and control of equipment;~~
~~(4) The requirements of 10 C.F.R. Part 39 and 902 KAR Chapter 100;~~
~~(5) The licensee's or registrant's written operating and emergency procedures;~~
~~(6) The licensee's or registrant's recordkeeping procedures; and~~
~~(7) Case histories of well logging accidents.~~

~~Section 29. Incorporation by Reference. (1) The following material is incorporated by reference:~~
~~(a) "USASI N5.10-1968, Classification of Sealed Radioactive Sources", 1968; and~~
~~(b) "ANSI/HPS N43.6-1997, "Sealed Radioactive Sources – Classification", 1997.~~
~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Commissioner of Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8:00 a.m. to 4:30 p.m~~].

JEFFREY D. HOWARD, JR., M.D., Commissioner
ADAM MEIER, Secretary
APPROVED BY AGENCY: June 29, 2018
FILED WITH LRC: July 5, 2018 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 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 August 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.
CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, phone (502) 564-3970, email julied.brooks@ky.gov; and Laura Begin
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation establishes the requirements for the issuance of a license authorizing the use of radioactive materials, and the radiation safety requirements for those authorized for the use of licensed materials, in well logging in a single well.
(b) The necessity of this administrative regulation: This administrative regulation outlines the requirements for those entities licensed for the practice of well logging. As an Agreement State with the authority to operate its radiation program, the Department for Public Health, Radiation Health Branch, is required to maintain a compatible set of regulations to those of the U.S. Nuclear Regulatory Commission (NRC) which govern the receipt, transfer, possession, use, and distribution of radioactive material in the Commonwealth.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the

secretary to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.844(1) requires the secretary to provide by administrative regulation the registration and licensing of the possession or use of any source of ionizing or electronic product radiation and the handling and disposal of radioactive waste; and to protect the public from unnecessary radiation exposure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation ensures all those who licensed for the practice of well logging are appropriately licensed and following all safety requirements for using sealed sources, radioactive tracers, radioactive markers and uranium sinker bars.

(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 adopts by reference the applicable NRC regulations for licenses and radiation safety requirements for well logging which eliminates any discrepancies between state and federal licensing requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary as the agreement between NRC and the Commonwealth requires the Radiation Health Branch to promulgate regulations that are compatible with NRC regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is consistent with the authorizing statutes, which require the secretary to adopt regulations for the registration and licensing of the possession of any source of ionizing or electronic product radiation necessary to protect the public from unnecessary radiation exposure.

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures all entities licensed for the practice of well logging understand the licensing requirements and are engaged in the safe usage of radioactive materials in their practice consistent with state and federal regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately five (5) licensees, all future applicants for a specific licensee to possess and use byproduct material for well logging and all licensees of other agreement states or NRC who perform licensed activities within the Commonwealth under reciprocal recognition pursuant to 902 KAR 100:065.

(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: Affected entities are required to be in compliance with NRC regulations so there will be no new actions required.

(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 cost of compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will be in full compliance with NRC regulations.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment does not affect 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 is associated with 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 establish or increase any fees.

(9) TIERING: Is tiering applied? No. This administrative regulation affects all radioactive materials licensees subject to 902 KAR Chapter 100 regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only the Radiation Health Branch in the Department for Public Health will be impacted by this administrative regulation as it contains reference to the federal regulation. There are no new requirements.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to adopt administrative regulations necessary to protect the health of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the Cabinet. KRS 211.844(1) requires the Cabinet to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and to regulate the handling and disposal of radioactive waste. This administrative regulation establishes the requirements for the issuance of a license authorizing the use of radioactive materials, and the radiation safety requirements for those authorized for the use of licensed materials, in well logging in a single well. 10 C.F.R. Part 34, contains these federal requirements that Kentucky must be consistent with.

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 generates no revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation generates no revenue.

(c) How much will it cost to administer this program for the first year? This administrative regulation does not add costs to the agency.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not add costs to the agency.

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. The Atomic Energy Act of 1954, as amended, the Energy Policy Act of 2005 and 10 C.F.R. Part 39.

2. State compliance standards. This regulation adopts the federal standards for the issuance of license authorizing the use of licensed materials including sealed sources, radioactive tracers, radioactive markers, and uranium sinker bars in well logging in a single.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires state regulations to be compatible with the equivalent federal regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no different, stricter, or additional responsibilities or requirements.

NEW ADMINISTRATIVE REGULATIONS

GENERAL GOVERNMENT CABINET
Kentucky Office of the Attorney General
Office of Consumer Protection
(New Administrative Regulation)

40 KAR 2:345. Visual aid glasses seller annual registration requirements.

RELATES TO: KRS 367.680, 367.686, 367.688, 367.689, 367.690

STATUTORY AUTHORITY: KRS 15.180, 367.150(4), 367.686, 367.688, 367.689

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.180 authorizes the Attorney General to promulgate administrative regulations that will facilitate performing the duties and exercising the authority vested in the Attorney General and the Department of Law. KRS 367.150(4) requires the Department of Law to study the operation of all laws, rules, administrative regulations, orders, and state policies affecting consumers and to recommend administrative regulations in the consumers' interest. KRS 367.689 authorizes the Attorney General to promulgate administrative regulations to carry out the provisions of KRS 367.680 to 367.690, pertaining to visual aid glasses. KRS 367.688 requires the Attorney General to charge a fee for investigation and registration of nonresident dispensers of visual aid glasses. This administrative regulation establishes requirements for annual registration required by KRS 367.686 for a person located outside of Kentucky who ships, mails, delivers, sells, or dispenses visual aid glasses to a patient at a Kentucky address, effective July 14, 2018, and will increase protection of the public health, safety and welfare.

Section 1. Visual Aid Glasses Seller Annual Registration Form. A registrant shall register annually by submitting a complete Visual Aid Glasses Seller Annual Registration, Form G-1, containing all information and the registration fee required by this administrative regulation. The Visual Aid Glasses Seller Annual Registration, Form G-1, shall contain the following:

(1) The legal name of the registrant;

(2) Other names under which the registrant conducts business;

(3) The registrant's contact person including name, title, business address, phone number, and fax number. The contact person's email address may also be provided;

(4) The registrant's principal physical business location, which shall not be a post office box;

(5) The registrant's mailing address;

(6) The location where the registrant keeps or maintains records of its Kentucky customers;

(7) The toll-free phone numbers for questions from customers, optometrists, osteopaths and physicians;

(8) The registrant's fax number;

(9) The registrant's website;

(10) Whether the registrant has been the subject of civil or criminal action by an agency in any state that regulates the sale or dispensing of visual aid glasses, and, if yes, an explanation;

(11) A list of each state in which the registrant is registered or licensed to sell or dispense visual aid glasses;

(12) An annual registration fee of $500 enclosed with each registration in the form of a check made payable to "Kentucky State Treasurer"; and

(13) The signature of the registrant or a person authorized to sign on behalf of the registrant, the printed name and title of the person signing the registration form, and the date of the signature. The signature shall constitute a certification that the statements contained in the registration form are true and correct to the best of the knowledge and belief of the person signing the registration form.

Section 2. The original completed Visual Aid Glasses Seller Annual Registration, Form G-1, and the registration fee, shall be mailed or delivered to the Kentucky Office of the Attorney General, Office of Consumer Protection, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601.

Section 3. The registrant shall notify the Attorney General within thirty (30) days of any material change to information provided in the registrant's Visual Aid Glasses Seller Annual Registration, Form G-1, in writing at the address shown in Section 2 of this administrative regulation.

Section 4. A notice or letter from the Attorney General to a registrant may be sent by first-class regular mail to a last-known address as shown in the registrant's last Visual Aid Glasses Seller Annual Registration, Form G-1, or in the registrant's last notice of material change provided pursuant to Section 3 of this administrative regulation.

Section 5. The Attorney General may charge a fee for investigation of nonresident dispensers of visual aid glasses based on reasonable expenses incurred during the complaint or investigation process, in accordance with KRS 367.688.

Section 6. Incorporation by Reference. (1) "Visual Aid Glasses Seller Annual Registration, Form G-1", 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of the Attorney General, Office of Consumer Protection, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ANDY BESHEAR, Attorney General

APPROVED BY AGENCY: June 29, 2018

FILED WITH LRC: July 2, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2018 at 10:00 a.m. Eastern Time at the Kentucky Office of the Attorney General, Office of Consumer Protection, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed 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., Eastern Time, on August 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kevin R. Winstead, Assistant Attorney General, Kentucky Office of the Attorney General, Office of Consumer Protection, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 696-5300, email kevin.winstead@ky.gov, fax (502) 573-8317.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the registration requirements, incorporates the requisite registration form, and sets the annual registration fee for nonresident dispensers of visual aid glasses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for an annual registration and create the registration form for nonresident dispensers of visual aid glasses that are required to register with the Attorney General under KRS 367.686, as amended by House Bill 191 (2018 Ky Acts ch. 44), effective July

14, 2018.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation creates a registration form and a registration fee for nonresident dispensers of visual aid glasses dispensing to Kentucky residents. KRS 367.686 requires registration with the Attorney General, and KRS 367.688 requires the Attorney General to charge a fee for registration and investigation of nonresident dispensers of visual aid glasses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the registration requirements, incorporates the registration form, and sets the requisite annual fee for registration.

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

(a) How the amendment will change this existing administrative regulation: N/A.

(b) The necessity of the amendment to this administrative regulation: N/A.

(c) How the amendment conforms to the content of the authorizing statutes: N/A.

(d) How the amendment will assist in the effective administration of the statutes: N/A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: the office is uncertain of how many nonresident dispensers of visual aid glasses will register, however, the agency estimates that ten (10) to twenty (20) registrations will be received annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation will require nonresident dispensers of visual aid glasses to Kentucky residents to register annually with the Kentucky Office of the Attorney General, complete a registration form, pay a fee for registration, and provide written notice to the Attorney General within thirty (30) days of any material change in the information in the registration form.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): A registration fee of $500 will be charged to cover administrative costs of registration. KRS 367.686 requires the Attorney General to charge a fee for investigation and registration of nonresident dispensers of visual aid glasses.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Nonresident dispensers of visual aid glasses will be registered with the Kentucky Attorney General as required by law. Compliance will also increase protection of the public health, safety and welfare.

(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: There is no funding required 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: A registration fee of $500 will be charged for registration to cover administration costs and a fee may be charged for reasonable expenses incurred during any investigation. KRS 367.686 requires the Attorney General to charge a fee for investigation and registration of nonresident dispensers of visual aid glasses.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulation establishes a registration fee of $500. KRS 367.686 requires the Attorney General to charge a fee for investigation and registration of nonresident dispensers of visual aid glasses.

(9) TIERING: Is tiering applied? Tiering was not applied as the same criteria apply to all registrants.

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 Office of the Attorney General.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 367.680, 367.681, 367.686, 367.688, 367.689 and 367.690.

(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? A de minimus amount of revenue will be generated from this administrative regulation, estimated at ten (10) to twenty (20) annual registrations at $500 per registration.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? A de minimus amount of revenue will be generated from this administrative regulation, estimated at ten (10) to twenty (20) annual registrations at $500 per registration.

(c) How much will it cost to administer this program for the first year? No additional costs are anticipated.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated.

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

PUBLIC PROTECTION CABINET
Department of Professional Licensing
Kentucky Athlete Agent Registry
(Repealer)

200 KAR 30:011. Repeal of 200 KAR 30:010, 30:020, 30:030, 30:040, and 30:070.

RELATES TO: KRS 164.6901 to 164.6935

STATUTORY AUTHORITY: KRS 164.6905(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.6901 to 164.6935 authorizes the Department of Professional Licensing to exercise all of the administrative functions of the Commonwealth in the regulation of athlete agents, and to promulgate administrative regulations to carry out the provisions of the chapter. This administrative regulation repeals 200 KAR 30:010; 200 KAR 30:020; 200 KAR 30:030; 200 KAR 30:040; and 200 KAR 30:070, all of which are unneeded because the necessary content has been amended to be consistent with statutory amendments in the Revised Athlete Agents Act, and is being concurrently promulgated in a new administrative regulation chapter located at 830 KAR Chapter 2.

Section 1. The following regulations are hereby repealed:

(1) 200 KAR 30:010, Definitions for 200 KAR Chapter 30;

(2) 200 KAR 30:020, Complaint review;

(3) 200 KAR 30:030, Procedure for registration;

(4) 200 KAR 30:040, Fees; and

(5) 200 KAR 30:070, Records retention.

ISAAC VANHOOSE, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: July 9, 2018

FILED WITH LRC: July 11, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 2018, at the hour of 1:00 p.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 no later than 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. 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. Written comments shall be accepted through August 31, 2018. Send written notification of intent to attend the public hearing, and/or written comments on the proposed administrative regulation to:

CONTACT PERSON: David C. Trimble, General Counsel, Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 782-8823, fax (502) 564-4818, 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 repeals five (5) regulations relating to athlete agents in Kentucky. The necessary content of the regulations is being updated and repromulgated as 830 KAR Chapter 2, in accordance with SB-228, the Revised Uniform Athlete Agent Act passed during the 2018 Regular Session of the General Assembly.

(b) The necessity of this administrative regulation: This administrative regulation repeals outdated and cumbersome regulations. The necessary content is being updated and repromulgated as 830 KAR Chapter 2.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.6905(3) authorizes the Department of Professional Licensing to promulgate administrative regulations for the Kentucky Athlete Agent Registry.

(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 licensing and regulating athlete agents in Kentucky. This repealer removes outdated and cumbersome regulations, allowing the Department to concurrently promulgate more appropriate administrative regulations for athlete agents.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This repealer and the concurrent promulgation of new administrative regulations in 830 KAR Chapter 2 will affect all persons seeking to register as an athlete agent in the Commonwealth of Kentucky. There are currently one hundred twenty-nine (129) individuals registered as athlete agents in Kentucky.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: This repealer will not require any actions by the entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): This repealer will not result in costs for any of the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This repealer will allow for new, clearer administrative regulations in 830 KAR Chapter 2.

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

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

(b) On a continuing basis: There should be no additional cost on a continuing basis to this repealer.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this is a repealer.

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.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The Revised Uniform Athlete Agents Act at KRS 164.6901 et. seq.

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

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

(c) How much will it cost to administer this program for the first year? This repealer will not cost anything to administer for the first year.

(d) How much will it cost to administer this program for subsequent years? This repealer will not cost anything to administer for the first year.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Oil and Gas
(New Administrative Regulation)

805 KAR 1:210. Comment Period for Pooling of Oil and Gas Shallow Wells.

RELATES TO: KRS 353.510, 353.630, 353.640.
STATUTORY AUTHORITY: KRS 353.630.
NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.630 requires an applicant for pooling of oil and gas interests for shallow wells to provide notice to all persons reasonably known to have an oil or gas interest in any tract or portion thereof proposed to be pooled, and to unknown or nonlocatable owners and requires the department to consider written comments before rendering a final decision on shallow well pooling. This administrative regulation establishes the requirements related to comment periods on shallow well pooling proposals.

Section 1. Opportunity for comment period. Any person having an oil or gas interest in any tract or portion thereof proposed to be pooled, including an unknown or nonlocatable owner, may submit written comments to the cabinet on a proposal for shallow well pooling. The comment period shall commence on the date of notice as defined by KRS 353.510(45). The division shall consider all written comments before rendering its final decision on the shallow well pooling proposal.

CHARLES G. SNAVELY, Secretary
APPROVED BY AGENCY: July 3, 2018
FILED WITH LRC: July 13, 2018 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 2018 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.
CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the requirements related to comment periods on shallow well pooling proposals.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify that interested parties can submit comments on oil and gas pooling hearings before the cabinet renders its final decision.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.630 requires an applicant for pooling of oil and gas interests for shallow wells to provide notice to parties that may have an interest in the pooling. This administrative regulation provides a method for providing comments that conforms with the time frame in KRS 353.510(45).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the comment period for individuals that may have an interest in the pooling of shallow oil and gas wells.
(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 statutes: NA.
(d) How the amendment will assist in the effective administration of statutes: NA.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation establishes a comment period for pooling of oil and gas shallow wells. The number of individuals impacted will depend on the area to be pooled.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will comply with this administrative regulation and the timeframes established on KRS 353.510(45).
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to the regulated entity to comply with this administrative regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will benefit from the ability to provide comments on oil and gas pooling prior to the cabinet's final decision.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: The cabinet will not incur any additional costs for the implementation of this administrative regulation.
(b) On a continuing basis: The cabinet will not incur any additional costs for the implementation of this administrative regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's current operating budget will be used for the implementation of this administrative regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding is necessary to implement this amendment.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? No, tiering was not used. All individuals interested in providing comment on oil and gas shallow well pooling are provided that opportunity.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact not only the cabinet but any local governments that would like to offer comment on a proposed pooling of oil and gas shallow well.
2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 353.630.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the regulation is to be in effect.

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

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

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

PUBLIC PROTECTION CABINET
Department of Insurance
(Repealer)

806 KAR 17:091. Repeal of 806 KAR 17:010, 806 KAR 17:090, 806 KAR 17:130, 806 KAR 17:310, 806 KAR 17:320, 806 KAR 17:330, 806 KAR 17:440, 806 KAR 17:460, 806 KAR 17:500, 806 KAR 17:540, 806 KAR 17:545, 806 KAR 17:555.

RELATES TO: KRS 304.17-415, 304.12-190, 304.17-319, 304.18-0365, 304.32-1585, 304.38-1937, 304.2-310, 304.9-020(1), 304.17-042, 304.17-070, 304.17A-005(26), 304.17A-140, 304.17A-142, 304.17A-200(8), 304.17A-230(2), 304.17A-243, 304.17A-245, 304.17B-001-304.17B-033, 304.18-110, 304.17A-005(29), 304.17A-132, 304.17A-134, 304.17A-139, 304.17A-149, 304.17B-001-304.17B-033, 304.12-013, 304.14-020, 304.14-120, 304.14-140, 304.14-150, 304.14-180, 304.14-210, 304.14-360, KRS 304.14-440, 304.14-450, 304.17-030, 304.17-310, 304.17-313, 304.17-3165, 304.17-319, 304.17A-005, 304.17A-096-304.17A-132, 304.17A-135-304.17A-145, 304.17A-148-304.17A-149, 304.17A-155, 304.17A-171, 304.17A-250, 304.17A-258, 304.17A-520, 304.17A-540, 304.17A-545, 304.17A-647, 304.17C-060, 304.18-032, 304.18-0365-304.18-037, 304.18-0985, 304.32-153, 304.32-1585, 304.32-1595, 304.32-280, 304.38-1935-304.38-1937, 304.38-199, 304.38-210, 304.1-050 (2), 304.14-120, 304.14-430, 304.14.450, 304.17A-095 – 304.17A-0954, 29 C.F.R. 2590.702(b), 2590.711, 2590.712, 29 U.S.C. 1185, 42 U.S.C. 300gg-4-300gg-6, 300gg-51, 300gg-52, 2012 Ky. Acts ch. 144, Part XII, secs. 1-8, 12, 42 U.S.C. 1396e

STATUTORY AUTHORITY: KRS 13A.310, 304.2-110, 304.32-250, 304.38-150, 304.17A-096, 304.17A-097, 304.17C-060, 2012 Ky. Acts ch. 144, Part XX, secs. 1(2), 1(3), 2(3)(b), 2(5), 8(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations to aid in the effectuation of any provision of the Insurance Code, as defined in KRS 304.1-010. KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. This administrative regulation repeals 806 KAR 17:010, Refund of unearned premium, which is outdated and no longer necessary because KRS 304.17-415 mandates the return of unearned premium on individual policies; 806 KAR 17:090, Preauthorization requirements for coverage of temporomandibular joint disorder and evaluation of medical necessity for treatment of craniomandibular jaw disorder, which uses outdated ICD-9 codes and conflicts with KRS 304.38-1937; 806 KAR 17:130, the Twenty-four (24) Hour Pilot Insurance Program, which has not been used since its inception in 1995; 806 KAR 17:310, Prompt payment of claims reporting requirements, which is being consolidated within 806 KAR 17:360 for ease of reference and to eliminate duplication; 806 KAR 17:320, Kentucky Access, which is out of date due to reorganization and disbanding of the Kentucky Access program; 806 KAR 17:330, Kentucky Access health benefit plans, which is out of date as Kentucky Access is no longer offering health benefit plans; 806 KAR 17:440, Provider agreement, subcontract agreement, and risk-sharing arrangement agreement and other filing requirements for insurers offering a limited health service benefit plan, which is being consolidated with 806 KAR 17:300 for ease of reference and to eliminate duplication between administrative regulations governing identical subject matter; 806 KAR 17:460, Requirements for autism benefits for children, which contains requirements identical to KRS 304.17A-142, as amended by House Bill 218 of the 2018 Regular Session; 806 KAR 17:500, Basic health plan requirements, which is out of date as insurers are no longer permitted to offer these types of health plans under the Patient Protection and Affordable Care Act, 42 U.S.C. §18001 (2010); 806 KAR 17:540 ICARE Program high-cost conditions, which is obsolete as the ICARE Program was not renewed and is no longer active; 806 KAR 17:545 ICARE Program employer eligibility, application process, and requirements, which is obsolete as the ICARE Program was not renewed and is no longer active; 806 KAR 17:555, ICARE Program Requirements, which is obsolete as the ICARE Program was not renewed and is no longer active.

Section 1. The following administrative regulations are hereby repealed:

(1) 806 KAR 17:010, Refund of unearned premium;

(2) 806 KAR 17:090, Preauthorization requirements for coverage of temporomandibular joint disorder and evaluation of medical necessity for treatment of craniomandibular jaw disorder;

(3) 806 KAR 17:130, Twenty-four (24) hour pilot insurance program;

(4) 806 KAR 17:310, Prompt payment reporting requirements;

(5) 806 KAR 17:320, Kentucky Access requirements;

(6) 806 KAR 17:330, Kentucky Access health benefit plans;

(7) 806 KAR 17:440, Provider agreement, subcontract agreement, and risk-sharing arrangement agreement and other filing requirements for insurers offering a limited health service benefit plan;

(8) 806 KAR 17:460, Requirements for autism benefits for children;

(9) 806 KAR 17:500, Basic health benefit plan requirements;

(10) 806 KAR 17:540, ICARE Program high-cost conditions;

(11) 806 KAR 17:545, ICARE Program employer eligibility; and

(12) 806 KAR 17:555, ICARE Program Requirements.

NANCY G. ATKINS, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: July 11, 2018

FILED WITH LRC: July 11, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2018 at 09:00 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 August 16, 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 11:59 p.m. on August 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact

person below.

CONTACT PERSON: Patrick D. O'Connor II, Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-2669, email Patrick.oconnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick D. O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 806 KAR 17:010; 806 KAR 17:090, 806 KAR 17:130, 806 KAR 17:310, 806 KAR 17:320, 806 KAR 17:330, 806 KAR 17:440, 806 KAR 17:460, 806 KAR 17:500, 806 KAR 17:540, 806 KAR 17:545, 806 KAR 17:555.

(b) The necessity of this administrative regulation: This administrative regulation repeals unnecessary and outdated administrative regulations. Necessary provisions of the administrative regulations being repealed will be preserved by concurrent amendments to related administrative regulations.

806 KAR 17:010, Refund of unearned premium, is unnecessary as KRS 304.17-415 already mandates the return of unearned premium for an individually marketed health insurance policy.

806 KAR 17:090, Preauthorization requirements for coverage of temporomandibular joint disorder and evaluation of medical necessity for treatment of craniomandibular jaw disorder, uses outdated ICD-9 codes and conflicts with KRS 304.38-1937 by creating standards for medical necessity. While KRS 304.38-1937 mandates coverage, insurers retain the authority to develop and use their own criteria for medical necessity.

806 KAR 17:130, Twenty-four (24) hour pilot insurance program, was promulgated following the 1995 establishment of a pilot program under KRS 216.2960. In the twenty-three (23) years since its enactment, the Department has not received any filings by insurers seeking to participate.

806 KAR 17:310, prompt payment of claims reporting requirements, is an administrative regulation required by KRS 304.17A-722. Current prompt payment requirements are spread across multiple regulations, so insurers, individuals, and providers must look in multiple places to determine and understand the requirements. To increase efficiency, the Department is proposing a concurrent amendment consolidating prompt payment regulations into a single, user-friendly regulation at 806 KAR 17:360.

806 KAR 17:320, Kentucky Access, is out of date due to reorganization and disbanding of the Kentucky Access program. 806 KAR 17:330, Kentucky Access health benefit plans, is out of date as Kentucky Access is no longer offering health benefit plans.

806 KAR 17:440 is duplicative of the requirements included within 806 KAR 17:300. The only difference was 806 KAR 17:440 applied to limited health service benefit plans. The consolidated administrative regulations improve administrative efficiency by preventing insurers and other parties from reviewing multiple regulations for the Department requirements on reporting of provider and subcontractor agreements.

806 KAR 17:460, Requirements for autism benefits for children, is no longer necessary as House Bill 218 of the 2018 Regular Session amended KRS 304.17A-142, eliminating limits on autism treatment benefits within health benefit plans.

806 KAR 17:500, Basic health plan requirements, is out of date as insurers are no longer permitted to offer these types of health plans under the Patient Protection and Affordable Care Act, 42 U.S.C. §18001 (2010).

806 KAR 17:540, 806 KAR 17:545, and 806 KAR 17:555 all relate to the ICARE program, and are obsolete as the ICARE Program was not renewed and is no longer active.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 13A.310 states that an administrative regulation shall only be repealed by the promulgation of an administrative regulation. This administrative regulation is repealing twelve (12) obsolete administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals twelve (12) administrative regulations that are no longer necessary.

(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 repealer.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation provides compliance savings for insurers or other regulated entities as it repeals obsolete statutes. It does not change existing business practices of the Department of Insurance.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not be required to take any action as a result of this repealer.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from reduced regulations, elimination of duplicative regulations, and consolidation of regulations with identical subject matter all of which will increase the administrative efficiencies to determine required compliance measures.

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

(a) Initially: There will not be an initial cost to implement this repealer.

(b) On a continuing basis: There will not be a continuing cost related to this repealer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be necessary.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this regulation apply equally to all insurance companies, corporate sureties or other entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110 and KRS 13A.310.

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

the first full year the administrative regulation is to be in effect.

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

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

(d) How much will it cost to administer this program for subsequent years**?** There is no cost associated with this administrative regulation.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Department of Professional Licensing
Kentucky Athlete Agent Registry
(New Administrative Regulation)

830 KAR 2:001. Definitions.

RELATES TO: KRS 164.6901 to 164.6935

STATUTORY AUTHORITY: KRS 164.6905(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Revised Uniform Athlete Agents Act, KRS 164.6901 to 164.6935, authorizes the Department of Professional Licensing to exercise administrative functions of the Commonwealth in the regulation of athlete agents, and to promulgate administrative regulations for the Kentucky Athlete Agent Registry. This administrative regulation sets forth the definitions for use in 830 KAR, Chapter 2.

Section 1. Definitions. (1) "Appropriate college, university, or athletic regulatory body" means the college, university, or athletic regulatory body which provides or regulates an athletic program in which a student athlete participates or did participate at the time misconduct set forth in a complaint occurred.

(2) "Charge" means a written allegation issued by the college, university, or athletic regulatory body stating that a violation of a Kentucky statute or administrative regulation relevant to the relationship between an athlete agent and student athlete has occurred.

(3) "Commissioner" means the individual in charge of the Department of Professional Licensing.

(4) "Complaint" means a written allegation of misconduct by a registered athlete agent or student athlete which may constitute a violation of a Kentucky statute or administrative regulation relevant to the relationship between an athlete agent and student athlete.

(5) "Department" means the Department of Professional Licensing.

(6) "Disciplinary action" means:

(a) A suspension, revocation, or refusal to renew a registration for conduct that would have justified denial of an athlete agent's registration under KRS 164.6911(2);

(b) The imposition of community service upon a student athlete; or

(c) A combination of the actions authorized in paragraphs (a) and (b) of this subsection.

(6) "Investigative assistant" means an individual assigned by the Department to assist in the investigation of a complaint.

ISAAC VANHOOSE, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: July 9, 2018

FILED WITH LRC: July 11, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 2018, at the hour of 1:00 p.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 no later than 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. 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. Written comments shall be accepted through August 31, 2018. Send written notification of intent to attend the public hearing, and/or written comments on the proposed administrative regulation to:

CONTACT PERSON: David C. Trimble, General Counsel, Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 782-8823, fax (502) 564-4818, 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 definitions for terminology used within Title 830, Chapter 2 of the Kentucky Administrative Regulations. This new administrative regulation replaces 200 KAR 30:010, which is being concurrently repealed.

(b) The necessity of this administrative regulation: This regulation is necessary to provide clear and user-friendly definitions for terms used in this Chapter that are consistent with statutory updates arising from the passage of SB-228 during the 2018 Regular Session of the General Assembly.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.6905(3) authorizes the Department of Professional Licensing to promulgate administrative regulations for the Kentucky Athlete Agent Registry. This regulation sets forth definitions for 830 KAR Chapter 2.

(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 licensing and regulating athlete agents in Kentucky. These definitions will ensure consistent use of terminology.

(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 that replaces the former 200 KAR 30:010.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This new administrative regulation will make 830 KAR 2 easier to understand and comply with for those individuals seeking to register as an athlete agent in the Commonwealth of Kentucky. There are currently one hundred twenty-nine (129) individuals registered as athlete agents in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this

administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation will not require any actions by the entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): This administrative regulation will not result in costs for any of the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved ability to locate and implement terminology for regulations and their application.

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

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

(b) On a continuing basis: There should 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 administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation applies equally to all persons or entities involved in the athlete agent business.

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 administrative regulation. Publicly-funded secondary schools and schools of higher education may be affected by this administrative regulation to the extent student-athletes enrolled at their institutions have the potential to become professional athletes.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.6901 to 164.6935, as amended, creates the Kentucky Athlete Agent 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.

(a) How much 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 new or additional revenues.

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

(c) How much will it cost to administer this program for the first year? This is not the first year of the Athlete Agents Registry. Registration and issuance of certificates for athlete agents, including background checks and maintaining a public-accessible registry, costs approximately $45,000 per year. The Department has not received any complaints against Athlete Agents, so the enforcement cost is unknown.

(d) How much will it cost to administer this program for subsequent years? The registration program will cost the same as it has unless and until electronic registrations are implemented. Future enforcement costs remain unknown.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET
Department of Professional Licensing
Kentucky Athlete Agent Registry
(New Administrative Regulation)

830 KAR 2:010. Registration and Fees.

RELATES TO: KRS 164.6907(1), 164.6909, 164.6911, 164.6915

STATUTORY AUTHORITY: KRS 164.6905(3), 164.6909(1), 164.6911(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.6905(3) authorizes the Department of Professional Licensing to promulgate administrative regulations necessary to implement the provisions of KRS 164.6901 to 164.6935. KRS 164.6909 requires the office to prescribe an application form for registration as an athlete agent. KRS 164.6911 requires the Department to prescribe a registration renewal form. This administrative regulation establishes the procedures and fees for registration and registration renewal applications of an athlete agent.

Section 1. Application Procedures. (1) Initial registrations may be submitted at any time. An applicant for initial registration shall submit:

(a) A completed Athlete Agent Registry Application Form, Form AAR-002, with all attachments required by the form;

(b) An initial registration fee of $300;

(c) A copy of each agent contract with a student athlete in the Commonwealth of Kentucky; and

(d) A copy of all licenses or permits under which the agent is providing representation, advice, or serving as an agent in any way.

(2) Renewal registrations must be submitted annually on or before March 31. Any athlete agent registration not renewed on or before March 31 shall be considered automatically revoked. An athlete agent applying for registration renewal shall submit:

(a) A completed Athlete Agent Registry Application Form, Form number AAR-002; and

(b) A renewal registration fee of $200.

(3) The Department may request clarification and verification of information provided in the application prior to granting initial or renewal registration.

Section 2. Incorporation by Reference. (1) "Application for Athlete Agent Registry or Renewal", Form AAR-002, July 2018, is incorporated by reference.

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

ISAAC VANHOOSE, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: July 9, 2018

FILED WITH LRC: July 11, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 2018, at the hour of 1:00 p.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 no later than 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. 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. Written comments shall be accepted through August 31, 2018. Send written notification of intent to attend the public hearing, and/or written comments on the proposed administrative regulation to:

CONTACT PERSON: David C. Trimble, General Counsel, Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 782-8823, fax (502) 564-4818, 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 new administrative regulation provides procedures and fees for registration and renewal of registration for athlete agents consistent with amendments to the Revised Uniform Athlete Agents Act set forth in SB-228, which passed the General Assembly during the 2018 General Session. The administrative regulation replaces 201 KAR 30:030 and 201 KAR 30:040, which are being concurrently repealed.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide that those seeking to register as athlete agents in Kentucky have a consistent procedure and cost to do so.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.6905(3) authorizes the Department of Professional Licensing to promulgate administrative regulations for the Kentucky Athlete Agent Registry. This administrative regulation sets forth the procedures for registration and renewal of registration for athlete agents.

(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 licensing and regulating athlete agents in Kentucky. This administrative regulation sets forth the procedures for registration and renewal of registration for athlete agents.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department currently has one hundred twenty-nine (129) individuals registered as athlete agents in Kentucky. The Kentucky statute is similar to Federal law and other states' laws applying to athlete agents.

(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 for registration as athlete agents must complete an application, pay fees, and provide additional documentation as requested by the Department.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): Initial registrants will pay a $300 fee; renewing registrants will pay a $200 fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Ability to register or renew registration as an athlete agent.

(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 administrative regulation.

(b) On a continuing basis: There should 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 administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation updates fees previously established in administrative regulations that are being concurrently repealed.

(9) TIERING: Is tiering applied? No. The administrative regulation applies equally to all persons or entities involved in the athlete agent business.

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 administrative regulation. Publicly-funded secondary schools and schools of higher education have the potential to be affected by this administrative regulation to the extent student-athletes enrolled at their institutions have the potential to become professional athletes.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.6901 to 164.6935, as amended, creates the Kentucky Athlete Agent 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.

(a) How much 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 anticipated to generate approximately $30,000 for the state government. This administrative regulation will not generate revenue for 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 is anticipated to generate approximately $30,000 for the state government on an annual basis. This administrative regulation will not generate revenue for local government.

(c) How much will it cost to administer this program for the first year? This is not the first year of the Athlete Agents Registry. Registration and issuance of certificates for Athlete Agents, including background checks and maintaining a public-accessible registry, costs approximately $45,000 per year with current staffing levels. The Department has not received any complaints against athlete agents, so the enforcement cost is unknown.

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

adequate for administering the registry.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: The Department previously collected fees and administered the athlete agents registry under the authority of administrative regulations that are being concurrently repealed. It is not anticipated that there will be an increase in registrants or workload for Department staff currently tasked with administering the registry.

PUBLIC PROTECTION CABINET
Department of Professional Licensing
Kentucky Athlete Agent Registry
(New Administrative Regulation)

830 KAR 2:020. Complaints.

RELATES TO: KRS 164.6913 – 164.6933

STATUTORY AUTHORITY: KRS 164.6905(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.6905(3) authorizes the Department of Professional Licensing to promulgate administrative regulations necessary to implement KRS 164.6901 to 164.6935. This administrative regulation establishes the procedure for review of a complaint against an athlete agent or student athlete.

Section 1. Complaint to the Kentucky Athlete Agent Registry. (1) All complaints shall be submitted in writing on Form AAR-001.

(2) A complaint may be filed by:

(a) A person aggrieved in any fashion by an alleged violation of KRS 164.6901 to 164.6935, or 830 KAR Chapter 2; or

(b) A person or institution, including the Department or appropriate college, university, or athletic regulatory body, based upon information in its possession.

(3) No complaint may be filed anonymously. The Department will take no action on anonymous complaints.

(4) Upon receipt of a complaint, the Department shall:

(a) Send a copy to the appropriate college, university, or athletic regulatory body via certified mail, return receipt requested; and

(b) Send a copy and request for response to the athlete agent and student athlete named in the complaint, and each other identified party, via certified mail, return receipt requested.

Section 2. Response. (1) The response shall be:

(a) Filed with the Department within twenty (20) days from the date of receipt of mailing of the complaint; and

(b) Served upon the appropriate college, university, or athletic regulatory body, and any other party including the athlete agent and the student athlete.

(2) Each response shall include any and all contracts or other documents executed by or between the parties, and copies of any correspondence between the parties.

(3) Failure of any party against whom allegations of violation(s) of KRS 164.6901 to 164.6935, or 830 KAR Chapter 2, to file a response in a timely fashion may, at the sole discretion of the Department, be treated as a default of the obligation to file a response, and an admission of the alleged violation(s).

Section 3. Notice and Service of Process. (1) Unless waived by the recipient, service of notice and other process shall be made by hand-delivery or delivery by certified mail, return receipt requested, to the individual's address provided to the office at the time of registration or, if known, by regular mail on the named individual's attorney or registered agent.

(2) The making of service of process and the manner of same shall be shown on any document filed in a proceeding before the Department in the manner required by the Kentucky Rules of Civil Procedure.

(3) Refusal of service if by certified mail, or avoidance of service if hand-delivered, shall not prevent the office from proceeding.

Section 4. Department Review. (1) Within thirty (30) days of the Department's receipt of responses from the parties, the Department shall conduct a preliminary review to determine whether it has sufficient information upon which to base a decision.

(2) The complaint shall be dismissed and all parties notified of such dismissal if the department determines that:

(a) The department does not have jurisdiction; or

(b) The charges do not warrant disciplinary action.

(3) If the department determines that a violation of KRS 164.6901 to 164.6935 or 830 KAR Chapter 2 has occurred, it shall notify the parties of its determination, the charges upon which its determination is based, and shall suspend, revoke, or refuse renewal of registration pursuant to KRS 164.6913.

(4) If the Department determines that it lacks sufficient information with which to make a decision, it shall so notify the parties. The Department may then:

(a) Appoint an investigator to conduct an investigation to determine the relevant facts;

(b) Subpoena additional information from the parties; or

(c) Refer the complaint to an Administrative Hearing Officer pursuant to KRS Chapter 13B for further proceedings.

Section 5. Incorporation by Reference. (1) "Athlete Agent Registry Complaint Form, Form AAR-001", July 2018, is incorporated by reference.

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

ISAAC VANHOOSE, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: July 9, 2018

FILED WITH LRC: July 11, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 2018, at the hour of 1:00 p.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 no later than 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. 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. Written comments shall be accepted through August 31, 2018. Send written notification of intent to attend the public hearing, and/or written comments on the proposed administrative regulation to:

CONTACT PERSON: David C. Trimble, General Counsel, Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 782-8823, fax (502) 564-4818, 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 new administrative regulation sets requirements for review and disposition of complaints against athlete agents. This administrative regulation replaces 200 KAR 30:020, which is being concurrently repealed.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to create a process for the

review and disposition of complaints against athlete agents.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.6905(3) authorizes the Department of Professional Licensing to promulgate administrative regulations for the Kentucky Athlete Agent Registry. This administrative regulation sets requirements for review and disposition of complaints against athlete agents.

(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 licensing and regulating athlete agents in Kentucky. This administrative regulation sets requirements for review and disposition of complaints against athlete agents.

(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 new administrative regulation is part of a reorganization of the administrative regulations for the Kentucky Athlete Agent Registry, and provides a more detailed set of requirements for review and disposition of complaints against athlete agents, consistent with KRS Chapter 13B.

(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: There are one hundred and twenty-nine (129) athlete agents currently registered in Kentucky. This new regulation is consistent with new legislation taking effect on July 15, 2018, as well as KRS Chapter 13B and principles of constitutional due process. This administrative regulation potentially affects athlete agents and secondary and post-secondary schools with athletic programs.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will not have to take additional actions to comply with this administrative regulation, which sets forth procedures the department will use for addressing complaints received.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The regulated entities will not face any additional cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question: The regulated entities will have clarity regarding complaint and review procedures.

(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 administrative regulation.

(b) On a continuing basis: There should 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 administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. No, it does not directly or indirectly establish fees.

(9) TIERING: Is tiering applied? No. This administrative regulation applies equally to all persons or entities involved in the athlete agent business.

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 administrative regulation. Publicly-funded secondary schools and schools of higher education have the potential to be affected by this administrative regulation to the extent student-athletes enrolled at their institutions have the potential to become professional athletes.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.6901 to 164.6935, as amended, creates the Kentucky Athlete Agent 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.

(a) How much 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? No additional administrative cost will be incurred by this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional administrative cost will be incurred by this administrative regulation.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Administrative Regulation)

895 KAR 1:001. Definitions for 895 KAR Chapter 1.

RELATES TO: KRS 205.520, 205.8451, 20 C.F.R. Part 418, 42 C.F.R. Parts 435, 438, 440, 29 U.S.C. 701, 42 U.S.C. 1315, 1395dd, 1396a, 1396d, 9902, 12101, 18001

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes definitions for 895 KAR Chapter 1.

Section 1. Definitions. (1) "ACA" means the Patient Protection and Affordable Care Act, 42 U.S.C. 18001 et seq.

(2) "ACA expansion adult" means a Kentucky HEALTH beneficiary who meets the requirements established by 42 C.F.R. 435.119.

(3) "Active months" means the number of months in which a Kentucky HEALTH beneficiary is not disenrolled or in a suspension status during a benefit period.

(4) "Alternative benefit plan" or "ABP" means the benefit package developed by the department and approved by the Centers for Medicare and Medicaid Services in accordance with 42 C.F.R. Part 440, Subpart C (440.300-440.395 and provided to ACA expansion adults.

(5) "Applicant" means an individual for which coverage under Kentucky HEALTH is requested.

(6) "Beneficiary" means an individual who is enrolled in one of the following eligibility groups and subject to Kentucky HEALTH provisions under KAR Title 895:

(a) ACA expansion adult;

(b) Parent and caretaker relative;

(c) Transitional medical assistance;

(d) Pregnant women; or

(e) Former foster youth.

(7) "Benefit year" means the time period:

(a) January 1 through December 31 of each calendar year; or

(b) From the date of enrollment in Kentucky HEALTH through December 31 of that same calendar year.

(8) "Community engagement activities" means department approved activities to support community engagement and employment of Kentucky HEALTH beneficiaries, including:

(a) Employment;

(b) Education;

(c) Job skills training;

(d) Community service; or

(e) Substance use disorder treatment.

(9) "Conditionally eligible beneficiary" means an ACA expansion adult or a parent and caretaker relative who:

(a) Has been determined to meet all Kentucky HEALTH eligibility criteria;

(b) Has not made an initial premium payment; and

(c) Is not currently eligible to receive Kentucky HEALTH benefits.

(10) "Copay plan" means the cost sharing plan whereby beneficiaries:

(a) Are charged a copayment according to the schedule of copays established in 907 KAR 1:604 and the Kentucky Medicaid state plan for every Kentucky HEALTH covered benefit received; and

(b) Do not have access to a MyRewards account.

(11) "Debt" means any unpaid premium amounts that MCOs may collect from a beneficiary, and which is neither a condition of eligibility nor required to cure a non-payment penalty.

(12) "Declared disaster" means a flood, storm, earthquake, catastrophic event, declared emergency by the governor, or any other event or series of events designated by the governor as a disaster or natural disaster.

(13) "Deductible account" means a state-funded account that:

(a) Functions as an administrative tracking mechanism designed to expose beneficiaries to healthcare costs.:

(b) Tracks the first $1,000 of non-preventive care services received within a benefit year by a beneficiary; and

(c) Includes a monthly statement sent to the beneficiary.

(14) "Dental services" means services:

(a)1. That are purchased by a beneficiary from an enrolled Medicaid provider via a MyRewards account; and

2. Include cleanings, fillings, and root canal therapy; and

(b) That do not include medical dental services including but not limited to the removal of benign and malignant lesions, removal of foreign bodies, wound suturing, or anesthesia related to medical dental services, which shall continue to be reimbursed pursuant to KAR Title 907.

(15) "Department" means the Department for Medicaid Services or its designee.

(16) "Domestic violence" has the same meaning as in KRS 403.720.

(17) "Early and Periodic Screening, Diagnostic, and Treatment Services" or "EPSDT" means those services defined in 42 U.S.C. 1396d(r).

(18) "Emergency medical condition" means a medical condition as established by 42 U.S.C. 1395dd.

(19) "Emergency services" means covered services that are needed to evaluate or stabilize an emergency medical condition.

(20) "Fast-track payment" means an advance premium dollar amount calculated by the department that an applicant may opt to pay to expedite coverage to the first day of the month in which the payment is made, which may be as early as the first day of the month of application.

(21) "Federal poverty level" or "FPL" means the poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

(22) "Former foster youth" means a beneficiary who:

(a) Is at least nineteen (19) years of age, but no more than twenty-six (26) years of age; and

(b) Was in foster care under the responsibility of the state or a Tribe within Kentucky or another state; and

(c) Was enrolled in Medicaid on the date of attaining age eighteen (18) or a higher age as elected by the state.

(23) "Full-time employment" means employment that is at least 120 hours per calendar month.

(24) "Healthy behavior activity" means an activity that is:

(a) Documented by a beneficiary;

(b) Reported as designated by the department;

(c) Approved by the department; and

(d) When completed allows for a beneficiary to accrue a balance in the beneficiary's MyRewards account.

(25) "Household" means the composition and family size of a household as established by 42 C.F.R. 435.603(f).

(26) "Household income" means the application of the MAGI of every individual included in the individual's household as set forth at 42 C.F.R. 435.603.

(27) "Institutionalized" means:

(a) Residing in:

1. A nursing facility;

2. An intermediate care facility for an individual with an intellectual disability; or

3. A medical institution;

(b) Receiving hospice services; or

(c) Receiving 1915(c) home and community based services.

(28) "KCHIP" means the Commonwealth's Children's Health Insurance Program.

(29) "Kentucky HEALTH" means the commonwealth's Section 1115 waiver demonstration program approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services as authorized by 42 U.S.C. 1315.

(30) "Life-changing event" means the marriage of a beneficiary living in the household, a birth, a death of a member of the household, the end of a marriage of a beneficiary in the household through divorce or annulment, or other type of major life-changing event as defined by 20 C.F.R. 1205.

(31) "Managed care organization" or "MCO" means an entity for which the department has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

(32) "Medically frail" means a determination has been made that an ACA expansion adult, parent and caretaker relative or TMA beneficiary, in accordance with both 42 C.F.R. 440.315(f) and department developed criteria, has a:

(a) Disabling mental disorder;

(b) Serious mental illness;

(c) Chronic substance use disorder;

(d) Chronic homelessness;

(e) Serious and complex medical condition; or

(f) Physical, intellectual or developmental disability that significantly impairs the beneficiary's ability to perform one (1) or more activities of daily living as defined by KRS 194A.700.

(33) "Medically necessary" means a covered service that is

determined to be needed in accordance with 907 KAR 3:130.

(34) "Modified Adjusted Gross Income" or "MAGI" means MAGI-based income as calculated in accordance with 42 C.F.R. 435.603(e).

(35) "MyRewards account" or "MRA" means the account available to beneficiaries that can be utilized to purchase department approved services not covered by a beneficiary's benefit package and otherwise permitted in the special terms and conditions to be covered by the account.

(36) "Nonemergency medical transportation" or "NEMT" means transportation services provided pursuant to 907 KAR 3:066 that are unrelated to an emergency medical condition.

(37) "Non-payment penalty" means the six (6) month non-eligibility penalty period applied to beneficiaries to whom cost sharing requirements apply but who fail to make timely premium payments.

(38) "Parent and caretaker relative" means a beneficiary who meets the requirements established by 42 C.F.R. 435.110.

(39) "Past due premiums" means the total amount that:

(a) A beneficiary is required to pay to either avoid a non-payment penalty or to end a non-payment penalty prior to the expiration of the six (6) month penalty period; and

(b) Does not include debt.

(40) "PATH" means the community engagement component of Kentucky HEALTH and stands for "Partnering to Advance Training and Health".

(41) "PATH requirement" means the requirement that a beneficiary complete eighty (80) hours of community engagement activities each month to maintain eligibility in the Kentucky HEALTH program, unless the beneficiary meets an exceptions established in 895 KAR 1:020.

(42) "Pregnant women" means beneficiaries who meet the requirements established by 42 C.F.R. 435.116.

(43) "Premium assistance" means the Kentucky HEALTH benefit plan that:

(a) Subsidizes an individual's employer sponsored insurance plan minus their Kentucky HEALTH premium amount; and

(b) A beneficiary is required to participate in if the beneficiary is

1. Enrolled in Kentucky HEALTH for more than twelve (12) months;

2. Has been continuously employed by their employer for twelve (12) months, and

3. Has access to employer sponsored insurance.

(44) "Premium plan" means the cost sharing plan whereby beneficiaries make required monthly premium payments.

(45) "Protected disability" means a legally defined disability protected pursuant to 42 U.S.C. 12101, 29 U.S.C. 701 et. seq., or 42 U.S.C. 18116.

(46) "Provider" is defined by KRS 205.8451(7).

(47) "Random control group" means beneficiaries who are otherwise eligible for Kentucky HEALTH but are allocated, at random, to a control group through which they do not have the requirements of Kentucky HEALTH applied.

(48) "Re-entry course" means an education class designated by the department to enable a beneficiary in a suspension status or penalty period to meet the education requirement for early re-entry into Kentucky HEALTH or early reactivation of a MyRewards account.

(49) "Special terms and conditions" or "STCs" means the agreement between the Centers for Medicare and Medicaid Services and the commonwealth regarding the rules and requirements that govern the operation of Kentucky HEALTH.

(50) "State" or "Commonwealth" means the Commonwealth of Kentucky.

(51) "Transitional medical assistance" or "TMA" means a beneficiary who meets the requirements established by 42 U.S.C. 1396r.

(52) "Vision services":

(a)1. Means services purchased by a beneficiary via a MyRewards account from an enrolled Medicaid provider; and

2. Includes routine or preventative eye exams; and

(b) Does not include medical vision services including the removal of benign and malignant lesions or tumors, removal of foreign bodies, wound suturing, and anesthesia related to medical vision services.

JILL R. HUNTER, Acting Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 27, 2018

FILED WITH LRC: June 29, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 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 August 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: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions for administrative regulations located in Chapter 1 of Title 895 of the Kentucky Administrative Regulations. Chapter 1 establishes and implements the Kentucky HEALTH program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the definitions for administrative regulations located in Chapter 1 of Title 895.

(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 definitions for administrative regulations located in 895 KAR chapter 1.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing definitions for administrative regulations located in 895 KAR Chapter 1.

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

(a) How the amendment will change this existing administrative regulation: 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 beneficiaries, businesses, organizations, or state and local government affected by this administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers services to individuals eligible for the Kentucky HEALTH program, any enrolled provider that delivers services to individuals eligible for the Kentucky HEALTH program, and any beneficiary whose

eligibility for Medicaid will be governed by the Kentucky HEALTH program. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation establishes definitions for the Kentucky HEALTH program. Beneficiaries will benefit due to the clarity of terms being defined in this administrative regulation

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund 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: Neither an increase in fees or funding is necessary to implement this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation neither establishes or increases any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the definitions are standard throughout the Kentucky HEALTH program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

(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? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

(d) How much will it cost to administer this program for subsequent years? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Administrative Regulation)

895 KAR 1:010. Eligibility for Kentucky HEALTH program.

RELATES TO: KRS 205.520, 42 C.F.R. 435.916, 438.56, 457.343, 42 U.S.C. 1315, 1396a

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes the eligibility requirements for Kentucky HEALTH.

Section 1. Eligibility Groups. (1) Except for a beneficiary assigned to the random control group pursuant to 895 KAR 1:045, Section 2, a beneficiary that meets the eligibility standards established in this section and who is therefore eligible for participation in the Kentucky HEALTH program shall only receive services from the Medicaid program as established in KAR Title 895.

(2) An individual shall be eligible for participation in Kentucky HEALTH if the individual:

(a) Is a resident of Kentucky;

(b) Is not enrolled in, or, for an ACA expansion adult, eligible for, enrollment in the federal Medicare Program;

(c) Is not enrolled in a 1915(c) waiver, institutionalized, or receiving hospice services; and

(d) Is eligible under any of the following Medicaid assistance categories:

1. Parent and caretaker relative;
2. Transitional medical assistance;
3. Former foster youth;
4. Pregnant women; or
5. ACA expansion adult.

Section 2. Presumptive Eligibility Period. (1) During the presumptive eligibility period as established in 907 KAR 20:050, a beneficiary who is eligible under the ACA expansion adult group shall receive benefits:

(a) As established in the Kentucky HEALTH alternative benefit plan approved by the Centers for Medicare and Medicaid Services; and

(b) In accordance with KAR 1:035.

(2) A Kentucky HEALTH beneficiary in a suspension period or a non-eligibility period shall not be eligible for presumptive eligibility as established in 907 KAR 20:050.

Section 3. Transition to Kentucky HEALTH. (1) An individual shall be enrolled in Kentucky HEALTH on the first day of the month of the Kentucky HEALTH eligibility determination if the individual:

(a) Is determined to be presumptively eligible pursuant to 907 KAR 20:050; and

(b) Subsequently applies for Kentucky HEALTH and is determined eligible for Kentucky HEALTH.

(2) A Kentucky HEALTH beneficiary transitioning to Kentucky HEALTH from a presumptive eligibility period who is required to pay premiums in accordance with 895 KAR 1:015 shall:

(a) Be enrolled in the copay plan and

(b) Have sixty (60) days from the date of the invoice from the MCO to make a payment and avoid a non-payment penalty.

Section 4. Requirements Relating to Annual Recertification. (1)(a) The annual eligibility recertification process operated by the department shall be:

1. Consistent with 42 C.F.R. 435.916 for the renewal of Medicaid eligibility; and

2. If applicable, consistent with 42 C.F.R. 457.343 for the renewal of CHIP eligibility.

(b) For a beneficiary receiving premium assistance and who is covered by a parent or caretaker's employer-sponsored insurance, including children enrolled in either Medicaid or CHIP, the annual recertification shall be aligned with the parent or caretaker's employer sponsored insurance open enrollment period.

(2) A beneficiary shall comply with all requirements of the recertification process, including the requirement of providing the state with all necessary information or documentation to complete the process.

(3) Following a recertification process in which all requirements were not met, a beneficiary shall be:

(a) Disenrolled from Kentucky HEALTH; and

(b) Granted an additional ninety (90) day reconsideration period in which to submit recertification paperwork to be reenrolled in Kentucky HEALTH. Reenrollment shall be effective the first day of the month in which the recertification requirements were completed, unless the individual was subject to a suspension during the recertification process.

(4)(a) Except as provided by paragraph (b) of this subsection, an individual who has failed to submit all required recertification information and documentation upon the expiration of the ninety (90) day reconsideration period established in subsection (3) of this section shall be subject to a non-eligibility period of six (6) months.

(b) A beneficiary shall be exempt from paragraph (a) of this subsection if the beneficiary is:

1. A pregnant woman;

2. Former foster youth; or

3. Determined to be medically frail, or temporarily vulnerable.

(5) An individual subject to the non-eligibility period shall have the opportunity to re-enter Kentucky HEALTH prior to the expiration of the six (6) month penalty period by completing the early re-entry requirements established in 895 KAR 1:020.

(6)(a) A beneficiary who is subject to the non-eligibility penalty period under this section may request a good cause exemption by providing verification of any of the following:

1. The individual was hospitalized, otherwise incapacitated, or has a protected disability, and, as a result, was unable to provide information necessary to complete the recertification during the recertification reporting period;

2. The individual has a protected disability, and the individual requested but was not provided reasonable modifications needed to complete the recertification process;

3. The individual has a protected disability and there were no reasonable modifications that would have enabled the individual to complete the recertification process;

4. A member of the individual's immediate family who was living in the home with the individual who failed to report the change in circumstances during the reporting period as required by Section 4 of this administrative regulation:

a. Was institutionalized; or

b. Died;

5. A member of the individual's immediate family who was living in the home with the individual who failed to complete the recertification process has a protected disability, and caretaking or other disability-related responsibilities resulted in the individual's inability to complete recertification;

6. The individual either obtained or lost private insurance coverage during the recertification reporting period;

7. The individual was evicted from a home or experienced homelessness during the recertification reporting period;

8. The individual was a victim of domestic violence during the recertification reporting period; or

9. The individual was the victim of a declared disaster that occurred during the recertification reporting period.

(b) If a good cause exemption is granted, the beneficiary:

1. May re-enroll prior to the expiration of the non-eligibility penalty period; and

2. Shall not be required to complete the early re-entry requirements established by 895 KAR 1:020.

Section 5. Requirements for a Beneficiary to Report a Change in Circumstance. (1) A beneficiary shall report any change in circumstance that would affect eligibility under any MAGI or non-MAGI requirements within thirty (30) days of the change in circumstance.

(2) A beneficiary with a change in circumstance affecting eligibility shall be disenrolled:

(a) If the department determines the individual ineligible for all other bases of Medicaid eligibility; and

(b) After the department reviews the individual for eligibility for other insurance affordability programs in accordance with 42 C.F.R. 435.916(f).

(3)(a) Except as provided by paragraph (b) of this subsection, a beneficiary who failed to report a change within the time frames required by subsection (1) of this section and that failure resulted in the beneficiary receiving a benefit for which the beneficiary was not eligible shall be disenrolled and subject to a non-eligibility period of six (6) months,

(b) A beneficiary shall be exempt from paragraph (a) of this subsection if the beneficiary is:

1. A pregnant woman;

2. A former foster youth; or

3. Determined to be medically frail or temporarily vulnerable.

(4) A beneficiary who is subject to a non-eligibility period under this section shall have the opportunity to re-enter Kentucky HEALTH prior to the expiration of the six (6) month penalty period by completing the early re-entry requirements set forth at 895 KAR 1:020.

(5)(a) A beneficiary who is subject to disenrollment and a non-eligibility penalty period under this section may request a good cause exemption by providing verification of any good cause exemption established in Section 4(6) of this administrative regulation.

Section 6. Kentucky HEALTH Initial Eligibility Appeals – Premium Payment Required. (1) If an applicant was determined ineligible for Kentucky HEALTH but subsequently receives a favorable decision on appeal under this chapter, and is a beneficiary of any group set forth in 895 KAR 1:015 for which premium payments are required as a condition of eligibility, upon resolution of the appeal, the beneficiary shall be:

(a) Enrolled in Kentucky HEALTH; and

(b) Required to make a premium payment within sixty (60) days of the date of initial invoice from the MCO.

(2) In accordance with subsection (1)(b) of this section, an individual who does not make the required premium payment within sixty (60) days of the date of invoice shall be subject to the non-payment penalty provisions established in 895 KAR 1:015.

Section 7. Continued Payment to Retain Benefits Pending Appeal. (1) If a beneficiary is required to make premium payments, the beneficiary shall continue to make any monthly premium payments that become due during an appeal within sixty (60) days of the MCO's date of invoice in order to continue Kentucky HEALTH benefits.

(2) A beneficiary's premium payments submitted during the appeal process shall be subject to the following requirements:

(a) If the issue being appealed is recalculation of the

beneficiary's required premium amount, the recalculated premium amount shall remain in effect as established in 895 KAR 1:015 while the appeal is pending; and

(b) If the recalculated premium determination is overturned on appeal, excess premium amounts paid, if any, shall be credited to the beneficiary's premium payment in the next administratively feasible month.

(3) A beneficiary shall receive continued benefits pending the outcome of an administrative hearing if the beneficiary requests in writing that plan benefits be maintained pending the administrative appeal and the action is not a result of the beneficiary's nonpayment of required premiums.

Section 8. Changing MCOs. (1) Except as provided in subsections (2) or (3) of this section, a beneficiary shall remain enrolled with the same MCO during the beneficiary's benefit year.

(2) A beneficiary may change MCO upon request and without cause, only in the following circumstances:

(a) If the change is requested prior to the earlier of:

1. The date the beneficiary makes an initial fast-track payment or premium payment; or

2. The date the beneficiary has enrolled in Kentucky HEALTH after the sixty (60) day initial payment period has expired;

(b) The beneficiary is a pregnant woman or a former foster youth, in which case the beneficiary shall be allowed to change MCOs without cause for ninety (90) days after enrollment in Kentucky HEALTH; or

(c) During the beneficiary's annual open enrollment opportunity for the following benefit year.

(3) A beneficiary shall remain enrolled with the same MCO during the beneficiary's benefit year and may change MCOs upon request, for cause, as established in 907 KAR 17:010 and as provided for at 42 C.F.R. 438.56(c)(1).

Section 9. MCO Requirements when a Beneficiary Changes MCO. (1) Each MCO shall ensure that a beneficiary transferring from another MCO does not experience an interruption in care.

(2) For a beneficiary transitioning to a new MCO, the MCO from which the beneficiary is transferring shall refund any balance of the beneficiary's premium within thirty (30) days of the last date of the beneficiary's participation with the MCO.

(3) The MCO from which the beneficiary is transferring shall provide the beneficiary's deductible account balance to the new MCO.

Section 10. Cost Share Requirements and Limitations. (1) An MCO shall not charge, collect, or impose cost sharing, including premiums, copayments, or coinsurance, for any covered service to a beneficiary who is pregnant.

(2) An MCO shall not charge, collect, or impose, and shall require that any network providers do not charge, collect, or impose cost sharing, including premiums, copayments, or coinsurance, to a beneficiary for covered services, except for the following:

(a) Copayments as set forth in the Kentucky Medicaid state plan for a beneficiary enrolled in the copay plan; and

(b) Premiums as established in 895 KAR 1:015.

(3) An MCO may attempt to collect any debt but shall not:

(a) Report the premium amount owed to a credit reporting agency;

(b) Place a lien on the beneficiary's or disenrolled individual's home;

(c) Refer the case to a debt collector;

(d) File a lawsuit; or

(e) Seek a court order to seize a portion of the beneficiary or disenrolled individual's earnings.

Section 11. Federal approval and federal financial participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

JILL R. HUNTER, Acting Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 27, 2018

FILED WITH LRC: June 29, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 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 August 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.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes which individuals are eligible for the Kentucky HEALTH program, establishes a presumptive eligibility period for Kentucky HEALTH beneficiaries, annual recertification requirements, requirements for reporting a change in circumstances, an appeals process and additional appeals requirements for a beneficiary, and change of MCO and cost-sharing requirements

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish eligibility requirements and processes for the Kentucky HEALTH program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing eligibility requirements that allow for full receipt of federal funds and full participation in the Medicaid Program for Kentucky HEALTH beneficiaries.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing a clear eligibility process for Kentucky HEALTH beneficiaries, providers, MCOs, and the department.

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

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

(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 government affected by this administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers

services to individuals eligible for Medicaid through the Kentucky HEALTH program, any enrolled provider that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, and any beneficiary whose eligibility for Medicaid will be governed by the Kentucky HEALTH program. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

(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: Beneficiaries will need to verify if they are eligible for participation in Kentucky HEALTH, recertify annually, report changes in circumstances that impact eligibility, and continue payments of premiums.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs experienced by beneficiaries will vary depending on income level, compliance with premium payment requirements, certification and documentation requirements, and PATH requirement, and the beneficiary's eligibility status.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Beneficiaries who meet eligibility requirements will be able to receive healthcare benefits via participation in the Kentucky HEALTH program as established in Title 895 KAR.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund 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: Neither an increase in fees or funding is necessary to implement this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation neither establishes or increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied in that pregnant women, former foster youth, and individuals who are determined to be medically frail or temporarily vulnerable are exempted from a non-eligibility period and pregnant women are not subject to cost sharing requirements for covered services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1315; 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560 KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1315 establishes the 1115 waiver authority. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

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 establishes a premium and potential co-pay requirement for certain beneficiaries that fail to comply with the premium requirement.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A federal demonstration waiver has been approved pursuant to 42 U.S.C. 1315 and on an ongoing basis it shall determine and establish how Medicaid services are provided to Medicaid members who are eligible pursuant to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

(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? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

(d) How much will it cost to administer this program for subsequent years? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Administrative Regulation)

895 KAR 1:015. Premium payments within the Kentucky HEALTH program.

RELATES TO: KRS 205.520, 42 C.F.R. 447.56(f), 42 U.S.C. 1315

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration

waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes premium payment requirements and processes for beneficiaries and MCOs participating in the Kentucky HEALTH program.

Section 1. Required Premium Payments. (1) Notwithstanding any provision of Title 907 KAR to the contrary, including 907 KAR 1:604, any premium payments or copay plan requirements established pursuant to this administrative regulation are mandatory for beneficiaries and shall be remitted as established pursuant to Section 3 of this administrative regulation.

(2) A beneficiary that makes monthly premium payments shall:

(a) Not incur any other cost sharing for their healthcare coverage; and

(b) Have access to a MyRewards account.

(2)(a) Except as provided in Section 2 of this administrative regulation, a beneficiary with income above 100 percent FPL shall make required monthly premium payments to retain eligibility for Kentucky HEALTH.

(b) A beneficiary with income that is less than 100 percent FPL shall be exempt from the requirement to make a premium payment as a condition of Kentucky HEALTH eligibility.

(3)(a) Except as provided by paragraph (b) of this subsection, a beneficiary, regardless of FPL, shall make premium payments as a condition to access the beneficiary's MyRewards account.

(b) A beneficiary that is eligible for Kentucky HEALTH on the basis of being a pregnant woman shall be exempt from the requirement to make premium payments as a condition of accessing the beneficiary's MyRewards account.

Section 2. Premium Amount, Calculations, and Changes. (1)(a) Each household's monthly premium amount shall be an amount determined by the department and made available pursuant to a formula and a chart posted prominently on the department's Web site.

(b) If the adults within a household are members of different MCOs, a separate premium shall be charged to each adult member.

(2) A beneficiary's monthly premium shall not exceed four (4) percent of the aggregate household income, except that a beneficiary subject to the premium payment requirement shall be required to contribute a one (1) dollar monthly premium, at minimum, to access the beneficiary's MyRewards account.

(3)(a) In accordance with 42 C.F.R. 447.56(f), a household's combined premium and cost sharing requirements shall not exceed five (5) percent of the aggregate household income within a calendar quarter.

(b) Each beneficiary who is a member of a household that reaches the five (5) percent maximum cost sharing in a calendar quarter shall have their monthly premium reduced to one (1) dollar for the remainder of the calendar quarter to avoid non-payment penalties as established in Section 4 of this administrative regulation.

(4) After twenty-four (24) months of enrollment in Kentucky HEALTH, the monthly premium amount paid by a beneficiary whose income is above 100 percent of the FPL shall increase.

(5) The department shall notify each beneficiary of that beneficiary's premium payment requirements upon determination of eligibility for Kentucky HEALTH.

(6) As directed by the department, an MCO shall aggregate, accurately track, and forward all premium payments remitted by or on behalf of its members who are:

(a) Beneficiaries with a cost-sharing requirement; and

(b) Who are eligible on the basis of the MAGI.

(7) The department:

(a) Shall evaluate premium rates and amounts annually; and

(b) May change published rates on an annual basis.

(8) The department, or an MCO on behalf of the department, shall notify each beneficiary of any Kentucky HEALTH premium changes at least sixty (60) days prior to the effective date of the change.

(9) The department shall determine necessary adjustments to a beneficiary's premium amount in the following circumstances:

(a) At the beneficiary's annual recertification; or

(b) If made aware that the beneficiary's household income, household composition, or other eligibility factor has changed during the eligibility period.

(10) If an adjustment is necessary pursuant to subsection (9) of this section, the new premium payment amount shall be effective the first day of the next administratively feasible month following the calculation of the new premium amount.

Section 3. Entities Allowed to Make Premium Payment. (1) A monthly premium payment may be made by:

(a) A beneficiary; or

(b) Any third party on the beneficiary's behalf, except any MCO.

(2)(a) A third-party payment submitted pursuant to this section shall be used for a beneficiary's premium obligations only.

(b) Any payment in excess of the required premium obligation for the remainder of the beneficiary's benefit year shall be refunded to the source of the payment.

(3) A provider or a provider-related entity making a premium payment on a beneficiary's behalf shall have criteria for providing premium payment assistance that does not distinguish between beneficiaries based on whether or not they receive or will receive services from the contributing provider or class of providers.

(4) A provider shall not include the cost of a payment established pursuant to this administrative regulation in the cost of care for purposes of Medicare and Medicaid cost reporting.

(5) A payment made pursuant to this section shall not be included as part of a Medicaid shortfall or uncompensated care.

Section 4. Non-payment Penalties. (1) A conditionally eligible beneficiary who fails to make the first premium payment within sixty (60) days from the date of the first invoice shall be subject to the penalties established in this subsection.

(a) A beneficiary with a household income above 100 percent of the FPL shall:

1. Not be enrolled in Kentucky HEALTH; and

2. Reapply for Kentucky HEALTH coverage, if the beneficiary elects to attempt to reenroll.

(b) A beneficiary with a household income at or below 100 percent of the FPL shall be:

1. Enrolled in Kentucky HEALTH in a copay plan; and

2. Subject to the non-payment penalty provisions established in subsection (2)(b) of this section.

(2) A beneficiary who fails to make an ongoing premium payment within sixty (60) days from the date of the premium invoice or who voluntarily withdraws from Kentucky HEALTH to avoid making a premium payment or incurring debt as a result of non-payment shall be subject to the penalties established in this subsection.

(a) If the beneficiary's household income is above 100 percent of the FPL, the beneficiary shall:

1. Be disenrolled from Kentucky HEALTH;

2. Not be able to reenroll in Kentucky HEALTH for a period of six (6) months, unless the beneficiary completes all requirements for early re-entry as established in 895 KAR 1:020;

3. Receive a one (1)-time balance deduction from the beneficiary's MyRewards account as established in 895 KAR 1:030; and

4. Have a suspension of the beneficiary's MyRewards account until the beneficiary is re-enrolled in Kentucky HEALTH, unless the beneficiary meets the requirements for re-entry or reactivation of MyRewards account as established in 895 KAR 1:030.

(b) A beneficiary with a household income at or below 100 percent of the FPL, in accordance with subsection(1)(b) of this section, shall:

1.a. Be enrolled in the copay plan; and

b. Make copays for all covered services equal to the copays established in the Kentucky Medicaid state plan in Title 907 KAR;

2. Receive a one (1)-time balance deduction from the beneficiary's MyRewards account as established in 895 KAR

1:030; and

3. Have a suspension of the beneficiary's MyRewards account, until either of the following occurs:

a. The beneficiary completes the requirements for re-entry or reactivation of a MyRewards account as set forth at 895 KAR 1:030 to reactivate the beneficiary's MyRewards account prior to the expiration of the six (6) month penalty period, or

b. After the expiration of the six (6) month penalty period, the beneficiary makes one (1) premium payment to reactivate coverage in the premium plan.

(c) A beneficiary in a penalty period shall be permitted to end or avoid the non-payment penalty prior to the expiration of the six (6) month penalty period without completing the early re-entry requirements established in 895 KAR 1:020 by providing verification of any of the following:

1. The beneficiary was hospitalized, otherwise incapacitated, or has a protected disability, and, as a result, was unable to make a premium payment during the sixty (60) day payment period;

2. a. The beneficiary has a protected disability; and

b. The beneficiary requested but was not provided reasonable modifications needed to make a premium payment;

3.a. The beneficiary has a protected disability; and

b. There were no reasonable modifications that would have enabled the beneficiary to make a premium payment;

4. A member of the beneficiary's immediate family who was living in the home with the beneficiary who failed to make a premium payment:

a. Was institutionalized during the reporting period; or

b. Died during the reporting period;

5.a. A member of the beneficiary's immediate family who was living in the home with the beneficiary who failed to make a premium payment has a protected disability; and

b. Caretaking or other responsibilities related to the disability resulted in the beneficiary's inability to make the premium payment;

6. The beneficiary either obtained or lost private insurance coverage during the reporting period;

7. The beneficiary was evicted from a home or experienced homelessness during the sixty (60) day payment period;

8. The beneficiary was a victim of domestic violence during the sixty (60) day payment period; or

9. The beneficiary was the victim of a declared disaster that occurred during the sixty (60) day payment period.

Section 5. Groups with Premium Payment as Optional. (1) A beneficiary in the following eligibility groups shall have the option to make monthly premium payments to access a MyRewards account as established in 895 KAR 1:030:

(a) A beneficiary who is a former foster youth; or

(b) A beneficiary who is medically frail or temporarily vulnerable.

(2)(a) A beneficiary who, under this section or section 1 of this administrative regulation, has the option of making premium payments shall not be subject to

1. Disenrollment for non-payment; or

2. Copayments for services.

(b) A beneficiary who, under this section or Section 1 of this administrative regulation, has the option of making premium payments who fails to make an ongoing premium payment within sixty (60) days from the date of the premium invoice shall have the beneficiary's MyRewards account suspended for six (6) months, with the option to reactivate the MyRewards account prior to the expiration of the six (6) month penalty period by taking a re-entry course.

Section 6. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

JILL R. HUNTER, Acting Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 27, 2018

FILED WITH LRC: June 29, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 2018, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Beneficiaries interested in attending this hearing shall notify this agency in writing by August 20, 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 August 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: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes premium payment requirements and processes to be followed by beneficiaries and MCOs participating in the Kentucky HEALTH program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to outline premium payment requirements and processes for beneficiaries and MCOs participating in the Kentucky HEALTH program pursuant to an approved federal 1115 waiver.

(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 premium payment requirements that will allow for full participation in the Kentucky HEALTH program by beneficiaries and MCOs pursuant to an approved federal 1115 waiver.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing clear premium payment requirements for beneficiaries and MCOs.

(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 beneficiaries, businesses, organizations, or state and local government affected by this administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, any enrolled provider that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, and any beneficiary whose eligibility for Medicaid will be

governed by the Kentucky HEALTH program. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

(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: Beneficiaries will need to follow the premium payment requirements and submit premium payments as outlined 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): Beneficiaries will pay a varying premium payment based on income relative to the FPL.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Beneficiaries who meet premium payment requirements will be able to receive healthcare benefits via participation in the Kentucky HEALTH program as outlined in Title 895 KAR.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund 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: Neither an increase in fees or funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation neither establishes or increases any fees.

(9) Tiering: Is tiering applied? Tiering was applied to beneficiaries who make more than 100% FPL and less than 100% FPL in relation to a requirement to make a premium as a condition of eligibility. In addition, pregnant women are not required to make a premium payment. Former foster youth and individuals who are medically frail or otherwise temporarily vulnerable will have an option to make premium payments to access a MyRewards account.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1315; 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560 KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1315 establishes the 1115 waiver authority. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

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 establishes a premium and potential co-pay requirement and other penalties for certain beneficiaries that fail to comply with the premium requirement.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A federal demonstration waiver has been approved pursuant to 42 U.S.C. 1315 and on an ongoing basis it shall determine and establish how Medicaid services are provided to Medicaid members who are eligible pursuant to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

(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? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

(d) How much will it cost to administer this program for subsequent years? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Administrative Regulation)

895 KAR 1:020. PATH requirement for the Kentucky HEALTH program.

RELATES TO: KRS 205.520, 42 U.S.C. 1315

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes the Partnering to Advance Training and Health (PATH) requirements for the Kentucky

HEALTH program.

Section 1. Beneficiaries Required to Meet the PATH Requirement. (1) A beneficiary shall complete the monthly PATH requirement if the beneficiary is:

(a) At least nineteen (19) years of age and less than sixty-five (65) years of age;

(b) Eligible under one (1) of the following Medicaid assistance categories:

1. ACA Expansion Adult;

2. Parent and Caretaker Relative; or

3. Transitional Medical Assistance; and

(c) Not exempt from the PATH requirement pursuant to Section 4 of this administrative regulation.

(2) A beneficiary required to meet the PATH requirement shall not receive the suspension required by Section 3 of this administrative regulation if a good cause exemption is granted. A good cause exemption shall be granted if:

(a) The beneficiary:

1. Has a protected disability; and

2. Was unable to meet the PATH requirement for the month in which the good cause exemption is sought for reasons related to that disability;

(b) The beneficiary:

1. Has an immediate family member living in the beneficiary's home with a protected disability; and

2. Was unable to meet the PATH requirement for the month in which the good cause exemption is sought for reasons related to the disability of that family member;

(c) During the month in which the good cause exemption is sought, the beneficiary or an immediate family member who was living in the home with the beneficiary experienced:

1. An inpatient hospitalization or a serious medical event involving treatment at a hospital; or

2. A serious illness;

(d) The beneficiary experienced the birth or death of a family member living with the beneficiary during the month in which the good cause exemption is sought;

(e) The beneficiary experienced severe inclement weather, such as a snowstorm, an ice storm, a warned winter storm, or other warned weather event, which includes a declared disaster, during the month in which the good cause exemption is sought; or

(f) During the month in which the good cause exemption is sought, the beneficiary experienced:

1. A family emergency; or

2. A life-changing event.

Section 2. PATH Requirement Timeframe, Qualifying Activities, and Deemed Compliance. (1)(a) A beneficiary shall be given a three (3) month notice period before being subject to the PATH requirement if the beneficiary:

1. Was not required to meet the PATH requirement within the previous five (5) years; and

2. Does not qualify for an exemption established in Section 4 of this administrative regulation.

(b) A beneficiary shall be required to meet the PATH requirement effective on:

1. The first day of the month following enrollment in Kentucky HEALTH; or

2. The first day of the month following expiration of the three (3) month notice period required by paragraph (a) of this subsection.

(2) A beneficiary who is required to meet the PATH requirement shall be deemed to satisfy the PATH requirement with no additional PATH reporting obligations if the beneficiary:

(a) 1. Is enrolled in the Supplemental Nutrition Assistance Program (SNAP); and

2. Meets, or is exempt from meeting, the requirements of the SNAP employment initiative;

(b) 1. Is enrolled in Temporary Assistance for Needy Families (TANF); and

2. Meets, or is exempt from meeting, the requirements of the TANF employment initiative;

(c) Is enrolled in the Kentucky Medicaid Premium Assistance program; or

(d) Is employed full time.

(3) Except as provided by subsection (2) of this section, a beneficiary who is subject to the PATH requirement shall use the Web site www.citizenconnect.ky.gov to:

(a) Report and track community engagement activities;

(b) Document completion of a re-entry course; and

(c) Request an exemption pursuant to Section 1(2) or 4 of this administrative regulation.

Section 3. Failure to Meet PATH Requirement. (1) In the month immediately following the month in which a beneficiary fails to meet the PATH requirement, the beneficiary shall have the opportunity to avoid a suspension from eligibility for Kentucky HEALTH for failing to comply with the PATH requirement by:

(a) Being current on required hours for the current month; and

(b) Either:

1. Making up all deficit PATH hours not completed in the prior month; or

2. Completing a re-entry course.

(2)(a) Except as provided by paragraph (a) of this subsection, failure to comply with the PATH requirement shall result in a beneficiary receiving a suspension from the Kentucky HEALTH program. The suspension shall:

1. Not end until the beneficiary completes the requirements in paragraph (b) of this subsection or until the beneficiary successfully recertifies for Kentucky HEALTH eligibility for the next benefit year; and

2. Begin on the first day of the second month immediately following the month in which the beneficiary failed to meet the PATH requirement.

(b) A beneficiary shall be able to reactivate eligibility on the first day of the month following completion of either:

1. Eighty (80) hours of community engagement activities within a thirty (30) day time period; or

2. A re-entry course.

(3) A beneficiary who received a suspension from Kentucky HEALTH benefits for failure to comply with the PATH requirement over the twelve (12) month period between benefit year certification dates shall:

(a) Be terminated from Kentucky HEALTH; and

(b) Submit a new application to receive Kentucky HEALTH benefits, following a delay of no less than one (1) month.

Section 4. PATH Exempt Groups. (1) A beneficiary shall be exempt from the PATH requirement if the beneficiary is:

(a) A former foster youth;

(b) A pregnant woman;

(c) Medically frail or temporarily vulnerable;

(d) A full-time student;

(e) Diagnosed with a serious chronic medical condition, validated by a medical professional pursuant to department guidance and review that would prevent the beneficiary from complying; or

(f) A primary caregiver of:

1. A minor dependent child under age nineteen (19) or

2. A dependent adult who is disabled.

(2) The exemption authorized by subsection (1)(f) of this section shall be limited to one (1) exemption per household.

Section 5. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

JILL R. HUNTER, Acting Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 27, 2018

FILED WITH LRC: June 29, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 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 August 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: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the PATH requirement, establishes penalties for failure to comply with the PATH requirement, and clarifies which beneficiaries are exempt from the PATH requirement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish and implement the requirements and processes for beneficiaries subject to the PATH requirement that will allow for those beneficiaries to fully participate in the Kentucky HEALTH program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing requirements and processes relating to the PATH requirement that will allow for full participation in the Kentucky HEALTH program by a beneficiary.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing clear PATH requirements for a beneficiary to follow in order to fully participate in the Kentucky HEALTH program.

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

(a) How the amendment will change this existing administrative regulation: This 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 a beneficiaries, businesses, organizations, or state and local government affected by this administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, any enrolled provider that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, and any beneficiary whose eligibility for Medicaid will be governed by the Kentucky HEALTH program. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

(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: Beneficiaries will need to meet the PATH requirement and submit information as outlined 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): Regulated entities should experience no additional costs as a result of compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Beneficiaries who meet the PATH requirement will be able to receive healthcare benefits via participation in the Kentucky HEALTH program as outlined in Title 895 KAR.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund 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: Neither an increase in fees or funding is necessary to implement this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation neither establishes or increases any fees.

(9) Tiering: Is tiering applied? Tiering was applied in that former foster youth, pregnant women, individuals who are medically frail or temporarily vulnerable, full-time students, beneficiaries diagnosed with an acute medical condition that prevents compliance, or primary caregivers of a minor dependent child or a dependent adult are exempted from the PATH requirement.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1315; 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560 KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1315 establishes the 1115 waiver authority. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

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 establishes a PATH and potential co-pay requirement for certain beneficiaries that fail to comply with the PATH requirement. This administrative additionally establishes a potential suspension if a PATH requirement is not met.

5. Justification for the imposition of the stricter standard, or

additional or different responsibilities or requirements. A federal demonstration waiver has been approved pursuant to 42 U.S.C. 1315 and on an ongoing basis it shall determine and establish how Medicaid services are provided to Medicaid members who are eligible pursuant to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

(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? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

(d) How much will it cost to administer this program for subsequent years? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Administrative Regulation)

895 KAR 1:025. Beneficiary Premiums.

RELATES TO: KRS 205.520, 42 U.S.C. 1315

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes requirements for Kentucky HEALTH beneficiaries relating to premium payments.

Section 1. Required Premium Payments. (1) Except as otherwise provided in this administrative regulation and 895 KAR 1:015, a beneficiary shall make monthly premium payments as required by 895 KAR 1:015.

(2)(a) A conditionally eligible beneficiary who is not otherwise exempt from premium payments shall make a first premium payment prior to the start of coverage.

(b) A conditionally eligible beneficiary shall have sixty (60) days from the date of the first invoice from the MCO to make the first premium payment.

(c) The beneficiary's coverage shall become effective the first day of the month in which the initial premium payment is received by the MCO.

(d) If a conditionally eligible beneficiary fails to make the first premium payment within the initial sixty (60) day payment window, the beneficiary shall be subject to the non-payment penalty provisions established at 895 KAR 1:010 and 895 KAR 1:015.

(3)(a) At the time of application, an applicant shall be given the option to make a one-time fast-track payment in order to expedite eligibility if the applicant is subsequently determined eligible for coverage.

(b) If an applicant makes a fast-track payment and is determined eligible for coverage, the effective date shall be the first day of the month in which the fast-track payment was made.

(c) A fast-track payment shall meet the requirements established in this paragraph.

1. The fast-track payment amount shall not exceed the highest monthly premium that could be required of that household.

2. The payment shall be fully refundable if:

a. The applicant is determined to be not eligible for Kentucky HEALTH; or

b. The applicant:

(i) Is determined to be a beneficiary for whom premiums are optional; and

(ii) Requests a refund within sixty (60) days of enrollment in Kentucky HEALTH;

(d) If the option to make a fast-track payment is selected on the application, the beneficiary shall not change MCOs except for cause, as set forth at 895 KAR 1:010, prior to their annual open enrollment opportunity.

(e) If the beneficiary's monthly premium payment is subsequently calculated upon eligibility determination to be less than the fast-track payment, the excess fast-track payment shall be credited until the full amount of the fast-track payment is exhausted against:

1. The first monthly premium due; and

2. Any additional premiums due.

(f) If the beneficiary's monthly premium payment is subsequently calculated upon eligibility determination to be more than the fast-track payment, the beneficiary shall remain liable for any balance remaining between the premium amount and fast-track amount.

Section 2. Effective Date for Premium Payments. (1) A beneficiary in either of the following eligibility groups shall have an effective date of coverage as established in the Kentucky Medicaid state plan and consistent with 42 C.F.R. 435.915:

(a) Former Foster Youth; or

(b) Pregnant Women.

(2) After approval, each beneficiary known to be medically frail at the time of application for Kentucky HEALTH shall have coverage effective the first day of the month in which the beneficiary applied for coverage.

(3) A beneficiary determined eligible through the presumptive eligibility process established in 907 KAR 20:050 shall have an effective date of coverage as established in 895 KAR 1:010.

Section 3. Federal approval and federal financial participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

JILL R. HUNTER, Acting Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 27, 2018

FILED WITH LRC: June 29, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 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 August 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: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for beneficiaries relating to premium payments.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish general rights and responsibilities relating to individual beneficiaries who will be submitting premium payments as a condition of their full participation in the Kentucky HEALTH program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing premium payment requirements for beneficiaries that will allow for these beneficiaries to fully participate in the Kentucky HEALTH program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing clear premium payment requirements for individual beneficiaries.

(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 government affected by this administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, any enrolled provider that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, and any beneficiary whose eligibility for Medicaid will be governed by the Kentucky HEALTH program. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

(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: Beneficiaries will need to follow the premium payment requirements and submit premium payments as outlined 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): Beneficiaries will pay a varying premium payment based on income relative to the FPL.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Beneficiaries who meet premium payment requirements will be able to receive healthcare benefits via participation in the Kentucky HEALTH program as outlined in Title 895 KAR.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund 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: Neither an increase in fees or funding is necessary to implement this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation neither establishes or increases any fees.

(9) Tiering: Is tiering applied? Tiering was applied as differing effective dates of coverage are established for former foster youth, pregnant women, and individuals who are determined to be medically frail or temporarily vulnerable.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1315; 42 U.S.C. 1396n(b), and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560 KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1315 establishes the 1115 waiver authority. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

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 establishes effective dates for premiums.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A federal demonstration waiver has been approved pursuant to 42 U.S.C. 1315 and on an ongoing basis it shall determine and establish how Medicaid services are provided to Medicaid members who are eligible pursuant to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

(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? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

(d) How much will it cost to administer this program for subsequent years? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Administrative Regulation)

895 KAR 1:030. Establishment and use of the MyRewards program.

RELATES TO: KRS 205.520, 42 C.F.R. 489.24, 42 U.S.C. 1315

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes the MyRewards account requirements for the Kentucky HEALTH program.

Section 1. Purpose of MyRewards Account. (1) The MyRewards account shall be a Kentucky HEALTH incentive in which a beneficiary with an active account may use it to access items and services pursuant to subsection (2) of this section that are not covered in the beneficiary's benefit package, as established in 895 KAR 1:035.

(2) Except as provided by subsections (3) and (4) of this section, items and services available through the MyRewards account shall include:

(a) Vision services; and

(b) Dental services.

(3) The department shall:

1. Review additional items and services for availability to users of a MyRewards account; and

2. Prominently post any approved items or services to its Web site.

(4) Services available in subsection (2) of this section through the beneficiary's MyRewards account shall be limited in scope to services that would be covered under the Kentucky Medicaid state plan if the beneficiary was not receiving the Kentucky HEALTH alternative benefit plan benefit package.

Section 2. Requirements for Maintaining an Active MyRewards Account. (1)(a) To maintain an active MyRewards account, a beneficiary shall make monthly premium payments.

(b) The requirement to make a monthly premium payment to maintain an active MyRewards account shall include each beneficiary who is:

1. A former foster youth;

2. An individual determined to be medically frail or temporarily vulnerable; or

3. A beneficiary who has met the five (5) percent cost sharing limit established in 895 KAR 1:015.

(c) The requirement to make a monthly premium payment to maintain an active MyRewards account shall not apply to a beneficiary who is a pregnant woman.

(2) Only a beneficiary with an active, non-suspended MyRewards account shall be able to utilize the account to access services established in Section 1 of this administrative regulation.

Section 3. Accruals Within a MyRewards Account. (1)(a) A MyRewards account shall not be subject to any annual limit.

(b) A beneficiary shall continuously accrue balances for completion of activities listed in subsection (2) of this section if:

1. The account remains active; and

2. The beneficiary is not otherwise suspended or disenrolled.

(2) A beneficiary shall have the opportunity to accrue balances in the MyRewards account in the following circumstances:

(a) If the beneficiary completes a healthy behavior activity;

(b) If an individual in the household accesses preventive services, except that preventive services for children shall be accrued differently for the child and the household;

(c) At the end of a benefit year in which a beneficiary did not make any non-emergent visits to an emergency department;

(d) If the beneficiary completes and reports department approved community engagement activities in excess of the hours required of the beneficiary pursuant to the PATH requirement established in 895 KAR 1:020; or

(e) If the beneficiary completes a department approved education course.

(3) A beneficiary who has a suspended MyRewards account shall accrue balances for completion of an activity listed in subsection (2) of this section if the MyRewards account is unsuspended within sixty (60) calendar days of completing the approved activity.

(4) A beneficiary may accrue funds in the MyRewards account through deductible account rollover as established in 895 KAR 1:040.

Section 4. Deductions. A beneficiary with an active MyRewards account shall have the account balance reduced, up to a maximum negative balance of $150 for:

(1) Failure to make a required premium payment within sixty (60) days of the date of invoice, resulting in a non-payment penalty as established in 895 KAR 1:015; or

(2) A non-emergent use of the emergency department. Non-emergent use of the emergency department shall exist if:

(a) The beneficiary did not need emergency services;

(b) A medical screening conducted pursuant to 42 C.F.R.

489.24 was completed by the emergency department, and

(c) The beneficiary failed to contact the nurse hotline operated by the MCO with which the beneficiary is enrolled within twenty-four (24) hours prior to utilizing the emergency department.

Section 5. Payout of Account. (1) A former beneficiary who disenrolls from Kentucky HEALTH by obtaining commercial insurance and who remains commercially insured for a minimum of eighteen (18) months may apply to receive a payout of up to half of that beneficiary's remaining MyRewards account balance up to $500, subject to the following requirements:

(a) The former beneficiary shall provide attestation of commercial insurance; and

(b) The former beneficiary shall be without any type of Medicaid assistance in the commonwealth for at least eighteen (18) consecutive months following the date of disenrollment from Kentucky HEALTH.

(2) A MyRewards account shall be closed after the payout requested by a former beneficiary under this section.

Section 6. Establishment of Early Reentry or Early Reactivation Opportunity. (1) A beneficiary who is subject to a six (6) month penalty period under 895 KAR 1:010 or 895 KAR 1:015 shall be given the opportunity to re-enter Kentucky HEALTH or reactivate the beneficiary's MyRewards account, as applicable, prior to the expiration of the six (6) month penalty period.

(2) The opportunity to re-enter Kentucky HEALTH or reactivate the beneficiary's MyRewards account, as applicable, prior to the expiration of the six (6) month penalty period shall only be available to an individual one (1) time per benefit year per penalty reason type.

Section 7. Requirements for Re-entry. A beneficiary seeking to re-enter Kentucky HEALTH or reactivate the beneficiary's MyRewards account set forth in this administrative regulation, as applicable, prior to the expiration of the six (6)-month penalty period shall:

(1) Complete a re-entry course;

(2) Pay any premium payment required for the first month of coverage to restart benefits; and

(3) Pay any past due premiums owed for each month in which the individual received healthcare coverage through Kentucky HEALTH during the sixty (60) day payment period prior to the effective date of the applicable six (6) month penalty period.

Section 8. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

JILL R. HUNTER, Acting Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 27, 2018

FILED WITH LRC: June 29, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 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 August 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: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the MyRewards account requirements, including for accruals, deductions, account payout, early re-entry and re-activation following a suspension, and general account re-entry and reactivation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish and implement the MyRewards program and account for individual beneficiaries that are participating in the Kentucky HEALTH program or who otherwise elect to utilize a MyRewards program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing requirements and processes relating to the MyRewards program, which will enhance and allow for full participation in the Kentucky HEALTH program by individual beneficiaries and those who otherwise elect to utilize a MyRewards program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the MyRewards program and its requirements and processes, which will allow for individual beneficiaries and those who otherwise elect to participate in the MyRewards program to fully participate in the Kentucky HEALTH program pursuant to an approved federal 1115 waiver.

(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 government affected by this administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, any enrolled provider that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, and any beneficiary whose eligibility for Medicaid will be governed by the Kentucky HEALTH program. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

(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: Beneficiaries will need to comply with any relevant premium payment, PATH requirement, or any cost sharing limits to participate in the MyRewards program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Beneficiaries should experience no additional costs as a result of compliance with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, beneficiaries will be able to use a MyRewards account for purchase of items and services such as vision services, dental services, and additional state approved services. Qualifying beneficiaries may also eventually receive a MyRewards account payout if certain conditions are met.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund 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: Neither an increase in fees or funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation neither establishes or increases any fees.

(9) Tiering: Is tiering applied? Tiering was only applied in the sense that a beneficiary who is a pregnant woman is not required to make a monthly premium payment to maintain an active MyRewards account.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1315; 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560 KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1315 establishes the 1115 waiver authority. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A federal demonstration waiver has been approved pursuant to 42 U.S.C. 1315 and on an ongoing basis it shall determine and establish how Medicaid services are provided to Medicaid members who are eligible pursuant to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

(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? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

(d) How much will it cost to administer this program for subsequent years? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Administrative Regulation)

895 KAR 1:035. Covered services within the Kentucky HEALTH program.

RELATES TO: KRS 205.520, 205.622, 369.101 - 369.120, 42 C.F.R. parts 447, 489, 42 U.S.C. 1396a

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1115(b), the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes the covered benefits that shall be afforded to beneficiaries participating in the Kentucky HEALTH program.

Section 1. Alternative Benefit Plan (ABP). (1)(a) An ACA expansion adult not eligible under paragraph (b) of this section shall receive benefits:

1. As established in the Kentucky HEALTH alternative benefit plan approved by the Centers for Medicare and Medicaid Services; and

2. In accordance with the essential health benefit requirements under 42 C.F.R. 440.347 for alternative benefit plans.

(b) An ACA expansion adult shall receive benefits in accordance with the Kentucky Medicaid state plan, as established by KAR Title 907, if the ACA expansion adult:

1. Is pregnant;

2. Is a former foster youth; or

3. Is determined to be, or otherwise deemed, medically frail or temporarily vulnerable pursuant to 895 KAR 1:055.

(2) The Kentucky HEALTH ABP shall include covered services in each of the following categories:

(a) Ambulatory patient services;
(b) Emergency services;
(c) Hospitalization;
(d) Maternity services;
(e) Mental health and substance abuse services;
(f) Prescription drugs;
(g) Rehabilitative and habilitative services and devices;
(h) Laboratory services;
(i) Preventive care services;
(j) Early and periodic screening, diagnostic, and treatment services for beneficiaries nineteen (19) and twenty (20) years of age; and
(k) Any other services approved by the Centers for Medicare and Medicaid Services in the Kentucky HEALTH alternative benefit plan.
(3) The following services shall not be covered under the Kentucky HEALTH alternative benefit plan:
(a) Services that are not medically necessary;
(b) Dental services;
(c) Vision services;
(d) Nonemergency medical transportation; and
(e) Any other services not approved by the Centers for Medicare and Medicaid Services in the alternative benefit plan.

Section 2. State Plan Benefits. (1) A beneficiary in one (1) of the following groups shall receive covered services as established by the Kentucky Medicaid state plan, subject to the coverage criteria, limitations, and procedures specified in the Kentucky Medicaid state plan, as established by title 907 KAR and this title:
(a) Parents and caretaker relatives;
(b) Transitional medical assistance;
(c) Pregnant women;
(d) Former foster youth; and
(e) Medically frail, or temporarily vulnerable.
(2) The following services shall not be covered for beneficiaries under this section:
(a) Services that are not medically necessary;
(b) Nonemergency medical transportation for methadone treatment services, except for the following groups:
1. Pregnant women;
2. Former foster youth; or
3. Nineteen (19) and twenty (20) year-olds in accordance with EPSDT requirements; and
(c) Any other services not covered by the Kentucky Medicaid state plan.

Section 3. Coverage of Preventive Care Services. (1) For a beneficiary with a deductible account as established in 895 KAR 1:040, any preventive care service shall not be tracked against a beneficiary's deductible.
(2) Preventive care service shall include:
(a) The preventive services assigned a grade of A or B by the United States Preventive Services Task Force (USPSTF);
(b) The approved adult vaccines, including their administration, recommended by the Advisory Committee on Immunization Practices;
(c) Preventive care and screening recommended by the Health Resources and Services Administration Bright Future Program Project; or
(d) Preventive services recommended by the Institute of Medicine.

Section 4. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:
(1) Receipt of federal financial participation for the coverage; and
(2) Centers for Medicare and Medicaid Services' approval for the coverage.

JILL R. HUNTER, Acting Commissioner
ADAM M. MEIER, Secretary
APPROVED BY AGENCY: June 27, 2018
FILED WITH LRC: June 29, 2018 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 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 August 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: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the covered benefits that will be provided to beneficiaries participating in the Kentucky HEALTH program.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish those covered benefits that beneficiaries participating in the Kentucky HEALTH program shall receive.
(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 covered benefits that will apply to beneficiaries participating in the Kentucky HEALTH program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the covered benefits that will apply to the beneficiaries participating in the Kentucky HEALTH program pursuant to an approved federal 1115(b) waiver.
(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 government affected by this administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, any enrolled provider that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, and any beneficiary whose eligibility for Medicaid will be governed by the Kentucky HEALTH program. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this

administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will have to ensure that the benefits offered pursuant to the Kentucky HEALTH program are consistent with this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated entities should experience no additional costs as a result of compliance with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the covered benefits established in federal law shall be provided to qualifying beneficiaries.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund 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: Neither an increase in fees or funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation neither establishes or increases any fees.

(9) Tiering: Is tiering applied? Tiering was applied ACA expansion adults receive the Kentucky HEALTH Alternative Benefit Plan. While parents and caretaker relatives, transitional medical assistance, pregnant women, former foster youth, and individuals who are medically frail or temporarily vulnerable receive services established under the Kentucky Medicaid state plan. In addition, nonemergency medical transportation for methadone treatment is only available to pregnant women, former foster youth, and 19-20 year olds in accordance with EPSDT requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1315; 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560 KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1315 establishes the 1115 waiver authority. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

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 establishes an alternative benefit plan to the Kentucky Medicaid state plan for certain ACA expansion adults.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A federal demonstration waiver has been approved pursuant to 42 U.S.C. 1315 and on an ongoing basis it shall determine and establish how Medicaid services are provided to Medicaid members who are eligible pursuant to 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? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

(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? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

(d) How much will it cost to administer this program for subsequent years? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Administrative Regulation)

895 KAR 1:040. Deductible accounts within the Kentucky HEALTH program.

RELATES TO: KRS 205.520, 42 U.S.C. 1315

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes requirements for the use of deductible accounts for adult Kentucky HEALTH beneficiaries.

Section 1. Establishment of Deductible Account. (1) An adult beneficiary shall begin each benefit year with a deductible account with a dollar value equivalent to $1,000 as a mechanism to track

the first $1,000 of non-preventive covered services utilized by the beneficiary in the benefit year.

(2) This section shall not apply to an adult beneficiary who is a pregnant woman.

(3) As necessary, the department shall:

(a) Freeze deductible accounts to accommodate adult beneficiaries who become pregnant; or

(b) Pro-rate deductible accounts to accommodate an adult beneficiary who enrolls in Kentucky HEALTH for a partial benefit year.

Section 2. Purpose and Use of Deductible Account. (1) The deductible account shall cover the Kentucky HEALTH deductible, which shall be applicable to all non-preventive care services.

(2) Preventive care services as established in 895 KAR 1:045 shall not be:

(a) Subject to the $1,000 Kentucky HEALTH deductible; and

(b) Deducted from the deductible account.

Section 3. Continued Access to Service and Monthly Statement. (1) An adult beneficiary who receives more than $1,000 worth of non-preventive services in the benefit year shall retain access to all covered services despite having exhausted the deductible account.

(2) Each adult beneficiary shall receive a monthly deductible account statement, which shall include:

(a) The cost of non-preventive care services that the adult beneficiary has utilized during the statement period; and

(b) The deductible account balance that the adult beneficiary has remaining.

Section 4. Deductible Account Balance Transfer and Calculation. (1) An adult beneficiary with funds remaining in a deductible account at the end of the benefit year may transfer up to fifty (50) percent of the remaining deductible account balance to the beneficiary's MyRewards account established in 895 KAR 1:030.

(2) For a beneficiary who was not an active member of Kentucky HEALTH for the entire benefit year, the deductible account balance that is eligible to be transferred to an adult beneficiary's MyRewards account shall be calculated on a prorated basis based on the beneficiary's active months during the benefit year.

Section 5. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

JILL R. HUNTER, Acting Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 27, 2018

FILED WITH LRC: June 29, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 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 August 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, Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the use of deductible accounts for Kentucky HEALTH beneficiaries.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish and implement requirements and processes for individual beneficiaries to track how they utilize services via a deductible account for non-preventive covered services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing requirements and processes relating to the use of deductible accounts to allow for individual beneficiaries to track their use of non-preventive covered services to allow for beneficiaries to more fully participate in the Kentucky HEALTH program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the requirements and procedures for the use of deductible accounts, which will allow individual beneficiaries to track and receive data relating to their use of non-preventive covered services and more fully participate in the Kentucky HEALTH program.

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

(a) How the amendment will change this existing administrative regulation: This 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 government affected by this administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, any enrolled provider that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, and any beneficiary whose eligibility for Medicaid will be governed by the Kentucky HEALTH program. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

(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: Beneficiaries will track and send a monthly deductible account statement to beneficiaries. Beneficiaries may transfer 50% of amounts remaining in a deductible account to the beneficiary's MyRewards account at the end of the benefit year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Beneficiaries should experience no additional costs as a result of compliance.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): As a result of compliance, beneficiaries will be able to track use of their deductible account in order to better understand the use of healthcare funds and potentially transfer the amount remaining in the deductible account to the beneficiary's MyRewards account.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund 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: Neither an increase in fees or funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation neither establishes or increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied in the sense that deductible accounts are used only by adult beneficiaries, and pregnant women are not required to utilize a deductible account.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1315; 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560 KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1315 establishes the 1115 waiver authority. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A federal demonstration waiver has been approved pursuant to 42 U.S.C. 1315 and on an ongoing basis it shall determine and establish how Medicaid services are provided to Medicaid members who are eligible pursuant to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

(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? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

(d) How much will it cost to administer this program for subsequent years? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Administrative Regulation)

895 KAR 1:045. Accommodations, modifications, and appeals for beneficiaries participating in the Kentucky HEALTH program.

RELATES TO: KRS 205.520, 42 U.S.C. 1315

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes a requirement for reasonable modifications and accommodations for Kentucky HEALTH beneficiaries, a random control group, and an eligibility and covered services appeals process.

Section 1. Reasonable Accommodations. (1) The department shall provide reasonable accommodations or modifications, in accordance with subsection (2) of this section, to Kentucky HEALTH requirements and processes as necessary to support and assist each beneficiary with a protected disability or disabilities to meet the requirements of this title.

(2) Reasonable accommodations and modifications shall include the following actions if requested by a beneficiary with a protected disability or disabilities:

(a) An exemption or exemptions from PATH participation if a beneficiary is unable to participate for reasons related to a protected disability;

(b) A modification in the number of hours of PATH participation required if a beneficiary is unable to participate for the required number of hours;

(c) Provision of support services necessary to comply with requirements, if compliance is possible with supports;

(d) Assistance with demonstrating eligibility for a good cause exemption to the Kentucky HEALTH requirements, in accordance

with 895 KAR 1:020, Section 1;

(e) Assistance with appealing a suspension for failure to meet requirements;

(f) Assistance with complying with any documentation requirements of Kentucky HEALTH, including for community engagement activities; or

(g) Assistance with understanding notices and program rules related to Kentucky HEALTH requirements.

Section 2. Random Control Group. (1) Except as otherwise provided in this section, all policies, requirements, procedures, and timeframes established for Kentucky Medicaid in Title 907 KAR shall apply to the Kentucky HEALTH random control group.

(2) An individual assigned to the Kentucky HEALTH random control group shall not be:

(a) Subject to the requirements for Kentucky HEALTH eligibility established in 895 KAR 1:010; or

(b) Eligible for coverage prior to the first day of the month of application.

Section 3. Eligibility Appeals. An appeal by an applicant, conditionally eligible beneficiary, or beneficiary regarding an eligibility determination shall be governed by KRS Chapter 13B and 907 KAR 1:560.

Section 4. Covered Services Appeals and Hearings. Except as otherwise provided in Title 895 KAR, a beneficiary appeal regarding a benefit determination by a managed care organization shall be governed by KRS Chapter 13B and 907 KAR 17:010.

Section 5. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

JILL R. HUNTER, Acting Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 27, 2018

FILED WITH LRC: June 29, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 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 August 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: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a requirement for reasonable modifications and accommodations for Kentucky HEALTH beneficiaries, a random control group, and establishes an eligibility and covered services appeals process.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish certain rights and responsibilities for beneficiaries receiving services pursuant to the Kentucky HEALTH program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing rights, responsibilities, and additional processes for the benefit of individuals receiving services pursuant to the Kentucky HEALTH program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing rights, responsibilities, and processes for the benefit of individuals and for the efficient administration of the Kentucky HEALTH program.

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

(a) How the amendment will change this existing administrative regulation: This 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 government affected by this administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, any enrolled provider that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, and any beneficiary whose eligibility for Medicaid will be governed by the Kentucky HEALTH program. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The department commits to provide certain reasonable accommodations and modifications to beneficiaries with a protected disability including exemption from PATH requirements, modification in hours of PATH requirements, provision of support services, assistance with demonstration of eligibility for good cause exemptions, assistance with appealing of suspensions, assistance with compliance with documentation requirements, and assistance with understanding notices and program rules. The department will also establish a random control group, and an eligibility and covered services appeals process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Beneficiaries should experience no additional costs as a result of compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, beneficiaries will experience a program that has incorporated reasonable accommodations and modifications for beneficiaries with a protected disability, and an eligibility and covered services appeals process.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative

regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund 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: Neither an increase in fees or funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation neither establishes or increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied in that a random control group that is not subject to the Kentucky HEALTH requirements is established and is used for data tracking purposes.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1315; 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560 KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1315 establishes the 1115 waiver authority. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

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 establish 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. A federal demonstration waiver has been approved pursuant to 42 U.S.C. 1315 and on an ongoing basis it shall determine and establish how Medicaid services are provided to Medicaid members who are eligible pursuant to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

(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? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

(d) How much will it cost to administer this program for subsequent years? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Administrative Regulation)

895 KAR 1:050. Enrollment and reimbursement for providers in the Kentucky HEALTH program.

RELATES TO: KRS 205.520, 42 U.S.C. 1315

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes the enrollment and reimbursement requirements for providers that provide covered and non-covered services to beneficiaries participating in the Kentucky HEALTH program.

Section 1. Provider Enrollment Requirements. (1) A provider shall be automatically eligible for Kentucky HEALTH provider participation if the provider is currently enrolled as a Medicaid provider or as a provider with an MCO to provide Medicaid services to Kentucky Medicaid recipients.

(2) To enroll as a provider under Title 895 KAR, the provider shall comply with all Medicaid enrollment procedures and requirements established in Title 907 KAR.

Section 2. Provider Reimbursement. (1) A provider shall be reimbursed at the reimbursement rate established by the MCO for the MCO covered services.

(2) A provider shall be reimbursed for services covered by 895 KAR 1:030 Section 1, through the beneficiary's MyRewards account on a fee-for-service basis. A claim for services covered by the MyRewards account shall not be submitted to the beneficiary's MCO.

(3) A provider shall not receive reimbursement under title 895 KAR for services provided to an individual if:

(a) The individual is not eligible for participation in the Kentucky HEALTH program pursuant to 895 KAR 1:010; or

(b) The individual is suspended or otherwise not enrolled in Kentucky HEALTH on the date the service is provided.

Section 3. Non-covered Services Reimbursed via MyRewards Account. (1) A provider who seeks to receive reimbursement for an otherwise non-covered service that is reimbursable via a beneficiary's MyRewards account established by 895 KAR 1:030 shall be at risk for the cost of the service provided, if:

(a)1. The provider fails to place a hold on funds in the account; and

2. Funds are not available at the time services are billed;

(b) The beneficiary's MyRewards account was inactive or suspended at the time the service was rendered; or

(c) The hold on the funds placed by the provider subsequently expired due to the provider's failure to submit a claim within thirty (30) days of the date of service.

(2) A provider may bill a beneficiary with an inactive or suspended MyRewards account for services not covered by the beneficiary's benefit plan as established in 895 KAR 1:030 or 895 KAR 1:025 if the services are for:

(a) Vision; or

(b) Dental.

Section 4. MCO Payment. (1)(a) Except as provided in paragraph (b) of this subsection, a provider shall:

1. Accept MCO reimbursement as payment in full for services rendered; and

2. Not collect from a beneficiary any portion of the provider's charge for a covered service that is not reimbursed by the MCO.

(b) A provider shall collect the copays required by the Kentucky Medicaid state plan, for beneficiaries in the copay plan.

(2) A provider may seek beneficiary reimbursement for non-covered services, including services received by the beneficiary during a suspension or other penalty period, if the following four (4) conditions are met:

(a) The provider has an established policy for billing all patients for services not covered by a third party and does not bill only Medicaid or Kentucky HEALTH patients;

(b) The patient is advised prior to receiving a non-covered service that Kentucky HEALTH will not pay for the service;

(c) The patient agrees to be personally responsible for the payment; and

(d) The agreement is made in writing between the provider and the patient, detailing both the service and the amount to be paid by the patient.

Section 5. Third Party Liability. A provider shall comply with KRS 205.622.

Section 6. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which a beneficiary has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each beneficiary using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the beneficiary has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 7. Auditing Authority. The department or MCO in which a beneficiary is enrolled shall have the authority to audit any:

(1) Claim;

(2) Health record; or

(3) Documentation associated with any claim or health record, including any activity related to a beneficiary's use of a MyRewards account.

Section 8. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

JILL R. HUNTER, Acting Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 27, 2018

FILED WITH LRC: June 29, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 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 August 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: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the enrollment and reimbursement requirements for providers that provide covered and non-covered services to beneficiaries participating in the Kentucky HEALTH program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements for providers that will provide covered and non-covered services to the beneficiaries participating in the Kentucky HEALTH program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the requirements and processes by which providers will be able to provide covered and non-covered services to Kentucky HEALTH beneficiaries.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing processes and requirements by which providers will be able to provide covered and non-covered services to Kentucky HEALTH beneficiaries.

(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 government affected by this administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, any enrolled provider that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, and any beneficiary whose eligibility for Medicaid will be governed by the Kentucky HEALTH program. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

(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: Providers will need to follow existing enrollment procedures and requirements in Title 907 KAR. For non-covered services, a provider may bill a MyRewards account via established procedures. Additional procedures outlining the step that must occur before a provider can establish additional beneficiary liability shall also be followed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs experienced.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, providers will attain the ability to receive reimbursement for covered and certain non-covered services provided to beneficiaries in the Kentucky HEALTH program.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund 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: Neither an increase in fees or funding is necessary to implement this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation neither establishes or increases any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the requirements established herein apply to all regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1315; 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560 KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1315 establishes the 1115 waiver authority. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Different responsibilities established include establishing how providers accept payment for non-covered services by a MyRewards account.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A federal demonstration waiver has been approved pursuant to 42 U.S.C. 1315 and on an ongoing basis it shall determine and establish how Medicaid services are provided to Medicaid members who are eligible pursuant to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

(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? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

(d) How much will it cost to administer this program for subsequent years? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Administrative Regulation)

895 KAR 1:055. Designation or determination of medically frail status or accommodation due to temporary vulnerability in the Kentucky HEALTH program.

RELATES TO: KRS 205.520, 42 C.F.R. part 447, 42 U.S.C. 1315

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity

presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes those beneficiaries who shall qualify as medically frail or temporarily vulnerable and establishes the requirements for determination of that status.

Section 1. Designation as Medically Frail at Time of Application. A beneficiary shall be designated as medically frail at the time of application if the beneficiary is:

(1) A beneficiary with HIV or AIDS as identified by the Ryan White Program;

(2) Receiving retirement, survivors, disability insurance (RSDI) income based on disability; or

(3) Chronically homeless.

Section 2. Medically Frail Screenings. (1) A beneficiary who is not designated as medically frail at the time of application shall be reviewed for medically frail status at any of the following times:

(a) Upon beneficiary request;

(b) During the benefit year if documentation demonstrates that the beneficiary may have a medically frail condition; or

(c) If claims history or provider documentation demonstrates that the beneficiary may no longer have a medically frail condition.

(2) A medically frail beneficiary shall be reviewed at least annually by the managed care organization to determine if the beneficiary is eligible for continued designation as medically frail.

(3) In order to verify a beneficiary's medically frail condition, the managed care organization shall consider:

(a) The beneficiary's medical records;

(b) The beneficiary's medical claim data;

(c) Any other information relevant to the beneficiary's health condition; or

(d) Physician attestation of medically frail status.

Section 3. Accommodation due to Temporary Vulnerability. (1) A beneficiary shall be designated as temporarily vulnerable by the department if the beneficiary is:

(a) A refugee, as defined by KRS 186.010(13)(c), during the first twelve (12) months after the refugee entered the United States; or

(b) A victim of domestic violence.

(2) An individual who is designated as temporarily vulnerable shall:

(a) Pay premiums for access to a MyRewards account; and

(b) Be exempt from the following Kentucky HEALTH requirements:

1. Payment of premiums for medical services;

2. Copays for medical services;

3. Completion of the PATH requirement during the entire period of temporary vulnerability.

Section 4. Auditing Authority. The department or MCO in which a beneficiary is enrolled shall have the authority to audit any:

(1) Claim;

(2) Health record; or

(3) Documentation associated with any claim or health record, including any activity related to a beneficiary's use of a MyRewards account.

Section 5. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 6. Appeal Rights. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563 and 895 KAR 1:045.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010 and 895 KAR 1:045.

JILL R. HUNTER, Acting Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 27, 2018

FILED WITH LRC: June 29, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 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 August 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: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes those beneficiaries of the Kentucky HEALTH program who shall qualify as medically frail or temporarily vulnerable and establishes the requirements for determination of that status.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish certain beneficiaries of the Kentucky HEALTH program as medically frail or temporarily vulnerable, and therefore not subject to certain PATH requirements, and establish a process by which other beneficiaries may be screened and verified to be medically frail or temporarily vulnerable, and therefore not subject to certain PATH requirements, by an MCO.

(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 which beneficiaries are automatically deemed to be medically frail, and how other beneficiaries may be deemed medically frail or temporarily vulnerable by an MCO, which will assist with the effective implementation of the Kentucky HEALTH program pursuant to an approved federal 1115 waiver.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing certain beneficiaries as medically frail, and establishing a screening process for other beneficiaries who may qualify as medically frail or temporarily vulnerable. A process for designation of medically frail or temporarily vulnerable status will assist with the effective implementation of the Kentucky HEALTH program pursuant to an approved federal 1115 waiver.

(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 government affected by this administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, any enrolled provider that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, and any beneficiary whose eligibility for Medicaid will be governed by the Kentucky HEALTH program. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

(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 need to claim, verify, or submit to screening to determine medically frail or temporarily vulnerable status. MCOs will need to establish processes to determine which beneficiaries are medically frail or temporarily vulnerable.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs experienced.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, beneficiaries may claim or qualify as medically frail or temporarily vulnerable and thus may be exempt from PATH requirements.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund 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: Neither an increase in fees or funding is necessary to implement this administrative regulation.

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

(9) Tiering: Is tiering applied? Tiering is applied in the sense that certain beneficiaries are automatically designated as medically frail and all other beneficiaries who are determined medically frail or temporarily vulnerable are determined to be medically frail or temporarily vulnerable via screenings and documentation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1315; 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560 KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1315 establishes the 1115 waiver authority. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Different responsibilities established include a closer analysis of which beneficiaries are designated or determined to be medically frail or temporarily vulnerable.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A federal demonstration waiver has been approved pursuant to 42 U.S.C. 1315 and on an ongoing basis it shall determine and establish how Medicaid services are provided to Medicaid members who are eligible pursuant to 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? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

(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? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

(d) How much will it cost to administer this program for subsequent years? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over $2.2 billion dollars in state and federal funding over the five year waiver period.

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 Public Health
Division of Public Health Protection and Safety
(Repealer)

902 KAR 10:051. Repeal of 902 KAR 10:050.

RELATES TO: KRS 211.025, 211.090, 211.180
STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of

the individual citizens of the commonwealth. KRS 211.090(3) requires the secretary to adopt rules and regulations necessary to regulate and control all matters set forth in KRS 211.180. KRS 211.180 does not include the regulation of distributed refuse bins and facility refuse bins are sufficiently regulated by other administrative regulations with authority over those facilities. This administrative regulation repeals 902 KAR 10:050.

Section 1. 902 KAR 10:050, Refuse bins, is hereby repealed.

JEFFREY D. HOWARD, JR., M.D., Commissioner
ADAM MEIER, Secretary

APPROVED BY AGENCY: July 6, 2018

FILED WITH LRC: July 11, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 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 August 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: Julie Brooks, JulieD.Brooks@ky.gov, 502-564-3970; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 902 KAR 10:050.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal 902 KAR 10:050, as the Department for Public Health does not regulate refuse bins to be distributed in commerce and is not statutorily authorized to do so. Refuse bins used in regulated facilities are regulated by administrative regulations specific to those facilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 13A.310 by repealing an obsolete administrative regulation that is not enforced by the Department for Public Health.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of 902 KAR 10:050 is consistent with Governor Bevin's Red Tape Reduction initiative to repeal obsolete administrative regulations. This administrative regulation is in accordance with KRS 13A.310(3)(a).

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of 902 KAR 10:050 does not impact individuals, businesses, organizations, or government.

(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: No action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There are no costs associated with the compliance of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will result in the repeal of an obsolete administrative regulation.

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

(a) Initially: There are no costs to the administrative body associated with this administrative regulation.

(b) On a continuing basis: There are no costs to the administrative body associated with this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no costs to the administrative body associated with this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? No. Tiering is not applicable as this administrative regulation repeals 902 KAR 10:050.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The repeal of 902 KAR 10:050 does not impact anyone as this administrative regulation is not used or statutorily authorized.

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), 211.090(3).

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

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

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

(c) How much will it cost to administer this program for the first year? There are no costs to the administrative body associated with this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs to the administrative body associated with this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Repealer)

902 KAR 20:251. Repeal of 902 KAR 20:250.

RELATES TO: KRS 216B.020(2)(c), (3)(c), (4)
STATUTORY AUTHORITY: KRS 216B.042
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the cabinet to promulgate administrative regulations to establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. In accordance with KRS 13A.310(3)(a), this administrative regulation repeals 902 KAR 20:250 as the standards for freestanding or mobile technology services are established in the amendment of 902 KAR 20:275, filed concurrently with this administrative regulation.

Section 1. 902 KAR 20:250, Specialized medical technology services, is hereby repealed. 902 KAR 20:251

STEVEN D. DAVIS, Inspector General
ADAM M. MEIER, Secretary
APPROVED BY AGENCY: June 29, 2018
FILED WITH LRC: July 11, 2018 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 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 August 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: Stephanie Brammer-Barnes, email stephanie.brammer@ky.gov, phone 502-564-2888; Laura Begin
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation repeals 902 KAR 20:250.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal 902 KAR 20:250 as the standards for freestanding or mobile technology services are established in the amendment of 902 KAR 20:275, filed concurrently with this administrative regulation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This repealer is filed in accordance with KRS 13A.310.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by repealing 902 KAR 20:250 as the standards for freestanding or mobile technology services are established in the amendment of 902 KAR 20:275.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is not an amendment to an existing administrative regulation.
(b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to an existing administrative regulation.
(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment to an existing administrative regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects entities that will convert their licensure from 902 KAR 20:250 to 902 KAR 20:275 if providing diagnostic or therapeutic equipment or procedures, i.e., MRI, PET, cardiac catheterization, or megavoltage radiation therapy services.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All freestanding or mobile technology services will be licensed under 902 KAR 20:275 if providing MRI, PET, cardiac catheterization, or megavoltage radiation therapy services.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred to comply with this repealer.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation repeals 902 KAR 20:250.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: This administrative regulation imposes no costs on the administrative body.
(b) On a continuing basis: This administrative regulation imposes no costs on the administrative body.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement this repealer.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fee or funding increase is necessary to implement this repealer.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulation does not establish or increase any fees.
(9) TIERING: Is tiering applied? Tiering is not applicable as this administrative regulation repeals 902 KAR 20:250.

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 entities that will convert their licensure from 902 KAR 20:250 to 902 KAR 20:275 if providing diagnostic or therapeutic equipment or procedures, i.e., MRI, PET, cardiac catheterization, or megavoltage radiation therapy services. This repealer also impacts the Cabinet for Health and Family Services, Office of Inspector General.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310(3)(a)
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

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

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

(c) How much will it cost to administer this program for the first year? This repealer imposes no costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This repealer imposes no costs on the administrative body.

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 Public Health
Division of Public Health Protection and Safety
(Repealer)

902 KAR 47:071. Repeal of 902 KAR 47:040, 902 KAR 47:050, 902 KAR 47:060, and 902 KAR 47:070.

RELATES TO: KRS 211.090, 211.180, 217.801

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth. KRS 211.090(3) requires the secretary to adopt rules and regulations necessary to regulate and control all matters set forth in KRS 211.180. KRS 211.180 does not include the regulation of cellulose insulation, consumer products containing lead, the safety of toys and children's products, or flammable fabrics. This administrative regulation repeals 902 KAR 47:040, 902 KAR 47:050, 902 KAR 47:060, and 902 KAR 47:070.

Section 1. The following administrative regulations are hereby repealed:

(1) 902 KAR 47:040, Cellulose insulation;

(2) 902 KAR 47:050, Ban of paint, coatings, and certain consumer products containing lead;

(3) 902 KAR 47:060, Safety of toys and children's products; and

(4) 902 KAR 47:070, Standards for flammable fabrics and flammable fabric products.

JEFFREY D. HOWARD, JR., M.D., Commissioner
ADAM MEIER, Secretary

APPROVED BY AGENCY: July 6, 2018

FILED WITH LRC: July 11, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 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 August 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: Julie Brooks, 502-564-3970, JulieD.Brooks@ky.gov, and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 902 KAR 47:040, 902 KAR 47:050, 902 KAR 47:060, and 902 KAR 47:070.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal 902 KAR 47:040, 902 KAR 47:050, 902 KAR 47:060, and 902 KAR 47:070, as the Department for Public Health does not regulate cellulose insulation, consumer products, or flammable fabrics and is not statutorily authorized to do so.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 13A.310 by repealing obsolete administrative regulations that are not enforced by the Department for Public Health.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of these administrative regulations is consistent with Governor Bevin's Red Tape Reduction initiative to repeal obsolete administrative regulations. This administrative regulation is in accordance with KRS 13A.310(3)(a).

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of these administrative regulations does not impact individuals, businesses, organizations, or government.

(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: No action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There are no costs associated with the compliance of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will result in the repeal of obsolete administrative regulations.

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

(a) Initially: There are no costs to the administrative body associated with this administrative regulation.

(b) On a continuing basis: There are no costs to the administrative body associated with this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no costs to the administrative body associated with this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? No. Tiering is not applicable as this administrative regulation repeals administrative regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The repeal of these administrative regulations does not impact anyone as these administrative regulations are not used or statutorily authorized. The repeals reduce the number of administrative regulations enforced by the 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), 211.090(3).

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

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

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

(c) How much will it cost to administer this program for the first year? There are no costs to the administrative body associated with this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs to the administrative body associated with this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Repealer)

902 KAR 100:018. Repeal of 902 KAR 100:017, 902 KAR 100:060, 902 KAR 100:090.

RELATES TO: KRS 211.842-211.852, 211.990(4)

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.844(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth. KRS 211.844 provides through administrative regulation for the registration and licensing of the possession or use of any source of ionizing or electronic product radiation and the handling and disposal of radioactive waste. Special requirements for teletherapy license and broad license limits are no longer applicable under this statute.

Section 1. The following administrative regulations are hereby repealed:

(1) 902 KAR 100:017, Special requirements for teletherapy license;

(2) 902 KAR 100:060, Leak testing; and

(3) 902 KAR 100:090, Broad license limits.

JEFFREY D. HOWARD, JR., M.D., Commissioner
ADAM MEIER, Secretary

APPROVED BY AGENCY: June 29, 2018

FILED WITH LRC: July 5, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 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 August 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-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, JulieD.Brooks@ky.gov, 502-564-3970; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 902 KAR 100:017, 902 KAR 100:060 and 902 KAR 100:090.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal 902 KAR 100:017, 902 KAR 100:060 and 902 KAR 100:090, as the provisions for licensing for the possession or use of any source of ionizing or electronic product radiation have been incorporated in other amendments to regulations in 902 KAR Chapter 100.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 13A.310 by repealing an obsolete regulation that is not enforced by the Department for Public Health.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of 902 KAR 100:017, 902 KAR 100:060 and 902 KAR 100:090 is consistent with Governor Bevin's Red Tape Reduction initiative to repeal obsolete regulations. This administrative regulation is in accordance with KRS 13A.310(3)(a).

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

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

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

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

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

regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of 902 KAR 100:017, 902 KAR 100:060 and 902 KAR 100:090 does not impact individuals, businesses, organizations, or government.

(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: No action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There are no costs associated with the compliance of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will result in the repeal of obsolete administrative regulations.

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

(a) Initially: There are no costs to the administrative body associated with this administrative regulation.

(b) On a continuing basis: There are no costs to the administrative body associated with this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no costs to the administrative body associated with this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? No. Tiering is not applicable as this administrative regulation repeals administrative regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The repeal of these administrative regulations does not impact anyone as this regulation is not used or statutorily authorized.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 211.090, 211.844.

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.

(b) How 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.

(c) How much will it cost to administer this program for the first year? There are no costs to the administrative body associated with this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs to the administrative body associated with this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Administrative Regulation)

907 KAR 1:642. Adult group 07-2018 benefit plan and copayments.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a, 42 C.F.R. 435.119, 440

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, a state plan amendment has been approved that aligns the benefit plan offered to Kentucky Medicaid Affordable Care Act (ACA) expansion adults with the benefits required to be offered to Medicaid recipients underneath the Affordable Care Act and federal law. This administrative regulation implements the state plan amendment, by aligning the benefit plan offered to ACA expansion adults with federal requirements and clarifying that ACA expansion adults are required to remit copayments.

Section 1. Definitions. (1) "Adult group 07-2018 adult" means a Medicaid member who meets the requirements established by 42 C.F.R. 435.119 and who was previously eligible and designated as an ACA expansion adult within Title 907 KAR.

(2) "Alternative benefit plan" or "ABP" means the benefit package:

(a) Developed by the department and approved by the Centers for Medicare and Medicaid Services in accordance with 42 C.F.R. Part 440, Subpart C (440.300-440.395); and

(b) Provided to Adult group 07-2018 in accordance with Medicaid Alternative Benefit Plan KY-18-0001, April 20, 2018 with supplementary approval on May 9, 2018.

(3) "Preventive dental services" means services:

(a)1. Performed by an enrolled Medicaid provider; and

2. That include cleanings, fillings, and root canal therapy and other services that are preventive in nature; and

(b) That do not include medical dental services that are not preventive in nature including the removal of benign and malignant lesions, removal of foreign bodies, wound suturing, or anesthesia related to the provision of medical dental services.

(4) "Preventive vision services" means services:

(a)1. Performed by an enrolled Medicaid provider; and

2. That include routine or preventative eye exams and other services that are preventive in nature; and

(b) Does not include medical vision services that are not preventive in nature including the removal of benign and malignant lesions or tumors, removal of foreign bodies, wound suturing, and anesthesia related to the provision of medical vision services.

Section 2. Alternative Benefit Plan (ABP). (1)(a) An adult group 07-2018 adult not eligible under paragraph (b) of this subsection shall receive benefits:

1. As established in the alternative benefit plan approved by the Centers for Medicare and Medicaid Services; and

2. In accordance with the essential health benefit requirements under 42 C.F.R. 440.347 for alternative benefit plans.

(b) An adult group 07-2018 adult shall receive benefits in accordance with the Kentucky Medicaid state plan, as established by Title 907 KAR, if the adult group 07-2018 adult:

1. Is pregnant; or

2. Is a former foster youth.

(2) The ABP established pursuant to this administrative regulation shall include covered services in each of the following categories:

(a) Ambulatory patient services;

(b) Emergency services;

(c) Hospitalization;

(d) Maternity services;

(e) Mental health and substance abuse services;

(f) Prescription drugs;

(g) Rehabilitative and habilitative services and devices;

(h) Laboratory services;

(i) Preventive care services;

(j) Early and periodic screening, diagnostic, and treatment services for beneficiaries nineteen (19) and twenty (20) years of age; and

(k) Any other services approved by the Centers for Medicare and Medicaid Services in the alternative benefit plan.

(3) The following services shall not be covered under the alternative benefit plan:

(a) Services that are not medically necessary;

(b) Preventive dental services;

(c) Preventive vision services;

(d) Nonemergency medical transportation as established pursuant to 907 KAR 3:066; and

(e) Any other services not approved by the Centers for Medicare and Medicaid Services in the alternative benefit plan.

Section 3. Copayments by adult group 07-2018. (1) Notwithstanding any provision of Title 907 KAR to the contrary, including 907 KAR 1:604, any copay plan requirements established pursuant to this administrative regulation shall be mandatory for each Medicaid member in the adult group 07-2018 and shall be remitted as established pursuant to subsection (2) of this section.

(2)(a) An adult group 07-2018 adult participating in the Kentucky Medicaid state plan in Title 907 KAR shall make co-pays for all covered services equal to the copays established in the Kentucky Medicaid state plan.

(b) Any co-payment requirements established pursuant to 907 KAR 1:604 shall not be waived by an MCO or provider for the adult group 07-2018 and shall be collected by either the MCO or the provider and remitted as directed by the department.

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

(1) "Medicaid Alternative Benefit Plan KY-18-0001, April 20, 2018 with supplementary approval on May 9, 2018", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the:

(a) Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. through 4:30 p.m.; or

(b) Website address of http://www.chfs.ky.gov/dms/incorporated.htm.

JILL R. HUNTER, Acting Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 2, 2018

FILED WITH LRC: July 2, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 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 August 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: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation implements a state plan amendment, by aligning the benefit plan offered to ACA expansion adults within the Adult Group 07-2018 with federal requirements and clarifying that ACA expansion adults are required to remit copayments.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement a state plan amendment in order to align the benefit plan offered to ACA expansion adults within Adult Group 07-2018 with federal requirements and clarifying that ACA expansion adults are required to remit copayments.

(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 implementing a state plan amendment in order to align the benefit plan offered to ACA expansion adults within Adult Group 07-2018 with federal requirements and clarifying that ACA expansion adults are required to remit copayments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by implementing a state plan amendment and aligning a benefit plan to ACA expansion adults with federal requirements.

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

(a) How the amendment will change this existing administrative regulation: This 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 beneficiaries, businesses, organizations, or state and local government affected by this administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers services to individuals eligible as an Adult Group 07-2018 adult, any enrolled provider that delivers services to individuals eligible as an Adult Group 07-2018 adult, and any beneficiary whose eligibility for Medicaid will be governed by the Adult Group 07-2018 designation. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

(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: Eligible adults will need to submit copayments to access services in the benefit plan established pursuant to 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): Eligible adults will pay the copayments established in

907 KAR 1:604.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Eligible adults will be able to access Medicaid benefits.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund 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: Neither an increase in fees or funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation neither establishes or increases any fees.

(9) Tiering: Is tiering applied? Tiering was applied in the sense that the requirements established pursuant to this administrative regulation apply only to adults within the Adult Group 07-2018. Tiering was further applied in that pregnant women and former foster youth are exempted from the requirements of this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 440

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560 KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

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 establish standards that are stricter than required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Requirements are established in response to a completed state plan amendment that aligns the benefit plan offered to the Adult Group 07-2018 with federal law.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

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

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

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

(c) How much will it cost to administer this program for the first year? The department anticipates no additional costs in the implementation of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The department anticipates no additional costs in the implementation of this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(New Administrative Regulation)

922 KAR 1:560. Putative father registry and operating procedures.

RELATES TO: KRS 194A.060, 199.011, 199.480, 199.505, 199.990, 620.020(11), 625.065

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472, 199.503(3)

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 the responsibilities vested in the cabinet. KRS 199.472(1) requires the cabinet to promulgate administrative regulations that establish criteria to be followed for the adoption of children. Ky. Acts ch. 159, Section 28(3), codified as KRS 199.503(3), requires that the cabinet establish a putative father registry and promulgate administrative regulations to administer the registry. This administrative regulation establishes the putative father registry and operating procedures.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(3).

(2) "Child-placing agency" is defined by KRS 199.011(6).

(3) "Department" is defined by KRS 199.011(7).

(4) "Putative father" is defined by KRS 199.503(2).

(5) "Reasonable efforts" is defined by KRS 620.020(11).

Section 2. Registry Standards. (1) The cabinet shall establish and maintain a putative father registry in accordance with KRS 199.503, KRS 199.505 and KRS 199.990.

(2) Information received and recorded by the cabinet shall be kept confidential in accordance with KRS 194A.060 and KRS 199.503(11).

Section 3. Submission of Registration. (1) A putative father shall request registration on the putative father registry by completing the DPP-1304, Putative Father Registration Form.

(2) A putative father shall submit a DPP-1304 to the cabinet by:

(a) Mail to the Department for Community Based Services, attention: Putative Father Registry, 275 East Main Street, mail-stop 3C-E, Frankfort, Kentucky 40621;

(b) Electronic submission through the online registration system located on the department’s website once the online function is available; or

(c) Electronic mail to putativefather@ky.gov.

(3) A putative father shall provide the following information on the DPP-1304 prior to the cabinet accepting and processing a

registration request:

(a) The putative father's full name;

(b) The putative father's date of birth;

(c) The putative father's place of birth;

(d) The putative father's place of residence;

(e) An address where the putative father may be served with notice of a petition for termination of parental rights or adoption;

(f) The first and last name of the birth mother;

(g) The birth mother's date of birth, if known;

(h) The birth mother's place of birth, if known;

(i) The birth mother's place of residence, if known;

(j) The birth mother's mailing address, if known;

(k) The child's name, if known;

(l) The child's date of birth, if known; and

(m) The child's place of birth, if known.

(3) A putative father shall sign the DPP-1304 verifying that the information in his registration is accurate subject to penalty in accordance with KRS 199.990.

(4) A putative father who is registered shall submit an amended DPP-1304 each time information about the father changes in accordance with KRS 199.503(4)(b)2.

(5) The cabinet shall not accept and shall attempt to return a DPP-1304 that:

(a) Does not contain the information required by subsection (2) of this section; or

(b) Is not accepted in accordance with subsection (7) of this section.

(6) The cabinet shall:

(a) Accept a DPP-1304 that contains information required by subsection (2) of this section and is submitted within the timeframe specified in subsection (7) of this section; and

(b) Provide the putative father with a copy of his registration, including:

1. A registration number; and

2. The date the registration was processed and made effective by the cabinet.

(7) The cabinet shall not accept a registration request that is electronically submitted, electronically mailed, or postmarked more than thirty (30) days after the birth of the child subject to the registration in accordance with KRS 199.480(1)(b)2. and KRS 625.065(1)(b).

Section 4. Search of the Putative Father Registry. (1) An individual or entity authorized by KRS 199.503(8) or KRS 199.505, to receive a certified copy of a putative father's registration shall:

(a) Complete the DPP-1305, Putative Father Registry Search Request;

(b) Include a copy of the birth mother's consent or adoption petition with the form; and

(c) Submit the DPP-1305 to the cabinet by means specified in Section 3(2)(a) through (c) of this administration regulation.

(2) Unless the entity requesting a certified copy of a putative father's registration is a court, a DPP-1305 shall include a twenty-five (25) dollar fee in accordance with KRS 199.503(10), paid by:

(a) Certified or cashier's check or money order made payable to the Kentucky State Treasurer if the DPP-1305 is mailed to the cabinet;

(b) A prepaid account established with the cabinet; or

(c) Credit or debit card through the online registration system once the function becomes available.

(3) Upon submission of a completed DPP-1305 in accordance with this section, KRS 199.503 and KRS 199.505, the cabinet shall issue a DPP-1302, Kentucky Putative Father Registry Affidavit of Diligent Search.

(4) The cabinet may request at any time a search of the putative father registry to establish:

(a) Reasonable efforts in a child protective services case in accordance with 922 KAR 1:330; or

(b) Permanency services in accordance with 922 KAR 1:140.

(5) Pursuant to KRS 199.505, a search of the putative father registry shall not be required for a public agency adoption in accordance with 922 KAR 1:100.

Section 5. Registration Revocation. (1) A putative father registrant may revoke his registration at any time using the DPP-1304.

(2) The cabinet shall revoke a registration that is found to have been filed with error or false information.

(3) The cabinet shall provide notice of:

(a) Revocation of a registration; and

(b) Appeal rights in accordance with 922 KAR 1:320 if the revocation is performed by the cabinet in accordance with subsection (2) of this section.

Section 6. Notice by a Mother. (1) A mother may notify the cabinet of a potential putative father by completing, at a minimum, Part 1 of the DPP-1303, Birth Mother Notification of Putative Father, and submitting it to the cabinet through means specified in Section 3(2)(a) through (c) of this administrative regulation.

(2) Upon receipt of a completed DPP-1303, the cabinet shall provide the putative father with information regarding the putative father registry by:

(a) Mail to his mailing address; or

(b) Delivery to his place of residence.

(3) The cabinet shall take no action on a DPP-1303 that is received after a putative father's ability to register has expired in accordance with Section 3(7) of this administrative regulation.

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

(a) "DPP-1302, Kentucky Putative Father Registry Affidavit of Diligent Search", 7/18;

(b) "DPP-1303, Birth Mother Notification of Putative Father", 7/18;

(c) "DPP-1304, Putative Father Registration Form", 7/18; and

(d) "DPP-1305, Putative Father Registry Search Request", 7/18.

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

ERIC T. CLARK, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 5, 2018

FILED WITH LRC: July 13, 2018 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 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 August 20, 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 August 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 and Christa Bell, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov and

Christa.Bell@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the putative father registry and operating procedures as authorized by 2018 Ky. Acts ch. 159 (House Bill 1 from the 2018 Regular Session).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the putative father registry and operating procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of the putative father registry and operating procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes through its establishment of the putative father registry and operating procedures.

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

(a) How the amendment will change this existing administrative regulation: 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 is anticipated to impact entities specified in KRS 199.503.

(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: Putative fathers will have the ability to register with the cabinet thereby protecting their rights. The registry will aid in the identification of putative fathers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to putative fathers to register. Authorized entities or individuals, other than a court, will be required to pay a twenty-five (25) dollar fee for a search of the registry.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Putative fathers will have another safeguard for their paternal rights to a child. The registry will add an additional means to identify a putative father in private adoption proceedings.

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

(a) Initially: The cabinet projects that staffing and technology costs for the registry will be approximately $700,000 for the first year.

(b) On a continuing basis: The cabinet projects the staffing and technology costs to maintain the registry will be approximately $350,000 in subsequent years.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A fee was authorized in KRS 199.503 to offset costs of the registry. State General Fund dollars will support any additional agency costs above and beyond the collection of fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The cabinet anticipates establishing, operating, and maintaining the registry within appropriations.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes a fee for a search of the putative father registry in accordance with KRS 199.503(10).

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation will be implemented 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, namely the Department for Community Based Services, and the courts will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.472, 199.503, 199.505

(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? KRS 199.503(10) establishes a fee for putative father registry searches; however, the cabinet is unable to project at this time the revenue that may be generated from said fee.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? KRS 199.503(10) establishes a fee for putative father registry searches; however, the cabinet is unable to project at this time the revenue that may be generated from said fee.

(c) How much will it cost to administer this program for the first year? The cabinet projects that staffing and technology costs for the registry will be approximately $700,000 for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet projects the staffing and technology costs to maintain the registry will be approximately $350,000 in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of May 8, 2018

Call to Order and Roll Call

The July meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, July 10, 2018, at 1:00 p.m. In Room 149 of the Capitol Annex. Senator Harris, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the June 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: Travis Powell, Rae Smith, Council on Postsecondary Education; Jimmy Adams, Cassie Trueblood, Education Professional Standards Board; Stafford Easterling, Personnel Board; Heather Becker, Harold Corder, Joe Gribbins, Board of Auctioneers; Ryan Holloran, Freddie Mayes, Lee Peplinski, Board of Optometric Examiners; Quincy Ward, Board of Licensure for Long-Term Care Administrators; Board of Licensure for Professional Art Therapists; and Board of Private Investigators; Julie Campbell, Board of Cosmetology; Sonja Minch, Board of Barbering; Amber Arnett, Steve Beam, John Brunjes, Kevin Kelly, Karen Waldrop, Department of Fish and Wildlife Resources; Amy Barker, Ashley Short, Department of Corrections; John Lyons, John Parks, Public Service Commission; Shawn Chapman, John Forgy, Richard Sams, Horse Racing Commission; Duane Curry, Steve Milby, David Startsman, Roger Banks, Department of Housing, Buildings, and Construction; Laura Begin, Julie Brooks, Tori Cunningham, Julie Miracle, Jody Schweitzer, John Lyons, John Parks, Public Service Commission; Shawn Chapman, John Forgy, Richard Sams, Horse Racing Commission; Duane Curry, Steve Milby, David Startsman, Roger Banks, Department of Housing, Buildings, and Construction; Laura Begin, Erica Brakefield, Julie Brooks, Tori Cunningham, Julie Miracle, Jody Schweitzer, Department for Public Health; Stephanie Brammer-Barnes, Steve Davis, Molly Lewis, Office of Inspector General; Mark Nethery, Jim Strader, Michael Roberts, Robert Campbell, Nancy Galvagni, Michael Harned.

The Administrative Regulation Review Subcommittee met on Tuesday, July 11, 2018, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

POSTSECONDARY EDUCATION: Adult Education and Literacy

13 KAR 3:060. High school equivalency diploma awarded for credit hour completion at Kentucky Community and Technical College System institutions. Travis Powell, general counsel, and Rae Smith, GED administrator, represented the council.

In response to a question by Co-Chair Harris, Mr. Powell stated that this administrative regulation applied to students nineteen (19) years of age and older who were less comfortable with a testing environment to obtain a high school equivalency diploma in order to begin postsecondary education. This administrative regulation did not apply to students taking du-al-credit courses.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT: Education Professional Standards Board: Teaching Certificates

16 KAR 2:010. Kentucky professional and provisional teacher certificates. Jimmy Adams, executive director, and Cassie Trueblood, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to add one (1) definition; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 through 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Administrative Certificates

16 KAR 5:030. Proficiency evaluation.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 6 through 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PERSONNEL BOARD

101 KAR 1:325. Probationary periods. Stafford Easterling, general counsel, represented the board.

BOARDS AND COMMISSIONS: Real Estate Authority: Board of Auctioneers

201 KAR 3:006. Repeal of 201 KAR 3:005, 3:025, 3:035, 3:055, and 3:065. Heather Becker, general counsel; Harold E. Corder, executive director; and Joe Gribbins, chair, represented the board.

Co-Chair Harris reminded agencies that, in the process of consolidating and reorganizing administrative regulations, it was important that administrative regulations be divided by topic to avoid massively long, over-burdensome administrative regulations. Co-Chair Harris thanked the board for reorganizing this package of administrative regulations to ensure that stakeholders could readily locate complaint procedures.

201 KAR 3:045. Recordkeeping and accounting.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to reflect added provisions for complaints; (2) to amend the RELATES TO paragraph to comply with the drafting requirements of KRS Chapter 13A; (3) to add a new Section 7 to establish a complaints process; and (4) to incorporate the Complaint Form by reference. With-out objection, and with agreement of the agency, the amendments were approved.

201 KAR 3:090. Fees.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 4 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 1 to clarify that licensure requirements shall be determined pursuant to the authorizing statute. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 3:100. Education requirements.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 3 and 5 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to add edition dates to forms incorporated by reference; and (3) to amend Sections 1 and 5 through 7 to transfer

complaint procedures to 201 KAR 3:045. Without objection, and with agreement of the agency, the amendments were approved.

Board of Optometric Examiners

201 KAR 5:090. Annual renewal fees. Ryan Halloran, assistant attorney general; Dr. Freddie Mayes, secretary – treasurer; and Dr. Lee Peplinksi, O.D., vice president, represented the board.

A motion was made and seconded to approve the following amendments: to amend the TITLE and the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 5:130. Controlled substances.

Board of Professional Licensing: Board of Licensure for Long-term Care Administrators

201 KAR 6:020. Other requirements for licensure. Quincy Ward, counsel, represented the board.

201 KAR 6:050. Licensure by endorsement.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Cosmetology

201 KAR 12:010. Administrator's duties. Julie Campbell, board administrator, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY para-graphs and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 12:030. Licensing, permits, and examinations.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 5, 8, and 10 through 14 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 12:140. School equipment.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 1 to clarify the minimum equipment and supplies required to comply with the curriculum established in 201 KAR 12:082. Without objection, and with agreement of the agency, the amendments were approved.

In response to questions by Co-Chair Harris, Ms. Campbell stated that the board did not want to overregulate by requiring accountability for every item. Sharps containers were necessary for estheticians more than for cosmetologists. The changes to this administrative regulation still provided for public protection without overregulation. The goal was to keep students in Kentucky schools.

201 KAR 12:190. Complaint and disciplinary process.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 3 to comply with the drafting requirements of KRS Chapter 13A; (2) to amend Section 3 to establish a time limit between when the complaint committee receives a complaint and when it makes its recommendation to the board; and (3) to amend Section 5 to clarify that the written request for a hearing shall be made by the respondent. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 12:230. Code of ethics.

A motion was made and seconded to approve the following amendment: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

Board of Barbering

201 KAR 14:180. Fees. Sonja Minch, administrator, and Quincy Ward, counsel, represented the board.

In response to a question by Co-Chair Harris, Ms. Minch stated that fee increases were geared toward the schools and businesses, rather than individuals.

Board of Licensure for Professional Art Therapists

201 KAR 34:060. Qualifying experience under supervision. Quincy Ward, counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to establish eighty (80) percent as a passing examination score; (2) to amend Section 13 to incorporate by reference a required form; and (3) to amend Sections 1 through 4, 7 through 11, and 13 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Professional Licensing: Board of Licensure for Private Investigators

201 KAR 41:100. Verification of limited employees. Quincy Ward, counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 1:130. Live bait for personal use. Amber Arnett, counsel; Steve Beam, wildlife division director; and Karen Waldrop, deputy commissioner, represented the department.

Game

301 KAR 2:228. Sandhill crane hunting requirements.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Section 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY: Department of Corrections: Office of the Secretary

501 KAR 6:070. Kentucky Correctional Institution for Women. Amy Barker, assistant general counsel, and Ashley Short, program coordinator, represented the department.

In response to a question by Co-Chair Harris, Ms. Barker stated that "restrictive housing unit" was the term now used for what was previously referred to as a "special housing unit." Depending on the institution involved, a restrictive housing unit could be a unit for a rule violator or an accused rule violator for whom a determination had not yet been made.

In response to questions by Representative Petrie, Ms. Barker stated that a female death row inmate had the option to transition into a different housing unit. Currently, there was only one (1) inmate to which this provision would apply, but there could be more in the future.

A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to: (1) correct policy titles; (2) use consistent terminology; and (3) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT: Public Service Commission: Utilities

807 KAR 5:022. Gas service. John Lyons, deputy executive director, and John Parks, staff attorney, represented the commission.

In response to a question by Senator Clark, Mr. Parks stated that these administrative regulations reorganized and consolidated requirements.

In response to a question by Co-Chair Harris, Mr. Parks stated that there were no substantive changes to requirements.

807 KAR 5:026. Gas service; gathering systems.

PUBLIC PROTECTION: Horse Racing Commission: Thoroughbred Racing

810 KAR 1:111. Repeal of 810 KAR 1:110. John Forgy, general counsel, and Dr. Richard Sams, Ph.D., independent consultant, represented the commission.

810 KAR 8:040. Out-of-competition testing.

In response to questions by Co-Chair Harris, Mr. Forgy stated that this administrative regulation governed the time periods between races, so that a horse may be randomly tested for prohibited "doping" substances. Some substances were undetectable shortly after administration; therefore, random drug testing was needed to discourage illicit performance-enhancing drug administration. Horses tied to Kentucky may be randomly tested at any time in or out of state.

A motion was made and seconded to approve the following amendments: (1) to amend the eligibility requirements in Section 2 to include two (2) development funds that were inadvertently omitted; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 4 and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Harness Racing

811 KAR 1:241. Repeal of 811 KAR 1:240.

Quarter Horse, Paint Horse, Appaloosa, and Arabian Racing

811 KAR 2:151. Repeal of 811 KAR 2:151.

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

815 KAR 7:110. Criteria for expanded local jurisdiction. Duane Curry, director; Steven Milby, commissioner; and David Startsman, general counsel, represented the division.

In response to a question by Co-Chair Harris, Mr. Curry stated that the combination Housing, Buildings and Construction board had superseded the individual licensure boards within the department.

A motion was made and seconded to approve the following amendments: to amend Section 2(3) to clarify that a local government shall maintain the minimum responsibilities required by KRS 198B.060(2), unless specifically agreed otherwise in writing between the local government and department. Without objection, and with agreement of the agency, the amendments were approved.

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.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY para-graphs and Sections 2 and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 8:080. Inspections and requests.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 4 and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 8:100. Criteria for local jurisdiction HVAC programs.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 2 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 7 to clarify that local HVAC inspection programs shall comply with the Department of Libraries and Archives' record retention schedules; and (3) to amend Section 8 to clarify when the notification period shall begin. Without objection, and with agreement of the agency, the amendments were approved.

HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Epidemiology and Health Planning: Communicable Diseases

902 KAR 2:055. Immunization data reporting and exchange. Laura Begin, regulation and legislative analyst; Julie Brooks, regulation coordinator; and Jody Schweitzer, epidemiologist, represented the division.

In response to a question by Co-Chair Harris, Ms. Schweitzer stated that this administrative regulation changed immunization reporting from grade 6 to grade 7 because of age differences of students in grade 6. Some students in grade 6 were too young for the immunizations; therefore, reporting immunizations at the grade 7 level was more appropriate.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Public Health: Division of Public Health Protection Safety: Sanitation

902 KAR 10:040. Kentucky youth camps. Laura Begin, regulation and legislative analyst; Erica Brakefield, section supervisor; and Julie Brooks, regulation coordinator, represented the di-vision.

In response to questions by Co-Chair Hale, Ms. Begin stated that each youth camp volunteer was required to obtain a background check; however, there were some exemptions, such as vacation Bible schools. There were several options to comply with the background check requirement. An applicant may proceed through the cabinet's background check; however due to new background check requirements for public school employees, it was currently taking about one (1) week to complete the process. State and national background checks were also available and usually took one (1) to two (2) days to complete. The division recommended that youth camp organizations have back-up volunteers who had already completed the back-ground checks in case of unexpected absences or other staffing shortages. The cost for each background check was around ten (10) dollars.

In response to questions by Co-Chair Harris, Ms. Begin stated that confusion regarding what exactly constitutes a youth camp began in 1996. Clarification to the definition may re-quire a statutory amendment. This administrative regulation established sanitation requirements for overnight camps. The division expected to make further clarifications later this year.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3 through 13, and 15 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Public Health: Office of Inspector General: Division of Healthcare: Health Services and Facilities

902 KAR 20:016. Hospitals; operations and services. Stephanie Brammer – Barnes, regulation coordinator; Steve Davis, inspector general; and Molly Lewis, deputy inspector general, represented the division. Nancy Galvangi, senior vice president, Kentucky Hospital Association, and Robert Campbell, Certified Registered Nurse Anesthetist (CRNA), Kentucky Association of Nurse Anesthetists, appeared in support of this administrative regulation. Dr. Michael Harned, Ph.D., Kentucky Society of Anesthesiologists, appeared in opposition to this administrative regulation.

Ms. Galvangi stated that the Kentucky Hospital Association supported the changes to this administrative regulation without further amendment, especially revisions pertaining to medical staffing. CRNAs were critical to rural hospitals. Many rural hospitals relied solely on CRNAs for anesthesia services. If physician supervision requirements for the administration of anesthesia were reinstated, many rural hospitals would have to cease surgical services.

Mr. Campbell stated that CRNAs had specialized training and were licensed by the Kentucky Board of Nursing. The Kentucky Association of Nurse Anesthetists submitted comments on this administrative regulation during the public comment period. In response, the division submitted an amended after comments version of this administrative regulation with revisions that clarified the term "anesthetist" and updated requirements for physician supervision of CRNAs. The association supported continuation of the 2012 language to CMS to opt out of physician supervision requirements for the administration of anesthesia. Reinstating physician supervision requirements would lead to access problems, especially for rural areas.

In response to a question by Co-Chair Harris, Ms. Galvangi stated that reinstating physician supervision requirements for the administration of anesthesia would put rural healthcare access at risk. Mr. Davis stated that scope of practice was determined by the licensure boards.

Dr. Harned stated that the Kentucky Society of Anesthesiologists was opposed to opting out of physician supervision requirements for the administration of anesthesia. The society supported a physician-lead anesthesia healthcare team approach to the administration of anesthesia. The team-based approach provided a higher level of patient care. There was very little cost difference between CRNA-lead and physician-lead administration of anesthesia. Over a five (5) year period, the U.S. Veterans' Administration studied this issue and determined that the physician-lead, team-based approach was best.

Mr. Davis stated that this administrative regulation did not constitute an erosion of scope of practice. This administrative regulation governed the certification and licensure of hospitals, not individuals. Scope of practice was governed by the licensure boards. CRNAs were authorized to administer anesthesia and did so safely throughout the country. CMS authorized Kentucky's opting out of physician supervision requirements for the administration of anesthesia upon the Governor's request in 2012. Additionally, the language at issue used the word, "direction," rather than "supervision."

In response to a question by Co-Chair Hale, Mr. Davis stated that there had been confusion regarding what "direction" meant, as opposed to "supervision." This administrative regulation clarified requirements to eliminate that confusion. Requiring physician supervision for all administration of anesthesia would harm hospitals and healthcare access.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 3 and 4 to comply with the drafting requirements of KRS Chapter 13A; and (2) to add a new Section 7 to establish provisions for Off-campus, Kentucky Hospital-Owned Freestanding Emergency Departments. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred or removed from the July 11, 2018, subcommittee agenda:

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. Amber Arnett, counsel; Steve Beam, wildlife division director; and Karen Waldrop, deputy commissioner, represented the department.

Representative Turner stated that the department, subcommittee members, and stake-holders would meet over the next two (2) weeks to discuss concerns pertaining to these administrative regulations.

Without objection, and with agreement of the agency, 301 KAR 2:172 and 2:176 were deferred to the August 14 meeting of the subcommittee.

301 KAR 2:176. Deer control tags, deer destruction permits, and landowner designees.

ENERGY AND ENVIRONMENT: Department for Environmental Protection: Division of Water: Water Quality

401 KAR 5:002. Definitions for 401 KAR Chapter 5.

401 KAR 5:005. Permits to construct, modify, or operate a facility.

401 KAR 5:006. Wastewater planning requirements for regional planning agencies.

401 KAR 5:015. Releases to be reported to the division.

401 KAR 5:037. Groundwater protection plans.

401 KAR 5:039. Repeal of 401 KAR 5:035, 5:057, 5:070, and 5:300.

401 KAR 5:045. Treatment requirements; compliance; biochemically degradable wastes.

401 KAR 5:050. General provisions of KPDES permitting program.

401 KAR 5:052. Requirements applicable to cooling water intake structures of facilities regulated by Section 316(b) of the Clean Water Act, 33 U.S.C. 1326(b).

401 KAR 5:055. Scope of applicability of the KPDES program and pretreatment requirements.

401 KAR 5:060. KPDES application requirements.

401 KAR 5:065. KPDES permit conditions.

401 KAR 5:075. Cabinet review procedures for KPDES permits and permit timetables for 401 KAR Chapter 5.

401 KAR 5:080. Criteria and standards for the Kentucky Pollutant Discharge Elimination System.

401 KAR 5:320. Wastewater Laboratory Certification Program.

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

405 KAR 1:011. Repeal of 405 KAR Chapter 1.

Surface Effects of Underground Coal Mining

405 KAR 3:011. Repeal of 405 KAR Chapter 3.

JUSTICE AND PUBLIC SAFETY: Department of Criminal Justice Training: Law Enforcement Foundation Program Fund

503 KAR 5:090. Participation: requirements; application;

withdrawal.

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 Highways: Division of Contract Procurement: Pre-construction
603 KAR 2:015. Prequalification for construction, certificate of eligibility, and contract claims dispute.

PUBLIC PROTECTION CABINET: Department of Charitable Gaming: Charitable Gaming
820 KAR 1:001. Definitions.
SUMMARY: Amends to delete or modify definitions.

820 KAR 1:005. Charitable gaming licenses and exemptions.

820 KAR 1:011. Repeal of 820 KAR 1:010, 1:015, 1:016, 1:017, 1:026, 1:027, 1:028, 1:029, 1:033, 1:034, 1:036, 1:044, 1:056, 1:058, 1:100, 1:110, 1:120.

820 KAR 1:025. Reports.

820 KAR 1:032. Pulltabs.

820 KAR 1:042. Bingo.

820 KAR 1:050. Raffles.

820 KAR 1:055. Charity fundraising event standards.

820 KAR 1:057. Recordkeeping.

820 KAR 1:060. Prohibited conduct.

820 KAR 1:125. Gaming inspections.

820 KAR 1:130. Administrative actions.

820 KAR 1:135. Disposal of gaming supplies.

HEALTH AND FAMILY SERVICES: Department for Aging and Independent Living: Division of Operations and Support: Guardianship
910 KAR 2:030. Accounting provisions for adult guardianship.

910 KAR 2:052. Repeal of 910 KAR 2:050.

The subcommittee adjourned at 2:30 p.m. The next meeting of the subcommittee is tentatively scheduled for August 14, 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 NATURAL RESOURCES AND ENERGY
Meeting of July 10, 2018

The following administrative regulation was available for consideration and placed on the agenda of the Interim Joint Committee on Agriculture for its meeting of 07/20/18, having been referred to the Committee on 07/05/18, pursuant to KRS 13A.290(6):

301 KAR 2:221
301 KAR 2:222
401 KAR 51:240
401 KAR 51:250
401 KAR 51:260

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

INTERIM JOINT COMMITTEE HEALTH AND WELFARE AND FAMILY SERVICES
Meeting of July 18, 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 July 18, 2018, having been referred to the Committee on July 5, 2018, pursuant to KRS 13A.290(6):

201 KAR 9:021
201 KAR 9:031
906 KAR 1:200
922 KAR 2:090 & E
922 KAR 2:100 & E
922 KAR 2:111E
922 KAR 2:120 & E
922 KAR 2:171E
922 KAR 2:180 & E
922 KAR 2:190 & E
922 KAR 2:270 & E

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 18, 2018 meeting, which are hereby incorporated by reference.

INTERIM JOINT COMMITTEE AGRICULTURE
Meeting of July 24, 2018

The following administrative regulation was available for consideration and placed on the agenda of the Interim Joint Committee on Agriculture for its meeting of 07/20/18, having been referred to the Committee on 07/05/18, pursuant to KRS 13A.290(6):

302 KAR 50:050 THC Sampling and Testing; Post-Testing Actions

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates **B - 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 **B - 8**

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 **B - 13**

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 **B - 16**

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 **B - 17**

The Subject Index is a general index of administrative regulations published in VOLUME 45 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.

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 *Administrative Register of Kentucky* but had not yet gone into effect when the *2017 Kentucky Administrative Regulations Service* was published.

SYMBOL KEY:

* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
IJC Interim Joint Committee
(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

Regulation Number	44 Ky.R. Page No.	Effective Date
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
Replaced	2513	7-18-2018
922 KAR 2:100E	1925	2-14-2018
Replaced	2522	7-18-2018
922 KAR 2:111E	1936	2-14-2018
Expires		8-13-2018
922 KAR 2:120E	1937	2-14-2018
Replaced	2533	7-18-2018
922 KAR 2:171E*(r)*	2306	4-13-2018
Expires	2308	10-10-2018
922 KAR 2:180E	1946	2-14-2018
Replaced	2138	7-18-2018
922 KAR 2:190E	1952	2-14-2018
Replaced	2144	7-18-2018
922 KAR 2:270E	2308	4-13-2018
Replaced	2459	7-18-2018

ORDINARY ADMINISTRATIVE REGULATIONS:

Regulation Number	44 Ky.R. Page No.	Effective Date
13 KAR 3:060	2702	
16 KAR 2:010		
Amended	1584	
Am Comments	2033	See 44 Ky.R.
16 KAR 5:030		
Amended	1589	
Am Comments	2039	See 44 Ky.R.
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	See 44 Ky.R.
201 KAR 3:090		
Amended	2546	
201 KAR 3:100	2705	
201 KAR 5:090		
Amended	2548	See 44 Ky.R.
201 KAR 5:130		
Amended	2549	
201 KAR 6:020		
Amended	2552	
201 KAR 6:050		
Amended	2554	See 44 Ky.R.
201 KAR 9:021		
Amended	2361	7-18-2018
201 KAR 9:031		
Amended	2363	7-18-2018
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	See 44 Ky.R.
201 KAR 12:030		
Amended	2557	See 44 Ky.R.
201 KAR 12:082		
Amended	2364	
As Amended		See 45 Ky.R.
201 KAR 12:140		
Amended	2561	See 44 Ky.R.
201 KAR 12:190		
Amended	2563	See 44 Ky.R.
201 KAR 12:230		
Amended	2565	See 44 Ky.R.
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	

Regulation Number	43 Ky.R. Page No.	Effective Date
As Amended	2487	6-20-2018
201 KAR 25:090		
Amended	1623	
201 KAR 34:060		
Amended	2568	See 44 Ky.R.
201 KAR 41:100		
Amended	2572	See 44 Ky.R.
301 KAR 1:130		
Amended	2574	
301 KAR 2:049		
Amended	2260	
As Amended	2488	6-7-2018
301 KAR 2:172		
Amended	2370	
301 KAR 2:176		
Amended	2576	
301 KAR 2:221		
Amended	2374	
As Amended		See 45 Ky.R.
301 KAR 2:222		
Amended	2376	
As Amended		See 45 Ky.R.
301 KAR 2:228		
Amended	2380	See 44 Ky.R.
302 KAR 16:020		
Amended	2265	
As Amended	2492	
302 KAR 16:081*(r)*	2283	
302 KAR 16:091		
Amended	2267	
As Amended	2493	
302 KAR 50:050	1768	
Amended	2383	7-18-2018
401 KAR 5:002		
Amended	2578	
401 KAR 5:005		
Amended	2585	
401 KAR 5:006		
Amended	2598	
401 KAR 5:015		
Amended	2602	
401 KAR 5:037		
Amended	2604	
401 KAR 5:039(r)	2707	
401 KAR 5:045		
Amended	2610	
401 KAR 5:050		
Amended	2612	
401 KAR 5:052		
Amended	2615	
401 KAR 5:055		
Amended	2616	
401 KAR 5:060		
Amended	2620	
401 KAR 5:065		
Amended	2623	
401 KAR 5:075		
Amended	2625	
401 KAR 5:080		
Amended	2628	
401 KAR 5:320		
Amended	2631	
401 KAR 51:240	2284	
AmComments	2505	
401 KAR 51:250	2286	
AmComments	2507	
401 KAR 51:260	2288	
AmComments	2509	
405 KAR 1:011(r)	2708	
405 KAR 3:011(r)	2709	
501 KAR 6:030		
Amended	2269	
AmComments	2511	
501 KAR 6:070		
Amended	2635	See 44 Ky.R.
501 KAR 6:170		
Amended	2270	
501 KAR 6:270		
Amended	2097	
As Amended	2494	
501 KAR 16:290		
Amended	1884	
Am Comments	2337	
As Amended	2494	
501 KAR 16:300		
Amended	1887	
Am Comments	2339	
As Amended	2496	
501 KAR 16:310		
Amended	1891	
Am Comments	2343	
As Amended	2498	
501 KAR 16:330		
Amended	1893	
Am Comments	2345	
As Amended	2499	
501 KAR 16:340		
Amended	1897	
Am Comments	2349	
503 KAR 5:090		
Amended	2637	
505 KAR 1:120		
Amended	2384	
505 KAR 1:140		
Amended	2386	
600 KAR 4:010		
Amended	2272	
As Amended	2501	
601 KAR 2:030		
Amended	1651	
Withdrawn		6-13-2018
603 KAR 2:015		
Amended	2640	
Withdrawn		7-24-2018
703 KAR 5:190		
Repealed	2157	6-17-2018
703 KAR 5:191*(r)*	2157	6-17-2018
703 KAR 5:225		
Amended	2101	
As Amended		See 45 Ky.R.
703 KAR 5:260		
Repealed	2157	6-17-2018
703 KAR 5:280	2158	
Am Comments	2351	6-17-2018
As Amended		See 45 Ky.R.
704 KAR 7:090		
Amended	1658	
As Amended	2015	
735 KAR 1:010		
Amended	2388	
As Amended		See 45 Ky.R.
735 KAR 1:020		
Amended	2391	
As Amended		See 45 Ky.R.
735 KAR 2:010		
Amended	2394	
As Amended		See 45 Ky.R.
735 KAR 2:020		
Amended	2396	
As Amended		See 45 Ky.R.
735 KAR 2:030		
Amended	2398	

Regulation Number	43 Ky.R. Page No.	Effective Date
As Amended		See 45 Ky.R.
735 KAR 2:040		
Amended	2399	
As Amended		See 45 Ky.R.
735 KAR 2:050		
Amended	2401	
As Amended		See 45 Ky.R.
735 KAR 2:060		
Amended	2403	
As Amended		See 45 Ky.R.
804 KAR 9:051*(r)*	1774	
807 KAR 5:022		
Amended	2405	
807 KAR 5:026		
Amended	2436	
810 KAR 1:111(r)	2711	
Withdrawn		7-18-2018
810 KAR 8:040	2712	
Withdrawn		7-18-2018
811 KAR 1:241*(r)*	2717	
Withdrawn		7-18-2018
811 KAR 2:151*(r)*	2718	
Withdrawn		7-18-2018
815 KAR 7:110		
Amended	2439	See 44 Ky.R.
815 KAR 7:120		
Amended	2442	
815 KAR 7:125		
Amended	2445	
815 KAR 8:011*(r)*	2458	
815 KAR 8:070		
Amended	2446	See 44 Ky.R.
815 KAR 8:080		
Amended	2449	See 44 Ky.R.
815 KAR 8:100		
Amended	2451	See 44 Ky.R.
820 KAR 1:001		
Amended	2646	
820 KAR 1:005		
Amended	2650	
820 KAR 1:011(r)	2720	
820 KAR 1:025		
Amended	2654	
820 KAR 1:032		
Amended	2656	
820 KAR 1:042		
Amended	2670	
820 KAR 1:050		
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	See 44 Ky.R.
902 KAR 10:040		
Amended	2277	See 44 Ky.R.
902 KAR 20:016		
Amended	1415	
Am Comments	2054	See 44 Ky.R.
902 KAR 20:058		
Amended	1714	
906 KAR 1:200		
Amended	2454	
As Amended		See 45 Ky.R.
910 KAR 2:030		
Amended	2698	
910 KAR 2:052(r)	2723	
921 KAR 2:015		
Amended	1899	
922 KAR 2:090		
Amended	2109	
AmComments	2513	7-18-2018
922 KAR 2:100		
Amended	2118	
AmComments	2522	7-18-2018
922 KAR 2:110		
Repealed	2306	7-18-2018
922 KAR 2:120		
Amended	2129	
AmComments	2533	7-18-2018
As Amended		See 45 Ky.R.
922 KAR 2:170		
Repealed	2308	7-18-2018
922 KAR 2:180		
Amended	2138	7-18-2018
As Amended		See 45 Ky.R.
922 KAR 2:190		
Amended	2144	7-18-2018
As Amended		See 45 Ky.R.
922 KAR 2:210		
Repealed	2308	7-18-2018
922 KAR 2:270	2459	7-18-2018
As Amended		See 45 Ky.R.

SYMBOL KEY:

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*** 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.

VOLUME 45

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.)

Regulation Number	45 Ky.R. Page No.	Effective Date
9 KAR 1:015E	234	7-11-2018
9 KAR 1:030E	235	7-11-2018
31 KAR 3:010E	7	5-22-2018
31 KAR 4:100E	236	6-21-2018
31 KAR 4:120E	239	6-21-2018
40 KAR 2:345E	241	7-2-2018
400 KAR 1:001E	243	7-13-2018
400 KAR 1:040E	245	7-13-2018
400 KAR 1:090E	251	7-13-2018
400 KAR 1:100E	260	7-13-2018
400 KAR 1:110E	265	7-13-2018
503 KAR 1:110E	274	6-27-2018
601 KAR 2:030E	9	6-13-2018
803 KAR 25:089E	15	6-11-2018
805 KAR 1:210E	277	7-13-2018
895 KAR 1:001E	279	6-29-2018
895 KAR 1:010E	282	6-29-2018
Withdrawn		7-2-2018
895 KAR 1:015E	285	6-29-2018
Withdrawn		7-2-2018
895 KAR 1:020E	288	6-29-2018
Withdrawn		7-2-2018
895 KAR 1:025E	290	6-29-2018
Withdrawn		7-2-2018
895 KAR 1:030E	292	6-29-2018
Withdrawn		7-2-2018
895 KAR 1:035E	295	6-29-2018
Withdrawn		7-2-2018
895 KAR 1:040E	297	6-29-2018
Withdrawn		7-2-2018
895 KAR 1:045E	299	6-29-2018
Withdrawn		7-2-2018
895 KAR 1:050E	301	6-29-2018
Withdrawn		7-2-2018
895 KAR 1:055E	303	6-29-2018
Withdrawn		7-2-2018
900 KAR 5:020E	305	7-13-2018
902 KAR 20:008E	307	7-13-2018
902 KAR 20:401E(r)	312	7-13-2018
902 KAR 55:011E(r)	313	7-13-2018
906 KAR 1:071E(r)	315	7-13-2018
907 KAR 1:642E	316	7-2-2018
922 KAR 1:560E	318	7-13-2018

ORDINARY ADMINISTRATIVE REGULATIONS

Regulation Number	45 Ky.R. Page No.	Effective Date
9 KAR 1:015		
Amended	376	
9 KAR 1:030		
Amended	377	
11 KAR 5:145		
Amended	105	
11 KAR 15:010		
Amended	106	
11 KAR 15:110	207	
12 KAR 2:006		
Amended	380	
12 KAR 2:011		
Amended	381	
12 KAR 2:016		
Amended	382	
12 KAR 2:017		
Amended	384	
12 KAR 2:018		
Amended	385	
12 KAR 2:021		
Amended	389	
12 KAR 2:026		
Amended	391	
12 KAR 2:031		
Amended	392	
12 KAR 2:036		
Amended	394	
12 KAR 2:041		
Amended	395	
12 KAR 2:046		
Amended	396	
12 KAR 2:051		
Amended	398	
12 KAR 2:056		
Amended	399	
12 KAR 2:061		
Amended	400	
12 KAR 2:066		
Amended	401	
12 KAR 3:007		
Amended	108	
12 KAR 3:012		
Amended	109	
12 KAR 3:017		
Amended	112	
12 KAR 3:022		
Amended	114	
12 KAR 3:027		
Amended	116	
12 KAR 3:028	208	
12 KAR 3:032		
Amended	118	
12 KAR 3:037		
Amended	119	
12 KAR 3:039	210	
12 KAR 3:042		
Amended	120	
13 KAR 2:020		
Amended	403	
16 KAR 2:010		See 44 Ky.R.
As Amended	321	
16 KAR 5:030		See 44 Ky.R.
As Amended	326	
31 KAR 3:010		
Amended	122	
31 KAR 4:100		
Amended	124	
Amended	408	
31 KAR 4:120		
Amended	125	
Amended	409	
40 KAR 2:345	557	
101 KAR 2:020		
Amended	127	
101 KAR 2:034		
Amended	139	
101 KAR 2:076		
Amended	133	
101 KAR 2:095		
Amended	135	
101 KAR 3:045		
Amended	139	
101 KAR 3:050		
Amended	144	
200 KAR 30:011*(r)*	558	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	45 Ky.R. Page No.	Effective Date
201 KAR 2:015		
Amended	146	
201 KAR 3:045		See 44 Ky.R.
As Amended	327	
201 KAR 3:090		See 44 Ky.R.
As Amended	327	
201 KAR 3:100		See 44 Ky.R.
As Amended	328	
201 KAR 5:090		See 44 Ky.R.
As Amended	330	
201 KAR 6:050		See 44 Ky.R.
As Amended	330	
201 KAR 9:031		See 44 Ky.R.
As Amended	17	
201 KAR 2:082		See 44 Ky.R.
As Amended	17	
201 KAR 12:010		See 44 Ky.R.
As Amended	330	
201 KAR 12:030		See 44 Ky.R.
As Amended	331	
201 KAR 12:140		See 44 Ky.R.
As Amended	334	
201 KAR 12:190		See 44 Ky.R.
As Amended	335	
201 KAR 12:230		See 44 Ky.R.
As Amended	337	
201 KAR 12:251*(r)*	212	
201 KAR 12:260		See 44 Ky.R.
As Amended	20	
201 KAR 12:280	213	
201 KAR 20:057		
Amended	411	
201 KAR 20:490		
Amended	415	
201 KAR 22:020		
Amended	4148	
201 KAR 22:040		
Amended	420	
201 KAR 22:170		
Amended	422	
201 KAR 34:060		See 44 Ky.R.
As Amended	337	
201 KAR 41:100		See 44 Ky.R.
As Amended	340	
301 KAR 1:115		
Amended	148	
301 KAR 1:201		
Amended	423	
301 KAR 1:410		
Amended	428	
301 KAR 2:221		See 44 Ky.R.
As Amended	21	
301 KAR 2:222		See 44 Ky.R.
As Amended	22	
301 KAR 2:228		See 44 Ky.R.
As Amended	341	
302 KAR 29:020		
Amended	150	
400 KAR 1:001		
Amended	431	
400 KAR 1:040		
Amended	433	
400 KAR 1:090		
Amended	439	
400 KAR 1:100		
Amended	448	
400 KAR 1:110		
Amended	453	
501 KAR 6:070		See 44 Ky.R.
As Amended	342	
503 KAR 1:110		
Amended	462	
505 KAR 1:120		
Am Comments	368	
505 KAR 1:140		
Am Comments	369	
601 KAR 2:030		
Amended	152	
703 KAR 5:225		See 44 Ky.R.
As Amended	26	
703 KAR 5:280		See 44 Ky.R.
As Amended	29	
704 KAR 3:015	215	
704 KAR 3:306	217	
735 KAR 1:010		See 44 Ky.R.
As Amended	34	
735 KAR 1:020		See 44 Ky.R.
As Amended	36	
735 KAR 2:010		See 44 Ky.R.
As Amended	38	
735 KAR 2:020		See 44 Ky.R.
As Amended	39	
735 KAR 2:030		See 44 Ky.R.
As Amended	39	
735 KAR 2:040		See 44 Ky.R.
As Amended	40	
735 KAR 2:050		See 44 Ky.R.
As Amended	40	
735 KAR 2:060		See 44 Ky.R.
As Amended	41	
803 KAR 25:089		
Amended	158	
804 KAR 5:080	219	
805 KAR 1:210	560	
806 KAR 9:360		
Amended	159	
806 KAR 17:020		
Amended	446	
806 KAR 17:091*(r)*	561	
806 KAR 17:300		
Amended	437	
806 KAR 17:360		
Amended	470	
806 KAR 17:570		
Amended	161	
807 KAR 5:022		
AmComments	62	
807 KAR 5:026		
AmComments	92	
815 KAR 7:110		See 44 Ky.R.
As Amended	343	
815 KAR 7:120		
AmComments	96	
815 KAR 7:125		
AmComments	98	
815 KAR 8:070		See 44 Ky.R.
As Amended	345	
815 KAR 8:080		See 44 Ky.R.
As Amended	347	
815 KAR 8:100		See 44 Ky.R.
As Amended	348	
830 KAR 1:010		
Amended	180	
830 KAR 2:001	563	
830 KAR 2:010	564	
830 KAR 2:020	566	
895 KAR 1:001	567	
895 KAR 1:010	570	
895 KAR 1:015	573	
895 KAR 1:020	576	

Regulation Number	45 Ky.R. Page No.	Effective Date
895 KAR 1:025	579	
895 KAR 1:030	581	
895 KAR 1:035	583	
895 KAR 1:040	585	
895 KAR 1:045	587	
895 KAR 1:050	589	
895 KAR 1:055	591	
900 KAR 5:020		
Amended	472	
902 KAR 2:055		See 44 Ky.R.
As Amended	350	
902 KAR 10:040		
Am Comments	100	
As Amended	351	
902 KAR 10:051*(r)*	593	
902 KAR 20:008		
Amended	474	
902 KAR 20:016		See 44 Ky.R.
As Amended	355	
902 KAR 20:251*(r)*	595	
902 KAR 20:260		
Amended	479	
902 KAR 20:275		
Amended	485	
902 KAR 45:160		
Amended	495	
902 KAR 47:071*(r)*	596	
902 KAR 100:018*(r)*	597	
902 KAR 100:022		
Amended	499	
902 KAR 100:052		
Amended	508	
902 KAR 100:070		
Amended	510	
902 KAR 100:072		
Amended	517	
902 KAR 100:100		
Amended	542	
902 KAR 100:142		
Amended	550	
906 KAR 1:190		
Amended	181	
906 KAR 1:200		See 44 Ky.R.
As Amended	42	
907 KAR 1:642	598	
910 KAR 1:090		
Amended	187	
910 KAR 2:030		
Am Comments	371	
921 KAR 1:380		
Amended	193	
921 KAR 3:025		
Amended	196	
921 KAR 3:030		
Amended	200	
921 KAR 3:035		
Amended	202	
922 KAR 1:560	600	
922 KAR 2:120		See 44 Ky.R.
As Amended	43	7-18-2018
922 KAR 2:180		See 44 Ky.R.
As Amended	51	7-18-2018
922 KAR 2:190		See 44 Ky.R.
As Amended	56	7-18-2018
922 KAR 2:270		See 44 Ky.R.
As Amended	57	

SYMBOL KEY:

Regulation Number	45 Ky.R. Page No.	Effective Date

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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.

KRS INDEX

KRS SECTION	REGULATION
11A.080	9 KAR 1:015
	9 KAR 1:030
11A.100	9 KAR 1:030
12.040	101 KAR 3:050
12.050	101 KAR 3:050
13B	902 KAR 45:160
	906 KAR 1:190
	910 KAR 1:090
15.330	503 KAR 1:110
15.386	503 KAR 1:110
15.404	503 KAR 1:110
15.440	503 KAR 1:110
18A.005	101 KAR 2:020
	101 KAR 2:076
18A.030	101 KAR 2:020
	101 KAR 2:034
	101 KAR 2:095
18A.032	101 KAR 2:020
18A.110	101 KAR 2:020
	101 KAR 2:034
	101 KAR 2:076
	101 KAR 2:095
	101 KAR 3:045
	101 KAR 3:050
18A.115	101 KAR 2:076
	101 KAR 3:050
18A.120	101 KAR 2:076
18A.155	101 KAR 3:045
	101 KAR 3:050
18A.165	101 KAR 2:034
18A.202	101 KAR 3:045
45A	601 KAR 2:030
116.048	921 KAR 3:030
116.085	31 KAR 3:010
116.155	31 KAR 3:010
117.015	31 KAR 4:120
117.025	31 KAR 3:010
117.045	31 KAR 4:100
	31 KAR 4:120
117.225	31 KAR 3:010
146.200 - 146.360	400 KAR 1:001
	400 KAR 1:040
	400 KAR 1:090
	400 KAR 1:100
146.450	400 KAR 1:001
	400 KAR 1:090
146.530	400 KAR 1:001
	400 KAR 1:090
146.990	400 KAR 1:001
	400 KAR 1:040
	400 KAR 1:090
	400 KAR 1:100
149.344	400 KAR 1:001
	400 KAR 1:090
	400 KAR 1:100
149.346	400 KAR 1:001
	400 KAR 1:090
	400 KAR 1:100
149.348	400 KAR 1:001
	400 KAR 1:090
	400 KAR 1:100
150.010	301 KAR 1:201
	301 KAR 1:410
150.170	301 KAR 1:201
	301 KAR 1:410
150.175	301 KAR 1:201
	301 KAR 1:410
150.235	301 KAR 1:410
150.290	301 KAR 1:115
150.340	301 KAR 1:201
150.445	301 KAR 1:410

KRS SECTION	REGULATION
150.485	301 KAR 1:115
150.620	301 KAR 1:201
	301 KAR 1:410
150.990	301 KAR 1:201
	301 KAR 1:410
151.125	400 KAR 1:001
	400 KAR 1:090
151.182	400 KAR 1:001
	400 KAR 1:040
	400 KAR 1:090
	400 KAR 1:100
151.184	400 KAR 1:001
	400 KAR 1:040
	400 KAR 1:090
	400 KAR 1:100
151.297	400 KAR 1:001
	400 KAR 1:040
	400 KAR 1:090
	400 KAR 1:100
151.990	400 KAR 1:001
	400 KAR 1:040
	400 KAR 1:090
	400 KAR 1:100
156.070	704 KAR 3:306
156.160	13 KAR 2:020
	704 KAR 3:306
156.162	704 KAR 3:306
157.3175	704 KAR 3:015
158.197	704 KAR 3:306
158.6451	13 KAR 2:020
	704 KAR 3:306
158.6453	13 KAR 2:020
160.290	704 KAR 3:306
164.001	13 KAR 2:020
164.020	13 KAR 2:020
164.030	13 KAR 2:020
164.744	11 KAR 5:145
164.753	11 KAR 5:145
164.772	201 KAR 22:020
	201 KAR 22:040
164.6901 - 164.6935	200 KAR 30:011
	830 KAR 2:001
164.6907	830 KAR 2:010
164.6909	830 KAR 2:010
164.6911	830 KAR 2:010
164.6913 - 164.6933	830 KAR 2:020
164.6915	830 KAR 2:010
164.7535	11 KAR 5:145
164.7871 - 164.7885	11 KAR 15:010
	11 KAR 15:110
164.7889	11 KAR 5:145
186.010	601 KAR 2:030
186.440	601 KAR 2:030
186.442	601 KAR 2:030
186.480	601 KAR 2:030
186.531	601 KAR 2:030
186.560	601 KAR 2:030
186.570	601 KAR 2:030
189A.005	601 KAR 2:030
189A.010	601 KAR 2:030
189A.040	601 KAR 2:030
189A.070	601 KAR 2:030
189A.085	601 KAR 2:030
189A.090	601 KAR 2:030
189A.103	601 KAR 2:030
189A.105	601 KAR 2:030
189A.107	601 KAR 2:030
189A.200	601 KAR 2:030
189A.240	601 KAR 2:030
189A.250	601 KAR 2:030
189A.340	601 KAR 2:030

KRS SECTION	REGULATION
189A.345	601 KAR 2:030
189A.400	601 KAR 2:030
189A.410	601 KAR 2:030
189A.420	601 KAR 2:030
189A.440	601 KAR 2:030
189A.500	601 KAR 2:030
194A.005	902 KAR 100:022
	902 KAR 100:070
	902 KAR 100:142
194A.060	922 KAR 1:560
198B.260	902 KAR 20:260
199.011	922 KAR 1:560
199.480	922 KAR 1:560
199.505	922 KAR 1:560
199.555	101 KAR 3:045
199.8943	704 KAR 3:015
199.990	922 KAR 1:560
205.455	910 KAR 1:090
205.520	895 KAR 1:001
	895 KAR 1:010
	895 KAR 1:015
	895 KAR 1:020
	895 KAR 1:025
	895 KAR 1:030
	895 KAR 1:035
	895 KAR 1:040
	895 KAR 1:045
	895 KAR 1:050
	895 KAR 1:055
	907 KAR 1:642
205.622	895 KAR 1:035
205.705	921 KAR 1:380
205.712	601 KAR 2:030
205.710 - 205.800	921 KAR 1:380
205.900 - 205.925	910 KAR 1:090
205.992	921 KAR 1:380
205.2005	921 KAR 3:025
205.8451	895 KAR 1:001
211.025	902 KAR 10:051
211.090	902 KAR 10:051
	902 KAR 47:071
211.180	902 KAR 10:051
	902 KAR 47:071
	902 KAR 100:022
	902 KAR 100:070
	902 KAR 100:100
	902 KAR 100:142
211.842 - 211.852	902 KAR 20:275
	902 KAR 100:018
	902 KAR 100:022
	902 KAR 100:052
	902 KAR 100:070
	902 KAR 100:072
	902 KAR 100:100
	902 KAR 100:142
211.990	902 KAR 100:018
	902 KAR 100:022
	902 KAR 100:052
	902 KAR 100:070
	902 KAR 100:072
	902 KAR 100:100
	902 KAR 100:142
213.046	921 KAR 1:380
216.530	902 KAR 20:008
216.860	906 KAR 1:071
216.865	906 KAR 1:071
216.900 - 216.915	906 KAR 1:071
216.930	906 KAR 1:071
216.2925	902 KAR 20:008
216B.010	902 KAR 20:008
216B.010 - 216B.130	900 KAR 5:020
216B.010 - 216B.131	902 KAR 20:260
216B.010 - 216B.170	902 KAR 20:275
216B.015	902 KAR 20:008

KRS SECTION	REGULATION
216B.020	902 KAR 20:008
	902 KAR 20:251
216B.040	902 KAR 20:008
216B.042	902 KAR 20:008
216B.045 - 216B.055	902 KAR 20:008
216B.075	902 KAR 20:008
216B.105 - 216B.131	902 KAR 20:008
216B.176	902 KAR 20:401
216B.177	902 KAR 20:401
216B.185	902 KAR 20:008
216B.990	902 KAR 20:008
	902 KAR 20:260
	902 KAR 20:275
217.005 - 217.205	902 KAR 45:160
217.290 - 217.390	902 KAR 45:160
217.801	902 KAR 47:071
217.990 - 217.992	902 KAR 45:160
217B	302 KAR 29:020
218A.160	902 KAR 55:011
218A.172	201 KAR 20:057
218A.175	902 KAR 20:260
218A.205	201 KAR 20:057
	902 KAR 20:260
223	400 KAR 1:001
	400 KAR 1:040
	400 KAR 1:090
	400 KAR 1:100
224	400 KAR 1:001
	400 KAR 1:040
	400 KAR 1:090
	400 KAR 1:100
224.10-410	400 KAR 1:110
241.010	804 KAR 5:080
243.232	804 KAR 5:080
250.491 - 250.631	12 KAR 2:006
	12 KAR 2:011
	12 KAR 2:016
	12 KAR 2:017
	12 KAR 2:018
	12 KAR 2:021
	12 KAR 2:026
	12 KAR 2:036
	12 KAR 2:056
	12 KAR 3:007
	12 KAR 3:032
250.501	12 KAR 2:031
	12 KAR 2:041
	12 KAR 2:046
	12 KAR 2:051
	12 KAR 2:061
	12 KAR 3:012
	12 KAR 3:017
	12 KAR 3:022
	12 KAR 3:027
	12 KAR 3:028
	12 KAR 3:037
	12 KAR 3:039
	12 KAR 3:042
250.511	12 KAR 2:041
	12 KAR 2:051
	12 KAR 2:061
	12 KAR 3:037
250.521	12 KAR 2:061
	12 KAR 3:012
	12 KAR 3:017
	12 KAR 3:022
	12 KAR 3:027
	12 KAR 3:028
	12 KAR 3:039
	12 KAR 3:042
250.531	12 KAR 2:031
	12 KAR 3:017
250.541	12 KAR 2:041
	12 KAR 2:051

KRS SECTION	REGULATION
	12 KAR 2:046
	12 KAR 2:066
	12 KAR 3:037
250.551	12 KAR 2:031
	12 KAR 2:046
	12 KAR 2:051
250.561	12 KAR 2:061
250.581	12 KAR 2:051
304.1 - 050	806 KAR 9:360
	806 KAR 17:091
304.2 - 310	806 KAR 17:091
	806 KAR 17:570
304.3 - 240	806 KAR 17:570
304.9 - 020	806 KAR 17:091
304.9 - 053	806 KAR 9:360
304.9 - 054	806 KAR 9:360
304.12-013	806 KAR 17:091
304.12 - 020	806 KAR 17:570
304.12 - 190	806 KAR 17:091
304.14-020	806 KAR 17:091
304.14-120	806 KAR 17:020
	806 KAR 17:091
	806 KAR 17:570
304.14-140	806 KAR 17:091
304.14-150	806 KAR 17:091
304.14-180	806 KAR 17:091
304.14-210	806 KAR 17:091
304.14-360	806 KAR 17:091
304.14-430	806 KAR 17:091
304.14-440	806 KAR 17:091
304.14-450	806 KAR 17:091
304.14-500 - 304.14-550	806 KAR 17:570
304.17 - 030	806 KAR 17:091
304.17 - 042	806 KAR 17:091
304.17 - 070	806 KAR 17:091
304.17 - 310	806 KAR 17:091
304.17 - 311	806 KAR 17:570
304.17 -313	806 KAR 17:091
304.17 - 319	806 KAR 17:091
304.17 - 415	806 KAR 17:091
304.17-3165	806 KAR 17:091
304.17A.005	806 KAR 17:091
	806 KAR 17:360
	806 KAR 17:570
304.17A-095 - 304.17A-0954	806 KAR 17:091
304.17A-096 - 304.17A-132	806 KAR 17:091
304.17A.132	806 KAR 17:091
304.17A.134	806 KAR 17:091
304.17A-135 - 304.17A-145	806 KAR 17:091
304.17A.139	806 KAR 17:091
304.17A.140	806 KAR 17:091
304.17A.142	806 KAR 17:091
304.17A-148 - 304.17A-149	806 KAR 17:091
304.17A.149	806 KAR 17:091
304.17A-150	806 KAR 17:300
304.17A.155	806 KAR 17:091
304.17A.171	806 KAR 17:091
304.17A.200	806 KAR 17:091
304.17A.230	806 KAR 17:091
304.17A.243	806 KAR 17:091
304.17A.245	806 KAR 17:091
304.17A.250	806 KAR 17:091
304.17A.258	806 KAR 17:091
304.17A-500	806 KAR 17:300
304.17A.520	806 KAR 17:091
304.17A-527	806 KAR 17:300
304.17A-530	806 KAR 17:300
304.17A-532	806 KAR 17:300
304.17A.540	806 KAR 17:091
304.17A.545	806 KAR 17:091
304.17A-560	806 KAR 17:300
304.17A-575	806 KAR 17:300
304.17A-577	806 KAR 17:300
304.17A-578	806 KAR 17:300

KRS SECTION	REGULATION
304.17A.647	806 KAR 17:091
304.17A-700	806 KAR 17:360
304.17A-702	806 KAR 17:360
304.17A-704	806 KAR 17:360
304.17A-706	806 KAR 17:360
304.17A-708	806 KAR 17:360
304.17A-720	806 KAR 17:360
304.17A-728	806 KAR 17:300
304.17A-730	806 KAR 17:360
304.17B.001 - 304.17B.033	806 KAR 17:091
304.17C-060	806 KAR 17:091
	806 KAR 17:300
304.17C-090	806 KAR 17:360
304.18 - 032	806 KAR 17:091
304.18 - 034	806 KAR 17:570
304.18 - 110	806 KAR 17:091
304.18 - 0365	806 KAR 17:091
304.18-0365 - 304.18-037	806 KAR 17:091
304.18-0985	806 KAR 17:091
304.32-153	806 KAR 17:091
304.32 - 275	806 KAR 17:570
304.32-280	806 KAR 17:091
304.32-1585	806 KAR 17:091
304.32-1595	806 KAR 17:091
304.33 - 030	806 KAR 17:570
304.38-199	806 KAR 17:091
304.38 - 205	806 KAR 17:570
304.38 - 210	806 KAR 17:091
304.38-1935 - 304.38-1937	806 KAR 17:091
304.38 - 1937	806 KAR 17:091
304.99	806 KAR 17:300
304.99-123	806 KAR 17:360
311	902 KAR 20:260
314	902 KAR 20:260
314.011	201 KAR 20:057
	201 KAR 20:490
314.042	201 KAR 20:057
314.193	201 KAR 20:057
314.195	201 KAR 20:057
314.196	201 KAR 20:057
315.036	902 KAR 55:011
315.065	201 KAR 2:015
315.120	201 KAR 2:015
315.191	902 KAR 55:011
315.402	902 KAR 55:011
315.406	902 KAR 55:011
317A.060	201 KAR 12:251
317A.130	201 KAR 12:280
318.130	902 KAR 45:160
327.010	201 KAR 22:020
327.050	201 KAR 22:020
	201 KAR 22:040
327.060	201 KAR 22:020
327.070	201 KAR 22:040
327.075	201 KAR 22:020
327.080	201 KAR 22:020
327.300	201 KAR 22:170
327.310	201 KAR 22:020
342.0011	803 KAR 25:089
342.019	803 KAR 25:089
342.020	803 KAR 25:089
342.035	803 KAR 25:089
350.010	400 KAR 1:110
350.028	400 KAR 1:001
	400 KAR 1:040
	400 KAR 1:090
	400 KAR 1:110
350.029	400 KAR 1:090
350.032	400 KAR 1:001
	400 KAR 1:090
350.060	400 KAR 1:090
350.070	400 KAR 1:001
	400 KAR 1:040
	400 KAR 1:090

KRS SECTION	REGULATION
	400 KAR 1:110
350.085	400 KAR 1:001
	400 KAR 1:040
	400 KAR 1:090
350.090	400 KAR 1:001
	400 KAR 1:090
	400 KAR 1:110
350.093	400 KAR 1:001
	400 KAR 1:040
	400 KAR 1:090
	400 KAR 1:110
350.130	400 KAR 1:001
	400 KAR 1:040
	400 KAR 1:090
	400 KAR 1:110
350.240	400 KAR 1:090
350.255	400 KAR 1:001
	400 KAR 1:090
	400 KAR 1:110
350.300	400 KAR 1:090
350.305	400 KAR 1:090
350.465	400 KAR 1:001
	400 KAR 1:040
	400 KAR 1:090
	400 KAR 1:110
350.610	400 KAR 1:001
	400 KAR 1:090
350.990	400 KAR 1:001
	400 KAR 1:040
	400 KAR 1:090
	400 KAR 1:110
350.0301	400 KAR 1:001
	400 KAR 1:090
	400 KAR 1:110
350.0305	400 KAR 1:001
	400 KAR 1:090
351.315	400 KAR 1:001
	400 KAR 1:040
	400 KAR 1:090
	400 KAR 1:110
351.345	400 KAR 1:001
	400 KAR 1:040
	400 KAR 1:090
	400 KAR 1:110
351.350	400 KAR 1:001
	400 KAR 1:040
	400 KAR 1:090
	400 KAR 1:110
353	400 KAR 1:100
353.060	400 KAR 1:001
	400 KAR 1:040
	400 KAR 1:090
353.200	400 KAR 1:001
	400 KAR 1:040
	400 KAR 1:090
353.510	805 KAR 1:210
353.590	400 KAR 1:001
	400 KAR 1:040
	400 KAR 1:090
353.620	400 KAR 1:001
	400 KAR 1:040
	400 KAR 1:090
353.630	400 KAR 1:001
	400 KAR 1:040
	400 KAR 1:090
	805 KAR 1:210
353.640	400 KAR 1:001
	400 KAR 1:040
	400 KAR 1:090
	805 KAR 1:210
353.700	400 KAR 1:001
	400 KAR 1:040
	400 KAR 1:090
353.5901	400 KAR 1:001

KRS SECTION	REGULATION
	400 KAR 1:040
	400 KAR 1:090
367.680	40 KAR 2:345
367.686	40 KAR 2:345
367.688	40 KAR 2:345
367.689	40 KAR 2:345
367.690	40 KAR 2:345
369.101 - 369.120	895 KAR 1:035
403.211	921 KAR 1:380
405.430	921 KAR 1:380
405.467	921 KAR 1:380
405.520	921 KAR 1:380
406.021	921 KAR 1:380
406.025	921 KAR 1:380
407.5101 - 407.5903	921 KAR 1:380
433.900 - 433.906	830 KAR 1:010
610.170	921 KAR 1:380
620.020	922 KAR 1:560
625.065	922 KAR 1:560
7 C.F.R.	921 KAR 3:025
	921 KAR 3:030
	921 KAR 3:035
10 C.F.R.	902 KAR 100:022
	902 KAR 100:052
	902 KAR 100:070
	902 KAR 100:072
	902 KAR 100:100
	902 KAR 100:142
20 C.F.R.	895 KAR 1:001
21 C.F.R.	12 KAR 2:031
	12 KAR 2:041
	12 KAR 2:051
	12 KAR 3:037
	902 KAR 45:160
29 C.F.R.	806 KAR 17:091
	902 KAR 20:260
	902 KAR 20:275
30 C.F.R.	400 KAR 1:001
	400 KAR 1:040
	400 KAR 1:090
	400 KAR 1:110
39 C.F.R.	400 KAR 1:090
40 C.F.R.	902 KAR 100:022
42 C.F.R.	806 KAR 17:570
	895 KAR 1:001
	895 KAR 1:010
	895 KAR 1:015
	895 KAR 1:030
	895 KAR 1:035
	895 KAR 1:055
	907 KAR 1:642
45 C.F.R.	806 KAR 9:360
	806 KAR 17:570
	902 KAR 20:260
	902 KAR 20:275
	902 KAR 100:072
	921 KAR 1:380
	921 KAR 3:025
49 C.F.R.	902 KAR 100:070
74 C.F.R.	806 KAR 17:570
7 U.S.C.	302 KAR 29:020
	921 KAR 3:025
	921 KAR 3:030
	921 KAR 3:035
15 U.S.C.	12 KAR 3:012
	12 KAR 3:028
	12 KAR 3:039
18 U.S.C.	601 KAR 2:030
20 U.S.C.	11 KAR 15:010
21 U.S.C.	12 KAR 2:041
	12 KAR 3:037
	902 KAR 20:260
	902 KAR 45:160
26 U.S.C.	101 KAR 2:095

KRS SECTION	REGULATION	KRS SECTION	REGULATION
29 U.S.C.	806 KAR 17:091		
	806 KAR 17:570		
	895 KAR 1:001		
30 U.S.C.	400 KAR 1:001		
	400 KAR 1:040		
	400 KAR 1:090		
	400 KAR 1:110		
42 U.S.C.	806 KAR 17:091		
	806 KAR 17:570		
	895 KAR 1:001		
	895 KAR 1:010		
	895 KAR 1:015		
	895 KAR 1:020		
	895 KAR 1:025		
	895 KAR 1:030		
	895 KAR 1:035		
	895 KAR 1:040		
	895 KAR 1:045		
	895 KAR 1:050		
	895 KAR 1:055		
	902 KAR 20:260		
	902 KAR 20:275		
	902 KAR 100:022		
	902 KAR 100:052		
	902 KAR 100:070		
	902 KAR 100:072		
	902 KAR 100:100		
	902 KAR 100:142		
	906 KAR 1:190		
	907 KAR 1:642		
	921 KAR 1:380		
	921 KAR 3:030		
	921 KAR 3:035		
49 U.S.C.	302 KAR 29:020		
52 U.S.C.	921 KAR 3:030		
2012 Ky. Acts ch. 144, Part XII	806 KAR 17:091		
Pres. EO 13166	921 KAR 3:030		
Pub. L 108-173	806 KAR 17:570		

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	Remain in Effect without Amendment
201 KAR 022:010	12-02-1986	06-04-2018	Remain in Effect without Amendment
201 KAR 022:035	05-31-2013	06-04-2018	Remain in Effect without Amendment
201 KAR 022:045	10-19-2016	06-04-2018	Remain in Effect without Amendment
201 KAR 022:052	01-04-2005	06-04-2018	Remain in Effect without Amendment
201 KAR 022:053	06-02-2017	06-04-2018	Remain in Effect without Amendment
201 KAR 022:130	10-04-2013	06-04-2018	Remain in Effect without Amendment
201 KAR 022:135	07-21-2010	06-04-2018	Remain in Effect without Amendment
201 KAR 022:140	11-15-2006	06-04-2018	Remain in Effect without Amendment
201 KAR 022:150	01-04-2005	06-04-2018	Remain in Effect without Amendment
201 KAR 022:160	08-01-2014	06-04-2018	Remain in Effect without Amendment
405 KAR 002:010	08-11-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 005:002	08-26-2004	07-03-2018	Remain in Effect without Amendment
405 KAR 005:015	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 005:021	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 005:032	03-08-2013	07-03-2018	Remain in Effect without Amendment
405 KAR 005:036	08-26-2004	07-03-2018	Remain in Effect without Amendment
405 KAR 005:040	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 005:042	08-26-2004	07-03-2018	Remain in Effect without Amendment
405 KAR 005:048	08-26-2004	07-03-2018	Remain in Effect without Amendment
405 KAR 005:050	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 005:055	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 005:062	08-26-2004	07-03-2018	Remain in Effect without Amendment
405 KAR 005:065	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 005:070	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 005:078	08-26-2004	07-03-2018	Remain in Effect without Amendment
405 KAR 005:082	08-26-2004	07-03-2018	Remain in Effect without Amendment
405 KAR 005:085	02-03-2012	07-03-2018	Remain in Effect without Amendment
405 KAR 007:001	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 007:015	12-12-1994	07-03-2018	Remain in Effect without Amendment
405 KAR 007:030	11-09-1992	07-03-2018	Remain in Effect without Amendment
405 KAR 007:035	11-26-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 007:040	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 007:050	05-04-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 007:060	02-04-1986	07-03-2018	Remain in Effect without Amendment
405 KAR 007:070	09-10-1987	07-03-2018	Remain in Effect without Amendment
405 KAR 007:080	09-28-1994	07-03-2018	Remain in Effect without Amendment
405 KAR 007:095	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 007:097	06-09-1999	07-03-2018	Remain in Effect without Amendment
405 KAR 007:100	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 007:110	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 008:001	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 008:010	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 008:020	11-26-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 008:030	01-05-2015	07-03-2018	Remain in Effect without Amendment
405 KAR 008:040	01-05-2015	07-03-2018	Remain in Effect without Amendment
405 KAR 008:050	01-05-2018	07-03-2018	Remain in Effect without Amendment
416 KAR 001:010	08-24-1995	06-27-2018	Remain in Effect without Amendment
805 KAR 001:020	09-25-1991	07-03-2018	Remain in Effect without Amendment
805 KAR 001:030	10-23-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 001:040	04-09-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 001:050	09-25-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 001:060	12-07-2017	06-27-2018	Remain in Effect without Amendment
805 KAR 001:080	06-11-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 001:100	09-03-2015	06-27-2018	Remain in Effect without Amendment
805 KAR 001:110	04-04-2008	06-27-2018	Remain in Effect without Amendment
805 KAR 001:120	09-25-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 001:130	09-04-2015	06-27-2018	Remain in Effect without Amendment
805 KAR 001:140	09-04-2015	06-27-2018	Remain in Effect without Amendment

805 KAR 001:160	07-09-1997	06-27-2018	Remain in Effect without Amendment
805 KAR 001:170	09-04-2015	06-27-2018	Remain in Effect without Amendment
805 KAR 001:180	11-12-1997	06-27-2018	Remain in Effect without Amendment
805 KAR 001:190	11-17-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 001:200	10-23-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 002:010	12-11-1974	06-27-2018	Remain in Effect without Amendment
805 KAR 003:010	09-22-1993	06-27-2018	Remain in Effect without Amendment
805 KAR 003:020	07-09-1985	06-27-2018	Remain in Effect without Amendment
805 KAR 003:030	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:040	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:060	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:070	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:080	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:090	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:100	02-05-2016	06-27-2018	Remain in Effect without Amendment
805 KAR 003:110	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:120	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 004:005	06-07-1993	06-27-2018	Remain in Effect without Amendment
805 KAR 004:010	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 004:020	07-02-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 004:030	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:040	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 004:050	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:060	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:075	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:080	09-01-1976	06-27-2018	Remain in Effect without Amendment
805 KAR 004:085	12-11-1996	06-27-2018	Remain in Effect without Amendment
805 KAR 004:087	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:090	09-07-1983	06-27-2018	Remain in Effect without Amendment
805 KAR 004:093	12-11-1996	06-27-2018	Remain in Effect without Amendment
805 KAR 004:095	05-03-1978	06-27-2018	Remain in Effect without Amendment
805 KAR 004:100	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 004:105	09-01-1976	06-27-2018	Remain in Effect without Amendment
805 KAR 004:110	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:115	05-03-1978	06-27-2018	Remain in Effect without Amendment
805 KAR 004:120	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:125	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 004:130	09-01-1976	06-27-2018	Remain in Effect without Amendment
805 KAR 004:135	09-01-1976	06-27-2018	Remain in Effect without Amendment
805 KAR 004:140	12-11-1996	06-27-2018	Remain in Effect without Amendment
805 KAR 004:145	09-01-1976	06-27-2018	Remain in Effect without Amendment
805 KAR 004:150	09-01-1976	06-27-2018	Remain in Effect without Amendment
805 KAR 004:155	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:160	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:165	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 005:010	10-14-1996	06-27-2018	Remain in Effect without Amendment
805 KAR 005:030	12-11-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 005:070	12-11-1996	06-27-2018	Remain in Effect without Amendment
805 KAR 007:010	08-06-2007	06-27-2018	Remain in Effect without Amendment
805 KAR 007:020	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:030	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:040	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:050	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:060	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:070	10-13-1999	06-27-2018	Remain in Effect without Amendment
805 KAR 007:080	03-06-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 007:090	10-13-1999	06-27-2018	Remain in Effect without Amendment
805 KAR 007:100	08-06-2007	06-27-2018	Remain in Effect without Amendment
805 KAR 008:010	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 008:030	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 008:040	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 008:050	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 008:060	09-02-2010	06-27-2018	Remain in Effect without Amendment
805 KAR 009:010	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:020	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:030	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:050	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:060	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:070	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:080	06-08-2005	06-27-2018	Remain in Effect without Amendment

CERTIFICATION LETTER SUMMARIES

805 KAR 009:090	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:100	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 11:001	08-23-2007	06-27-2018	Remain in Effect without Amendment
805 KAR 11:010	08-23-2007	06-27-2018	Remain in Effect without Amendment
805 KAR 11:020	08-23-2007	06-27-2018	Remain in Effect 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
401 KAR 39:005	07-09-2018		
900 KAR 11:010	07-13-2018		
907 KAR 17:020	06-05-2018		

SUBJECT INDEX

AGING AND INDEPENDENT LIVING
Aging Services
Personal care attendant program and assistance services; 910 KAR 1:090

AGRICULTURE
Structural Pest Control
General provisions; 302 KAR 29:020

AGRICULTURE EXPERIMENT STATION
Commercial Feeds
Brand and product names; 012 KAR 002:016
Definitions for 12 KAR Chapter 2; 012 KAR 002:006
Directions for use and precautionary statements; 012 KAR 002:031
Drug and feed additives; 012 KAR 002:041
Expression of guarantees; 012 KAR 002:021
Guaranteed analysis; 012 KAR 002:018
Ingredients; 012 KAR 002:026
Label format; 012 KAR 002:011
List of manufacturers; 012 KAR 002:056
Manufacturing conditions; 012 KAR 002:051
Non-protein; 012 KAR 002:036
Poisonous or deleterious substances; 012 KAR 002:046
Product purpose statement; 012 KAR 002:017
Registration; 012 KAR 002:061
Suitability; 012 KAR 002:066

Pet food
Additives, drugs and pet food; 12 KAR 3:037
Brand and product names; 12 KAR 3:017
Calorie content, statements of; 12 KAR 3:042
Definitions; 12 KAR 3:007
Descriptive terms; 12 KAR 3:028
Feeding directions; 12 KAR 3:032
Guarantees, Expression of; 12 KAR 3:022
Ingredients; 12 KAR 3:027
Label format and labeling; 12 KAR 3:012
Nutritional adequacy; 12 KAR 3:039

ALCOHOLIC BEVERAGE CONTROL
Vintage distilled spirits;

AUCTIONEERS, KENTUCKY BOARD OF
Standards of conduct and complaints; 201 KAR 3:045

ATTORNEY GENERAL
Office of Consumer Protection
Visual aid glasses seller annual registration requirements; 40 KAR 002:245

BOARDS AND COMMISSIONS
See also Occupations and Professions
See listing below for specific subject headings:
Cosmetology, 201 KAR Chapter 12
Medical Licensure; 201 KAR Chapter 9
Nursing; 201 KAR Chapter 20
Optometric Examiners; 201 KAR Chapter 5
Fee, annual renewal; 201 KAR 5:090
Pharmacy; 201 KAR Chapter 2
Physical Therapy; 201 KAR Chapter 22

COMMUNITY BASED SERVICES
Child Welfare
Putative father registry and operating procedures; 922 KAR 001:560
Day Care
Health and safety standards for centers; 922 KAR 2:120
Child care Assistance Program; Requirements for registered providers; 922 KAR 2:180
Civil penalties; 922 KAR 2:190
Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes; 922 KAR 2:270
Family Support
Child Support Enforcement Program application and intergovernmental process; 921 KAR 1:380
Supplemental Nutrition Assistance Program
Application process; 921 KAR 3:030
Certification process; 921 KAR 3:035
Technical requirements; 921 KAR 3:025

COSMETOLOGY
Esthetic practices restrictions; 201 KAR 12:280
Repeal of 201 KAR 12:085, 088, 120, 180, 250; 201 KAR 12:251

DEAF AND HARD OF HEARING
Interpreter Referral Services
Definitions for 735 KAR Chapter 2; 735 KAR 2:010
Grievance procedures; 735 KAR 2:060
Interpreter qualifications; 735 KAR 2:030
Interpreter protocols; 735 KAR 2:040
KCDHH Interpreter Referral Services Program parameters; 735 KAR 2:020
Processing of requests for services; 735 KAR 2:050
Telecommunication Devices for the Deaf
Eligibility requirements, application and certification procedures to receive specialized equipment for the deaf, hard of hearing, and speech impaired; 735 KAR 1:010
Processing system - vendor participation, security, maintenance, repair for specialized equipment; 735 KAR 1:020

EDUCATION
Assessment and Accountability
Improvement planning for schools and districts; 703 KAR 5:225
Improvement procedures, schools; 703 KAR 5:280
Instruction, Office of
All STARS for Preschool programs; 704 KAR 3:015
Bible Elective Social Studies course; 704 KAR 3:306

EDUCATION AND WORKFORCE DEVELOPMENT
For Education, see listing below:
Education; KAR Title 704 *(See Education)*
Higher Education Assistance Authority; KAR Title 11 *(See Higher Education Assistance Authority)*
For Workforce Development, see listing below:
Workplace Standards; KAR Title 803 *(See Workplace Standards)*

ELECTIONS
Forms and Procedures
Precinct officers
Additional and emergency; 31 KAR 4:120
Evaluation of; 31 KAR 4:100
Statewide Voter Registration
Current address of registered voters; 31 KAR 3:010
Voter registration list distribution; 31 KAR 3:010

FISH AND WILDLIFE
Fish
Aquatic organisms; propagation of; 301 KAR 1:115
Taking of fish by nontraditional fishing methods; 301 KAR 001:410
Taking of fish by traditional fishing methods; 301 KAR 001:201

ENERGY AND ENVIRONMENT CABINET
Public Service Commission, KAR Title 807
Office of the Secretary
Administration
Administrative discovery; 400 KAR 001:040
Administrative hearings practice provisions; 400 KAR 001:090
Administrative hearings relating to matters brought under KRS Chapter 350.310 through 351.375; 400 KAR 001:110
Definitions for 400 KAR Chapter 1; 400 KAR 001:001
General administrative hearing practice provisions relating to

matters brought under KRS Chapters 146, 149, 151, 223, 224, and 353; 400 KAR 001:100

EXECUTIVE BRANCH ETHICS COMMISSION
Administrative proceedings; 009 KAR 001:030
Pre-administrative proceedings; 009 KAR 001:015

FOOD STAMPS
Now called Supplemental Nutrition Assistance Program
See Community Based Services; 921 KAR Chapter 3

HEALTH AND FAMILY SERVICES
See listing below for specific subject headings:
Aging and Independent Living; KAR Title 910
Community Based Services; KAR Title 921
Inspector General (Health); KAR Title 900, 902, 906
Medicaid Services; KAR Title 895 and 907

HIGHER EDUCATION ASSISTANCE AUTHORITY
Grant Programs
CAP grant award determination procedure; 11 KAR 5:145
KEES Program
http://www.lrc.ky.gov/kar/011/015/010.pdfDefinitions; 11 KAR 15:010
Scholarships for Registered Apprenticeship programs; 11 KAR 15:110

INSURANCE
Agents, Consultants, Solicitors, and Adjusters
Pharmacy Benefit Manager License; 806 KAR 9:360
Health Insurance Contracts
Medicare supplement insurance policies and certificates, minimum standards for; 806 KAR 17:570

HOUSING, BUILDINGS AND CONSTRUCTION
Kentucky Building Code
Building code; 815 KAR 7:120
Residential code; 815 KAR 7:125

INSPECTOR GENERAL (HEALTH)
Civil Money Penalty Funds collected from certified Long-term Care facilities; 906 KAR 1:200
Inspector General
Repeal of 906 KAR 001:050, 906 KAR 001:060, and 906 KAR 001:070; 906 KAR 1:071E
National background check; 906 KAR 1:190
State Health Plan
State Health Plan for facilities and services; 900 KAR 005:020

INSURANCE
Health Insurance Contracts
Disclosure of other coverage in application; 806 KAR 017:020
Prompt payment of claims; 806 KAR 017:360
Provider agreement and risk-sharing agreement filing requirements; 806 KAR 017:300
806 KAR 017:091. Repeal of 806 KAR 017:010, 806 KAR 017:090, 806 KAR 017:130, 806 KAR 017:310, 806 KAR 017:320, 806 KAR 017:330, 806 KAR 017:440, 806 KAR 017:460, 806 KAR 017:500, 806 KAR 017:540, 806 KAR 017:545, 806 KAR 017:555.

JUSTICE AND PUBLIC SAFETY
Kentucky Law Enforcement Council
Department of Criminal justice Training basic training graduation requirements; records; 503 KAR 001:110

LABOR
See listing below for specific subject headings:
Workplace Standards; KAR Title 803 *(See Workplace Standards)*
Workers' Claims; 803 KAR Chapter 25 *(See Workers' Claims)*

MEDICAID SERVICES
Medicaid
Accommodation, modifications, and appeals for beneficiaries participating in the Kentucky HEALTH program; 895 KAR 001:045
Beneficiary premiums; 895 KAR 001:025
Covered services within the Kentucky HEALTH program; 895 KAR 001:035
Deductible accounts within the Kentucky HEALTH program; 895 KAR 001:040
Definitions for 895 KAR Chapter 001; 895 KAR 001:001
Designation or determination of medically frail status or accommodation due to temporary vulnerability in the Kentucky HEALTH program; 895 KAR 001:055
Eligibility for Kentucky HEALTH program; 895 KAR 001:010
Enrollment and reimbursement for providers in the Kentucky HEALTH program; 895 KAR 001:050
Establishment and use of the MyRewards program; 895 KAR 001:030
PATH requirement for the Kentucky HEALTH program; 895 KAR 001:020
Premium payments within the Kentucky HEALTH programs; 895 KAR 001:015
Medicaid Services
Adult group 07-2018 benefit plan and copayments; 907 KAR 001:642

NATURAL RESOURCES
Coal Bed Methane; *805 KAR Chapter 9*
Forestry, *KAR Title 402*
Mining
Permits; *KAR Title 405*
Safety; *805 KAR Chapters 7 & 8*
Oil and Gas; *805 KAR Chapter 1*

NURSING
Licensed practical nurse infusion therapy scope of practice; profess201 KAR 020:49
Scope and standards of practice of advanced practice registered nurses; 201 KAR 020:057

OIL AND GAS
Comment period for pooling of oil and gas shallow wells; 805 KAR 001:210

OPTOMETRIC EXAMINERS, KENTUCKY BOARD OF
(See Boards and Commissions)

PERSONNEL CABINET
Classified
Compensation; 101 KAR 2:034
General Service requirements; 101 KAR 2:095
Job classification plan; 101 KAR 2:020
Vacancies, detail to special duty and temporary overlap; 101 KAR 2:076
Unclassified
Compensation and pay incentives; 101 KAR 3:045
Service, promotion, transfer, disciplinary actions; 101 KAR 3:050

PHARMACY
Continuing education; 201 KAR 2:015

PHYSICAL THERAPY
Eligibility and credentialing procedure; 201 KAR 022:020.
Physical Therapy Compact Commission; 201 KAR 022:170
Procedure for renewal or reinstatement of a credential for a physical therapist or physical therapist assistant; 201 KAR 022:040

POSTSECONDARY EDUCATION
Public Educational Institutions
Guidelines for admission to the state-supported postsecondary education institutions; 013 KAR 002:020

PROFESSIONAL LICENSING
Occupations and Professions, Athlete Agents
Repeal of 200 KAR 030:010, 030:020, 030:030, 030:040, and

030:070; 200 KAR 030:011
Registry
Complaints; 830 KAR 002:020
Definitions; 830 KAR 002:001
Registration and fees; 830 KAR 2:010
Secondary Metals Recyclers
Forms for application, certificate of registration, fees; 830 KAR 1:010

PUBLIC PROTECTION CABINET
See listing below for specific subject headings:
Alcoholic Beverage Control*; KAR Title 804 (See Alcoholic Beverage Control)*
Professional Licensing; *KAR Title 830 (See Professional Licensing)*
Secondary Metals Recyclers*; 830 KAR Chapter 1*
Charitable Gaming; *KAR Title 820*
Claims Commission; *KAR Title 107*
Financial Institutions; *KAR Title 808*
Housing, Buildings and Construction; *KAR Title 815 (See Housing, Buildings and Construction)*
Insurance; KAR Title 806 *(See Insurance)*

PUBLIC HEALTH
Controlled Substances
Repeal of 902 KAR 055:010; 902 KAR 055:011E
Food and Cosmetics
Kentucky food processing, packaging, storage, and distribution operations; 902 KAR 045:160
Hazardous Substances
Repeal of 902 KAR 047:040, 902 KAR 047:050, 902 KAR 047:060, and 902 KAR 047:070; 902 KAR 047:071
Health Services and Facilities
Hospital-owned pain management clinics; 902 KAR 020:260
Freestanding or mobile technology; 902 KAR 020:275
License procedures and fee schedule; 902 KAR 020:008
Repeal of 902 KAR 020:058, 902 KAR 020:145, 902 KAR 020:190, and 902 KAR 020:400; 902 KAR 020:401E
Repeal of 902 KAR 020:250; 902 KAR 020:251
Radiology
Licenses and radiation safety requirements for well logging; 902 KAR 100:142
Licenses for industrial radiography and radiation safety requirements for industrial radiographic operations; 902 KAR 100:100
Licensing requirements for land disposal of radioactive waste; 902 KAR 100:022
Medical use of byproduct material; 902 KAR 100:072.
Packaging and transportation of radioactive material; 902 KAR 100:070
Repeal of 902 KAR 100:017, 902 KAR 100:060, and 902 KAR 100:090; 902 KAR 100:018
Specific domestic licenses of broad scope for by product material; 902 KAR 100:052.
Sanitation
Kentucky youth camps; 902 KAR 10:040
Repeal of 902 KAR 10:050; 902 KAR 010:051

PUBLIC SERVICE COMMISSION
Utilities
Gas service; 807 KAR 5:022
Gas service; gathering systems; 807 KAR 5:026

REAL ESTATE AUTHORITY, KENTUCKY
Auctioneers *(See Auctioneers, Kentucky Board of)*

TRANSPORTATION
See Vehicle Regulation; KAR Title 601

UTILITIES
See Public Service Commission; KAR Title 807

VEHICLE REGULATION
Motor Carriers
Ignition interlock; 601 KAR 2:030

WORKERS' CLAIMS
Fee schedule for physicians; 803 KAR 25:089

WORKFORCE DEVELOPMENT CABINET
Workers' Claims; 803 KAR Chapter 25 *(See Workers' Claims)*
Labor; KAR Title 803

WORKPLACE STANDARDS
Workers' Claims; 803 KAR Chapter 25 *(See Workers' Claims)*